

1 International Criminal Court
2 Trial Chamber 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé
5 Goudé - ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Status Conference - Courtroom 1
9 Monday, 1 October 2018
10 (The hearing starts in open session at 10.16 a.m.)
11 THE COURT USHER: [10:16:20] All rise.
12 The International Criminal Court is now in session.
13 PRESIDING JUDGE TARFUSSER: [10:16:38] Good morning. Good morning to
14 everybody.
15 First of all, let me say that we apologise for this delay, which was caused by the late
16 arrival of the defendants and not, it wasn't the fault of the Court as such or of the
17 Chamber or anybody else, but it was a problem in the transport.
18 I would like to start this hearing by first of all summarising for the record of the Court,
19 I think also for the benefit of all of us here in the courtroom, but especially for the
20 benefit of all those who could not follow the development of this proceedings due to
21 the confidentiality of our respective filings, summarise as I said what happened in
22 these months since the last hearing.
23 In the course of this hearing today and the next -- of this hearing session which starts
24 today, the parties will discuss on the existence of sufficient evidence to sustain a
25 conviction, and this hearing was convened pursuant to a procedure first set forth in

1 the Chamber's, and I quote, "order on the further conduct of the proceedings" which
2 was dated 9 February 2018, and the filing is filing number 1124.

3 This order was issued following the completion of the testimony of the last witness of
4 the Prosecutor, who appeared in front of this Court on 17 and 19 January 2018, it is
5 Witness P-564.

6 Therein, in the order the Chamber instructed the Prosecutor to file a trial brief
7 illustrating her case and detailing the evidence in support of the charges and this trial
8 brief was submitted on 19 March 2018, and it is filing number 1136.

9 The goal of this exercise was to obtain from the Office of the Prosecutor a brief
10 explanation, what in their view, after having heard all their own evidence, they
11 considered they had proven in respect to the charges vis-à-vis what they had
12 announced they wanted to prove in their pre-trial brief filed before the opening of the
13 trial.

14 On 23 April 2018, the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé filed
15 their observations to the trial brief, both Defence teams expressing the view that the
16 Prosecutor has not presented enough evidence to warrant a conviction.

17 In their observations, they also indicated that they intended to bring motions
18 challenging the inadequacy of the Prosecutor's evidence, in which they would, if
19 granted, ask for a full acquittal on all charges. And I'm referring to filings number
20 1157 for Mr Gbagbo and 1158 for Mr Blé Goudé.

21 On 4 June 2018, the Chamber then issued the second order on the further conduct of
22 the proceedings. It is filing 1174, ordering the Defence for Mr Gbagbo and the
23 Defence for Mr Blé Goudé to file no later than 20 July 2018, and I quote, "Concise and
24 focused submissions on the specific factual issues for which in their view the evidence
25 presented by the Prosecutor is not sufficient to sustain a conviction, and in respect of

1 which accordingly a full or partial judgment of acquittal would be warranted."
2 The Office of the Prosecutor and the Legal Representative of Victims were ordered to
3 file their responses with the same concise and focused modalities by 27 August 2018.
4 In that order, that's the second order, the Chamber also decided to hold a hearing
5 starting on 10 September 2018 which, following requests by the Prosecutor and the
6 Legal Representative of Victims for additional time to submit their responses, was
7 postponed until today 1 October 2018. And this is filing 1189.
8 On 23 July 2018, the Defence for Mr Blé Goudé filed submissions of 300, altogether
9 311 pages, filing 1198, and the Defence for Mr Gbagbo, a filing of 498 pages. It is
10 filing 1199. In their submissions, both Defence teams asked the Chamber extensively
11 arguing to declare the lack of sufficient evidence to support the charges and to acquit
12 both accused.
13 On 10 September 2018, the Legal Representative of Victims and the Prosecutor filed
14 their responses, filing numbers 1206 and 1207, of respectively 101 and 1,093 pages.
15 Both the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé immediately
16 reacted in their filings of 12 and 4 September 2018, filing 1208 and filing 1211
17 respectively, arguing that the response of the Prosecutor exceeded the scope of the
18 response in both size and content and requested the Chamber to reject it in limine.
19 In the alternative, they requested to be granted additional time to prepare for an oral
20 hearing and the Defence for Mr Gbagbo requested also the written translation into
21 French of the response of the Prosecutor.
22 It is clear that if these requests were granted, it would have led to a long
23 postponement of today's hearing and thus a delay of the proceedings as a whole.
24 The second order envisaged a hearing where the parties and participants would have
25 the possibility to illustrate and to complete their submissions and to respond to each

1 other's submissions as well as to questions of the Chamber.

2 In light of the features and the length of the documents submitted in execution of the
3 second order, as well as of the requests by both Defence teams, it was therefore
4 necessary for the Chamber to clarify and adapt its subject matter and purpose.

5 In an effort and with a view to balance the principles of fairness and expeditiousness
6 of the proceedings, the decision issued on, the Chamber issued a decision on 21
7 September, filing 1212, in which it confirmed the hearing scheduled for today and in
8 so doing avoided any further delay guaranteeing the expeditiousness of the
9 proceedings and ordered the Prosecutor to orally respond to the Defence request to
10 submit the charges -- to dismiss the charges in a concise and focused manner.

11 As usual, these oral submissions will be simultaneously interpreted into French.

12 In addition, the decision ordered the Registrar to promptly devise arrangements for
13 the translation of the Prosecutor's response by liaising with the Defence for
14 Mr Gbagbo and in so doing guaranteed the fairness of the proceedings.

15 Following the oral response of the Prosecutor, which will start very soon, the Legal
16 Representative of Victims will have the possibility to orally present and integrate her
17 views and the Defence will then have the opportunity to immediately respond, if this
18 is feasible, and without prejudice to their requesting an adjournment of the hearing to
19 prepare and submit or supplement their oral responses. The Chamber may also
20 pose questions to the parties.

21 This recalled for the record and said for the benefit of all those who were excluded
22 from our exchange of filings, we will sit as usual for three sessions of one hour and a
23 half a day, not this morning, unfortunately because we started with 45 minutes of
24 delay. So today we will go to 11. Then from 11.30 to 1 o'clock, p.m., and then from
25 2.30 to 4 as usual, starting now, and the following days we will have the ordinary 9.30

1 start in the morning.

2 This said, I will now give the floor to the Office of the Prosecutor for its submissions.

3 I don't know who will talk. Mr MacDonald.

4 MR MACDONALD: [10:29:31] Good morning, Mr President, your Honours.

5 I'll give the Chamber a brief overview of the structure of our presentation these next

6 two days. First, Deputy Prosecutor, Mr Stewart, will be addressing the Chamber as

7 to the standard that the Chamber should apply at this stage of the proceedings,

8 summarising the Prosecution's position, address a specific issue as to the assessment

9 of the evidence.

10 I will therefore after take the floor for the remainder of the Prosecution's presentation.

11 I will first summarise the Prosecution's position as to the crimes charges and then

12 move on to the contextual elements of crimes against humanity dealing with two

13 issues, the course of conduct on the one hand and, second, the policy. And

14 thereafter, I will address the different modes of liability that Mr Gbagbo and

15 Mr Blé Goudé are charged with, and that should conclude our presentation.

16 Our presentation, as the order you alluded to, your Honour, the last decision, sorry,

17 the Chamber rendered is to summarise briefly our case, but mainly respond to the

18 Defence arguments. Therefore it is not, let's put it this way, a normal advocacy

19 presentation that is trilling and high flying. It's mainly responding to arguments

20 because the Chamber has a wealth of information which has been provided in March

21 in our trial brief and recently in our thousand-page response. The factual allegations,

22 the chronology of events is set out in those two documents at length. So therefore,

23 this exercise is more one in response with the understanding that the Chamber

24 masters all these facts. So when I refer to them, I'm not giving references.

25 PRESIDING JUDGE TARFUSSER: [10:32:13] It's a good understanding.

1 MR MACDONALD: [10:32:14] Thank you. Sorry. I will now give the floor to
2 Deputy Prosecutor, Mr Stewart.

3 PRESIDING JUDGE TARFUSSER: [10:32:24] Mr Stewart, you have the floor.

4 MR STEWART: [10:32:28] Thank you, Mr President, your Honours. It's a pleasure
5 and an honour to be here before you. Every so often they let me out of my office to
6 come into the Court and be what I loved to be in the past, that is an advocate. So I
7 hope I can assist you on the matter that Mr MacDonald has referenced.
8 My submissions will deal purely with the test applicable to no case to answer motions
9 and how that test should be applied.

10 Mr President, I can say by way of opening that the trial of the accused,
11 Laurent Gbagbo and Charles Blé Goudé should, in our submission, go through to a
12 determination on the merits.

13 With respect to the no case to answer motions filed by the accused, the Prosecution
14 has met the test that the Trial Chamber should apply at this midway stage of the trial
15 proceedings. There is, in our submission, evidence that has been submitted and
16 discussed before the Chamber upon which a Trial Chamber could reasonably convict
17 the accused of the charges against them. Given the nature and volume of the
18 evidence that Mr MacDonald will go through that the Prosecution has submitted to
19 the Chamber, it is right, in our submission, that the case should go through to
20 determination on the merits.

21 This is in the interests, we submit, of the victims of the alleged crimes, the
22 communities affected by the crimes, the people of Côte d'Ivoire, the wider
23 international community and the ability of this Court to dispense independent and
24 impartial justice.

25 As I say, my submissions will address the test that we submit should apply at this

1 stage to a no case to answer motion and how that test should be applied.

2 So let me begin with the test.

3 To reach that final stage of a determination on the merits, the Chamber has to be
4 satisfied that it has evidence before it now that could reasonably sustain convictions
5 of the accused.

6 In saying this, I'm anticipating the nature of the test to be applied in deciding a no
7 case to answer motion.

8 It is vitally important for us all to know what test or standard the Chamber will apply
9 to the assessment of the evidence at this stage.

10 This Court has little experience with no case to answer motions since only one other
11 Trial Chamber has in its discretion permitted a no case to answer motion to be heard.
12 The Court can draw upon the settled jurisprudence of international criminal tribunals.
13 The Court can also have reference to domestic legal systems where such motions are
14 part of the procedural regime. However, the Court in our submission must
15 ultimately examine the matter as a function of its own Statute and the purpose to be
16 served by a no case to answer motion in the context of its own proceedings.

17 It is our mission that the test that fits within the function of the Rome Statute of the
18 ICC and which serves the legitimate purpose of a no case to answer motion is this:

19 At this midway stage of the trial proceedings, is there evidence that has been
20 submitted and discussed before this Trial Chamber upon which any Trial Chamber
21 acting reasonably could find the accused guilty of the charges?

22 We submit that the answer to that question is yes.

23 Mr MacDonald will review the evidence to explain why we answer the question that
24 way. That is not my role here. My role is confined to submitting to the Chamber
25 what the test should be in keeping with the purpose of a no case to answer motion

1 and how the test should be applied. And my submissions rely principally upon
2 paragraphs 27 through 53 and paragraphs 72 through 77 of our written response.
3 The framework for the Prosecution submissions in response to the no case to answer
4 motions before you will be the test that I have just described.
5 Let me come to the purpose of a no case to answer motion.
6 The accused are presumed innocent until their guilt is established to the satisfaction
7 of the Trial Chamber beyond a reasonable doubt. The Statute places the burden
8 upon the Prosecution of proving the guilt of the accused beyond a reasonable doubt.
9 The Prosecution has put its whole case before you.
10 Will the accused call a defence? Much depends upon whether the Prosecution case
11 calls for an explanation, failing which the accused risk being convicted on the
12 evidence presented by the Prosecution.
13 The accused have the right to remain silent. There is no onus on them to testify or
14 call a defence. Their silence cannot be used against them to draw any inference of
15 guilt. However, if the Prosecution has put forward a case that would normally call
16 for an explanation that would put the accused upon their defence, then the accused
17 have a choice to make: To offer no defence and go directly to the merits based solely
18 on the Prosecution case or to call a defence to explain their point of view.
19 The accused should not, however, have to make that choice unless the Prosecution
20 has indeed put in a case that could sustain convictions if left unanswered.
21 This is where a no case to answer motion potentially comes into play.
22 In determining a no case to answer motion, therefore, the Chamber will assess
23 whether the evidence before it at the close of the Prosecution case is such that any
24 Trial Chamber acting reasonably could return verdicts of guilty on the basis of it.
25 Mr President, your Honours, note that the test is not whether any Trial Chamber

1 would convict. That puts the test too high at this stage. The question is whether
2 any Trial Chamber could convict.

3 The reason for this is that we have not yet reached the end of the trial where it will be
4 necessary to weigh the evidence.

5 At the midway point in the trial proceedings, the Chamber is not called upon to
6 determine issues of reliability or credibility with respect to the evidence, and this is a
7 point I'll return to.

8 Should the Chamber find that the evidence is sufficient according to the test, then the
9 trial will continue on the merits to a determination of the guilt or innocence of the
10 accused.

11 If the Chamber determines that this is not the case respecting certain of the counts,
12 then it can enter acquittals respecting those counts and proceed with the trial of the
13 merits of the remaining counts.

14 Should the evidence fail in relation to all of the accounts, then the accused are entitled
15 to be acquitted outright.

16 Thus, where is no case to answer motion is entertained by the Trial Chamber, an
17 additional filter is provided to protect the rights of the accused in addition to those
18 mechanisms that already exist under the Statute.

19 Such a motion may also incidentally serve to refine and focus the issues in contention
20 in the trial.

21 How should the test be applied?

22 At this midway stage in the trial, the Trial Chamber in examining the evidence does
23 not have to decide whether it would itself convict the accused. Indeed, it should
24 scrupulously refrain from doing so in order to preserve both the fact and the
25 appearance of its impartiality.

1 Thus, the test is an objective one: On the evidence before you, could any Trial

2 Chamber acting reasonably convict the accused?

3 In deciding whether any Trial Chamber could reasonably convict, this Chamber will

4 also refrain from engaging in the sort of evaluation of the credibility and reliability of

5 the evidence, testimonial or documentary, that it would at the end of the trial when

6 assessing the weight of the evidence to determine guilt or innocence. This is because,

7 as I have submitted to you, the trial proceedings have not yet reached the stage of

8 deliberations envisaged by Article 74 of the Statute.

9 Were the Chamber to weigh credibility or reliability at this stage of the process, then

10 we would no longer be dealing with no case to answer motions, but something else,

11 for which there is no precedence and no jurisprudence and that, in our submission,

12 would not fit within the procedural structure of the Statute. And this is an

13 important point.

14 The task of the Chamber now is to decide whether there is evidence that has been

15 submitted and discussed before you that could sustain convictions. Now, obviously,

16 that will involve the Chamber in assessing the evidence as a function of the test

17 applicable to the determination of a no case to answer motion.

18 If one wishes to call that weighing the evidence, then it is weighing of an extremely

19 limited sort.

20 So in applying the test, the Chamber should take the Prosecution evidence at its

21 highest. At this midway stage, any weighing of evidence is therefore extremely

22 limited. It is not the sort of weighing of the evidence that would occur at the end of

23 the trial when all of the evidence is in, including any evidence adduced by the

24 Defence.

25 If there is direct evidence implicating the accused in the crimes alleged, then the case

1 must go forward. That evidence will be weighed at the end of the trial. If the
2 evidence is circumstantial, then it is weighed only to the very limited extent needed to
3 determine whether it is reasonably capable of supporting the inferences that the
4 Prosecution is asking the Chamber to draw in order to establish guilt.

5 Once again, circumstantial evidence is taken at its highest and, if it reasonably
6 supports the factual inferences required to sustain a conviction, then the case must go
7 forward.

8 It is only if the evidence is on any reasonable view incapable of belief or incapable of
9 sustaining a conviction that the count or the case should be stopped.

10 That is how, we submit, the test should be applied.

11 I'll deal briefly with the scope of the evidence.

12 There must of course be evidence on all of the key factual allegations necessary to
13 support a conviction. There must also be evidence respecting the modes of liability
14 alleged. However, the Chamber should approach the charges or counts holistically.

15 If with respect to any particular charge there is evidence on at least one of the
16 underlying incidents supporting it, then the whole count must go forward. It
17 doesn't matter if the evidence as it unfolded did not support all of the alleged
18 incidents underlying the count.

19 Similarly, if there is evidence relating to at least one of the modes of liability alleged,
20 then the whole count must go forward.

21 Now, Mr MacDonald will in the interests of a more focused trial suggest a refinement
22 of that general rule which will work in this particular trial. But what I have just
23 stated is the approach generally taken.

24 In sum, the question remains: Is there evidence that has been submitted and
25 discussed before the Chamber upon which a Trial Chamber could reasonably convict

1 the accused of the charges against them? That is the governing standard.
2 I'd like to address briefly, Mr President, your Honours, the no case to answer motion
3 in the context of a submission of evidence regime.
4 I have been speaking conveniently about the weighing of evidence, taking the
5 Prosecution case evidence at its highest, refraining from evaluating the credibility and
6 reliability of the evidence at this midway stage, except in extremely limited
7 circumstances and so on.
8 This implies a so-called admissibility of evidence regime, which is the sort of
9 procedural regime where the no case to answer motion has arisen, either domestically
10 or internationally, including the one other situation where a Trial Chamber of this
11 Court entertained such a motion.
12 However, this Chamber, by a majority, has adopted a submission of evidence regime,
13 as it is entitled to do under the Statute. This means that the evidence must be
14 submitted and discussed to be in play at the trial at all, and matters of relevance,
15 admissibility and weight, are all reserved to the final deliberations of the Chamber at
16 the end of the trial.
17 Now, this does not, I submit, interfere with the Chamber's ability to deal with the no
18 case to answer motions before it.
19 In accordance with the decision of the Appeals Chamber in the Bemba Article 70 case,
20 and I refer the Chamber here to paragraph 75 of our response, the expectation is that
21 all of the evidence submitted and discussed to this point will be considered for the
22 purpose of the Trial Chamber's decision pursuant to Article 74(2) of the Statute based
23 on its evaluation of the evidence and the entire proceedings.
24 Thus, in applying the test of the capability of the evidence reasonably to support a
25 conviction, without at this point weighing its credibility or reliability, all of the

1 evidence submitted and discussed to this stage should be considered by the Chamber.
2 This would allow the no case motions to fit within the procedural structure of the
3 Statute and the regime that this Chamber has chosen by a majority to apply to the
4 reception of the evidence.
5 Mr President, with your indulgence, I need to give a brief word on the approach to
6 the evidence. I don't have much detail on that.
7 You will note that in paragraphs 54 and following of our response we make
8 submissions on the approach that should be taken to the evaluation of the evidence,
9 testimonial and documentary.
10 For my purposes now, I am not asking you to weigh the evidence at this stage, of
11 course, that should come at the end of the trial. The written submissions are just to
12 help the Chamber be aware of the factors that can affect the evaluation of the evidence
13 when it considers whether the evidence submitted and discussed is such that it could
14 support reasonably the convictions.
15 I am not going to take you through those written submissions.
16 I want to deal briefly with the procedural context as a final point.
17 The no case to answer motion should be fit into their procedural context, which is
18 essentially to protect the rights of the accused and shape and focus the issues in the
19 trial. I have just mentioned how this would work with respect to a submission of
20 evidence regime.
21 Unlike the ad hoc tribunals, this Court has the Article 61 confirmation of charges
22 procedure. This serves to protect the rights of the accused by ensuring that he or she
23 is only committed for trial where the evidence discloses substantial reasons to believe
24 that he or she committed the crimes charged.
25 In the discretion of the Trial Chamber, a further filtering of the evidence may occur at

1 the midway point in the trial to determine if the Prosecution case as it has actually
2 been presented as such as to warrant the continuation of the trial.

3 Now, as I say, the Article 61 confirmation procedure serves to help focus the issues in
4 the upcoming trial, given that the accused is committed on the basis of the charges
5 confirmed, and it represents an important protection of the rights of the accused who
6 is not put on trial, unless there is sufficient evidence to warrant a trial.

7 This may explain, in part, why other Trial Chambers of this Court have not permitted
8 no case to answer motions to be heard. But in any event, once the trial is engaged,
9 and the burden of proof on the Prosecution is the criminal standard of proof beyond a
10 reasonable doubt that the accused committed the crimes charged and, as I said, a
11 further filtering of the evidence may occur at the midway point of the trial to
12 determine if the Prosecution case as it has actually been presented is such as to
13 warrant the continuation of the trial.

14 The test applicable to this determination we submit is the one I've been describing,
15 and this is approach, we submit, fits within the structure of the Rome Statute.

16 To conclude, I said that this Court has only limited experience with no case to answer
17 motions. In the Ruto and Sang case, the Trial Chamber adopted the test I have
18 described. However, a majority, not the whole, but a majority of that Chamber went
19 further to evaluate the evidence in a way that was perhaps more suited to the end of
20 the trial. And the majority did this due to the exceptional circumstances that arose
21 in that case where, for various reasons, the majority thought the Prosecution case was
22 in tatters.

23 This is not the situation here, where there is a volume of evidence that in our
24 respectful submission should lead to only one result: The accused should be put
25 upon their defence and this trial should proceed to its conclusion with a

1 determination on the merits of their guilt or innocence.

2 If there is evidence that has been submitted and discussed before you upon which any
3 Trial Chamber acting reasonably could convict the accused, then these no case
4 motions must be denied and this trial proceed to its conclusion on the merits. Thank
5 you.

6 PRESIDING JUDGE TARFUSSER: [10:52:14] Well, this was not really a response to
7 that. It was a rehearsing or summarizing what is already written.

8 I would give now the floor to --

9 (Trial Chamber confers)

10 PRESIDING JUDGE TARFUSSER: [10:52:39] Judge Henderson wants to ask a
11 question on what you just said.

12 JUDGE HENDERSON: [10:52:45] Thank you, Mr Stewart.

13 Just a quick question on the approach of the Chamber with respect to circumstantial
14 evidence.

15 MR STEWART: [10:53:01] Yes.

16 JUDGE HENDERSON: [10:53:03] And the inferences that can be derived in this
17 assessment at this stage of the proceedings, because this case is based on the OTP's
18 presentation of certain direct facts from which we are invited to draw inferences.

19 MR STEWART: [10:53:22] Right.

20 JUDGE HENDERSON: [10:53:24] What is your submission with respect to the
21 position where there are several inferences that may be drawn from the facts that
22 have been established?

23 MR STEWART: [10:53:34] My position is simply this, your Honour. If one of those
24 inferences could reasonably support a conviction, the case must go forward, because
25 you are not yet at the stage where you are weighing the credibility, reliability of the

1 evidence and determining whether that is the only reasonable inference to draw in
2 order to establish guilt or innocence.

3 So this intermediate stage, my submission is as long as those circumstances could
4 reasonably support an inference that would lead to a conviction, that's the end of the
5 story. This case goes forward to a determination on the merits.

6 PRESIDING JUDGE TARFUSSER: [10:54:15] Well, while you are standing, I'm just
7 reading a part of your submissions, which really I felt very strange and I would like
8 you to explain, an explanation. You said how should the test be applied? At this
9 stage, at this midway stage in the trial, the Trial Chamber is examining the evidence,
10 does not have to decide, in examining the evidence, does not have to decide whether
11 it would itself convict the accused. Indeed, it should scrupulously refrain from
12 doing so in order to preserve both the fact and the appearance of its impartiality.
13 Do you really think that if the Chamber evaluates the evidence, somehow it goes
14 against its impartiality? I think this is the very job of a Trial Chamber to evaluate the
15 evidence.

16 MR STEWART: [10:55:19] It is indeed the very job of a Trial Chamber to evaluate the
17 evidence. And at the end of the trial, of course you have to do that. That is your
18 function.

19 The reason I said that is because we are dealing with a no case to answer motion.

20 PRESIDING JUDGE TARFUSSER: [10:55:34] But who -- sorry, sorry.

21 MR STEWART: [10:55:37] You, in my respectful submission, have to refrain from
22 going that extra step to evaluate credibility and reliability at this stage. If I may refer
23 to the dissenting opinion that was given in the Ruto and Sang case by your colleague,
24 I think that sums up the situation as neatly as you could have it summed up.

25 What would happen, I'm not saying that this is the case here, but what would happen

1 in a trial if a Trial Chamber were to accept a no case to answer motion on the basis
2 that it had already assessed the credibility of the evidence and said that it wouldn't,
3 no matter what else happened, convict on the basis of that evidence in terms of an
4 assessment of credibility and reliability, not the sort of abstract assessment that I've
5 been talking about? And there was appeal, and the matter was sent back to continue
6 because the Appeals Chamber didn't agree that that was a correct position in law,
7 what are the parties to think? The Trial Chamber has already committed itself, if
8 you will, in a way that it shouldn't at that stage.

9 And what would happen if, on the contrary, the Trial Chamber rejected, rejected the
10 motion but did so in a way that really engaged an assessment of reliability, how then
11 do the accused feel? What chance do they think they've got if they call it a case?
12 It's because of that, your Honour. It's not to suggest that in any way this Chamber
13 would not be impartial. It's simply, it's the fact of impartiality and the appearance of
14 impartiality. It is a fine line.

15 If you'll forgive me for a moment, early in my career at home in Canada, I had a case
16 of a young woman who was being preyed upon by a young man who wanted to have
17 her act as a prostitute for him. And we called the case, I put the witness in, I put the
18 victim into the witness box. She testified. At one point she broke out crying. She
19 was an extraordinary believable witness.

20 The Defence for its own good reasons brought a no case to answer motion, and the
21 Judge made it clear that he had been very affected by the witness I had called and, in
22 fact, believed her.

23 The Defence counsel looked at me, I looked at him and we said, "Your Honour, we're
24 sorry but we have to declare a mistrial in this case." And that was because of that
25 midway point where the Chamber cannot give away what it's thinking or what it

1 might do. It's a protection not only for the Prosecution and for the accused and the
2 victims, but it's a protection also for the process, your Honour, Mr President. That's
3 my answer. That's why I said that.

4 PRESIDING JUDGE TARFUSSER: [10:58:42] So let me just, the final question, then.
5 I mean, you have spoken two or three times of the procedural structure of the Statute.

6 MR STEWART: [10:58:51] Yes.

7 PRESIDING JUDGE TARFUSSER: [10:58:52] Okay. So this fits in. Where do you
8 find in the structure of the Statute the no case, the procedure for a no case to answer
9 motion for all what you said?

10 MR STEWART: [10:59:05] Well, you don't.

11 PRESIDING JUDGE TARFUSSER: [10:59:06] Okay, good. That's it. Thank you.

12 MR STEWART: [10:59:10] It doesn't detract from the submissions that we made of
13 course.

14 PRESIDING JUDGE TARFUSSER: [10:59:13] Of course.

15 MR STEWART: [10:59:15] Drawing on experience of other tribunals and domestic
16 cases. And we need, frankly we need some structure and this Chamber can help
17 establish this structure, not only for this case, but for others.

18 PRESIDING JUDGE TARFUSSER: [10:59:27] Thank you very much.

19 Now we will make the half an hour break and we go to 11.30 and then we continue
20 with Mr MacDonald, right? Okay. Thank you very much. The hearing is
21 adjourned to 11.30.

22 THE COURT USHER: [10:59:39] All rise.

23 (Recess taken at 10.59 a.m.)

24 (Upon resuming in open session at 11.31 a.m.)

25 THE COURT USHER: [11:31:11] All rise.

1 PRESIDING JUDGE TARFUSSER: [11:31:23] Good morning once again.

2 The floor is to you, Mr MacDonald.

3 MR MACDONALD: [11:31:33] Thank you, Mr President.

4 Your Honours, as I mentioned at the very beginning, I will now address the Defence
5 challenges to the five charged incidents.

6 Before starting, I would like to indicate to the Chamber that I will be quoting some of
7 the evidence today or during my presentation also tomorrow. Now, these quotes are
8 mainly in French, and they are with the interpreters. Of course I'll do my best to
9 deliver my presentation slowly in order to help with the interpretation.

10 Now, your Honours, for each of the five incidents, the Prosecution does not intend on
11 rehearsing the entirety of its evidence regarding the material elements of the charged
12 crimes, as it is already fully detailed in our trial brief, which was submitted in March,
13 and our response filed on 10 September.

14 And indeed we note that since last Friday, our response is publicly available, albeit in
15 redacted form.

16 For the purposes of my presentation today I will therefore only briefly highlight the
17 evidence regarding each incident and then focus on responding to the more salient
18 arguments raised by Mr Gbagbo and Mr Blé Goudé in their motions.

19 Now, on this point we've identified the challenges that we think the Chamber would
20 be interested in hearing us today. So let me now turn to the first incident, the 16
21 December 2010 march on the RTI and its aftermath.

22 PRESIDING JUDGE TARFUSSER: [11:33:51] Excuse me if I interrupt you briefly.

23 Could you also, if possible, make reference to the paragraph in which or to the part in
24 which this incident -- no? If possible, I said, to help us, to help us to follow better.

25 The only reason.

1 MR MACDONALD: [11:34:13] Yes. If I --

2 PRESIDING JUDGE TARFUSSER: [11:34:15] Maybe after --

3 MR MACDONALD: [11:34:16] If I'm not mistaken, the five incidents are dealt with
4 in part four of our response.

5 PRESIDING JUDGE TARFUSSER: [11:34:24] 203.

6 MR MACDONALD: [11:34:25] In full. I had, to be quite honest, your Honour, I
7 had all of these, initially we had all of these references. But we felt that since the
8 presentation is already pretty long, referring every single time to the paragraphs.
9 But I do note some of the paragraphs, either in the Defence motions or our own
10 motions, but not to all of them.

11 PRESIDING JUDGE TARFUSSER: [11:34:47] No, no, no. But just roughly, because
12 obviously here it's from page 203 to page 503, more or less, so it's quite extensive. So
13 if you just indicate roughly the --

14 MR MACDONALD: [11:35:04] Yes, I'll be --

15 PRESIDING JUDGE TARFUSSER: [11:35:06] Not in detail, but just roughly the -- if
16 possible.

17 MR MACDONALD: [11:35:09] I will do that, your Honour, using the table of
18 contents which will be provided to me right now actually.

19 PRESIDING JUDGE TARFUSSER: [11:35:26] I just thought it could be useful. You
20 are not obliged to do so. Please go ahead. Sorry.

21 MR MACDONALD: [11:35:34] Now, for the 16 December, I just want to note that it
22 starts at paragraph, paragraphs, yes, or pages? Paragraph 214 -- page 214, sorry.
23 Now, the first thing we want to draw your attention to, your Honours, is that the
24 evidence demonstrates that as of 12 December 2010, Mr Gbagbo and the FDS high
25 command were aware of an upcoming demonstration from the RHDP.

1 On 14 December 2010, Mr Blé Goudé held a meeting of youth leaders at the Hotel de
2 Ville of Cocody attended by the FPI youth wing leaders, Konaté Navigué, FESCI
3 leader Augustin Mian, GPP leader Zégouen Touré, Mr Youssouf Fofana, amongst
4 others.

5 The aim of that meeting was to protect the RTI from the demonstrators of the planned
6 march of 16 December. The evidence further demonstrates that Young Patriots and
7 members of the FESCI observed this call and supported the FDS to violently repress
8 the 16 December march of the RTI.

9 On the eve of the march, on 15 December, Mr Gbagbo himself instructed --

10 PRESIDING JUDGE TARFUSSER: [11:37:42] There is a technical issue I hope.

11 MR ALTIT: [11:37:45] (Interpretation) Thank you, Mr President. It's been taken
12 care of. Thank you.

13 PRESIDING JUDGE TARFUSSER: [11:37:48] Sorry, it's been taken care of, please.

14 Sorry for the interruption. Please go ahead.

15 MR ALTIT: [11:37:55] (Interpretation) I'm sorry, Mr President, your Honour. For
16 the record, there seems to be a bit of the French transcript missing from the record of
17 the court, the transcription.

18 PRESIDING JUDGE TARFUSSER: [11:38:11] We will take care of this.

19 Mr MacDonald, please.

20 MR MACDONALD: [11:38:21] Thank you, your Honours.

21 On the eve of the march, on 15 December, Mr Gbagbo himself instructed the FDS
22 generals during a meeting that, and I quote, (Interpretation) "The march must not
23 take place. It was prohibited."

24 This order was disseminated by the generals and executed by the FDS. The FDS
25 reinforced by pro-Gbagbo youth, militia and mercenaries violently repressed the

1 march using live ammunition, fragmentation grenades and other weapons.
2 Pro-Gbagbo forces killed 24 identified civilians and many other unidentified civilians,
3 raped at least 11 women and girls and seriously wounded 52 unidentified civilians
4 and many other unidentified civilians. Sorry, wounded 52 identified and many
5 others unidentified.

6 I will now refer specifically to the unidentified civilian casualties.
7 They could not be formally identified because of the context in which the crimes
8 occurred. However, despite the fact that these civilians cannot be formally identified,
9 the evidence demonstrates that they were either seriously wounded or killed during
10 the 16 December incident. These victims should be taken into consideration by the
11 Chamber.

12 To give you an example, the evidence of Witness 547 demonstrates how the FDS
13 opened fire on demonstrators, many of whom fell to the ground. Their corpses were
14 then collected and tossed into an FDS cargo truck. The bodies of the dead
15 demonstrators were then brought to morgues. Some of these bodies were never
16 identified. And this is a reality also, your Honour, that prevailed in Abidjan at the
17 time. And I quote the Trial Chamber in the Orić case at the ICTY as to the nature of
18 the cases the ICC also investigates and prosecutes:
19 "The Trial Chamber is convinced that applying rigid rules of evidence on chain of
20 custody to cases involving armed conflict would not be in the interests of justice and
21 potentially could even lead to the impossibility of bringing evidence at all in some
22 cases. The nature of armed conflicts is such that it is often impossible to investigate
23 an offence committed during an armed conflict to the extent of ordinary crimes
24 committed in peacetime." Or one may add even in national cases. "In addition to
25 the difficulty in retrieving evidence, maintaining a proper chain of custody and

1 safeguarding it during an armed conflict, witnesses are often unidentified or cannot
2 be found, and physical evidence is sometimes destroyed or damaged while the crime
3 scene may not be accessible."

4 Let me turn to the events. The Prosecution submits that the FDS's use on 16
5 December of live ammunition and fragmentation grenades against the demonstrators,
6 the involvement of the GPP, Young Patriots and FESCI members in repressing the
7 march, and the significant amount of casualties demonstrates that Mr Gbagbo's
8 instructions to the generals was understood and meant to be understood as a call to
9 repress the march by all means, which included violence.

10 And as I will demonstrate when addressing the contextual elements of the crimes
11 against humanity, the use of live ammunition, fragmentation grenades and other
12 weapons by pro-Gbagbo forces constitute an identifiable pattern that proves the
13 existence of a course of conduct.

14 Let me now turn to the Defence arguments. I will address six of the main Defence
15 arguments pertaining to the 16 December incident. First, the purpose of the blocus
16 at the Golf Hotel; second, the lack of formal notice to the authorities that a march was
17 to take place; third, the presence of armed individuals during the march; fourth, the
18 reliability of contemporaneous police reports; fifth, the presence of GPP militia
19 members during the march; and sixth, and last, the presence of Young Patriots and
20 FESCI members during the march.

21 The first Defence challenge, the question of the blocus at the Golf Hotel.

22 At annex 3, paragraph 18 to 27 of his motion, Mr Gbagbo disputes the fact that there
23 was a blocus at the Golf Hotel. Mr Gbagbo also disputes the Prosecution's
24 contention that it was put in place to curtail and monitor the movements of the
25 opposition and other groups. Mr Gbagbo adds that the control points were put in

1 place by the FDS, with the technical supervision of the UNOCI and as a security
2 measure, so as to monitor rebel soldiers and to notify the authorities to avoid possible
3 frictions with the population.

4 Our response: Your Honours, Mr Gbagbo's foreign affairs minister, Mr Alcide
5 Djédjé himself confirmed in early January 2011 that the FDS blockade was in place
6 around the Golf Hotel and that it would only be lifted under certain conditions.

7 Second, that the ONUCI might have collaborated with the FDS in regards to the
8 location of the control points does not detract from the fact that it was Mr Gbagbo
9 himself as president and commander-in-chief of the armed forces who ordered the
10 blockade around the area of the Golf Hotel.

11 This order, these instructions were translated by Witness P-9 into a military
12 operational order and executed by the armed forces. A correspondence from the
13 CEMA dated 11 December 2010, and I refer to document 0071-0152 of the Prosecution,
14 which clearly indicates where the control points would be and, more importantly,
15 who would have access to the Golf Hotel. All of this afforded the FDS with the
16 capability to monitor and curtail the movements of the opposition at the Golf Hotel.

17 In fact, as the crisis progressed, those who left or attempted to enter the Golf Hotel
18 came under added scrutiny and sometimes attacks. For instance, a UNOCI convoy
19 was stopped and searched by the FDS in January 2011. In March 2011, Colonel
20 Adama Dosso of the FDS was killed by pro-Gbagbo forces upon leaving the Golf
21 Hotel.

22 The second argument of the Defence I will now address is a question of the lack of
23 formal, formal notice regarding the 16 December march on the RTI.

24 At annex 3, paragraph 26 to 41 of his motion, Mr Gbagbo argues that he and the FDS
25 high command were never formally advised that there would be a march on the RTI

1 on 16 December. Mr Gbagbo also suggests that it was those who were responsible
2 for the security of the march that called for it to be cancelled, given the risks to the
3 population. In other words, Mr Gbagbo had nothing to do with it.

4 Our response: Whether or not Mr Gbagbo and the FDS high command were given
5 formal notice of the march, through a permit request, for instance, this is a distraction.
6 The real question is whether they had any prior notification at all.

7 The evidence on record shows that Mr Gbagbo and the FDS high command knew that
8 the march would take place prior to 16 December and they took all necessary
9 measures to repress it.

10 A fax from the police préfet of Abidjan dated 12 December 2010 with the heading, and
11 I quote, (Interpretation) "PO relating to the RHDP demonstration aiming to install the
12 prime minister Guillaume Soro" (Speaks English) which can be found at 0045-0748,
13 indicates the different locations of the forces and their general mission, but there is
14 more.

15 On 15 December 2010, the FDS spokesperson, Hilaire Babri, read a communiqué on
16 the RTI denouncing the upcoming march and warning Ouattara supporters that
17 taking part in the march would amount to destabilizing the public order and
18 threatened to forcefully intervene.

19 I shall now quote him. (Interpretation) "It must be said clearly that these marches
20 involving forces and serious disturbances to public forces have only one sole purpose,
21 namely, to pit innocent populations against the regular forces of law and order and
22 hoping that the forces of defence and security will engage in confrontations with
23 Ivorians. The Defence and Security Forces of Côte d'Ivoire strongly denounce such
24 attitudes. They thus disapprove the unconfessed manoeuvrings of persons who are
25 supposed to help Côte d'Ivoire with whom they themselves seek peace. In any event,

1 General Philippe Mangou, chief of the armed forces and the entire Defence and
2 Security Forces of Côte d'Ivoire hold Mr Choi responsible for the unpredictable
3 consequences that may result from these planned actions."

4 (Speaks English) What is interesting about this communiqué is that it also provides
5 insight, your Honours, into the state of mind of the authorities.

6 Finally, as I stated at the beginning, Mr Gbagbo himself instructed the generals on 15
7 December that the march was prohibited, interdite (Interpretation) prohibited.

8 (Speaks English) And indeed his instructions were followed because the evidence
9 demonstrates that the FDS violently repressed the march.

10 I will now address the issue of the alleged presence of armed individuals during the
11 march on the RTI, the third challenge of the Defence we're addressing today.

12 At annex 3, paragraphs 179 to 187 of his motion, Mr Gbagbo claims that the 16
13 December march was carefully prepared by the rebels in the context of a military
14 attack. That armed individuals were present during the march and fired on the FDS.
15 Mr Gbagbo relies on specific parts of the testimony of Witnesses 10, 46 and on the
16 footage from a video, which I will quote, CIV-OTP-0083-1394 to support their
17 allegations.

18 Our response, your Honours: First and foremost, the Prosecution has since the very
19 confirmation of charges proceedings admitted that there were FDS casualties on 16
20 December 2010. This is in our amended DCC under the Gbagbo case code filing
21 number, 592-annex 1, more specifically at paragraph 117.

22 However, these FDS casualties did not occur during the context of the march proper,
23 which was in Cocody around the RTI and its vicinity. In fact, the testimonial
24 evidence on record corroborated by independent police and FDS reports shows that
25 the FDS casualties occurred principally at the Carrefour Marie-Thérèse during a brief

1 confrontation between the rebel soldiers based at the Golf Hotel and in Abobo near
2 the Carrefour PK18.

3 We have prepared a map indicating where these incidents occurred and their
4 respective distances from the RTI in Cocody. I will now, I would now like to bring
5 this map up and I will let the Court clerk, it can be shown publicly, and I will let the
6 Court clerk indicate which buttons we need to press.

7 THE COURT OFFICER: [11:55:39] The document will be displayed on the evidence
8 2 channel.

9 PRESIDING JUDGE TARFUSSER: [11:55:52] Do we have it also on the big screen?
10 Yes. Good.

11 MR MACDONALD: [11:55:58] Your Honours, if we can see, as we can see, you have
12 the distances between the Carrefour Marie-Thérèse with RTI, bird's eye view of the
13 distance, and also the same with the Carrefour PK18 and the distances. Now, these
14 two locations is where you had indeed confrontations and FDS deaths.

15 But around the RTI, that's where the march took place. And within the vicinity of
16 the RTI in Cocody, adjacent neighbourhoods, it is a totally different story.

17 Your Honours, these incidents should not be conflated with the crimes that were
18 committed by the pro-Gbagbo forces against demonstrators during the march itself.

19 The Prosecution has addressed the issue of the implication of the Commando
20 Invisible and other opposing armed groups in Abobo during the post-election crisis in
21 a detailed manner in its response at paragraphs 359 to 385.

22 The evidence demonstrates that the march proper in Cocody and its vicinity was not
23 part of a military attack concocted by the rebels. The Prosecution submits that the
24 testimony of witnesses 10 and 46, cited by Mr Gbagbo, do not support the contention
25 that armed men were present during the march proper and fired on the FDS.

1 Witness 10 testified regarding FDS deaths caused by an RPG-7 and, we submit, it
2 refers to an incident that occurred on 17 December 2010, when a four-by-four carrying
3 eight CRS members was attacked on the main road at the Chateau d'Eau near
4 FILTISAC with heavy weaponry, killing two CRS1 officers and severely damaging
5 the four-by-four. The next day, not on the 16.

6 As for Witness 46, he referred to police officers being killed on the day of 16
7 December. Indeed the DGPN document, 0045-0973, reports on the death of police
8 officers. However, as noted in the report, the events took place in Abobo, well
9 outside the context of the march.

10 Moreover, as indicated in our response, contrary to Mr Gbagbo's contention, the
11 video footage that I referred to does not show demonstrators with firearms. If you
12 take a close look, you will not find or see firearms. However, what this footage does
13 corroborate is the testimonial evidence on record showing that demonstrators were
14 seriously wounded by the pro-Gbagbo forces during the march. And I refer to our
15 response at paragraph 576.

16 The testimonial evidence on record from witnesses 106, 172, 588, 350, 547, and 587,
17 corroborated by reliable portions of police reports, shows that the demonstrators in
18 different locations were unarmed.

19 The Prosecution highlights Witness 106's evidence that demonstrators were searched
20 to ensure that they were unarmed by older and responsible men before heading to the
21 demonstration. Witness 1177 testified that demonstrators would raise their hands to
22 show the police they were unarmed and simple civilians demonstrating. Insider
23 Witness 435 testified that none of the demonstrators that were intercepted by the GPP
24 on the day of the march were armed.

25 Finally, the Chamber will recall that the evidence speaks abundantly of unarmed

1 civilian demonstrators attacked by the FDS and unable to defend themselves during
2 the march proper. In this regard, the Prosecution highlights the evidence of Witness
3 230, regarding how the FDS cornered civilian demonstrators on Rue Lepic in Cocody,
4 the street where the seat of the RDR was located, and they fired live ammunition at
5 those who were trying desperately to escape causing many casualties.

6 Witnesses 547, 107, 589, 117 also describe similar scenes of the FDS firing live
7 ammunition at unarmed civilian demonstrators during the march. And again, this is
8 all detailed in our response.

9 Additionally, contemporaneous police reports make no mention of armed
10 demonstrators during the march proper. One police report suggests differently, and
11 the Prosecution has explained at length in its response why it should not be relied
12 upon by this Chamber. And I refer you to paragraph 571. First, it was transmitted
13 on 20 December, four days after the event by Claude Yoro, who is implicated both as
14 head of the operational command post PC Minos during the incident of 16 December
15 and as director of the police intervention units, which included the CRS1 and BAE,
16 both of which collaborated with militia during the post-election violence. The
17 Prosecution recalls that the CRS fired live ammunition on unarmed civilians during
18 the 16 December demonstration, killing several of them. The CRS was also
19 implicated in the storming of four mosques on 17 and 18 December 2010, killing one
20 civilian and wounding many others.

21 I will now address the fourth challenge, the question of the reliability of
22 contemporaneous police reports.

23 At annex 3, paragraphs 77 to 78 of his motion, Mr Gbagbo claims that the police
24 reports cited by the Prosecution demonstrate that the police performed their duties
25 professionally and in a neutral manner. Mr Gbagbo adds that the very fact that the

1 police drafted these reports and opened investigations militates against the
2 Prosecution's case.

3 Our response: The fact that the police drafted contemporaneous reports has no
4 bearing on whether they committed crimes during the post-election crisis. It
5 certainly cannot be considered as exculpatory evidence as suggested by Mr Gbagbo.
6 The Prosecution submits that although it relies on certain police reports to support its
7 case, this does not entail that the totality of their content is reliable or that all police
8 reports are necessarily reliable. And I refer on that issue the assessment in part II-B
9 in our brief.

10 As with testimonial evidence, the Chamber has the discretion to rely on the
11 trustworthy parts of a police report and ignore any unreliable information that it may
12 contain. In this regard the Prosecution submits that unlike routine recordings,
13 exculpatory information regarding the actions of the police should be examined with
14 extreme caution by the Chamber since it could very well be self-serving evidence:
15 We didn't do anything wrong. It's easy to write that in a report, to disculpate
16 yourself.

17 Allegations in police reports that demonstrators going to the RTI march on 16
18 December were dispersed with (Interpretation) "Conventional means of law
19 enforcement" (Speaks English) should be disbelieved as they are contradicted by
20 reliable evidence on the record. If anything, the evidence abundantly shows that the
21 demonstrators were dispersed by live ammunition and fragmentation grenades.

22 As for Mr Gbagbo's argument on the opening of information, information, which are
23 mentioned in certain contemporaneous police reports, the Prosecution submits that
24 this does not imply that investigations or criminal procedures were effectively carried
25 out as Mr Gbagbo suggests. In fact, the evidence reveals that incidents regarding

1 FDS wrongdoing against pro-Ouattara supporters during the post-election crisis were
2 not followed up by proper investigation, were simply ignored by the authorities or
3 even covered up with denials. Even in very serious cases involving murder no one
4 was ever punished.

5 And I'll come back to that in more detail when addressing the modes of liability,
6 especially pursuant to Article 28.

7 As indicated previously, the Ivorian authorities handling of the Wassakara incident
8 during which four RDR militants were killed and seven other were injured by
9 gendarme at their headquarters on the evening of 1 December, this is a demonstration
10 of this inaction. Despite the fact that an information was opened, and that Witness
11 440 communicated directly with the Procureur de la République, who was
12 responsible for investigating this type of incident, and sent him a report on the
13 incident, this did not result in any investigation into the matter nor any legal or
14 criminal procedure. It is important to recall that following the same pattern, the
15 Ivorian authorities also failed to undertake any proper investigations or punish
16 anyone in regards of the 16 December incident from the FDS authorities or the
17 pro-Gbagbo forces or in relation to 3 and 17 March as well.

18 I turn now to the presence of the GPP during the march, the fifth challenge.

19 At annex 3, paragraphs 68 to 73 of his motion, Mr Gbagbo claims that Witness 435 is
20 not a credible witness and should be disbelieved when he claims that the former
21 interior minister, Désiré Tagro, instructed the GPP militia members to support the
22 FDS. Mr Gbagbo adds that the GPP was not a powerful, organised and structured
23 militia, but a gang of delinquents. Last, Mr Gbagbo says that there was no
24 collaboration between the police and the GPP. In fact, both Mr Gbagbo and Blé
25 Goudé go to great lengths to challenge the credibility of Witness 435 on many

1 different issues.

2 Contrary to what is asserted by the Defence, we submit that Witness 435 is a reliable
3 insider witness who was corroborated by trustworthy testimonial evidence and
4 independent documentary evidence.

5 I will address this matter further when I speak about the criminal responsibility of the
6 accused. And while we keep in mind the words of Mr Stewart as to the assessment
7 of credibility and reliability, we made an exception for this witness.

8 And if you allow me to go into private session, your Honour, very brief private
9 session, I would like to address a matter regarding Witness 435 that was addressed in
10 private session.

11 PRESIDING JUDGE TARFUSSER: [12:12:17] Let's go into private session, please.

12 (Private session at 12.12 p.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Open session at 12.14 p.m.)

18 THE COURT OFFICER: [12:14:47] We are back in open session, Mr President.

19 PRESIDING JUDGE TARFUSSER: [12:14:55] Thank you.

20 Mr MacDonald, please.

21 MR MACDONALD: [12:15:00] The last challenge I will address is the presence -- for
22 the 16 December incident, is the presence of Young Patriots and FESCI members
23 during the march.

24 At annex 3, paragraph 74 of his motion, Mr Gbagbo claims that the Prosecution seems
25 to suggest that Mr Blé Goudé had a role in the repression of the 16 December march,

1 but that the Prosecution confuses the youth, the militia and the mercenaries and
2 therefore cannot establish any links with the common plan and inner circle members.
3 Your Honours, the Prosecution's case against Mr Blé Goudé is very clear. As I
4 indicated at the beginning of our presentation on 16 December, two days prior to the
5 march, Mr Blé Goudé held a meeting of youth leaders at the Hotel de Ville. And
6 again, the aim of that meeting was to protect the RTI from the demonstrators of the
7 march. Witness 625 testified that when called to mobilise, the Young Patriots knew
8 what to do, set up roadblocks. FESCI and Young Patriots members followed
9 Mr Blé Goudé's call as the evidence shows that they were aided -- sorry, that they
10 aided the FDS in violently repressing the 16 December march.
11 We recall how Witness 107 was himself injured by a bullet fired by FESCI members in
12 a university residence in Cocody. Witness 106 also saw marchers being assaulted by
13 FESCI members who were collaborating with the CECOS BMO on the day of the
14 march.
15 Your Honours, in conclusion for this incident, the evidence clearly demonstrates that
16 the FDS, the Young Patriots, militia and mercenaries, what we call the pro-Gbagbo
17 forces, violently repressed the 16 December march by using live ammunition and
18 fragmentation grenades, and they did that to kill unarmed civilians. Again, as to the
19 question of the modes of liability, this will come later. Also, your Honours, our
20 prima facie case is set out in our response. But for now the Prosecution submits that
21 there is more than sufficient evidence demonstrating that the pro-Gbagbo forces
22 committed the crimes as alleged for the 16 December incident.
23 Let me now turn to the second incident, the events of 25 to 28 February 2011.
24 And I draw your attention, your Honours, to part IV-D, page 305 and following,
25 Prosecution's case at page 305 and then we respond to Defence arguments

1 starting page 326.

2 The evidence demonstrates that on the morning of 25 February 2011, Mr Blé Goudé
3 held a meeting at the bar le Baron of Yopougon, in which he instructed the
4 pro-Gbagbo youth assembled, and I quote, to "check comings and goings in their
5 neighbourhoods and report any stranger or foreigner entering their neighbourhoods."
6 This, your Honours, was the mot d'ordre that Mr Blé Goudé had primed the youth
7 and militias to receive the evening before on the RTI on national television. In the
8 violence that ensued over the following days in Yopougon, pro-Gbagbo forces killed
9 at least 19 civilians and wounded at least 13.

10 The Prosecution's evidence regarding the crimes committed during this incident can
11 be found at paragraphs 621 to 633.

12 Let me now turn to the Defence arguments.

13 I will address three of the main Defence arguments pertaining to 25 February. First,
14 the Defence argues that there were ongoing clashes between the youths of Yao Séhi
15 and Doukouré. Doukouré being a pro-Ouattara neighbourhood, Yao Séhi being
16 pro-Gbagbo neighbourhood.

17 Second, that the police played no role in the events of 25 February. Third, the
18 Defence raises a number of factual issues such as the identification of the attackers
19 and acts committed by the Doukouré residents which I will also address.

20 The first challenge, therefore, is regarding the ongoing clashes between the youths of
21 Yao Séhi and of Doukouré.

22 At annex 3, paragraphs 547 and 548, Mr Gbagbo emphasises the context of ongoing
23 clashes between the youths of these two neighbourhoods and the assertions made by
24 some witnesses that the Doukouré side or pro-Gbagbo side was the stronger of the
25 two during the clashes of 25 February.

1 Mr Gbagbo also refers to instances of petty criminality, such as phone theft, and
2 concludes that many of the youths were actually marginalised persons or thugs
3 looking for a fight.

4 At paragraphs 19 and 587 of his motion, Mr Blé Goudé similarly argues that that
5 incident was the result of escalating tensions between two neighbourhoods that
6 predated his speech and that intervention of the police was necessary because the
7 Doukouré side was beating the Yao Séhi side.

8 In arguing that the incident was the result of this escalating tension, Mr Blé Goudé
9 claims that the incident cannot be linked to a policy to target pro-Ouattara or
10 perceived pro-Ouattara civilians.

11 Your Honours, our response: Mr Gbagbo and Mr Blé Goudé have not demonstrated
12 how questions of petty criminality and the relative strength of the Doukouré side
13 during the stone-throwing clash have any relevance to the ensuing commission of the
14 crimes of murder and inhumane acts committed by the police, the pro-Gbagbo youth
15 and militias against the residents of Doukouré.

16 In fact, the actions of the police in firing live bullets and grenades at the residents of
17 Doukouré goes beyond any legitimate law-enforcement response. As to the actions
18 of the pro-Gbagbo youth and militias in attacking the Lem mosque, and burning,
19 burning perceived Ouattara supporters at roadblocks over the coming days, there is
20 nothing in evidence to indicate that this was motivated by petty criminality or stone
21 throwing. This is contrary to common sense.

22 The background of the tension between the neighbourhoods of Yao Séhi and
23 Doukouré does not break the link between the incident and the broader widespread
24 and systematic attack. Nor does it detract from Mr Blé Goudé's responsibility for
25 events occurring in the immediate, immediate aftermath of his inflammatory speech

1 at the bar, le Baron.

2 If anything, the context of the tensions between the two neighbourhoods, the
3 prevailing atmosphere of the post-election crisis meant that Mr Blé Goudé was well
4 aware that his inflammatory words stigmatising foreigners would lead to violence
5 against the population of Doukouré and beyond.

6 The Prosecution recalls here the actions of Mr Blé Goudé in 2006 and, more
7 importantly, his own words, his interview for the documentary, *Shadow Work*, where
8 clearly he's well aware of the power he yields over the youth. "Now they're calm,
9 but when I call on them, they go to action."

10 The second defence challenge is the role of the police, your Honour, during the
11 incident.

12 At annex 3, paragraph 706 of his motion, Mr Gbagbo asserts that the police were weak
13 in numbers. Therefore, they had no offensive role in the events of 25 February 2011.
14 Mr Gbagbo further asserts that they took no side between the two neighbourhoods of
15 youths and tried to calm the situation.

16 At paragraph 589 of his motion, Mr Blé Goudé attempts to cast doubt on the actions
17 of the police by pointing to the testimony of Witness 109, that there was no
18 intervention by the 16th district police station policemen or officers.

19 Our response, your Honours: The Defence arguments on that point ignore all of the
20 reliable evidence of police involvement in the commission of the crimes as detailed,
21 first in the Prosecution's trial brief at paragraph 553, and in our response.

22 In relation to Witness 109, in relation to his testimony that there was no intervention
23 of the police, this contradiction with the accounts of witnesses 433, 436 and 422, first,
24 have to put in their proper context, but second, do not mean that those witnesses are
25 not reliable. The inconsistency is in the identification of the perpetrators.

1 Witness 109 described the persons firing bullets and grenades as being militia,
2 dressed partly in military uniform or otherwise in civilian clothing. Witness 109
3 may simply have been mistaken in his identification of the perpetrators as being
4 militia to police, instead of police. Sorry. Because, and why is that? Because the
5 militia were involved in the incident.

6 It is notable that Witness 442 recognised one policeman on the day, Seri, having seen
7 him on previous occasions leaving the police station of the 16 arrondissement. In
8 any case, it is the Prosecution's submission that the militia formed part of the
9 pro-Gbagbo forces, so this discrepancy has no relevance.

10 I now turn to the factual issues related to the question of the identification of the
11 attackers.

12 At paragraph 587 of his motion, Mr Blé Goudé argues that Witness 109 identified the
13 people who attacked the Doukouré neighbourhood as people from the Yao Séhi
14 neighbourhood, but did not identify them as being pro-Gbagbo youth.

15 Our response: The Prosecution relies also on Witness 442's evidence cited above,
16 identifying the attackers as pro-Gbagbo. The attackers had attended Mr Blé Goudé's
17 meeting at the bar le Baron and came down the Boulevard Principal throwing stones
18 at the Doukouré residents.

19 As to the question of the actions of the Doukouré residents, at paragraph 547,
20 Mr Gbagbo states in his motion that Prosecution Witness 404 and 554, and I quote,
21 (Interpretation) "had said that the youths of the Doukouré neighbourhood had set up
22 roadblocks."

23 (Speaks English) Our response: This submission misapprehends the chronology of
24 events. Read in its proper context, the testimony of the witnesses demonstrates that
25 the Doukouré youth mounted roadblocks not prior to the events, but in response to

1 the events of 25 February.

2 Witness 436 was clear that the residents of Doukouré only established roadblocks

3 after the events of 25 February. From 26 February onwards, he said. Witness 404

4 was also very clear. In the same passage cited by Mr Gbagbo actually, Witness 404

5 agreed in cross-examination that the roadblocks were mounted at the entry points to

6 Doukouré and I quote, (Interpretation) "To secure the neighbourhood after the

7 incident at the mosque." (Speaks English) Witness 0554, also cited by Mr Gbagbo,

8 spoke about roadblocks being erected by the youths of Doukouré. But in that case,

9 he doesn't give any time frame.

10 As will be further elaborated when addressing the modes of liability, the evidence

11 demonstrates that Mr Blé Goudé mot d'ordre (Interpretation) call (Speaks English)

12 caused the violence that immediately followed that day and over the following days

13 in Yopougon, during which pro-Gbagbo forces killed at least 19 civilians and

14 wounded 13 civilians.

15 I will now address the third incident, 3 March 2011.

16 Your Honours, I will now provide you with a brief overview of the 3 March incident

17 before addressing again the Defence arguments.

18 Now, in terms of the Prosecution's response, this can be found actually in paragraph

19 661 and 754 of our response.

20 On 3 March 2011, members of the FDS convoy patrolling Abobo murdered seven

21 women and injured at least six other people at a peaceful anti-Gbagbo protest. The

22 overwhelming testimonial, video and forensic evidence proves that the FDS targeted

23 these civilians, mainly on political grounds.

24 Now, this attack on civilians came within a week of Mr Gbagbo's explicit order to the

25 FDS generals not to cede Abobo and to do whatever it takes to keep Abobo. It came

1 only one day after Mr Gbagbo's speech where he emphasised his determination to
2 stay in power, despite mounting domestic and international pressure where he states
3 that (Interpretation) "Côte d'Ivoire will not be subjugated".

4 (Speaks English) On 3 March 2011 an FDS convoy of five vehicles, led by the BTR-80
5 of Mr Gbagbo's Garde Républicaine, shot a 14.5 millimetre gun and AK-47s into a
6 crowd of peaceful female protesters carrying anti-Gbagbo signs and asking for
7 Mr Gbagbo to step down.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted) expert Witness 606 predicted it would be after his analysis of this video.

12 Using his expertise in forensic image, Witness 606 confirmed that nobody had
13 tampered with this video file. He also produced an enhanced stabilised version
14 showing a cloud of smoke coming out of the BTR cannon. You can also see the
15 words "police nationale" on the side of the police vehicle. A copy of this video was
16 shown to six of the seven murdered family victims' members, all of whom were able
17 to identify the bodies of their relatives.

18 DNA analysis of samples taken from the bodies exhumed from a mass grave in
19 Abobo, a mass grave containing over 700 bodies, against samples of family members
20 proved the identification of three of these seven women. Forensic evidence,
21 including autopsies of these bodies by experts in forensic pathology, Witnesses 585,
22 564, confirmed their cause of death by gunshot.

23 Several witnesses, including family members and friends of the victims, testified that
24 they saw the injuries to the victims' bodies. Now, I will not dwell on the additional
25 corroboration from these and other crime base witnesses for this incident because,

1 your Honours, the women's horrific injuries in the video speak for themselves.
2 We submit, your Honours, that it is indisputable that the FDS shooting unarmed
3 civilians on 3 March 2011 demonstration was part of a widespread and systematic
4 attack directed against the civilian population. It was part of a larger pattern of
5 indiscriminate shooting in neighbourhoods inhabited by perceived Ouattara
6 supporters. Again, I'll come back on the contextual elements of crimes against
7 humanity later.

8 And I will come back later when discussing Article 28 all the denials, the denials on 3
9 March of the authorities. The next day, 36 hours after the event, Mr Hilaire Babri of
10 the FDS, the spokesperson of Mr Gbagbo's government, Ahoua Don Mello, they went
11 on TV, national television and denied any responsibility whatsoever into these events.
12 And I will come back on the testimony of Witnesses 9, 156, 47. But for now let me
13 just state that they testified that their investigation amounted to a few phone calls
14 between FDS commanders and their subordinates. Nobody was sent to the scene to
15 investigate.

16 Let me now discuss some of the Defence arguments. However, I will not address
17 any of the arguments of Mr Gbagbo challenging the authenticity and reliability of the
18 video by alleging that the victims were actresses and that the incident is a montage.
19 Why? Simply because none of these allegations are grounded on any credible
20 evidence and therefore should not be entertained by the Chamber.

21 And we're also, your Honours, mindful of the victims and their respective families.
22 Instead, I will first address the Defence arguments that Abobo was entirely under the
23 stranglehold of opposing armed groups. Second, that there were armed rebels at the
24 march, that's the Defence's argument, and that the Golf Hotel organised the march to
25 trap the FDS convoy. At last, I will discuss that the armed rebels shot at the FDS

1 convoy during the march, another argument of the Defence.

2 With respect to the first argument, Mr Gbagbo and Mr Blé Goudé argue, and I may
3 add with scarce sourcing, that Abobo was entirely under the stranglehold of opposing
4 armed groups in March 2011. Now, when we refer to opposing armed groups, we
5 also include in that the Commando Invisible, but there are more, there were more
6 armed groups that were not part necessarily of the Commando Invisible.

7 While the Prosecution does not deny the presence of such groups in Abobo, the
8 evidence on record shows these various groups did not have total military control of
9 Abobo. These were armed groups engaged in guerrilla type warfare, and as one of
10 their names suggests, were invisible.

11 The Prosecution has summarised the evidence in this regard in paragraphs 363 to 381
12 of its response.

13 Furthermore, these arguments of the Defence ignore a considerable amount of
14 evidence pointing to a significant FDS presence in Abobo and their ability to conduct
15 military operations there. And these operations included curfew enforcement,
16 regular military convoys and the launching of mortars, for example, on 17 March.

17 The second Defence argument raised by Mr Gbagbo alleges that there were armed
18 rebels at the march and that the Golf Hotel organised the women's march to trap an
19 FDS convoy. This argument is purely speculative and is not based on any evidence
20 on the record.

21 Again, your Honours, in part II-B, when discussing the assessment of the evidence, it
22 has to be based on evidence that was discussed before this Chamber. It cannot be
23 based on speculative arguments that are not grounded on evidence or drawing into
24 the record of the case evidence that is not before the record of the case. Defence for
25 Mr Gbagbo cannot rely on evidence that is not before the Chamber. If not, it defeats

1 the purpose of a no case to answer. Before it's an indication that they should simply
2 make a defence, and that now is not the time to do it, as stated by Mr Stewart.
3 Now, the video of the incident clearly shows a peaceful women's protest and that the
4 convoy passed with ease. Furthermore, the clear evidence on the record shows this
5 was a grassroots political march with the motivation to protest Mr Gbagbo's refusal to
6 resign.

7 Testimony from the demonstration's organizer, Witness 184, another eyewitness who
8 attended the march, confirmed this fact. She testified that her boss, the president of
9 the organisation Femmes du Rassemblement des Républicains called her on 2 March
10 2011 and told her that women from other communes were demonstrating to tell
11 Mr Gbagbo to resign. And therefore she agreed to help organise the participation of
12 women from Abobo.

13 In paragraph 380, annex 3 and 112 of annex 4 of his motion, while examining Witness
14 184, Mr Gbagbo repeatedly and misleadingly referred to one of the few men present
15 at the march as Mr Yéo Kolotioloma as Mr Ouattara's campaign director in 2010, a job
16 that actually belonged to Mr Amadou Gon Coulibaly. And they do that in an
17 attempt to overplay his connection to Mr Ouattara and the Golf Hotel. Mr Gbagbo
18 fails to specify that Mr Kolotioloma was actually only the campaign director for
19 Abobo, a fact that actually Witness 184 confirmed in her testimony.

20 Let me now address the last argument raised by Mr Gbagbo is the alleged, the
21 allegation that the armed rebels shot at the FDS convoy during the march. Your
22 Honours, the overwhelming evidence, however, shows that this was peaceful march
23 without the presence or participation of armed groups. No witnesses, civilian or
24 military, ever testified to seeing armed men or women at the women's march. No
25 armed individuals appear on any of the incident videos.

1 In fact, all the eyewitnesses present at the march testified to the peaceful and political
2 nature of the protest, and the fact that primarily women attended, a fact that is
3 corroborated by Witness 414's interviews of eyewitnesses to the march.

4 The Chamber may recall in response to a question from the Presiding Judge, Witness
5 607 clearly testified that the convoy fired first. So the question of the convoy acting
6 in self-defence is moot. In addition, because there is more, expert analysis of the
7 audio from Witness 583 also confirmed that the BTR-80 fired first when its cannon
8 was pointing horizontally into the crowd of protesters. No other shots can be heard
9 firing apart from the BTR-80.

10 Now, the only allegation of our men being present at the protest comes in the form of
11 indirect evidence. Soldiers in the BTR-80 told Witness 607 they saw a shooter with
12 an AK-47 and another with an RPG, told him that once the convoy was back at Camp
13 Agban.

14 The Prosecution submits this indirect evidence is a sad attempt by the FDS soldiers to
15 justify their illegal conduct after the fact. This self-serving uncorroborated hearsay
16 claim simply cannot be credited in light of the overwhelming evidence, wealth of
17 video, eyewitness and forensic evidence that proves that the FDS shot first into the
18 crowd at women.

19 I will now turn to the fourth incident, the shelling in Abobo on 17 March.

20 I will start and I may not finish on the 17th, and then I understand at 1 p.m. we break
21 for lunch, your Honours. So if you allow me, I will try to choose a proper occasion
22 to take a break for this morning.

23 On 17 March 2011, members of the BASA in Camp Commando executed orders and
24 launched 120 millimetre mortars on the Siaka Koné market, SOS Village, a mosque, a
25 hospital and some homes, thereby killing at least 31 civilians and wounding at

1 least 36 more.

2 The record is also clear that Mr Gbagbo and the CEMA authorised the use of 120
3 millimetre mortars in Abobo during the crisis. The CEMA testified that the BASA
4 was authorised to use 120 millimetre mortars under Mr Gbagbo's requisition of
5 January 2011. Now, independently of the existence of the requisition, the CEMA
6 testified he had a delegation from Mr Gbagbo to use 120 millimetre mortars during
7 the crisis.

8 Further corroborating this point, BASA Witness 239 testified that the BASA is taught
9 in training that the president himself needs to sign off on the use of 120 millimetre
10 mortars because of the significant destruction they cause.

11 Overwhelming testimonial, video, photographic and forensic evidence proves that
12 the FDS targeted civilians mainly on political grounds. There is no doubt that
13 Abobo was densely populated, that it was a densely populated pro-Ouattara
14 neighbourhood. This attack came within weeks of Mr Gbagbo's explicit order, again,
15 explicit order to the FDS generals on 24 February not to cede Abobo and to do
16 whatever it takes to keep Abobo.

17 Immediately after this order, the FDS started using mortars in Abidjan. Let me recall
18 that during the 25 February 2011 operation, mortars were used. And again a few
19 days later in early March, Witness 0164 testified BASA troops in Camp Commando
20 received orders from their superiors to open fire on Abobo despite the presence of
21 civilian population. Concerned about the legality of the operation and the potential
22 for civilian casualties, Witness 164 requested a written order, but it never arrived.

23 Now, a couple of weeks later, on 17 March, BASA's Colonel Dadi relayed the same
24 order to launch 120 millimetre mortars into Abobo. You heard the testimony of 239,
25 who observed fellow members of the BASA launch these mortars from Camp

1 Commando. Crime base witness testimony, video evidence and expert observations
2 and their forensic analysis corroborate that these mortars landed in densely
3 populated areas of Abobo, which I've described at the very beginning.
4 Now, there is more also. You may recall the explicit videos of this incident which
5 also corroborate the suffering of the victims described by eyewitnesses to the shelling
6 and its immediate aftermath. The door, the door with the holes on it.
7 Crime base witnesses 105 and 364 still to this day have shell fragments that remain in
8 their bodies as confirmed by the x-rays and expert testimony of Witness 410 and the
9 medical examinations he conducted.
10 Expert witness 411 also analysed three additional shell fragments that were removed,
11 removed from 364's body and corroborated that these were consistent with a 120
12 millimetre mortar.
13 Eyewitness testimony that BASA launched 120 millimetre mortars from Camp
14 Commando is further corroborated by findings of UNOCI Witness 414 and her team
15 who visited the impact sites on 17 March 2011, after, and this again receiving a call at
16 the UNOCI call centre. And, again, on the UNOCI call centres and their reliability,
17 we refer to section II-B of our response.
18 Witness 414 saw two houses damaged by shells in SOS Village and saw shell impact
19 on the ground at the Siaka Koné market. She even smelled the strong odour of gun
20 powder consistent therefore with mortar fire. And also Witness 369 also visited the
21 sites in July 2011 and observed damage consistent with shelling. But independently
22 that these may be UN and NGO staff, the expert went on site. He's an expert and
23 military engineer. And he also two years later saw that it was very likely 120
24 millimetre mortars that caused the damage.
25 And I said, your Honours, the Chambers can see for itself the physical evidence of the

1 shelling he observed in the 360 degree presentation of the Siaka Koné market and SOS
2 Village.

3 The same expert, your Honour, and I will finish on this point, was also clear on the
4 inherent imprecision of a 120 millimetre mortar. And he also described their
5 substantial lethal radius. He said that users are unlikely to hit a specific point on a
6 map, because mortars could land anywhere from 60 to 100 metres in diameter from
7 that point.

8 I will leave you on this, your Honours, for the break and come back, finish with 17th
9 of March, 12th of April and then try to finalize for today crimes against humanity. I
10 think we'll be good on time for that, and I would kindly request then that we proceed
11 tomorrow with the modes of liability. I think it would make a good break. And
12 also to be quite honest, delivering a text this long, and I'm delivering tomorrow, is
13 quite physically and mentally consuming.

14 PRESIDING JUDGE TARFUSSER: [12:59:49] Thank you very much.

15 The hearing is adjourned for the lunch break until 2.30. Thank you very much.

16 THE COURT USHER: [12:59:57] All rise.

17 (Recess taken at 12.59 p.m.)

18 (Upon resuming in open session at 2.31 p.m.)

19 THE COURT USHER: [14:31:03] All rise.

20 Please be seated.

21 PRESIDING JUDGE TARFUSSER: [14:31:25] Good afternoon.

22 Mr MacDonald, yours the floor.

23 MR MACDONALD: [14:31:39] Thank you, your Honours.

24 Before I continue where I left off, just two little corrections to the transcript.

25 Drawing your attention at the English version of the transcript, I made a mistake at

1 page 56, line 1.

2 PRESIDING JUDGE TARFUSSER: [14:31:57] You made a mistake.

3 MR MACDONALD: [14:31:58] I made a mistake, yes, where I referred to Witness
4 114, when it should read 414. And I did the same mistake at page 59 of the transcript,
5 line 12, when I referred to Witness 104, when it should read again 414.

6 PRESIDING JUDGE TARFUSSER: [14:32:28] Okay. Thank you. We have taken
7 note of this.

8 The floor is yours.

9 MR MACDONALD: [14:32:34] Your Honours, I was discussing the expertise that
10 were conducted in relation to the 17th of March incident. Now, you also have the
11 evidence of medico-legal expert, Witness 564. She provided a report at the request
12 of the OTP to follow up on her examination of the eight bodies of the victims of 17
13 March shelling.
14 Now, through revisiting her reports and external examinations of the bodies, Witness
15 564 verified that four of the eight bodies she examines, including one from the
16 Derrière Rails location, had wounds that were consistent with a shelling as a cause of
17 death.
18 For the remaining four bodies, Witness 564 did not exclude shelling as a cause of
19 death; rather, she indicated she was unable to come to a conclusion as to the cause of
20 death from the mere external examination.
21 Now, logical explanations for this outcome were provided by the witness, including
22 the bodies' advanced state of decay, her choice to perform external examinations
23 instead of autopsies because of the large amount of bodies from the crisis had caused
24 the morgues to reach capacity, such that the odour of rotting bodies was a problem.
25 If you allow me a second. Sorry, your Honours, I've been told to slow down.

1 Your Honours, despite the fact that Mr Gbagbo claims that Witness 564 had no way to
2 confirm the identity of the eight persons killed by shelling, Witness 564 testified that
3 friends or relatives identified the bodies to the morgue and/or the IML ...

4 PRESIDING JUDGE TARFUSSER: [14:35:09] Yes, please.

5 MR N'DRY: [14:35:12] (Interpretation) Mr President, I would like to apologise to
6 my learned friend, but just to point out that the French transcript is not working.

7 THE COURT OFFICER: [14:35:26] The Registry is aware of the problem and we
8 are doing out utmost to fix the problem as soon as possible.

9 MR N'DRY: [14:35:31] D'accord.

10 PRESIDING JUDGE TARFUSSER: [14:35:32] Well, can we continue? Is it not
11 working? Not at all? The French? Can we continue or do we wait?

12 MR N'DRY: [14:35:50] (Interpretation) As far as the Charles Blé Goudé team is
13 concerned, we can proceed.

14 MR ALTIT: [14:36:09] (Interpretation) We need to have a French version of this
15 hearing. It is difficult for us to follow.

16 PRESIDING JUDGE TARFUSSER: [14:36:30] You will have a French version. It's
17 not that we will. We're working on it, so you will have the French version. You
18 know that I am going slow, so maybe by going slow they will adjust the thing, but the
19 problem is if we can continue while they're working or not. You will have the full
20 French version of course.

21 MR ALTIT: [14:36:53] (Interpretation) Well, let us try that, Mr President.

22 PRESIDING JUDGE TARFUSSER: [14:37:02] So how long does it take?

23 (Discussion off the record)

24 (Pause in proceedings)

25 PRESIDING JUDGE TARFUSSER: [14:39:15] Apparently in five minutes we will be

1 there. So I would say we wait five minutes and then we have -- the reason for this
2 hearing is also to have the translation into French, so I think we wait five minutes and
3 we suspend until quarter to.

4 But I would ask the court officer to call us back, okay? Thank you very much.

5 THE COURT USHER: [14:39:41] All rise.

6 (Recess taken at 2.39 p.m.)

7 (Upon resuming in open session at 2.55 p.m.)

8 THE COURT USHER: [14:55:26] All rise.

9 Please be seated.

10 PRESIDING JUDGE TARFUSSER: [14:55:45] Problem hopefully solved. The floor
11 is yours, Mr MacDonald.

12 MR MACDONALD: [14:55:55] Thank you, your Honour.

13 So I will just restart where I was at, the last topic. Your Honours, despite the fact

14 that Mr Gbagbo claims that Witness 564 had no way to confirm the identity of the

15 eight persons killed by a shelling, Witness 564 testified that friends or relatives

16 identified the bodies to the morgue and/or the IML staff, the IML being the Institut

17 médico-légal, at a time proximate to their deaths, an admission to the morgue, a fact

18 corroborated by a report and contemporaneous IML worksheets, INTERFU dossiers,

19 Anyama morgue registers and Witness 297 and 594.

20 As detailed in our response, this shelling was part of a larger pattern of FDS shelling

21 in densely populated pro-Ouattara areas of Abidjan. FDS witnesses and civilian

22 witnesses testified about FDS shelling in civilian areas densely populated by

23 perceived Ouattara supporters between 26 February 2011 to April of that same year, a

24 fact that shows the attack was in fact directed against the civilian population. I will

25 get back to this later.

1 Let me now address the denial and lack of government investigation. As with the 3
2 March killing of women in Abobo, Mr Gbagbo's government failed to conduct an
3 investigation into the 17 March murder of civilians in Abobo and officially denied any
4 FDS involvement. One day after the shelling, media reports blamed the FDS for the
5 shelling. But instead of conducting a good-faith investigation or punishing the
6 perpetrators, Mr Gbagbo, through his spokesperson, called on all Ivorians to assume
7 greater responsibility and collaborate more with the FDS to neutralise suspicious
8 individuals.

9 It was not that the top levels of government were unaware of the shelling. Witness
10 47 testified about the considerable press coverage of the incident and a meeting held
11 between the FDS generals and the head of the CPCO, where it was reported that
12 mortars had been fired on Abobo on 17 March.

13 Despite their knowledge of civilian deaths, no proper investigation was ever done.
14 During questioning by the Presiding Judge, Witness 47 reiterated that none of the
15 military authorities were even sent to the location to investigate. No formal
16 interviews were conducted. Nobody was ever punished. Rather, Colonel Dadi
17 celebrated the members of the BASA that executed this order upon their return to
18 Camp Akouédo.

19 Only five days later after the shelling on 22 March 2011, Mr Gbagbo's government
20 issued a statement on national television, the RTI, announcing the results of a sham
21 investigation aimed at covering up their crimes and allowing them to continue to
22 govern with impunity. Government spokesperson, Ahoua Don Mello, falsely
23 claimed the following: First, no damage had been observed at the Abobo market;
24 second, no victims had been registered at the Abobo and Anyama morgue; three, that
25 no complaint had been registered at police stations with respect to an FDS operation.

1 This statement was a lie. The record clearly shows photographic and video evidence
2 of the damage to the Abobo market, which was still visible two years after the
3 incident. Again, the Chamber can also easily see that the register from the Anyama
4 morgue clearly identifies victims of the 17 March shelling.

5 Let me now address three of the main Defence arguments pertaining to 17 March.
6 The first one, the Defence argues that P-411's expert report is not credible. Second,
7 they argue that neither Mr Gbagbo nor the inner circle made the order to fire the
8 mortars on 17 March 2011 and that there is insufficient proof of the order. And third,
9 the Defence argues that there is insufficient proof that the FDS used heavy weaponry
10 to indiscriminately target civilians.

11 Our response to the first challenge: Both Mr Gbagbo and Mr Blé Goudé argue that
12 Witness 411, the expert and his report, are not credible. Mr Gbagbo attacks the
13 substance and methodology of the expert witness report on the shelling sites in
14 Abidjan.

15 Now, we respond to each of these specific arguments in detail in paragraphs 931 to
16 950 of our response. In short, your Honours, this expert, whose qualifications the
17 Chamber accepted, confirmed that it is very likely that a 120 millimetre mortar caused
18 the damage at the Siaka Koné market and SOS Village based on an analysis of several
19 blast sites and extensive review of corroborative evidence. He was not, and I quote,
20 a rubber stamp, as the Defence suggests. Rather, his mandate was broad and
21 open-ended in that he was encouraged to make any other relevant findings or
22 remarks and to do an objective analysis.

23 He located evidence of the shelling and documented the damage with OTP
24 investigators, who took simultaneous 360-degree panoramic photographic
25 representations. Crime-base witnesses corroborated that these panoramic

1 photographs showed shelling damage from 17 March and FDS witnesses
2 corroborated the placement of 120 millimetre mortars on the photographs from Camp
3 Commando.

4 Mr Gbagbo, at paragraph 517 of annex 3 of his motion, also argues incorrectly that the
5 expert did not examine surrounding buildings to see if mortar trajectory would have
6 been blocked. The expert explained that when he stood at Camp Commando, he
7 saw no high-rise buildings or any obstacles in the probable direction of the fire that
8 would have limited the use of mortar ammunition.

9 He further clarified that the mortar bombs would easily pass over buildings based on
10 the indirect-fire principles and a three-storey building would not be an obstacle for a
11 mortar.

12 Mr Blé Goudé, in paragraphs 446 and 447 of his motion, also cites to the testimony of
13 Witness 9, who said that a mortar fired into Abobo from Camp Commando would
14 have been obstructed by buildings, despite that the 360 panorama of the location
15 shows the opposite is true. This 360 panorama is visible at 0073-0862.

16 I will now show the Chamber one still from this 360-degree presentation of Camp
17 Commando, specifically a view from panorama 11, just inside the camp's wall where
18 BASA Witness -- sorry, where Witness 330 and 0164 both testified they saw 120
19 millimetre mortars installed in late February and early March 2011.

20 I will now ask that it be publicly shown. And I believe we'll have to put ourselves in
21 evidence 2 or just we look in front of us.

22 Now, this view points directly in the direction of Siaka Koné market and SOS Village.
23 As the Chamber can see, there are no buildings obstructing the path of a mortar being
24 launched from this area into Abobo.

25 Furthermore, Witness 9 did not perform any measurements at the scene, nor has he

1 been qualified as an expert in mortars or military engineering. The self-serving
2 nature of this portion, this part of Witness 9's testimony is apparent. In contrast, the
3 expert demonstrated that a 120 millimetre Soviet or Russian mortar shell fired from
4 Camp Commando would be able to have an impact in Siaka Koné or SOS Village and
5 its range.

6 The second argument that I will address, neither Mr Gbagbo nor the inner circle made
7 the order to fire the mortars on 17 March and consequently, there is insufficient proof
8 of the order.

9 Our response: As a starting point, Mr Gbagbo's 24 February 2011 order to FDS
10 generals not to cede Abobo and to do whatever it takes to keep Abobo, marked a
11 turning point in FDS operations and their willingness to use mortars. Immediately
12 thereafter, the FDS started using mortars in Abidjan during their 25 February 2011
13 operation, a practice that continued into March.

14 Both the early March order to fire 120 millimetre mortars into Abobo as well as the
15 subsequent order on 17 March came directly from Mr Gbagbo himself. Although
16 there is no direct evidence of these orders, there is no other reasonable conclusion to
17 draw from the circumstances. The evidence shows: One, Mr Gbagbo authorised
18 the CEMA to use 120 millimetre mortars in Abidjan during the crisis. He
19 requisitioned the army, Mr Gbagbo requisitioned the army, be it on the 14th or
20 beginning of November or beginning of January, the army is requisitioned with all its
21 means.

22 Second, the CEMA admitted to using them in Abidjan, albeit for a tir de flambage and
23 a tir d'arrêt.

24 Three, multiple witnesses indicate the order to fire 120 millimetre mortars from Camp
25 Commando came from the presidency.

1 Fourth, the CEMA and other commanders pressured at least one BASA witness to fire
2 them.

3 Fifth, BASA commander and Gbagbo loyalist, Colonel Dadi, ordered his men to fire
4 the 120 millimetre mortars on 17 March 2011 and celebrated their success.

5 Sixth, the FDS failed to conduct a good faith investigation into the shelling. No one
6 was ever punished at the time for this incident. The totality of these circumstances
7 demonstrate that Mr Gbagbo authorised the 17 March shelling of Abobo.

8 Furthermore, BASA Witness 164, 239 and 226 all acknowledged that the use of
9 artillery weapons, such as 120 millimetre mortars in an urban area, required a written
10 order.

11 The Prosecution submits that there was no explicit written order to use 120 millimetre
12 mortars in Abobo in March 2011, precisely because this paper trail would have
13 directly implicated Mr Gbagbo and his chain of command in criminal conduct of
14 indiscriminately shelling a residential area. This also, your Honour, in the context
15 that Mr Gbagbo did not want Abobo to be declared a war zone.

16 Let me now turn to the last argument of the Defence.

17 Their last argument is the alleged insufficient proof that the FDS used heavy
18 weaponry to indiscriminately target civilians. Specifically, in paragraphs 54 and 55
19 of his motion, Mr Blé Goudé argues that the use of mortars in a densely populated
20 area is not, per se, illegal under the rules of international humanitarian law. But
21 even the legal commentary they cite indicates that those planning such an attack must
22 take, and I quote, "whatever steps that are necessary in order to avoid or minimise
23 collateral damage to civilians," even more so, your Honours, in urban settings and
24 elsewhere.

25 As demonstrated in our response, no such steps were taken in this case. BASA

1 Witness 239 described observing two members of his BASA unit firing 120 millimetre
2 mortars from Camp Commando in the direction of the gendarmerie roundabout in
3 Abobo. He clarified that this firing was done in response to an FDS convoy allegedly
4 being shot at earlier that day. This response, without any verification that the
5 military objective was still at the target location or that civilians were present,
6 constituted a failure of the FDS to exercise reasonable discretion in firing mortars.
7 These failures, combined with a failure to assess after the fact whether the mortars
8 even achieved their alleged military objective, actually demonstrates a lack of interest
9 in the military objective and an intention for the civilian population to be the primary
10 object of the attack. They didn't do anything, your Honours. They didn't verify
11 after the fact.

12 The FDS commanders did not act as a reasonable military commander, as
13 Mr Blé Goudé argues in paragraph 71 to 82 of his motion. The Prosecution's analysis
14 in paragraph 880 to 901 of its response shows that, the FDS failed to exercise
15 reasonable discretion in firing mortars in Abobo. There is no evidence on the record
16 to suggest that anyone in the FDS chain of command, whether commanders on the
17 ground or their superiors, ever took reasonable measures to ensure these imprecise
18 mortars were launched in Abidjan in a way that they actually achieved a military
19 objective and minimised civilian casualties.

20 I will now address the fifth and last incident, the incident of 12 April 2011.

21 A little bit of WD-40 would be good on that door.

22 The evidence demonstrates that on or about 12 April 2011 in the Yopougon
23 neighbourhoods of Doukouré and Mami Faitai, pro-Gbagbo forces killed at least 61
24 persons primarily from northern Côte d'Ivoire and neighbouring West African
25 countries. They raped at least six women and wounded at least three persons.

1 These crimes were committed on ethnic, political, national and religious grounds.
2 As just stated, the crimes occurred in the mostly Dioula neighbourhoods of Mami
3 Faitai and Doukouré.
4 The incidents formed part of a continuum of violence perpetrated against perceived
5 Ouattara supporters that was set in motion by Mr Blé Goudé's, mot d'ordre, call
6 February 2011, which resulted in the deaths of civilians.
7 The evidence shows that instead of condemning, condemning the violence
8 perpetrated at these roadblocks, in early March 2011, Mr Blé Goudé merely called
9 upon those that had erected the roadblocks to bring them under control and not to
10 engage in extortion and racketeering, nor to attack people from specific nationalities,
11 all the while glossing over violence perpetrated as a result of his mot d'ordre.
12 On 14 March 2011, Mr Blé Goudé even thanked the youth who had erected
13 roadblocks and claimed that allegations of racketeering at roadblocks were false.
14 Your Honours, despite his authority, Mr Blé Goudé never instructed the pro-Gbagbo
15 youth and militia at the roadblocks to dismantle the roadblocks or refrain from any
16 acts of violence against the civilians. As such, the killings at roadblocks continued
17 throughout the post-election crisis.
18 In the days preceding Mr Gbagbo's arrest on 11 April, both Mr Blé Goudé and
19 Mr Gbagbo called upon the pro-Gbagbo forces to continue the fight to remain in
20 power. The crimes perpetrated in Yopougon on 12 April were committed
21 immediately after Mr Gbagbo's arrest, committed by pro-Gbagbo forces that included
22 youth, mercenaries and GPP members trained, armed and financed by Mr Gbagbo
23 and Mr Blé Goudé and loyal members based at the Locodjoro naval base.
24 The killings, rapes and other inhumane acts committed in Mami Faitai and Doukouré
25 bear significant commonalities with the crimes committed by pro-Gbagbo forces

1 against perceived Ouattara supporters in Abidjan during the post-election crisis.
2 The perpetrators, some of whom spoke English, specifically targeted Dioulas who
3 were perceived as being pro-Ouattara supporters.
4 In some instances, the perpetrators asked about the ethnicity of the victims and asked
5 to look at their identification documents before attacking them.
6 Some of the perpetrators wore hoods.
7 Dioula men were seriously wounded or killed while Dioula women were raped, just
8 like some of the perceived Ouattara supporters during the 16 December incident.
9 Last, Maguy le Tocard, who was one of the GPP commanders in Yopougon, Maguy le
10 Tocard was amongst the attackers.
11 The Prosecution's evidence regarding the crimes committed during the 12 April 2011
12 incident can be found at paragraphs 998 to 1047 of our response.
13 I will now address four of the main Defence arguments pertaining to 12 April. First
14 argument, that the rebels infiltrated Yopougon before 12 April incident. Second, that
15 the crimes were isolated acts committed by bandits. Third, that the FDS no longer
16 existed on 12 April 2011. And last, the alleged lack of identification of the
17 perpetrators.
18 First Defence challenge can be found at annex 3, paragraph 532, 537 to 546 of
19 Mr Gbagbo's motion. The Defence states that rebels infiltrated Yopougon before 12
20 April 2011 and that it was most likely them who perpetrated crimes in Yopougon.
21 Our response, your Honours. To begin with, in terms of opportunity, there is no
22 evidence indicating that on or about 12 April the rebels or the FRCI were in Doukouré
23 and Mami Faitai or had control of these neighbourhoods. In fact, Witness 568
24 testified that the FRCI only arrived in Mami Faitai after they fled the neighbourhood,
25 which was at least five days after 12 April 2011.

1 Second, unlike the pro-Gbagbo forces, the rebels or FRCI had no motive to attack
2 pro-Gbagbo supporters. Simply put, it would make no sense for them to target
3 Dioulas. For the same reason, it also makes no sense that they would have shouted
4 that they were going to kill all the Dioulas on that day or spoken favourably about
5 Mr Gbagbo in English, as some of the perpetrators did.

6 Third, the crime base witnesses themselves identified the perpetrators as pro-Gbagbo
7 forces through their words, actions or descriptions.

8 In fact, your Honours, what the evidence reveals is that pro-Gbagbo forces controlled
9 Yopougon on 12 April 2011. Fuelled by the words and actions of Mr Blé Goudé and
10 Mr Gbagbo, the pro-Gbagbo forces committed the crimes charged in the Doukouré
11 and Mami Fatai neighbourhoods.

12 Witness 435, who arrived at the Locodjoro naval base on 12 April and stayed there
13 until 17 April, testified that pro-Gbagbo forces controlled Yopougon until Monday, 18
14 April. You can see that in our response at paragraph 1054.

15 Upon arriving at the base, Witness 435 saw Liberians, war chiefs, GPP commanders,
16 including Maguy le Tocard and Commander Tchang, FDS Commander Konan
17 Boniface and other FDS elements, including marines and soldiers, basically most of
18 the elements previously based in Plateau, some in Cocody and those already based in
19 Yopougon.

20 (Redacted)

21 (Redacted)

22 (Redacted) He saw them killing RHDP civilians who were suspected of giving
23 intelligence to the FRCI and used informants amongst the population to make
24 denunciations against pro-RHDP civilians.

25 UNOCI daily situation reports (Redacted). One report confirms that a

1 concentration of pro-Gbagbo militia group in Yopougon had killed and burnt people
2 on 12 April. Another report dated 14 April 2011 reiterates the presence of
3 pro-Gbagbo militiamen in Yopougon who would have killed at least 18 people
4 between 11 and 13 April and committed acts of pillaging in Yopougon.

5 The second argument of the Defence can be found at annex 3, paragraph 532 of
6 Mr Gbagbo's motion, where he argues that the crimes were isolated acts committed
7 by bandits taking advantage of a situation of chaos.

8 Our response: The circumstances surrounding the killing, rapes and other
9 inhumane acts show that it was a deliberate and coordinated attack against perceived
10 pro-Ouattara supporters of Doukouré and Mami Fatai and not mere isolated acts of
11 banditry. These criminal acts were perpetrated as a continuum of the common plan
12 with the objective to attack perceived pro-Ouattara supporters. The pro-Gbagbo
13 forces used the same modus operandi in both neighbourhoods. And we refer the
14 Chamber to our paragraph 1066.

15 The attackers killed male perceived as Ouattara supporters. Witness 109 stated that
16 the pro-Gbagbo forces, including Liberians, first checked the identity cards of two
17 members of his group and then opened fire on them. Several of his friends were
18 killed. Witness 567 testified that her four brothers and her brother's friend were
19 killed after the attackers forced their gate, shouting they were going to kill all the
20 Dioulas. The 17 or 18 corpses in Mami Fatai, including the corpses of Witness 568's
21 sons, were all Dioula men. The 34 corpses in Doukouré were also all male.

22 The attackers used informants to target the Dioula houses. For instance, in Mami
23 Fatai, Witness 567 testified that she recognised the voice of one of the militiamen who
24 killed her brothers as a friend of her older brother. He told the other militiamen,
25 after they had killed 567's brothers, that there was still one brother missing in the

1 household.

2 I will now address the third argument of the Defence. Still at annex 3, paragraph 526
3 and 532 of his motion, Mr Gbagbo argues that the FDS no longer existed
4 on 12 April 2011.

5 Our response: This argument is unsubstantiated and speculative. What the
6 evidence does show is that, although the formal FDS structure was falling apart after
7 Mr Gbagbo's arrest, the remaining loyal FDS members gathered at the Locodjoro
8 naval base along with other pro-Gbagbo forces.

9 Thank you, your Honour.

10 So what the evidence does demonstrate is that the loyal forces, the loyal FDS forces
11 gathered at the Locodjoro naval base along with other pro-Gbagbo forces.

12 I will now address the last argument of the Defence. At annex 3, paragraph 628 of
13 his motion, Mr Gbagbo argues that the Prosecution witnesses did not identify the
14 perpetrators as pro-Gbagbo forces.

15 Our response: The witnesses' description of the attackers demonstrates that they
16 were pro-Gbagbo forces.

17 Witness 109's testimony that some of the youth from Yao Séhi who had previously
18 thrown stones at them were amongst the attackers who injured him and left him for
19 dead on 25 January 2011.

20 If you allow me now to go quickly into private session, short.

21 PRESIDING JUDGE TARFUSSER: [15:31:22] Briefly you mean? Shortly?

22 MR MACDONALD: [15:31:26] Very.

23 PRESIDING JUDGE TARFUSSER: [15:31:27] Okay. Let's go into private session.

24 (Private session at 3.31 p.m.)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Open session at 3.32 p.m.)

12 THE COURT OFFICER: [15:32:48] We are back in open session, Mr President.

13 PRESIDING JUDGE TARFUSSER: [15:32:53] Mr MacDonald, the floor is yours.

14 MR MACDONALD: [15:32:55] Witness 441 testified that Maguy le Tocard and
15 Agbolo, a known associate of Mr Blé Goudé, were among the attackers in Doukouré
16 alongside many other armed individuals, civilians, uniformed individuals, police
17 officers and vagabonds. The Prosecution recalls that Witness 435 saw GPP
18 commander Maguy le Tocard at the Locodjoro naval base on 12 April and also
19 testified that the GPP was committing violence in Yopougon during that period.

20 Sorry I was distracted.

21 The Prosecution recalls that Witness 435 saw GPP commander Maguy le Tocard at the
22 Locodjoro naval base on 12 April and also testified that the GPP was committing
23 violence in Yopougon during that period. Witness 109 identified Liberians amongst
24 the attackers and heard English being spoken. Witness 568 also heard the attackers
25 speaking English and so did one sexual violence victim that you heard, and I will not

1 go into private session to give you her number.

2 As indicated earlier, Witness 435 testified that Liberians were committing crimes in
3 Yopougon against perceived pro-Ouattara supporters after Mr Gbagbo's arrest. In
4 addition, Witness 483 testified that Liberian mercenaries were based at the
5 presidential residence and went to the Locodjoro naval base after Mr Gbagbo's arrest.
6 Moreover, the words and actions of the attackers, who targeted Dioulas and
7 perceived pro-Ouattara supporters in Mami Fatai and Doukouré, demonstrates that
8 they were pro-Gbagbo forces. The perpetrators said that they were going to kill all
9 the Dioula. They verified the identity of civilians and they effectively killed many
10 Dioula men during the attacks. The attackers also raped perceived pro-Ouattara
11 women.

12 Last, the wounding, killing and raping of perceived Ouattara supporters on or about
13 12 April fits the pattern of similar crimes committed by pro-Gbagbo forces
14 throughout the post-election crisis as I will now address when discussing the
15 contextual elements of crimes against humanity.

16 I look at the time, your Honours. What I would propose to do is start the contextual
17 elements, but I will not be able to finish this presentation on the crimes against
18 humanity, the elements. I will deal with the first challenge of the Defence, which is
19 on the course of conduct. I will deal in full or propose to deal in full with the course
20 of conduct, which should bring us to 4 p.m. or maybe thereafter a few minutes.

21 In section III of our response, we first set out the law. In a second part, we detail
22 how the evidence on record demonstrates that the standard for the case to move
23 forward, that the pro-Gbagbo forces carried out a widespread and systematic attack
24 directed against the civilian population perceived as supporting Mr Ouattara. In
25 doing so, we also respond to the challenges of the Defence on the contextual elements.

1 I will be coming back tomorrow on the common plan when discussing the different
2 modes of liability, but specifically 25(3)(a), but I think it is important to recall now
3 how the attack unfolded.

4 By 27 November 2010, the implementation of the common plan had developed to
5 include a State or organisational policy to attack civilians considered to support Mr
6 Ouattara.

7 After the first round of the presidential elections, Mr Bédié encouraged the electorate
8 that had voted for him to support and vote for Mr Ouattara during the second round.
9 Strong from that support, Mr Ouattara was now the front runner for the second
10 round of the elections. Mr Gbagbo had been president since October 2000, a good
11 five years beyond his mandate which was marred by ethnic conflicts, attempted
12 coups and the separation of the country in two. The rebels occupied the north.
13 Mr Gbagbo ruled the south.

14 In August 2010, in preparation for the elections, Mr Gbagbo reminded his generals
15 that they needed to be loyal since, after all, if he fell, they would fall too.

16 Mr Gbagbo and his inner circle, including Mr Blé Goudé, also prepared for violence.
17 They trained and armed pro-Gbagbo youth and militia. Mr Gbagbo requisitioned,
18 for no legitimate operational reason, the army on 14 November 2010.

19 The campaign of the second round opened, and Mr Gbagbo started using
20 inflammatory language when referring to his opponent, Mr Ouattara. During a
21 political rally on 28 November, Mr Gbagbo stated that Mr Ouattara was responsible
22 for the 1999 coup d'état against Mr Bédié, adding, and I quote, (Interpretation) "The
23 snake is not yet dead" (Speaks English) and "to not let their clubs down".

24 Mr Gbagbo further referred to Mr Ouattara as the originator of all the violence in Côte
25 d'Ivoire and added that after 28 November, the seed of violence must be removed for

1 good from Ivory Coast's political life. It is no coincidence that violence began from
2 the second round and continued until Mr Gbagbo's arrest.

3 This violence, as we will demonstrate, was directed against the civilian population
4 perceived as supporting Mr Ouattara. During the next five months or so, the FDS,
5 pro-Gbagbo youths, militia and mercenaries killed, raped and seriously injured
6 civilians perceived as Ouattara supporters in Abidjan.

7 Civilians perceived as Ouattara supporters were actual or perceived political
8 opposition activists and sympathisers. They were also civilians considered to be
9 opposition supporters due to their Muslim faith, Dioula ethnicity, and/or their
10 provenance from northern Côte d'Ivoire or other western African countries, as well as
11 Ivorians of West African descent.

12 Pro-Gbagbo forces attacked perceived Ouattara supporters following similar patterns,
13 which I will come back to in a few minutes. They targeted pro-Ouattara
14 demonstrators and opposition party premises. They attacked perceived
15 pro-Ouattara neighbourhoods and mosques. They killed civilians based on
16 identification checks, particularly at roadblocks. And they used shelling or
17 indiscriminate fire against civilians perceived as Ouattara supporters or in their
18 neighbourhoods.

19 Some of the means of violence used evolved over time. As Mr Gbagbo became more
20 entrenched, he and Mr Blé Goudé increased the violence. For example, in late
21 February, and I've alluded to this and I will come back to that, the FDS began shelling
22 parts of Abobo, killing civilians. Around the same time in Yopougon, Mr Blé Goudé
23 called for pro-Gbagbo youths to set up roadblocks. At these roadblocks, civilians
24 were persecuted and killed.

25 What tied these events together, in the words of the Pre-Trial Chamber in

1 Mr Blé Goudé's confirmation decision at paragraph 146, was Mr Gbagbo's and I quote,
2 "overarching coordinating role." The overall purpose was to keep him, and I quote,
3 "in power at any cost, including by use of violence against civilians."

4 The Prosecution submits that the evidence demonstrates that between 27 November
5 and on or around 12 April in Abidjan, pro-Gbagbo forces carried out a widespread
6 and systematic attack directed against a civilian population perceived to support Mr
7 Ouattara. And also, that this attack was carried out pursuant or in furtherance of a
8 State or organisational policy to carry out this attack.

9 Let me now turn to the main Defence challenges on the contextual elements.

10 Mr Gbagbo in annex 3, page 138, and Mr Blé Goudé in paragraphs 4 to 5 of their
11 motions respectively argue, one, that the course of conduct involving the multiple
12 commission of acts referred to in Article 7(1) is not proven. They also indicate that
13 the State or organisational policy to commit an attack has also not been proven.

14 So I will address their arguments in turn, starting, like I mentioned, on the course of
15 conduct.

16 As to the course of conduct involving the multiple commission of acts referred to in
17 Article 7(1), the Prosecution's position is that the evidence on record of the Article 7(1)
18 acts committed during the five charged incidents is sufficient in and of itself to
19 establish this course of conduct.

20 There were at least 142 murders, 17 rapes, 110 other inhumane acts and multiple acts
21 of persecution. The evidence shows that these acts were not random. They were
22 not committed out of coincidence. These were acts of violence committed by the
23 pro-Gbagbo forces against civilians perceived as Mr Ouattara's supporters in Abidjan
24 and during the post-election crisis. Time and location.

25 But there is more, your Honours. In addition to the five charged incidents, the

1 Prosecution has presented further evidence to prove the course of conduct. This
2 includes evidence of Article 7(1) acts committed during 20 other incidents.
3 And further, beyond these 20 additional incidents, you have additional testimonial
4 evidence regarding further Article 7(1) acts committed by pro-Gbagbo forces against
5 perceived Ouattara supporters during the post-election violence in Abidjan. This
6 evidence is set out in paragraph 229 and following of our response.
7 Mr Gbagbo argues in his motion at paragraph 3, sorry, paragraph 640 of annex 3, that
8 the purpose in the Prosecution's case of these additional incidents is not clear.
9 Our response: Let us be clear, the evidence of the Article 7(1) acts committed during
10 these other 20 incidents corroborates and supplements our demonstration that there
11 was a course of conduct. Also, and this point has to be made, because it is an
12 important one, it is the course of conduct itself that needs to be proven, not every
13 single individual acts, the course of conduct itself.
14 The evidence of the 20 other incidents corroborates and supplements that pro-Gbagbo
15 forces carried out Article 7(1) acts against civilians perceived as Ouattara supporters
16 in Abidjan during the crisis. And the further evidence I referred to above also
17 corroborates and supplements the same. So you have the five incidents, which
18 ultimately are there. You have 20 additional incidents to supplement, and then you
19 have further evidence on the record.
20 And the totality of this evidence, from the totality of this evidence, the Article 7(1) acts
21 follow similar patterns. The patterns that I will now describe demonstrates that the
22 acts of violence were not random acts or coincidences.
23 What are these patterns, your Honours?
24 The first pattern, the pro-Gbagbo forces targeted actual or perceived Ouattara
25 political activists and sympathisers mainly around demonstrations or political parties'

1 premises. For example, between or during the night of 1 December, a gendarmerie
2 unit from Yopougon attacked the RDR offices in Wassakara killing four civilians,
3 wounding seven.

4 And you've heard the testimony of 440 on this issue. He was there.

5 On 6 December, the CECOS BMO, which stands for, and I should have said it earlier,
6 Brigade de Maintien de l'ordre, executed a civilian during an RHDP demonstration in
7 Adjamé-Boribana.

8 The FDS fired indiscriminately at demonstrators during the 16 December march.

9 During the same march, GPP and FESCI members beat demonstrators. FESCI
10 members also shot at and injured demonstrators.

11 On 3 March, the women's march, FDS killed seven women and wounded other
12 civilians. And again, this was a demonstration against the authority of Mr Gbagbo.

13 On 8 April, forces under Simone Gbagbo's aide de camp executed the bodyguards of
14 an RDR spokesperson and you heard this person testify. Pro-Gbagbo forces also
15 looted and destroyed the offices of political parties. They also looted and destroyed
16 the homes of representatives of the opposition. These acts further corroborate this
17 pattern.

18 It is relevant to recall that, on the other hand, rallies held by Mr Gbagbo were not
19 attacked, but instead protected as the evidence on record demonstrates.

20 I will now describe the second evidentiary pattern. Pro-Gbagbo forces targeted
21 civilians, including religious representatives, in neighbourhoods inhabited by
22 perceived Ouattara supporters. This pattern is evidenced by the attacks on parts of
23 Abobo on 17 and 18 December in the aftermath of the 16 December march; the
24 indiscriminate fire or shelling of 3 and 17 of March took place also in Abobo,
25 predominantly a pro-Ouattara neighbourhood; the pro-Ouattara neighbourhoods of

1 Doukouré and Lem were attacked from 25 to 28 February and the Doukouré and
2 Mami Fatai neighbourhoods were attacked on 12 April.

3 On 15 March, the militia group of Maguy le Tocard and members of the BAE, the
4 Brigade Anti-Émeute, and gendarmerie attacked Port-Bouët II. They killed an imam
5 and other civilians.

6 On 19 March, GPP militia members under CRS1 instructions raided an imam's house
7 in Williamsville, again, killing the imam and other civilians.

8 Further corroborating the second pattern, pro-Gbagbo forces also looted and
9 destroyed mosques. They also looted shops owned by northerners or West Africans.

10 The third pattern. The pro-Gbagbo forces targeted civilians perceived as Ouattara
11 supporters following identity checks. This happened particularly at roadblocks.

12 We're in public session, your Honour. I will recall the testimony of a victim of 16
13 December incident and what happened to her and how she was stopped and what
14 happened next, where she was brought and how she was stopped by pro-Gbagbo
15 youth. I will not go any further because she was heard in private session, but it is
16 spelt out in our response.

17 After 25 February, the lynching or burning of suspected rebels by Young Patriots at
18 roadblocks in Yopougon became an almost daily occurrence. On 11 March,
19 parliament youths killed a man of Burkinabé origin in Yopougon because they
20 suspected him of being a rebel informant.

21 On 12 April, pro-Gbagbo forces went door to door identifying, as I've described
22 earlier, men as Ouattara supporters. They killed them and raped women.

23 Let me now describe the last pattern. The FDS shelled or fired indiscriminately in
24 areas densely populated by perceived Ouattara supporters. This pattern is
25 illustrated by obviously the 3 and 17 March charged incident, but is not limited to that,

1 because in addition, the FDS shelled parts of Abobo at least on 26 and 27 February,
2 from 11 to 12 of March and also on 22 March.

3 And finally on 11 April, the Garde Républicaine shelled a bakery in Treichville.
4 Now, all of these incidents caused casualties, all of them. This pattern is also
5 illustrated by evidence from FDS and civilian witnesses. These witnesses testified
6 that from late February 2011, the FDS fired shells and placed mortars facing certain
7 locations. They also testified in February and in March, the FDS convoys fired
8 indiscriminately in areas between Camp Commando and other camps.
9 These are only some, some of the examples of these four patterns and again our
10 response details further.

11 A word now on Mr Gbagbo's submissions that the Prosecution relies on NGO and
12 UN reports containing anonymous hearsay. These submissions are in his motion in
13 annex 3, paragraph 764.

14 First, as stated by Mr Stewart in his presentation, at this midway stage of the
15 proceedings, the Chamber should refrain from evaluating the credibility and
16 reliability of the evidence except in extremely limited circumstances.

17 Second, and more importantly, as stated in section II-B of our response, nothing
18 prevents the Chamber from relying on hearsay evidence under the Statute, certainly
19 not to corroborate and supplement the five charged incidents.

20 Nevertheless, we have addressed these concerns in our response, like I said, in section
21 II-B and section III, where we submit that the reports relied upon, specifically from
22 the UNOCI, are reliable sources of evidence. While indeed the UNOCI reports do
23 contain hearsay evidence, the methodology followed in collecting this information
24 ensures a sufficient degree of reliability.

25 To conclude on the course of conduct, these Article 7(1) acts were not unrelated, were

- 1 not random acts. We submit that the evidence clearly demonstrates that these acts
2 establish a course of conduct and which calls for the Chamber to send this case to the
3 next stage of the proceedings, because that is what we are discussing today.
4 Thank you, your Honours. I will stop here and continue tomorrow.
5 PRESIDING JUDGE TARFUSSER: [16:01:34] Thank you very much.
6 I adjourn the hearing until tomorrow at 9.30 hopefully. So continue with the
7 presentation by the Prosecutor, which will probably be concluded by tomorrow.
8 Okay. Thank you very much. The hearing is adjourned to tomorrow 9.30.
9 THE COURT USHER: [16:01:57] All rise.
10 (The hearing ends in open session at 4.01 p.m.)