

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé -
5 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, 12 November 2018
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:07] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:32:38] Good morning. Good morning to
15 everybody.
16 We are here today to listen to the beginning, the first day of the submissions by the
17 Defence counsel. I think that it is the Defence for Mr Gbagbo to start, if I'm correct,
18 and therefore I immediately give the floor to Maître Altit, just reminding that we do,
19 as always, the one hour and a half, plus one hour and a half, plus one hour and a half
20 as usual.
21 The floor is yours, Maître Altit.
22 MR ALTIT: [9:33:34] (Interpretation) Thank you, your Honour.
23 PRESIDING JUDGE TARFUSSER: Well, if you drink before you start to speak, I'm
24 worried, huh.
25 MR ALTIT: [9:34:23] (Interpretation) Mr President, your Honours. With your leave,

1 I shall read out a sentence that sets the framework for these discussions and really
2 sheds light on the reason why we are having this discussion and why the charges
3 must be dismissed. And I quote:

4 "There are no statements nor are there any documents that explicitly show the
5 volition of Laurent Gbagbo or of the members of his inner circle to remain in power
6 even if to do so they would have to use violence against civilians." End of quote.

7 Everything has been said here. And who said this? But the Prosecutor himself said
8 this, because what I have just read out to you is to be found in his written response,
9 paragraph 1109. This reality that the Prosecution must acknowledge shows us that
10 the Prosecution has never truly answered the questions that we raised in our
11 submissions.

12 For I saw no true answer, no arguments, no solid grounds, neither in his written
13 response nor in his pleadings, nothing about the so-called inner circle that allegedly
14 drew up and implemented the so-called common plan.

15 When did this group of people begin to meet? When did they form such an inner
16 circle? How did they organise themselves? We have no idea. How is this group
17 of people structured? Was there a hierarchy, a particular way of operating?

18 The Prosecution has said nothing in this regard.

19 Who would have been part of this group and when? What were the roles that each
20 and every one of them played? Such a mystery.

21 The so-called common plan, who drew up this plan? When? Who helped devise it?
22 Who decided to implement it? The Prosecution has not answered even one of these
23 questions.

24 The Prosecution is unable to give any specific item of information about this inner
25 circle which allegedly drew up and implemented the common plan and no specific

1 information about the common plan itself.

2 What is more, I think you will have seen, Mr President, your Honours, that at no time

3 was the Prosecution able to define these two concepts. To support or shed light on

4 one, he refers to the other. The Prosecutor has supposed that there is this inner circle

5 and that there was a common plan. The two concepts depend on one another.

6 And he says because a number of people allegedly came together and met, he comes

7 to the conclusion that there must have been a common plan and these people were an

8 inner circle.

9 But how does he approach this concept of common plan? How was this inner circle

10 dreamt up? He has never bothered to determine how all of this came to be.

11 In other words, the Prosecution has not defined the circle, nor have they, well, in

12 other terms, they have not responded to any legitimate issue about the actual reality

13 of this inner circle and the very existence of a common plan.

14 I suppose it would be useful to find out when this common plan was implemented.

15 If there was a common plan, I suppose there was a time before the common plan and

16 a time after the common plan. But the Prosecution has made no distinction, cannot

17 make any distinction between these two time frames.

18 And the Defence, quite rightly, raises this issue. When did all of this begin? In 2012?

19 The responses vary. The first two DCCs, one in 2012 and one in 2013, speak of a

20 common plan only in 2010. The document containing the charges dated 2014,

21 backtracks and all of a sudden the common plan begins in the year 2000. Why?

22 Because the Defence had demonstrated during the confirmation of charges hearing in

23 2013 that it was absolutely impossible to argue that a common plan allegedly was

24 devised and implemented in 2010. Thus, the Prosecution had to push the beginnings

25 of this scheme back in time to wiggle around this factual impossibility.

1 For a moment, let us talk about this alleged common plan and let us remember what
2 the Prosecution witnesses have said and what we have learned from the documentary
3 evidence, including government opponents as early as the year 2003 to organise a
4 government of national unity, and then include rebels trying year after year, month
5 after month to do everything to bring peace back to the country, doing everything to
6 satisfy the rebels. And even in the year 2007, he appointed Guillaume Soro prime
7 minister, the leader of the rebels. Frankly, is this the implementation of a common
8 plan?

9 As for Guillaume Soro, he remained President Gbagbo's prime minister up until the
10 election of 2010. And thus, as prime minister from 2007 to 2010, he had full control
11 over the government, over the various government departments, the army, the police,
12 and the RTI.

13 Against this back-drop, how can one even imagine the implementation of a common
14 plan? This makes no sense. And this is the problem for the Prosecution. How can
15 the Prosecution make the charges match the realities that, the reality that we have
16 heard about from the witnesses, a reality that just does not jibe with the charges. So
17 what was the Prosecution's solution? Well, they invented another reality.

18 Mr President, your Honours, what you have been shown here in the courtroom is a
19 different reality, one that belongs solely to the Prosecution, very different to what we
20 have heard about from the witnesses themselves. Let us take the allegation that
21 there was a parallel structure. That is the only way that the Prosecution can get
22 around the fact that during all these years in question, the army and the police of
23 Côte d'Ivoire behaved in accordance with republican values, fighting off the attacks,
24 year after year, by troops of foreign mercenaries. These attacks upon the institutions
25 of the republic.

1 But when you ask questions about this so-called parallel structure, the Prosecution
2 gives no response. Now, how was this parallel structure organised? Who were the
3 leaders? What was the chain of command? *What orders were allegedly issued
4 getting around the usual chain of command? *To achieve what result? Why never a
5 satisfactory answer? When we dig a little deeper and try to understand this
6 allegation, when we listen to what military officials have said, the officials called by
7 the Prosecution, the allegation disappears, vanishes in thin air.
8 No matter how you look at the issue, no matter what unit you look at, no matter what
9 command, even if you take the perspective of so-called illegal orders that the unit
10 allegedly received or if you look at possible givers of orders belonging to the inner
11 circle, there is nothing, absolutely nothing. No answer, never.
12 The only way the Prosecution can have you believe that there was a parallel structure
13 is as follows. Offering a scrap of an allegation that perhaps there was some unit that
14 was part of the parallel structure, using suppositions, for example, the idea that this
15 unit was apparently led by extremists or that it engaged in criminal offences or that it
16 carried out orders from members of the inner circle, but never does the Prosecution
17 prove these suppositions.
18 Each time we see that these are only suppositions that the Prosecution turns into
19 affirmations, statements. In other words, the Prosecution is trying to demonstrate
20 that there was a parallel structure by postulating that such a structure existed.
21 And there, and as for the many other issues, the Prosecution never makes a case. He
22 always uses the same method, the same method that I have referred to in relation to
23 the inner circle and the common plan. No one, and I am saying this very clearly, no
24 credible Prosecution witness supported the thesis of a parallel structure. No one
25 said anything that would support the existence of an inner circle. No one said

1 anything that would support the existence of a common plan.

2 And as for the parallel hierarchy, the Prosecution has claimed that army units were set up

3 with a view to implementing the common plan in the years preceding the 2010 election

4 crisis. *But the Prosecution does not explain why the senior army leaders, whose testimony

5 showed that they were from diverse origins and diverse faiths, and were in no way

6 subservient to the President, apparently were not concerned about the creation of such

7 units and why the government of Guillaume Soro did not put an end to this. And the

8 orders, these illegal orders that so much has been made of, the orders revealing a criminal

9 intent that the Prosecution claims were given by the members of the so-called inner circle

10 to officers of the so-called parallel structure? Not a single one.

11 And how does the Prosecution explain the lack of orders? How does the

12 Prosecution make up for this gap in their arguments? They just don't give any

13 answer, at least not any satisfactory answer. For example, regarding the alleged use

14 of mortars in March 2011 the Prosecution says, and I quote, I quote from the transcript

15 of 1 October, French version, page 58, lines 18 to 22, transcript 221. And I quote:

16 "The Prosecution argues that no explicit written order concerning the use of

17 120-millimetre mortars were used in Abobo in March 2011, because this document

18 would have involved Mr Gbagbo directly and the entire chain of command in the

19 criminal conduct of systematically firing shells upon a residential area" end of quote.

20 Thus, according to the Prosecution, the lack of an order doesn't mean that there was no

21 order. *But this flies in the face of common sense. *On the contrary, this would be proof

22 that apparently there was an order. This is a very strange way, your Honours, to

23 construct a series of arguments. This is the same intellectual process the Prosecution has

24 followed throughout the course of their pleadings and in their written submissions by

25 hinting, constantly hinting that the lack of direct evidence of the existence of a so-called

1 common plan is in actual fact the proof that such a plan existed. In other words, the lack of
2 evidence is to their mind obvious proof of a plot. That is their line of reasoning.
3 The problem is that if this is so, everything becomes evidence, but the problem is that this
4 so-called evidence can't be based on anything, nothing whatsoever. The only orders that
5 are mentioned on the case record are the normal orders given by army officers and police
6 officers to their men with a view to prevent the attack of heavily armed rebel groups
7 against the institutions or to defend the people. As for the behaviour of the army and
8 the police, one thing I should say, it is remarkable to see, to hear from the witnesses
9 themselves that these men, these officers acting within a legal framework, putting
10 themselves in danger as necessary, faced with armed groups of different allegiances who
11 have -- these men defended the institutions of the republic as it was necessary.
12 The Prosecution gives no response when they are asked how it can be that a
13 multi-ethnic army, whose commitment -- whose commanders, rather, were appointed
14 at all levels, according to the principle of merit, suddenly *turned into a single ethnicity
15 army in the year 2010 that attacks the population and the institutions of the republic.
16 Why no answer? Because the army never was from a single ethnicity in
17 Côte d'Ivoire. *The army remained the army, as the Prosecution witnesses have told us.
18 And it was the army of Côte d'Ivoire, bringing together officers, men from different
19 origins, following different faiths *which defended the institutions of the republic.
20 And what else have the Prosecution witnesses told us? They have told us that the
21 armies and the police's interventions were conducted according to the proper rules
22 that international humanitarian law was complied with. All measures were taken
23 under all circumstances to ensure that civilians would not be the victims of the war
24 raging between the rebels and the republican authorities.
25 And let us ponder one point for a moment. If the army commanders had behaved as

1 criminals, would they have been promoted, as most of them were by Alassane
2 Ouattara? A reality that the Prosecution turns a blind eye to, because this reality is
3 somewhat bothersome. The reality is simpler than that. There is no need to
4 imagine a parallel structure. The police and then the army were attacked in Abidjan
5 as early as December 2010 by rebels who had made their way into the city in the
6 preceding months, the months preceding the presidential election.
7 And they defended themselves. They were attacked and then destroyed by the
8 French army before Abidjan was invaded by the rebel army coming from the north,
9 made up for the most part of foreign mercenaries and Dozos. That is the reality.
10 That is what happened.
11 These attacks were not the first ones. The same rebel leaders assisted by the same
12 mercenaries had attempted to take power from President Bédié, then General Guéï,
13 before they launched a general attack upon Côte d'Ivoire in September 2002.
14 It's quite revealing when you consider that the Prosecution says nothing about this
15 bothersome, embarrassing reality, even though the Prosecution's most credible
16 witnesses explained that *there had been only one crisis in Côte d'Ivoire, a crisis that
17 had lasted for 10 years, marked by constant attempts by rebels supported by foreign
18 countries to take power. And ultimately they succeeded in their plan in 2011. And
19 *from that perspective, it's quite revealing to look at the Prosecution's arguments *and
20 to see that they refuse to take this reality into account and to answer *the Defence's
21 simple questions about the rebel attacks.
22 They continue to refuse to give specific information about the rebel armed groups and
23 the battle order, both in Abidjan and in the rest of the country. This refusal, it says
24 something, it's quite striking. I'm sure you have realised that in their 1,000-page
25 response and in their *presentation from early October, never has the Prosecution

1 provided useful information. The Prosecution has merely acknowledged reluctantly
2 that there were armed groups in Abobo *at the time, while at the same time downplaying
3 their role. But above all, they have tried to keep these groups out of their account.*
4 Because of this approach, one cannot understand the causal sequencing and thus how the
5 crisis unfolded. This is a misleading way of giving an account of what happened, and
6 this does not reflect what the Prosecution witnesses have told the Court. But the reality
7 remains, what the Prosecution witnesses have said is there, reality is stubborn.
8 The same rebel attacks *over all these years, the same causes, the same effects, in 2010
9 and 2011, just like in *2000, just like in 2002, just like in 2004, *attacks by the same
10 rebels against the institutions. But in 2011, unlike previous years, the army and the police
11 were unable to preserve the institutions, destroyed by the attacks by the French army.
12 I think, your Honours, everything is here. In 2010-2011, the police and the army
13 were on the defensive. Day after day they came under attack from heavily armed
14 groups. The rebels were attacking and the security forces of Côte d'Ivoire were in a
15 defensive role, not the other way around. This is what has been revealed by all the
16 witnesses, but also this is what the Prosecution is desperately attempting to hide,
17 because if the truth comes out, this fake reality that the Prosecution has submitted to
18 you *would disappear, and we would *see the true reality, namely a planned attack
19 upon the institutions allowing Alassane Ouattara to seize power by force.
20 This is why the Prosecution cannot answer simple questions, because answering these
21 questions means that this other reality would come to the forefront and answering
22 these questions would be confessing the existence of a fabrication, something that has
23 built, a construction. Some simple questions:
24 Why was it that there were members of armed groups hidden amongst the
25 demonstrators on 16 December 2010? If that wasn't the case, who killed the soldiers

1 and the police officers on that same day? And why is it that these attacks came from
2 armed groups who were hidden amongst the demonstrators at the same time as the
3 attacks by armed vehicles and rebel troops coming from the Golf that same day?

4 *And why the footage of an alleged machine gun attack on 3 March 2011, an attack
5 upon a group of women by an army vehicle? *Why is the footage dated 7 January
6 2011? Why, why was this video footage*, which supposedly was shot in a continuous
7 fashion, why does it seem to have been edited? *

8 The Prosecution gives no answer. For example, when we see the, when we see the
9 convoy go by, that there are no bodies on the ground. The bodies appear only after
10 the convoy has passed and has disappeared on the horizon. When the cameraman
11 turns around to film the place where the convoy left, had left for a while, why? Why?
12 The Prosecution has alleged that on 17 March 2011 six mortar shells were fired from
13 Camp Commando onto inhabited areas in Abobo. Their only witness, and once
14 again a not credible witness, P-239, who was unable to give simple details, for
15 example, the date on which the firing occurred, and why that witness, the only one,
16 why did he mention only two shots?

17 I think there is a problem here. Either the witness is saying the truth, but then there
18 would be only two shots that day; or the witness is lying and the Prosecution's
19 arguments about the origin of the shooting is based on nothing.

20 *The Prosecution cannot say black and then turn around and say white, without,
21 without creating * reasonable doubt. And the expert upon which they rely cannot
22 change this, because the expert was unable to present any clear or definitive
23 conclusion. And why? Why is it that concerning the alleged incidents of 12 April

24 *2011, the Prosecution was not able to provide any information that would allow one
25 to designate exactly who carried out these alleged acts. And without identifying the

1 perpetrators, how can any kind of connection be made *with the so-called common
2 plan, particularly since we know that it was chaos everywhere in the neighbourhood
3 in question? Criminal acts left, right and centre, particularly a great deal of looting.
4 The Prosecution can't answer these simple questions, they just can't, because if they
5 did, they would be destroying their own account.

6 Let me provide an example. Allow me to show you how the Prosecution is avoiding
7 these questions. Allow me to hark back to the incident of 16 December 2010. Let us
8 recall the Prosecution's account. Police officers, gendarmes and soldiers belonging
9 to the Ivoirien forces allegedly attacked peaceful pro-Ouattara demonstrators,
10 terrorizing them, thus allowing President Gbagbo and members of the so-called inner
11 circle to cling to power.

12 But the problem, you see, is that apparently during the march, police officers and
13 soldiers were attacked by heavily armed groups. And apparently in actual fact this
14 was a military attack that had been planned. In fact, the soldiers at the hôtel du golf
15 at the same time were counterattacking government forces in order to seize power as
16 Guillaume Soro had announced the day before. It's all very clear.

17 Now, the Prosecutor, to deal with *this issue of armed rebel groups active during the
18 so-called peaceful march, has told us, and I quote from the transcripts of the hearing
19 of 1 October 2018, this is the French transcript, lines 10 to 20, page 26, transcript *221
20 and I quote:

21 "Ever since the confirmation of charges, the Prosecution constantly acknowledged
22 that there were victims amongst the FDS on 16 December 2010. I refer you to our
23 amended document containing the charges, filing 592, annex 1. More specifically I
24 refer you to paragraph 117. However, these victims within the FDS had nothing to
25 do with the march that was going on in Cocody in the area surrounding the RTI. In

1 actual fact, the witnesses who testified in this case and their accounts corroborated by
2 independent reports from the police and the FDS show, their testimonies show that
3 the victims amongst the FDS were mainly, the victims were mainly at Marie-Thérèse
4 and they fell victim after a brief confrontation between rebels based *at the Golf hotel
5 and in Abobo near PK18*'' . *End of quote.

6 In other words, the Prosecution has acknowledged the existence of incidents, *-- with
7 the implication being that they were because of the armed rebel groups that had
8 attacked the FDS, but the Prosecution is careful not to tell us so -- some to the north of
9 the city, some to the south, but the Prosecution claims that in no way does this change
10 their account. To their mind, the march was a peaceful march. But let's just think
11 about this for a few moments.

12 *First problem: *the incidents at Marie-Thérèse Carrefour mentioned by the *Prosecutor,
13 *incidentally, what was, what was this all about? It was a battle, you saw the footage,
14 your Honours, a battle between heavily armed rebels from the Golf hotel who were
15 trying to make their way into the city squared off against the security forces.

16 It's understandable that the Prosecution did not dwell on this point, because attacks
17 by rebel units from the Golf at the same time as there were attacks * against the FDS
18 *by armed rebel groups from Abobo, this means concerted attacks, this means there
19 was planning, this means it was a military offensive. In other words, this attack by
20 rebel soldiers from the Golf hotel disappears from the Prosecution's account. They
21 attach no significance to this attack, because if they were to include this attack in their
22 account, they would be acknowledging ipso facto that it was not a peaceful march.

23 Now allow me to turn to the second problem. Since this response comes a bit too
24 quickly, the Prosecution also mentions a "brief confrontation" at PK18 that allegedly
25 occurred 16 December 2010. What does that mean? What is that all about? That

1 there might have been incidents involving armed rebel groups on 16 December, but
2 that these incidents did not change the march, that it was still a peaceful march?
3 For the reason, if we follow the Prosecution's logic, that these incidents were restricted
4 to Abobo. My first remark is this: In Abobo, there were points where people gathered
5 for the march, so it would be odd to make a distinction between Abobo and the march.
6 My second remark is that there were attacks against the Defence and Security Forces
7 during the march. In this regard, the witnesses have told us that the Defence and Security
8 Forces had been attacked, which really makes you wonder about the peaceful nature of the
9 march. The Prosecution, to save *its account *of a supposedly peaceful march, invents a
10 new concept and begins to speak of the march, specifically the march, the march proper.
11 And simply put, the Prosecution seems to be talking about two things, the march and then
12 the march proper. *If the FDS were attacked, it was not the march. If they were not
13 attacked, it was the march. *There was the march, and then there was the march proper.
14 Here, the march, no incidents; be careful, an incident there, it was no longer the march.
15 We do not believe that this argument is satisfactory. You see, Mr President, your Honours,
16 can you see just how fragile the Prosecution's account is? And why is it so fragile? *Because
17 it is built on sand, or rather, because it is not based on a properly conducted investigation.
18 This account is based on *presuppositions*and preconceived notions. This account is
19 basically identical to the account given by the current authorities in Côte d'Ivoire, the former
20 rebels, an account that the Prosecution has taken up in great detail. Perhaps this is why the
21 case file is marked by a number of problems, poor investigations conducted too late, led with
22 the authorities of Côte d'Ivoire, massive use of hearsay, systematic lack of corroboration
23 when it comes to the most important allegations, lack of serious forensic evidence.
24 *In order to respond to these glaring flaws that we have *brought to light in our
25 submissions, *to plug the holes in the dike, so to speak, *to make up for the shortcomings

1 of its reasoning, the Prosecution has brought in a number of new theories about the
2 interpretation of their evidence. The Prosecution ever since the very beginning of the case
3 has done the same sort of thing. The Prosecution provides an interpretation that *it says
4 is based on certain information to sustain an allegation and then when the Defence makes
5 things difficult *for the Prosecution, the Prosecution provides a fresh interpretation. And
6 when the fresh interpretation is shot down by the Defence, the Prosecution provides a
7 third interpretation and so on and so forth. *It never ends. This way of doing things is
8 already problematic, but it will just not do. Why? Because the Prosecution filed a mid-trial
9 brief of 500 pages. And why? The reason was to provide the account of the Prosecution.
10 Why? Because the Prosecution has concluded its case. So the Prosecution *cannot return
11 to its case whenever it pleases, whenever it feels like it and provide fresh
12 interpretations * each and every time the Defence points out the *inconsistencies and
13 contradictions of the arguments in the mid-trial brief. But now the trap has closed. By
14 dreaming up these fresh theories, the Prosecution has travelled farther and farther away
15 from what their very own witnesses have said. This can be clearly seen in their written
16 submissions and in their pleadings. The Prosecution no longer relies on these witnesses,
17 not really. They never really have. They do not rely on credible witnesses, the witnesses
18 that they called to the stand here, because these witnesses provided a different reality
19 contrary to their theory, and thus the weakness of the Prosecution evidence appears for all
20 to see.

21 What are we talking about? The evidence as such, not the items of evidence that could be
22 interpreted in one way or another depending on one's point of view. But let's look deeper.
23 We see that there is a lack of evidence, a material lack of evidence. So the question is,
24 unlike what the Prosecution seems to be arguing, it's not a matter of determining whether
25 the evidence he refers to, *explicitly or implicitly, is convincing. No. The issue is this:

1 Does the Prosecution have *any material evidence? Is there any substance on which an
2 allegation can be based or allegations? And the answer is no.

3 *From our point of view, materially speaking, there is no evidence. *There is no
4 demonstrative substance. The point is *that the evidence that the Prosecution has
5 brought forward is not *actually evidence, because the information that it has provided,
6 well, reveals only that the Prosecution does not understand Côte d'Ivoire *in the slightest.
7 It does not understand how the *State works, *or how the institutions of Côte d'Ivoire work.
8 The Prosecution has only shown their ignorance of the context of the crisis and their poor
9 grasp of the political, cultural, social and historical situation in Côte d'Ivoire.

10 When one looks deeper, when you start to dig, you see that the Prosecution's account is
11 based only on *preconceived notions that have only a very remote link to reality. This
12 account has been preconceived. It was devised before any investigation, and that is what
13 you have been shown. This is what has been put to you. In other words, the Prosecution
14 has not provided anything here in the courtroom that has any value whatsoever as
15 evidence.

16 So this is what the trial is truly all about. You must verify and determine whether
17 the evidence brought before you has any value. So it's not a matter of looking at the
18 evidence and determining whether or not it is convincing. The question comes
19 much earlier than that. The question is this: Does the Prosecution have any items
20 of information that would have any evidentiary value? Whether or not it is
21 convincing can only -- the *convincing nature of this evidence can only be looked at
22 afterwards.

23 In other words, the question is this: Is there a case, yes or no? Once you see that
24 there is no case, whether or not the evidence is convincing, that issue disappears.
25 Once you see just how weak the case is, what *remains? All you see is a *collection

1 of unfounded affirmations. And you cannot build a case on mere affirmations.

2 This review of the existence or non-existence of information that may or may not have
3 the status of evidence is the very reason for having these proceedings. Why?

4 Because this is about justice. This is about looking at whether or not these
5 proceedings should continue, proceedings that were based on nothing.

6 I believe that the issue goes beyond technical or procedural issues. The issue is the
7 freedom of a man presumed innocent, a man against whom no solid charges stand,
8 nothing supported by the Prosecution. That is why this is all about justice.

9 *My colleague, Madam Baroan, will continue our presentation followed by
10 Madam Naouri and Professor Jacobs.

11 PRESIDING JUDGE TARFUSSER: [10:21:00] Thank you, Maître Altit.

12 Madam Baroan, the floor is yours.

13 MS BAROAN: [10:21:09] (Interpretation) Good morning, Mr President; good
14 morning, your Honours. I want to avail myself of the opportunity as an *Ivoirienne* to
15 address the Court today and express to you the distress and the anguish of the
16 Ivorian people who have been referred to at length during the Prosecution case, but
17 who were almost not heard in the course of these hearings so far. I wonder whether
18 the witnesses who appear here were heard or even got the attention of the Prosecutor,
19 who appeared to be concerned by the interests of the Ivorian people last October.
20 Your Honours, the interests of the Ivorian people *are in line with the interests of
21 justice and truth in this case. *And the substance of the matter *is a proper
22 understanding of the reasons for the crisis that Côte d'Ivoire has experienced. This
23 crisis, *which I would call a series of attacks on the republican institutions of the State,
24 the relevant starting point of this crisis being *obviously the attempted coup and the
25 events of September 2002, culminating in the attack by Mr Alassane Ouattara's

1 supporters with a view to taking power in 2011.

2 2011, therefore, should be considered as the *culmination of this crisis, and it is
3 important to understanding the crisis. Such an understanding is essential between
4 2002 and 2011.

5 You see, your Honours, the victims who have been heard during this trial have also
6 established a link between the post-election crisis of 2010-2011 and the coup d'état of
7 2002. You will find this in the filings of 10 September 2018, where a link is
8 established clearly between the post-election crisis and the 2002 coup d'état.

9 Your Honours, in Côte d'Ivoire, all that happened in 2010 and 2011 is understood as
10 the culmination of the attempted coup d'état of 2002. In Côte d'Ivoire, this whole
11 incident is commonly referred to as the longest-running coup d'état in history. And
12 this understanding is not only from Ivorians.

13 To understand the tragic events that we experienced, we must substantively
14 understand the facts in their entirety, without distinction, without rejecting any
15 assumptions, with no presumptions or with no specific particular understanding of
16 reality. We must be able to analyse all aspects of the crisis, which was initiated by
17 Mr Ouattara's supporters, to be able to fully understand *this case.

18 Mr President, to fully understand this *case, we must listen to what others are saying
19 carefully; for the case of the Ivory Coast, we must listen to the Ivorian people, see and
20 hear what they are saying, because they are the ones who suffered. To understand
21 *our tragedy, you need to listen carefully and understand what the witnesses, the
22 Prosecution witnesses said, and what they said is quite different from what the
23 Prosecutor has so far presented to your Honours.

24 The Prosecution first attempted to develop or craft a narrative and *then, with much
25 difficulty clumsily tried to *adorn it with excerpts of testimony which were taken

1 totally out of context. They *presented you with a collection of truncated documents
2 and * interpretations * to explain what happened and what some of the protagonists
3 of the crisis did.

4 But, you see, you cannot play around with reality for too long, because reality is fact,
5 and facts are truth, and truth is there always to reveal any fabrications no matter
6 what.

7 Your Honours, criminal proceedings cannot be based on myth or legend or folklore or
8 folk tales. They are based on material facts in their real context. A criminal trial is
9 not the forum for theoretical analysis or personal deductions. It is based on tangible
10 facts in their contexts. We had hoped that after hearing several of its witnesses, the
11 Prosecution would adjust its case, because the witnesses provided enough
12 substantive material to foster a proper understanding of the crisis.

13 But unfortunately, the Prosecution was hell-bent on writing or rewriting the history of
14 Côte d'Ivoire and went on to, without listening, to continue to present to the Court
15 matters that do not dovetail with reality in any manner.

16 Yet it is reality that must be the bedrock of everything, and without reality, we are not
17 in a position to analyse anything.

18 As far as we are concerned, the substance of this case hinges on the Ivorian reality
19 before and after *and during the charged facts. That substance is about the bases on
20 which a State is built, its history, the history of its people, the functioning of its
21 institutions. It is about the sociocultural and political culture of Côte d'Ivoire. It is
22 this context that must be at the basis of understanding the facts that have been
23 presented by the Prosecution.

24 Yet, what has happened since the beginning of this trial? We have been given to
25 understand a profound misunderstanding of the social and political life of Côte

1 d'Ivoire as if Prosecution witnesses never appeared before you.

2 You see, it is the responsibility of the Prosecutor of the ICC, in an international trial, to
3 take interest in the context of his investigations in order to understand how to
4 interpret the evidence that has been gathered so as to bring forth the arguments of the
5 witnesses without distorting them.

6 What has the Prosecutor done? The Prosecutor has rather chosen to build on sinking
7 sand. In the face of such a stubborn attitude, we cannot be silent; *especially after
8 what the Prosecution witnesses have testified to in relation to the crisis. *Their
9 testimony has allowed us to understand the crisis differently in comparison with
10 what the Prosecution has advanced. Your Honours, the Prosecution witnesses
11 provided information on several aspects that the smoke-screen of the Prosecution
12 cannot hide. Information from the witnesses sheds light on the history of Côte
13 d'Ivoire, this history which the Prosecutor tries to hide.

14 The witnesses, without any doubt, without any doubt whatsoever, shed a ray of light
15 on the darkness into which the Prosecutor wishes to plunge your court.

16 Why? Why? Why did the Prosecutor seek to set aside *such a reverberation?

17 Why? Why, your Honours? It is because the Prosecutor has refused to let go of his
18 illusions. In other words, clearly, if the Prosecutor were to proceed differently, it
19 will only prove that he has no case. He ought to have confessed that he has
20 consistently adopted a poor interpretation of the evidence, the witness statements and
21 testimonies, the videos he has presented, the reports from the police and any other
22 such judicial documents and instruments from Ivorian institutions.

23 Your Honours, the Prosecutor cannot continue to function in this darkness without
24 having a negative impact on international justice and justice at the court and on the
25 people of Côte d'Ivoire. You see, the history of the people of Côte d'Ivoire has been

1 distorted right from the beginning of this trial. You know that when you present
2 facts out of their context in a criminal court, that is in violation of rules.
3 Fortunately, your Honours, we listened to and heard from the Prosecutor's own
4 witnesses. The Prosecutor's witnesses enabled us to discover Côte d'Ivoire, a very
5 specific, peculiar country, a land rich in diversity, *with a rich mix of peoples, a land
6 of sharing just like the common compounds where people *live together, where
7 people say, "come in and make yourself at home." *These compounds with *their
8 intertwined exits and entrances, *these compounds *with their countless doors.
9 *These small villages and city camps that point to a people who live together,
10 regardless of their ethnicity, their religion, political affiliation and what have you, and
11 through that diversity building up each other. In that diversity they enrich each other.
12 Yes, your Honours, this is the land of the people that the witnesses referred to, this nation
13 which is an encounter of cosmopolitan forces. They talked to you about *carrefour Bangui*,
14 about *Mauritanien*, and about *Sans Manquer* and *gbaka*.
15 You see, the *gbaka*, this is *another place where people socialise and come together when
16 they board *these minibuses, which are unique to Côte d'Ivoire, *these vehicles with
17 such interesting names as "Monsieur Lièvre", "*chien enragé*", "*les jaloux vont maigrir*" and
18 what have you. These *gbakas* *are very convenient, as the song goes. *Who could do
19 without these meteors that streak along the shoreline of *Ébrié* lagoon dividing day
20 from night as they travel down the bumpy streets and roads, full of potholes and
21 humps? You see the *gbakas* and their drivers and their assistants hanging off the
22 back of the vehicles. Their reckless driving blends with the shouts and insults of the
23 passengers who come from every corner of the globe. A country where you have
24 people interacting together and people from all over the world who are experiencing this
25 beautiful country.

1 When you are in the gbaka, you are shoved around as a passenger from one seat to another,
2 and yet in all of that people laugh, people may be nervous, but all that happens and
3 within that atmosphere of joy, where a small 32-seater minibus has managed to miss
4 crashing into a ravine, and yet these people, up to 38 of them, survived what could
5 have been certain death.

6 So, your Honours, the Ivorian people are not a homogeneous block of violent fanatics
7 living in an atmosphere of hate, contrary to what the Prosecutor has told you, the
8 Prosecutor who is fully unaware of the daily life in Côte d'Ivoire and their worldview.
9 Ivorians are simply happy and open-minded people. The people of Côte d'Ivoire are
10 brave and therefore do not deserve such contempt. You cannot deny them their
11 nature based on a hypothesis. They are a congenial people in spirit, in their very
12 spirit, that is the gift of the people, the brave people whom we are talking about, and
13 that dignity cannot be taken away from them.

14 Why is the Prosecutor so obsessed with presenting Côte d'Ivoire as an essentially
15 divided society with antagonistic blocks? Why this insistence on pitting
16 communities one against the other? Why create artificial barriers between people?
17 Why? Why is the Prosecutor doing this?

18 Your Honours, you see, Côte d'Ivoire is a mix of races, a mix of cultures, a mix of
19 humour and a high sense of hospitality. It is virtually impossible for this country to
20 slide into a fold of tribal war and inter-communal or ethnic conflicts. Attempts to do
21 so have failed so far. But the Prosecutor is attempting to achieve what has not been
22 achieved before through a very simplistic narrative of facts.

23 You see, your Honours, when you pit Ivorian communities against each other, you
24 end up doing what the Prosecutor has been doing as a natural reflex, and in doing so
25 the Prosecutor has forgotten to look at the facts in the course of his investigations.

1 He *would rather *build his case on the *notion of antagonistic camps. *Joyous those
2 for whom he feels compassion, for they shall receive compassion. Unfortunately, your
3 Honours, this approach takes us away from reality and bears the seed of violence as
4 you may know. We have said this over again before this Court and we wish to
5 repeat this, your Honours, that it is not *within the mandate, *nor is it in the interest
6 of the ICC to substitute violence for reconciliation or to be a factor of division and
7 social discord.

8 We say so because the *preamble of the Rome Statute *speaks to the hope of its
9 signatories, that hope being to preserve the delicate mosaic of the peoples. In order
10 to make this a reality *and not a pipe dream, the instrument set up for this purpose
11 must have a moral duty in its fight against impunity to support situation countries.
12 This is why we must act carefully and rigorously when we deal with the history of
13 peoples and *their cultures.

14 You may take the calabash to the stream often, but one day it will break. That is what our
15 traditional wisdom teaches us. *In order to preserve this mosaic, the Prosecutor should not
16 push the people to an understanding of a situation whereby they are pitted one against the
17 other, particularly when this is not a reflection of reality.

18 The Prosecutor has *adopted an entirely theoretical and superficial approach to the
19 crisis in our country. It is not based on any knowledge of *the Ivorian society, of its
20 political life and of the functioning of its institutions. The Prosecution thesis is faulty
21 *ab initio* and simply relies on what the Prosecutor believes *he can support himself.
22 However, that theory *or view cannot be substantiated, because it is contrary to what
23 the Prosecution witnesses themselves have testified to, those witnesses particularly
24 who were in power at the time of the crisis in Côte d'Ivoire.

25 Mr President, your Honours, as we heard more and more testimonies, the *edifice

1 built by the Prosecutor gradually crumbled and ultimately disappeared. *The
2 theoretical construction of the beginning of this case is now revealed for what it is: a
3 theory that had no substance, that was based on nothing and it is for that reason that
4 evidence could not be found to support it.

5 After *this seven years of prestidigitation trial, your Honours, I think we can all say
6 *with Pierre Joigneaux that it is at the end of it all that we can see what was being
7 cooked up all along.

8 You see, your Honour, reality in Côte d'Ivoire is far more complex than what the
9 Prosecutor would have us believe. We have argued before, we say it again and we
10 will continue to say so. The crises in Côte d'Ivoire are not a result of communities
11 fighting against each other. They are simply the spasms of the *impertinent and
12 uncontrolled ambitions of those who had access to weapons, these obscure economic
13 and armed strategists who only *have in mind the destruction of the country.

14 This has been explained to you by Prosecution witnesses. They have told your Court
15 about the tragedies of the various coup d'états by the rebels since 1999. They told
16 you how those rebels pillaged, killed, raped and set fire on the country from 2002
17 *onwards. Those witnesses told you about the distress of the Ivorian people in the
18 years following, and this also applied to the *north, which has not been spared. And
19 as I've already mentioned, I myself, I am a native of the north, and I can tell you that
20 this is a matter that I can talk about most comfortably.

21 Let us again see what is said, a wise saying *goes as follows: "364 days for the thief,
22 one day for the owner."

23 Well, Mr President, that day has come. In other words, the Prosecutor has attempted
24 to *portray the 2011 crisis as a settlement of ethnic scores, whereas it was indeed an
25 attack from abroad against the institutions of a State. We know this even from the

1 testimonies of the Prosecution witnesses.

2 Fortunately for the owner, again, current news from Côte d'Ivoire has again
3 confirmed that Côte d'Ivoire is not that *land where communities are pitted against
4 each other and are fighting each other. It is not that country where bullets are flying
5 or bullets fly discriminately in markets and among multi-ethnic crowds, as you would
6 have it.

7 Côte d'Ivoire, *the victim of these demonic manipulations, has courageously resisted
8 all these attempts *by its executioners, *who would like nothing better than to see the
9 country destroyed, disfigured. These attempts have failed, *and though start all
10 over again, they will always fail because, Mr President, *because Ivorians are a brave
11 people.

12 Let me again talk about life in Côte d'Ivoire. The witnesses, Mr President, have told
13 you over and over again that President Gbagbo has always supported multiparty
14 politics and democracy and that he always upheld legality. You heard the generals
15 and other senior officials of the army talk to you of the army of the Côte d'Ivoire and
16 not of Mr Laurent Gbagbo's army. Let me insist on this, the army of Côte d'Ivoire is
17 the Defence and Security Forces of Côte d'Ivoire and they are not the forces of
18 Mr Laurent Gbagbo, *contrary to what the Prosecutor has attempted to make you
19 believe.

20 You see, in a republic, the army does not belong to the leaders. It is the army of the
21 people. It is an institution of the republic. At that time in Côte d'Ivoire we were
22 still a republic. Please do not forget that.

23 Mr President, Mr President, we have learned from the witnesses that the army of
24 Côte d'Ivoire was made up of soldiers who were not only well trained, *but had
25 experience at the national and international *levels; it was made up better still of

1 soldiers who were respectful of the army and of the rules of international
2 humanitarian law, rules that were actually reiterated in their training. And this has
3 come from *the testimony of those who were on the field. And I think, your Honour,
4 that this matters, *whether the Prosecution believes it or not. This is testimony from
5 those who were on the ground.

6 Your Honours, President Laurent Gbagbo did not reign supreme on the south as such
7 as claimed by the Prosecutor. He was the leader of Côte d'Ivoire pursuant to its
8 constitutional rules.

9 The Prosecutor himself also states *repeatedly that Mr Laurent Gbagbo at the time of
10 the events was the president of the Republic of Côte d'Ivoire and head of State. You
11 see, the Prosecutor is fully aware I guess that like other countries, the President of the
12 Republic of Côte d'Ivoire or the presidency is an institution with its various
13 prerogatives and operational *protocols.

14 One would therefore have logically expected that the Prosecutor's analysis of
15 gathered evidence would be done bearing in mind the practices and customs relating
16 to the position and *functions of the president of the republic. Why does the
17 Prosecutor *not apply those rules and customs and professions pertaining to the
18 Ivorian authorities in his analysis of these alleged facts? Is this a deliberate act? *If
19 so, this would mean that the Prosecution has misjudged its own obligations. *Or is it
20 a consequence of ignorance? If it were ignorance, that would be *even worse.

21 *As for us, as far as we can see, the Prosecutor at the ICC should be knowledgeable
22 about the institutions *and about his States Parties and hold them *up as a point of
23 honour in his analysis, and this I believe is a matter that applies to situation countries
24 as a matter of obligation.

25 It appears, one would say, that the Prosecutor does not know how States function and

1 how the institutions function. *That is why he systematically takes the slightest
2 exchange between officers, between ministers, or the slightest document signed by
3 the President of the Republic, for example, a decree appointing someone, and he
4 systematically turns them into incriminating evidence. The Prosecutor seems to argue
5 that *a presidential decree should be signed by *several people; whereas in Côte
6 d'Ivoire, we have a presidential system in place and not a *triumvirate.

7 Mr President, you see, in order to appear to be consistent in his *narrative, the
8 Prosecutor was bound to wipe out or disregard all the institutions of the State as if
9 Côte d'Ivoire did not have its own government and its own administrative
10 institutions. *And yet the witnesses who have appeared before you have told you
11 how those institutions *function. They told you how those institutions continued to
12 function in spite of the crisis and how the administrators performed their functions.
13 They went on to tell you how those institutions *attempted to resist the *attacks by
14 external forces in a republican manner.

15 But the Prosecution seems to indicate that nothing *existed, that the institutions did
16 not exist, and it is as if, and that everybody did whatever they pleased. No, your
17 Honours. No, your Honours. Your Honours, Mr Laurent Gbagbo at the time was
18 president of the republic and supreme commander of the army, but he was not a
19 warlord. He was not the supreme chief of the republican forces of Côte d'Ivoire, and
20 I'm referring here to the FRCI, whom we know were an offshoot of the *Forces*
21 *Nouvelles*. The *Forces Nouvelles*, that is the *prosaic name of the rebel group that
22 brought desolation *and destitution to the people of Côte d'Ivoire. And may I say
23 that they continue to terrorise the people of Côte d'Ivoire even today.

24 Now, had the Prosecutor paid a little interest to the real context of his investigations,
25 yes, if the Prosecutor had at least paid some interest to the context, the real context of

1 his investigations, *he would not be agitating like a bullfighter or matador,
2 *brandishing sheets of paper with a few lines taken from some document * in an
3 attempt to convince you.

4 The excerpts of speeches that have been presented to you have unfortunately been
5 *awkwardly taken out of context systematically. Mr Laurent Gbagbo was not a
6 warlord. He was not a rebel leader. He was not a rebel. Mr Gbagbo represented
7 the people of Côte d'Ivoire. He was the leader of that nation in that capacity. He
8 therefore did not have any reason to dissimulate any criminal intent in any of his
9 speeches. There was no interest for him, no reason for him to do that.

10 *Had the Prosecutor attempted to understand the meaning of the various texts, the
11 obvious meaning of the texts, the Prosecutor would not be asking you to act as
12 soothsayers and to replace the Rome Statute with a crystal ball in order to find out
13 how the supporters of the co-accused interpret their message. This is what he asked
14 you to do in his October presentation, and we find that in French transcript T-223.

15 See, if the Prosecutor had paid even the least attention to getting information or *listened to
16 his own witnesses, he would have been able to understand the relationship between the
17 administration and the functioning of those institutions as well as the framework in which
18 the army can intervene according to the *laws and the constitution.

19 I wish he had listened to what the witnesses said about the functioning of the
20 administrative institutions of Côte d'Ivoire and read *and analysed the relevant
21 *available instruments. He would have been aware of what the president of the
22 republic can and cannot do, for example, conducting judicial investigations. All that
23 the Prosecutor needed to do was to make a small, little effort, which he failed to do in
24 spite of his professional obligations to investigate exculpatory and inculpatory
25 materials and to hear people *for that purpose on all these grounds.

1 You see, in October, the Prosecutor at some point said the following: The Chamber may
2 be wondering why one interpretation may be more credible than the other? I believe this
3 is a very surprising question from the Prosecution, because it is not a matter of challenging
4 one theory against another. There is no matter of a theory when we have to deal with
5 facts based on reality. And you see, once again, you cannot play around with facts. It
6 would appear that the Prosecutor thinks that there are concurrent realities in place
7 *including his own, which is built on prejudices and preconceived notions, contrary
8 to the reality on the ground, * which he was never interested in. There is only one reality.
9 It is alive. It is living. And it is *not subject to interpretation. But you must discover it,
10 you must dig for it, you must analyse it based on the available material. *All the things,
11 unfortunately, that put off the Prosecutor.

12 When the *former soldiers of Côte d'Ivoire came to testify before you, your Honours,
13 they brought light to this matter. The whole truth on what *really happened in Côte
14 d'Ivoire was laid bare before you. These witnesses testified and their testimony is
15 enough to enable us to understand the flow of *events during the *crises from 2002 to
16 2011, *and the objectives of the various protagonists. In their testimonies they
17 demonstrated to the Court that nothing, absolutely nothing can be said in support of
18 the Prosecutor's thesis.

19 Your Honours, I'll conclude by saying that anthropologists have taught us that truth
20 and historical *or social truth is an *indomitable force regardless of space and time.
21 So as you have seen, the Prosecutor has attempted to distort the Ivorian reality in
22 order to cause you to believe that he has evidence in his hands. The truth is that he
23 has nothing. We have said it before. He has only built his thesis on sinking sand, on
24 moving sand, and we know what happens to what is built on sinking sand.

25 Everything has been laid bare before you, *and it is vain to remain in denial, and the

1 question must be: Was it so difficult to *set all these things aside and instead, place reality,
2 this evidence before your *bench to help you so that you can come to a finding of the truth?
3 Your Honours, Mr President, you heard the witnesses who somehow filled the gaps
4 of the Prosecution narration. We cannot disregard what they said *and simply follow
5 the Prosecution *which is unaware of the reality of Côte d'Ivoire. If we did so, we
6 would be disregarding the rules of criminal law. We would be betraying the
7 principles of the Rome Statute and we will be moving further and further away from
8 the truth. That should not be done.

9 Therefore, your Honours, for the purpose of justice, for the purpose of peace and for the
10 purpose of reconciliation, and on behalf of all those who believe in the International
11 Criminal Court, for the Ivorians and for all those people who suffered and who continue to
12 suffer, your Honours, it is now upon you to clean up the case of, the apparent case of the
13 Prosecution in order to come to the truth, and in so doing, in finding the truth, *enable the
14 people of Côte d'Ivoire to be able to reconnect with their history and move forward.

15 Mr President, your Honours, the people of Côte d'Ivoire are in your hands. They are
16 looking *up to you. *They trust you that you will lift their spirit again and restore
17 their hope in their fatherland, this country of fraternity. Thank you.

18 PRESIDING JUDGE TARFUSSER: [11:00:41] Thank you, Madam Baroan.

19 Maître Altit, I think we now go for the break and we resume in half an hour for the
20 next session. Thank you.

21 The hearing is adjourned.

22 THE COURT USHER: [11:00:54] All rise.

23 (Recess taken at 11.00 a.m.)

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

25 THE COURT USHER: [11:31:30] All rise.

1 Please be seated.

2 PRESIDING JUDGE TARFUSSER: [11:31:53] Good morning. We continue with the
3 submissions by the Defence for Mr Gbagbo, and I give the floor to Maître Altit.

4 MR ALTIT: [11:32:18] (Interpretation) Thank you, Mr President. Your Honours,
5 Ms Naouri will continue with the presentation.

6 PRESIDING JUDGE TARFUSSER: [11:32:29] Thank you, Maître Altit.

7 Ms Naouri, the floor is yours.

8 MS NAOURI: [11:32:34] (Interpretation) Thank you, Mr President. Mr President,
9 your Honours, we will begin by tackling the issue of the quality of the evidence.
10 During his presentation regarding the probative value of the evidence, the Prosecutor
11 told us that it was not necessary to deal with that. According to their written
12 submissions, *however dubious or of weak probative value it may be, all evidence
13 could be acceptable. He told us that even if this is poor quality evidence, that is
14 evidence that is not *authenticated, or evidence of unknown origin or of suspect
15 origin, evidence we know nothing about, since the chain of custody is incomplete,
16 indirect evidence, hearsay, non-corroborated evidence, none of that is important,
17 because, and I quote, "The evidence taken individually out of context may seem to be
18 insufficient to support a fact, but when analysed within the body of the whole
19 evidence may become significant," paragraph 55 of his response.

20 So he's telling us: Take this poor quality evidence; put them together and you will
21 have good quality evidence. But poor quality evidence plus another poor quality
22 evidence cannot make good quality evidence.

23 One of the reasons why the Prosecutor's evidence is bad is because he did not respect
24 the rules governing the production of evidence. That will be our first point. We
25 will later see that the Prosecutor used third parties to gather evidence. We will also

1 talk about the excessive use of hearsay * and then we will talk about *the weakness of
2 the expert * produced by the Prosecutor *when presenting his case.

3 Now, regarding the rules of the production of evidence, we can see that the
4 Prosecutor tries to justify the lack of quality of evidence and the noncompliance with
5 the rules of evidence production because of the difficulty of carrying out
6 investigations in an armed conflict, and we refer you to paragraphs 95 and 96.

7 In fact, the Prosecutor is trying to justify the lack of seriousness in his investigations by
8 hiding behind the context of the investigation, which is supposed to have been difficult.

9 But there is nothing to show that the Prosecutor faced any difficulties during the
10 investigations or that they were confronted with difficulties that were dangerous.

11 Quite to the contrary, when you look at the evidence of the Prosecutor from the very
12 beginning, it is clear that the Prosecutor collaborated closely with Ivorian authorities
13 to carry out their investigations as early as 2011.

14 For example, we know that Jean-Pierre Mignard, the lawyer for Alassane Ouattara, sent to
15 the Prosecutor on 21 March 2011, that is right in the middle of the crisis, a report of the
16 humanitarian situation in Côte d'Ivoire drawn up at the request of Alassane Ouattara.

17 In 2011 the Prosecutor was in contact with Ivorian authorities *requesting them to
18 make contact, on his behalf, with potential witnesses. Let us take the example, the
19 commander, the superior commander of the gendarmerie during the crisis, *P-0011,
20 Kassaraté. He told us that the prime minister at the time, Guillaume Soro, called him
21 to tell him that he had to answer the questions of the investigators. He explained
22 that Guillaume Soro told him, and I quote, "Well, papa, papa. We have friends who
23 are going to come, please listen to their questions". And this is transcript 136,
24 *page 23, line 23 to page 24, line 25. It was after that exchange that Commander
25 Kassaraté met the investigators of the OTP for the first time on 10 August 2011.

1 We know that the Prosecutor as early as October 2011 met with important military
2 witnesses to take their statements:

3 Philippe Mangou, chief of staff of the army during the crisis on 7, 8 and 9 October 2011;
4 Édouard Kassaraté, 7, 8 and 10 October 2011; Georges Guiai Bi Poin, commander of
5 CECOS during the crisis on 10, 11 and 12 October 2011, and he was an officer of the
6 gendarmerie at that time; and then P-47, Detoh Letho, commander of the land forces on
7 11, 12 and 13 October 2011, at that time he was deputy of the chief of staff.

8 One month later from 23 to 26 November 2011, the investigators of the OTP met with
9 *P-0046, Bredou M'Bia, director general of the police *during the crisis, and he still
10 occupied that post *when he met with the OTP. So the Prosecutor did not have any
11 problem meeting with soldiers who were still in position.

12 Let us look at the fact-finding missions. In early 2012, the Prosecutor with 19 people
13 went to Abidjan for a meeting during which they carried out a mission and collected
14 information even in the presidential residence. So the Prosecutor did not have any
15 problem at all to go where they wanted, *immediately after the crisis, and they met
16 with whoever they wanted. It is clear from these examples that the Prosecutor in this
17 case was not faced with any obstacles owing to the situation of armed conflict. To the
18 contrary, the Ivorian authorities facilitated access to witnesses and communicated
19 evidence to them. So the Prosecutor cannot *rely on investigations that he was
20 *allegedly compelled to carry out * in a complex *or dangerous situation.

21 In fact, the Prosecutor never filed any submissions dealing or talking about the
22 difficulties of carrying out their investigations in Côte d'Ivoire. In fact, that is what
23 instead happened to the Defence. The fact is that the Prosecutor simply did not
24 investigate from the very beginning in an autonomous and professional manner, and
25 that is the real reason for the problems relating to the production of evidence.

1 It is because the Prosecutor tried to remedy at a later date this fault, especially after
2 the adjournment decision of 3 June 2013, that the evidence submitted did not comply
3 with the rules of the production of evidence. *He tried to obtain evidence when it
4 was already too late. He did not execute or carry out the investigations as soon as
5 possible, because they did not think about it. But the opportunity was there. They
6 did not think about ballistics expertise. It was necessary for the Defence to point this
7 out before the Prosecutor started dealing with it in 2013. The Prosecutor did not try
8 to identify victims or their bodies within the necessary time limits, and they did not
9 accomplish the forensic activities necessary on time.

10 And since the Prosecutor did not act in time, they did not present authenticifiable,
11 verifiable and reliable or direct evidence which could be crosschecked.

12 Let us look at some examples. The first example, chain of custody. You have an
13 exhibit that is presented by a party during the proceedings and has to be entered into
14 evidence. We need to know where that exhibit comes from.

15 What does the Prosecutor say? He tells us, referring us to the Orić trial in the ICTY
16 that it is not necessary, *and I quote, to apply rigid rules of the administration of
17 evidence in the area of the chain of custody in cases relating to armed conflict and that
18 such a practice could even make it impossible for the administration of evidence to be
19 carried out in certain cases. *End of quote. And I refer you to *paragraphs 95 and 96
20 of the response of the Prosecutor.

21 We have seen, *and this is a crucial point, that in the instant case the Prosecutor
22 cannot *make a general claim that he had to conduct investigations in the context of a
23 conflict. Each case is different. *Moreover, that is why the Trial Chamber in the
24 Orić case talks about *"certain cases" and not all cases.

25 Furthermore, chains of custody are all different, *if it is a question of determining

1 where an administrative document, a judicial document, a video, a photograph, a
2 logbook or a body *comes from. And you have to also distinguish between the chain
3 of custody of an exhibit before it comes into the possession of the investigators of the
4 OTP and then the chain of custody within the OTP.

5 *At paragraph 96, the Prosecutor seems to confuse these two notions. *They feel that
6 the only important part is the chain of custody of an exhibit, in accordance with the
7 electronic presentation protocol that allows one to trace the exhibit from the time it
8 was obtained by an investigator until it was saved in Ringtail. But it is also crucial to
9 be able to trace the chain of custody of an exhibit before an investigator comes into
10 possession of that exhibit, *especially when it is possible to do so.

11 Let us take for example the death certificate of Moyamou Koné, and this is
12 CIV-OTP-0039-0053, an alleged victim of the incident of 3 March 2011. This is a
13 death certificate on which it is indicated that it was issued by the Cocody hospital.
14 And yet the Prosecutor did not receive this certificate from the Cocody hospital.
15 It is Witness P-237, President of APAFEMA, and we will come back to this association,
16 he is that person who handed over that death certificate to the investigators of the
17 Prosecutor. And Witness 237 does not explain how he obtained that certificate.
18 What we know is that Witness P-172, the communications officer of the APAFEMA,
19 explained that he's the one who went to the Abobo town hall with relatives of the
20 victims in July 2011 and acquired the death certificate of Moyamou Koné.
21 And yet, in that death certificate it is indicated that it was issued at the Cocody
22 hospital and not at the Abobo town hall.

23 How did a document *from the Cocody hospital find itself in the Abobo town hall? We
24 know nothing about that. *Now, how did P-0237 get this document? We know nothing
25 about that. Was it through P-0172 or through friends or relatives of the victims in question?

1 The only thing that 237 told us is that as the president of APAFEMA it was his role to
2 ensure that the families had the documents that they needed *and that he was the one
3 who was keeping the archives. This does not help us better understand the chain of
4 custody of the documents that apparently made up his archives. So it was up to the
5 Prosecutor to clarify the chain of custody of that document that he presented in the
6 case file and *that he used * to support the death of a person.

7 Now, second example, the chain of custody obtained by the Prosecutor during the
8 mission to collect information from Ivorian authorities.

9 It is enough to read the reports of the investigators of the OTP to understand that
10 most of the time they relied on an initial selection of documents made by Ivorian
11 authorities. They never asked their interlocutors questions on the way or manner in
12 which those people obtained the documents. No questions were put on any specific
13 documents, its author, how the document was preserved or conserved, and they
14 never questioned what the Ivorian authorities were telling them.

15 Now, let's look at the first example: The investigators did not personally go to the
16 presidential palace to select documents from there. They were happy with going to
17 the conference centre of a hotel where there were boxes stored, and they were told
18 that the contents of those boxes allegedly came from the presidential palace. So they
19 relied on Ivorian authorities to determine the provenance of materials.

20 The second example: Documents that are supposed to have come from the
21 presidential residence. In relation to these documents, the Ivorian authorities told
22 the investigators of the OTP that the residence had not been touched; whereas
23 everyone knows that the residence was looted and pillaged on several occasions after
24 the arrest of Laurent Gbagbo. So there was no sense in relying on what the Ivorian
25 authorities said. One had to use common sense and independence to try to retrace a

1 chain of custody of the documents found at the presidential residence because a

2 document taken from the presidential residence could have been put there after the

3 bombardment of the presidential residence.

4 Furthermore, the chain of custody is indispensable in assessing the authenticity of an exhibit.

5 Let us point out that the Prosecutor did not mention the first part of the conclusions of the

6 Chamber, the Trial Chamber in the Orić case, which states that the Trial Chamber does not

7 consider *that proof of the existence of a chain of * custody *is a necessary condition for

8 admissibility. *A gap in that chain of custody is not fatal, provided that the evidence taken

9 together can prove beyond reasonable doubt what an exhibit actually is.

10 An interruption of that chain of custody is not exclusive, and evidence together, taken

11 together can prove what an exhibit actually is.

12 So in order for an exhibit to be accepted as what it is, it is important to establish its

13 authenticity. But in the Prosecution's case, several *key exhibits were not correctly

14 *authenticated. *The unauthenticated pieces of evidence included documents from

15 the civil registry, administrative documents, military reports, open-source documents,

16 and the logbook at the residence. All those documents were really not authenticated

17 and we can look at the submissions in paragraphs 443 to 445 of annex 5 relating to the

18 residential logbook.

19 Relating to authenticity, the Prosecutor tells us that the authenticity of a document

20 can be assessed simply by looking at the document, that is, *by taking the evidence at

21 face value, and I refer you to paragraph 83 of the Prosecution's response. And they

22 even go further by saying that if you look at a document and it seems that it is what a

23 party claims that it is, then authentication is not really necessary.

24 This affirmation is not acceptable, especially in a criminal case, *since a fraudulent

25 document *will always be prepared to look to be authentic; that is why verification is

1 necessary.

2 Let us take another example, the authorisation to bury for Nachamy Bamba,
3 CIV-OTP-0039-0044, an alleged victim of the incident of 3 March 2011. The
4 Prosecutor says in paragraph 608 and I quote, "The *burial permits, signed and
5 stamped by the Abobo town hall, are simple administrative documents that
6 corroborate evidence *placed on the record about the death of the victims." But
7 those documents need to be authenticated. It is not because those documents have or
8 bear the stamp of the Abobo town hall that they are authentic. If you look at
9 document CIV-OTP-0039-0044, it seems to be authentic. This authorisation to bury
10 issued for Nachamy Bamba is dated on 3 March 2011, the same day on which he is
11 supposed -- she is supposed to have died.

12 According to P-237, president of APAFEMA, this document is supposed to have been
13 prepared 3 March 2011 at the Abobo town hall, and yet witness Sirah Dramé, P-184,
14 was working in the Abobo town hall, and he claims that the town hall was closed
15 between 19 February 2011 and the arrest of Laurent Gbagbo in April 2011.

16 How is it possible that an authorisation for burial was delivered on 3 March 2011
17 while the town hall was closed? This document, which could appear to be authentic,
18 is obviously a fraudulent document which seems to be authentic, and if the
19 authorisation to bury is a fake, what about the other documents bearing the stamp of
20 the Abobo town hall? So as the Prosecutor claims, one --

21 THE COURT OFFICER: [11:56:37] I am sorry to interrupt you, I just want to inform
22 the parties and participants that the document is available on the evidence 1 channel.

23 MS NAOURI: [11:56:44] (Interpretation) Thank you, madam court officer.

24 Now, let us take a second example. The death certificate of Moyamou Koné,
25 CIV-OTP-0039-0053, an alleged victim of the incident of 3 March 2011, when we were

1 talking about the chain of custody, we talked about this document. However, if you
2 look at this document, it can appear to be authentic. That is a document issued by
3 the Cocody hospital centre. But since the author of the document was not called to
4 testify, it is not possible to know whether this document is a true document or a fake.
5 But the information that we have reveals that this document cannot be authentic,
6 because the certificate is dated 3 March 2011, that is on the day of the alleged incident.
7 And the document is supposed to have been issued in Cocody.
8 And yet the Prosecutor witnesses say that on 3 March 2011, the bodies were
9 transported to the general hospital of Abobo south. So is this document a fake, a
10 forgery, or is it the witnesses who are lying? We have no idea. But it is not possible
11 to rely on this document even if it seems to be authentic.
12 When you analyse these *two documents it shows that there were manipulations to
13 produce forged documents *that may appear to be real. And once you have *discovered
14 these manipulations, it is impossible to rely on documents simply *on the basis of their
15 prima facie appearance or on the basis of statements made by witnesses who
16 provided these documents to OTP investigators, saying that they were authentic. If
17 one follows the Prosecution's reasoning, one would be accepting the risk of relying on
18 forged documents. Now, regarding authentication of documents in court, it should be
19 pointed out that the Prosecutor did not seize the opportunity to have the witnesses -- his
20 witnesses authenticate the documents that they relied on. And these are dozens of
21 documents, documents which seem to indicate that one of the witnesses of the Prosecutor
22 was either the author or the addressee, and it is not just any witness. For example, the
23 chief of staff, Philippe Mangou or General Bredou M'Bia. The Prosecutor did not make
24 the effort to present these documents to them so that they could authenticate them. This
25 exercise would have been all the more important because General Kassaraté stated that he

1 did not recognize his signature on two documents that had been attributed to him. There
2 is nothing easier to ask a witness to authenticate a document. It was not a period of war
3 and it was not an environment that was hostile.

4 Now let us talk about the issue of intermediaries; we cannot overlook this issue. The
5 Prosecutor relied on intermediaries to enter into contact with witnesses in order to
6 obtain documentary elements, documentary exhibits. For example, lists of victims,
7 civil status, registration documents and videos. Consequently, a major proportion of
8 his evidence is based on those documents given to *him by *these intermediaries *and
9 not on investigations that he conducted independently. We have already mentioned
10 the fact that during the information-gathering missions, the Prosecutor relied on
11 Ivorian authorities to obtain a certain number of documents.

12 Consequently, in order to assess the reliability of evidence collected by the
13 intermediaries, it would have been logical for the Prosecutor to explain who they
14 were and how they collaborated with them.

15 Now, the Defence raised on several occasions questions related to these
16 intermediaries, but the Prosecutor did not say anything about them. It appeared
17 during the presentation of the case of the Prosecutor that these intermediaries were
18 primarily Ivorian authorities or associations that had political agendas, and some of
19 them had been acting during the crisis on behalf of the management of the Golf Hotel
20 and this makes many of these documents suspect.

21 Now let us examine this issue of the intermediaries more closely, and we will use a
22 PowerPoint presentation in this case.

23 And court officer, can you hand us control for this particular part of the presentation.

24 THE COURT OFFICER: [12:03:13] The documentation will be displayed on the
25 evidence 2 channel.

1 MS NAOURI: [12:03:20] (Interpretation) Thank you very much, madam court officer.

2 PRESIDING JUDGE TARFUSSER: [12:03:28] Can we have it also on the big screen?

3 Okay, good. Thank you.

4 MS NAOURI: [12:03:34] (Interpretation) Thank you, Mr President.

5 Now, regarding the intermediaries *who provided the Prosecution with evidence in an

6 attempt to prove incidents that allegedly occurred in Abobo, the first intermediary is *La*

7 *Voix de la Jeunesse Active*. The Prosecutor submitted various materials into the case file

8 received from the members of the *Voix de la Jeunesse Active*, specifically through the

9 president of this association, Yacouba Tioté and the IT specialist of that association.

10 Now, to begin with, the Prosecutor called dual-status *witnesses, including *witnesses

11 who were participating victims, and the members of the VJA were intermediaries for

12 those witnesses. More specifically, the VJA was an intermediary for VPRS, then they

13 were an intermediary for the LRVs and then intermediaries for the OTP. For

14 example, Witness P-297, Mamadou Doumbia, a teacher who during the elections of

15 2010 on behalf of the *Rassemblement des Enseignants du RDR*, that is association of RDR

16 teachers, trained the populations to vote for Alassane Ouattara and he stated that he

17 collaborated quite a great deal with the VJA and that it was the members of the VJA

18 that put him in contact with the representatives of the ICC.

19 This witness, P-297, also explains that it was Yacouba Tioté, president of the VJA, who

20 was the intermediary between the victims of the group that he belonged to and the

21 LRV, and that the LRV organised meetings with clients in the offices of the VJA.

22 It should also be pointed out that P-297 clearly indicated that the VJA was the

23 intermediary between the Ivorian movement of human rights and victims.

24 Now let us talk about the Ivorian movement for human rights. It was created in

25 2000 by Épiphanie Zoro Bi Ballo and Ibrahim Doumbia.

1 Now who is Épiphané Zoro Bi Ballo? He is publicly known. He is the one who
2 signed the certificate of nationality, Ivorian nationality for Alassane Dramane
3 Ouattara. He is a close associate of Alassane Ouattara and Zakaria Koné, the rebel.
4 In 2012, after the crisis, he was appointed by Alassane Ouattara to the position of
5 director general of the Ivorian agency for francophone cooperation.
6 In the same year, he tried to present himself as a candidate for the RDR in the
7 elections to the town hall of Sinfra.
8 In 2014, after the opening of the confirmation of charges hearings in the Charles Blé
9 Goudé case, the Legal Representatives of Victims presented Épiphané Zoro as their
10 legal expert based in Côte d'Ivoire.
11 Later on he left the *LRV's team, in 2015, and then in 2016 he was appointed director
12 of judicial *consular affairs in the ministry of foreign affairs. And in 2017 he was
13 appointed national secretary of the RDR for capacity building. Today he's the
14 secretary general -- deputy secretary general of the RDR in charge of human rights.
15 So the MIDH was created by a close collaborator of Alassane Ouattara, a militant of
16 the RDR.
17 This information is important because the members of the MIDH played the role of
18 intermediary between potential victims and VPRS. More specifically, members of
19 the MIDH helped victims to fill the participation forms.
20 And I will say a word on the applications for participation of the victims filed in the
21 case file.
22 The Prosecutor called many dual-status victims, so they cannot be unaware of the
23 applications for participation of these victims. And in fact, how can these
24 documents be ignored in the assessment of the evidence, and more specifically in the
25 testimony of the dual-status witnesses?

1 It is on the basis of the participation applications that the Pre-Trial Judges decided to
2 authorise these persons to participate in the proceedings as victims so it is based on
3 what is written on these applications for participation that those people were granted
4 the right to participate in the proceedings.

5 So in this particular case, the application for participation of victims contradicts *the
6 testimony *and so one must take a closer look at this. Either this dual-status witness *
7 filled up the victim application himself and lied or he accepted to sign an application in
8 which false information was included, because he signed that application.

9 Now let us return to the VJA, *Voix de la Jeunesse Active*. Members of the VJA also put
10 OTP investigators in touch with other witnesses *who are not dual-status witnesses.
11 We know, for example, that the IT specialist of the VJA, Sidibé Siaka, was the one who
12 allowed the Prosecution to find a witness that the Prosecution thought was quite
13 important for the women's march. We refer you to paragraphs 271 and 293, annex 3
14 of our written submissions.

15 During the Prosecution's case it was revealed that Witness P-172, Yacouba Ouattara,
16 the APAFEMA communications officer, APAFEMA is the association of relatives of
17 the women who were martyred in Abobo, this person Yacouba Ouattara was also a
18 member of the VJA. *And we will return to this question of the ties between the
19 APAFEMA and the VJA in a moment.

20 But above all, you must realise that the Prosecution obtained a great many items of
21 video footage through the VJA. Of the nine pieces of footage that were provided by
22 the VJA to the OTP, six were presented when the Prosecution gave its case,
23 representing 2 hours and 30 minutes of footage.

24 The video footage has to do with everything that happened during the women's
25 march on 3 March 2011 and in the following days and also showed events of 17

1 March 2011. Yet, the Prosecution has not said a word about the crucial role of the
2 VJA in obtaining the video footage that they provided. Since this footage is
3 important to the Prosecution and a great many of their allegations are based on the
4 footage, why did the OTP not call the intermediaries from the VJA to attest to the
5 chain of custody and to their authenticity?

6 No, on the contrary, the Prosecution has told us nothing about these intermediaries or
7 how they worked together.

8 Let us take the example of the video footage the Prosecution provided, saying that it
9 was footage of the women's march, CIV-OTP-0077-0411.

10 The Prosecution has said that this video footage is reliable and allows one to
11 understand what allegedly happened on 3 March 2011. We will hark back to this
12 point in a few moments, and we will talk about what we really see on the footage.

13 But what is of interest to us is the chain of custody for this footage. How did the
14 Prosecution obtain this video footage?

15 The first time that the footage was shown by the Prosecution was during the
16 confirmation of charges hearing. At the time the Court was told that the video
17 footage was open source.

18 Your Honour, if we could, if we could go into private session very quickly just to
19 establish chain of custody.

20 PRESIDING JUDGE TARFUSSER: [12:14:32] Let's go into private session, please.

21 (Private session at 12.14 p.m.)

22 (Redacted)

23 (Redacted)

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Status Conference

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18 (Open session at 12.18 p.m.)

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

20 PRESIDING JUDGE TARFUSSER: [12:18:27] Madam Naouri, the floor is yours.

21 MS NAOURI: [12:18:29] (Interpretation) Thank you, your Honour.

22 It is incomprehensible that the Prosecution did not call the person who provided

23 them with a copy of the video, particularly since this footage was on the Internet for

24 years and could have been manipulated in any and all ways.

25 Why did they not call members of the VJA to shed light on this matter rather than

1 saying nothing about all this useful information? It would not have been a
2 complicated matter, because as an intermediary, well, the Prosecution could have
3 easily contacted members of the VJA, particularly President Yacouba Tiroté.
4 Perhaps the video footage was -- well, perhaps to have the Court forget that the
5 footage was obtained by way of an association that *during the crisis was the
6 instrument of the people at the hôtel du Golf.
7 *How do we know that the members of the VJA were carrying out orders for the
8 people in charge at the Hotel du Golf? Because this has emerged from the
9 Prosecution's case. Let's take a few examples: first, we know that the members of the
10 VJA did take part in the organisation of the women's march on 3 March 2011. In
11 actual fact a witness did tell us that members of the VJA did help organise the
12 women's march and that members of the VJA were supposed to wait for the women
13 at the Abobo town hall, these women who were to march from the Banco roundabout.
14 And here we refer to CIV-OTP-0076-0951, page 0960, paragraph 56 and to the
15 following transcript, T-161, page 31, lines 4 to 11.
16 It emerged during the Prosecution case that the women's march was organised by
17 people holed up at the Golf Hotel. We will return to this point once we discuss the
18 incident of 3 March 2011.
19 My second example. The president of the VJA, Yacouba Tiroté was responsible for
20 transporting bodies on 3 March 2011, acting upon the instruction of those people in
21 charge at the hôtel du golf. How do we know this? It was Witness P-172, the
22 APAFEMA communications officer and a member of the VJA, who told us that with
23 Yacouba Tiroté, the president of the VJA, he carried the bodies from Banco roundabout
24 to the hospital, the Abobo south hospital. Once he got to the hospital, Prosecution
25 Witness 172 explained that Yacouba Tiroté gave an account to the people in charge at

1 the Golf Hotel regarding the transportation of bodies, in particular to the former
2 minister, Guikahué Maurice Kakou, the deputy campaign director of Alassane
3 Ouattara during the 2010 election.

4 I think it's interesting to note that Witness P-581 said that Alassane Ouattara had sent people
5 to pick up the bodies and take them to the hospital. *T-181, page 46, line 27 to page 47, line 12.
6 We also know that Yacouba Tioté, president of the VJA, was informed of what
7 *apparently happened with the bodies after the Abobo south hospital, since according to
8 P-172 it was Yacouba Tioté who allegedly * informed *him that the bodies were no longer
9 at the hospital and had been transferred. *Transcript 174, page 65, lines 13 to 18.

10 The presence of Yacouba Tioté and members of the VJA in relation to the transportation of
11 bodies is particularly suspicious since the VJA was always or systematically responsible for
12 the transportation of bodies rather than a funeral home when there was an incident.

13 Indeed, it was the members, the same members of the VJA who organised the
14 transportation of bodies during the 17 March 2011 incident. Now, regarding the
15 bodies of the alleged victims of 3 March 2011, it should be noted that the entire chain
16 of custody depends on the people who were in charge at the Golf Hotel.

17 For example, P-172 clearly stated that the bodies had first been buried following
18 orders from the Golf hotel *in April 2011 without the families being informed of this.

19 I refer to P-172's statement, *pages 0560 and 0561.

20 So, you see, the bodies were buried quickly, in a hurry, without the families even
21 knowing. P-172 said that he was surprised that this procedure was followed,
22 because Abobo had been freed at this point. So there was no need to bury the bodies
23 hastily without informing the families; paragraph 85 of his statement.

24 Another example is the visit of a witness along with a member of the VJA to the Golf
25 hotel after the women's march. We refer you to paragraph 350, annex 3 of our

1 written submissions.

2 Similarly, there was close cooperation between the VJA and people in charge at the
3 Golf Hotel. And it was the VJA that organised the arrival in Abobo of a delegation
4 of people from the Golf Hotel on 6 March *2011, three days after the march, to meet
5 the people who said that they were family members or friends of the victims of
6 March 3, 2011.

7 I think it's interesting to note that amongst the people who made up this delegation of
8 people in charge at the Golf Hotel included Aya Virginie Touré. Aya Virginie Touré
9 was the spokesperson of this delegation, but she was also one of the people who
10 organised the march of March 3, 2011.

11 Another member of this delegation from the Golf Hotel was Yéo Kolotchoma,
12 Alassane Ouattara's campaign director in Abobo for the 2010 election. He too had
13 helped organise the march of March 3, 2011. He was organising in the field.

14 Amongst the other people who were there, there were representatives from Abobo
15 town hall, the president of the VJA and those who said that they were family
16 members or friends of the victims. These people, family members, friends, included
17 people who were also members of APAFEMA. We will return to this point in a few
18 moments, but first of all, let us discuss the purpose of this visit organised by the VJA.
19 For the people who were in charge of the delegation of the Golf Hotel, they were to
20 provide money to those who said that they were family members or friends of the
21 victims of March 3, 2011. But on the date of 6 March 2011, the bodies had not yet
22 been buried. And the witnesses have confirmed to us that they received envelopes
23 containing money.

24 *It should also be noted that these witnesses received compensation through this
25 delegation *from the Hotel du Golf and *also as members of the APAFEMA. So this

1 means that the members of the APAFEMA are accountable, were accountable to the
2 people in charge at the hôtel du golf.

3 One word about this particular association, the APAFEMA.

4 During the Prosecution case, it was revealed that the APAFEMA was another
5 intermediary for the OTP, and yet the Prosecution has not spoken of their links with
6 APAFEMA members who put them in touch with a great many of their witnesses
7 concerning the incident of 3 March 2011. Amongst these witnesses, there were five
8 dual-status witnesses, both victims and members of the association.

9 The intermediary of these dual-status witnesses *with the VPRS was the witness of
10 the Prosecution, P-237, president of the APAFEMA. Furthermore, P-237's testimony
11 shows that he helped other APAFEMA members fill out their participation
12 applications. *The Prosecution also called members of APAFEMA as witnesses.

13 P-237, Mamadou Bamba resumed *his role as intermediary working for OTP
14 investigators. For example, he was the one who put investigators in touch with
15 another APAFEMA witness. I will not give that particular witness number for reasons
16 of confidentiality, but I refer you to the relevant transcript. *T-39, page 70, lines 3 to 8.

17 P-172, Yacouba Ouattara, a communications officer for APAFEMA, also was an
18 intermediary between witnesses who belonged to APAFEMA and OTP investigators.
19 It's interesting to note the role that Yacouba Ouattara played. He was not just
20 putting people in touch with the investigators. For example, P-582 explained that he
21 depended on Yacouba Ouattara on a daily basis. Ouattara was the one who gave
22 him money when he was short, who bought medicine for him and took his children to
23 the doctor. *Transcript 175, page 27, lines 12 to 23, and page 33, lines 2 to 15.

24 Witness P-582 was completely in the hands of Yacouba Ouattara when it came to all
25 the arrangements that stemmed from the alleged incident of 3 March 2011. *It was

1 Yacouba Ouattara who brought the witness to his daughter's grave because he did
2 not know where she was. *It was Yacouba Ouattara who managed the entire file
3 relating to P-582's daughter working with the team of investigators. *And once
4 again, it was Yacouba Ouattara organised everything for the meetings with the OTP,
5 with the OTP.

6 One word about the witnesses with whom the Prosecution made contact thanks to
7 APAFEMA. It's very striking to note that these are all indirect witnesses. None of
8 these people saw the deaths of the women themselves.

9 We will elaborate on this point later on in the day *in our submissions concerning
10 hearsay and indirect evidence.

11 The president and the communications officer of APAFEMA provided the OTP with
12 death certificates and other administrative documents. We have already made the
13 point in relation to the chain of custody, authenticity of documents adduced by the
14 Prosecution. We have already spoken to the doubtful nature of these documents
15 provided by these two members of the APAFEMA. These intermediaries provided
16 false documents to the OTP. When the delegation from the Golf Hotel came, there
17 were also people from the Abobo town hall.

18 I think I should say one or two words about the role of these people, these officials at
19 the Abobo town hall during the post-election crisis, because the Prosecution has
20 provided many documents that allegedly were drafted by officials from the town hall
21 or which allegedly were gathered from people at the town hall.

22 In the Prosecution case it was revealed that the officials at the Abobo town hall and
23 the members of the VJA were working together during the crisis, in particular, to
24 issue administrative documents. We know that the president of the VJA, Yacouba
25 Tioté, was in touch with Yacouba Ouattara, APAFEMA communications officer,

1 providing instructions from those in charge at the Golf Hotel concerning death

2 certificates, how to obtain death certificates from the Abobo town hall.

3 P-172, *Yacouba Ouattara, explained that Yacouba Tioté had passed on a message

4 from Guikahué Maurice Kakou, Alassane Ouattara's campaign director. He,

5 Maurice Kakou, had instructed Yacouba Tioté to tell family members of the victims to

6 go to the town hall in Abobo and a doctor was to be sent there as well as a court

7 *official. Their job was to provide death certificates to the family members of those

8 who had been killed. *I refer you to T-174, page 76, lines 11 to 22.

9 Thus it would appear that those who were in charge at the Golf Hotel organised the

10 drawing up of civil-status documents and administrative documents that do not

11 comply with the normal procedures.

12 P-172 told the Court that during these meetings at the town hall, there was a court

13 *official, Konan Koffi Emmanuel. He was there and sometimes he would ask

14 questions and would give instructions to a physician so that this physician would

15 issue the death certificate on the basis of what P-172 had told him. *T-174, page 74,

16 line 28, to page 75, line 2.

17 Thus we now know that the certificates were issued by physicians, but based on

18 accounts given by witnesses, not on medical observations. P-172 is an indirect

19 witness and the information found on this certificate is based on hearsay.

20 Another relative of one of the alleged victims of 3 March 2011, confirmed that the

21 physician who signed the death certificate of his sister had not even asked him any

22 questions about the circumstances of the alleged death and had not examined the

23 body either. *Transcript 188, page 55, lines 4 to 6.

24 The conditions in which these documents were issued are such that they cannot be

25 deemed to be reliable items of evidence. One might wonder why the officials at the

1 town hall agreed to *bend the rules, but there is no surprise here really. The people
2 in charge at the town hall were following the instructions from the Golf Hotel,
3 *instructions passed on by Yacouba Tiroté, because we know that during the crisis, the
4 Abobo town hall was controlled by RDR officials, some of whom were staying at the
5 Golf. The mayor of Abobo, Adama Toungara, at the time was the departmental
6 secretary of the RDR and was at the Golf Hotel during the crisis. Maïmouna Touré,
7 the assistant of Mayor Toungara, *to whom the mayor gave instructions, was *also the
8 president of the RDR women's association in Abobo *and was at the Hôtel du Golf.
9 And now a few words about Sirah Dramé, who was a municipal councilor *working
10 alongside Mayor Toungara. This person too was a departmental secretary of the
11 RDR women's association in Abobo. *She said that at the time of the crisis, she was
12 often in contact with RDR officials, either based at the Golf Hotel, like Aya Virginie
13 Touré, or active in the field, like Yéo Kolotchoma. It should also be noted that
14 *P-0580 stated that it was the FRCI who ensured security at the Abobo town hall.
15 *Transcript 186, page 65, lines 8 to 14.

16 As we have already indicated, there are -- many items of evidence on the case file have
17 been adduced as if they were documents issued by the town hall. For example, death
18 certificates, burial permits, information taken from the civil status register, list of
19 victims. But they are not reliable because they are clearly the product of manipulation.
20 And who was pulling the strings? The people who were in charge at the Golf Hotel.
21 Now, the lists of victims. One list that the Prosecution relies upon to a great extent is a list
22 of victims that was issued or rather drawn up by the *comité de survie*,
23 CIV-OTP-0032-0054-0001-R3. The Prosecution makes reference to this list from the *comité de*
24 *survie* for 102 of the alleged victims of the incidents that allegedly occurred on 16 December
25 2010, 3 March 2011 and 17 March 2011. For 60 of these 102 people, thus more than one half,

1 the list is the only source cited by the Prosecution to establish the existence of victims.

2 The *comité de survie* was not and is not a neutral association. It is a branch office so to
3 speak of the people who were in charge at the Golf Hotel. The main members were
4 Sirah Dramé and Yeo Kolotchoma, member of the RDR who was a close associate of
5 the rebels at the Golf during the crisis. Furthermore, the mayor of Abobo of the day,
6 Adama Toungara, was also at the Golf and he also took part in the activities of the
7 *comité de survie*. *Transcript 216, page 17, lines 19 to 28.

8 All the various measures taken by the *comité de survie* fall within a particular
9 framework; namely, the political strategy orchestrated by the people from the RDR
10 who were at the hôtel du Golf.

11 Finally, a word about the witnesses having a link with the Abobo town hall. I would
12 remind the Court that *P-0184, the *grand organiser of the *March 3rd march, in
13 addition to *her activities as an RDR supporter, was also a municipal councillor in
14 Abobo *working alongside Mayor Toungara. We know that the Golf Hotel was a
15 rebel base during the post-election crisis. *So it really comes as no surprise that these
16 Prosecution intermediaries had close links with the rebel combatants. Now,
17 members of the VJA had very close links to members of the invisible commando. For
18 example, the VJA organised rallies along with leaders of the *Commando Invisible* to
19 mobilise people against the government in place, *CIV-OTP-0042-0597, time stamp
20 01:27:40 to 01:30:38. We have footage on the case file of a rally held on 28 February 2011,
21 and we can see on the footage, we can see members of the VJA and one of the commanders
22 of the *Commando Invisible*, Commander Fognon, showing off his ammunition belt saying
23 *in Dioula, "I am the commander, we are ready to *remove Gbagbo. We're tired of *them.
24 We are now taking matters into our own hands." End of quote.

25 It's common knowledge that many members of the VJA are former members of the

1 ADO volunteers' movement, a movement led by Ibrahim Diarrassouba who was at
2 the Golf Hotel during the crisis, and now, and now apparently at this movement, led
3 by Ibrahim Diarrassouba, says it is made up of former fighters. What is more,
4 Yacouba Tioté, the president of the VJA, had been the coordinator of the movement's
5 activities before forming the VJA.

6 Now let us turn to another intermediary who provided information to the Prosecution
7 in an attempt to prove the incidents that allegedly occurred in Yopougon, the *collectif*
8 *des victimes du quartier* Doukouré-Yopougon, CVQDY. Questioning of Prosecution
9 witnesses revealed that this collective *had actually been created by members who
10 were and who still are active within the RDR, serving the RDR cause. In their written
11 submissions, the Prosecution tries to make an artificial distinction between the political
12 activities of members of this collective and their activities within the collective.

13 I refer the Bench to paragraph 656 of the Prosecution brief.

14 Yet the Prosecution has not responded to the fact that before 2014, this collective was
15 not in existence. It was only a forum that allowed for RDR supporters to gather.

16 More specifically, Adama Diomandé, the founder of this collective, has explained that
17 he had begun *identifying people informally in February 2011. Thus right in the
18 very middle of the battle of Abidjan. Thus, there is no contemporary item of
19 information or an item of information immediately posterior to the crisis that would
20 attest to the existence of this collective or measures taken by it in February 2011.

21 This collective was only formed late in 2013, after the decision adjourning the charges.

22 The bylaws of CVQDY were filed only late in 2013, first of all, with the minister of the
23 interior, and then with the Yopougon commune, CIV-OTP-0058-0334,

24 CIV-OTP-0058-0333. *And we do not even know whether the bylaws have been
25 validated because the documents shown do not constitute an administrative or

1 governmental acknowledgement. The founder *of the collective, P-436 himself, does not
2 know whether the bylaws were validated. *Transcript 149, page 32, line 18.

3 In any event, before Adama Diomandé and Brahim Bakayoko attempted to provide a sort of
4 framework for their efforts, the only framework that the two founders could be found within
5 was the RDR. Prosecution Witness 436, Adama Diomandé, president of the collective, was
6 the secretary of the Doukouré north section of the RDR and the local director of the RDR
7 campaign during the 2010 election.

8 *P-109, another witness, stated that some RDR meetings had been organised at the home of
9 Adama Diomandé. Brahim Bakayoko, co-founder of *the CVQDY, the collective, was part
10 of the RDR mobilisation and *community outreach committee during the campaign and
11 organised the meeting of the Doukouré north section of the RDR at his home.

12 More specifically, the home of Brahim Bakayoko was where the meeting of the Doukouré
13 north section of the RDR was held during the 2010 campaign. It was also at his home in an
14 outbuilding that members of the collective gathered and this was confirmed by alleged
15 witnesses of the events. *Transcript 210, for example, bears witness of this, page 40, lines 9
16 to 15.

17 It emerged very clearly from testimony that the reason for Adama Diomandé and
18 Brahim Bakayoko being known in the neighbourhood, it was because they were
19 political officials. P-433, Okou *Traoré, president of the Sicogi-Lem mosque
20 management committee and a member of the collective, specified that it was during
21 RDR activities that he met Adama Diomandé and Brahim Bakayoko. *Transcript 147,
22 page 72, line 12 to page 73, line 2.

23 Another witness explained that he was engaged in activities with them during the
24 campaign and had attended meetings that Brahim Bakayoko and Adama had
25 organised. Transcript 210, page 14, line 10, to page 15, line 16.

1 Witness 109 explained that he knew Bobby and Adama Diomandé well. He knew
2 that they were political officials of the RDR in the neighbourhood. P-109 took part in
3 political meetings in the home of Bobby and Adama Diomandé and specified that he
4 mobilised young people in the grins on behalf of Adama Diomandé. *Transcript 154,
5 page 70, line 22 to page 78, line 9.

6 The founders of the collective may have been recognised as officials, but nothing attests
7 that they had any skills or abilities whatsoever when it came to drawing up lists of
8 victims. Why is it that political activists without any particular skill in this area would
9 have formed a collective? Their work had been botched so badly that none of the
10 information gathered is reliable, and yet the Prosecution relies on nine lists of victims
11 drawn up by the CVQDY for 23 alleged victims, both people who died and people who
12 were injured during the incident of 25 February 2011 and the incident of 12 April 2011.
13 That is why in their brief at paragraph 659, the Prosecution tries to have us approve of
14 this methodology used by the collective. But one simply cannot take the work done
15 by the CVQDY seriously.

16 Witness P-436 has explained that the lists were *apparently drawn up on the basis of
17 accounts given by people that they met with and documents that these people
18 allegedly gave to members of the collective. Transcript 149, *page 35, lines 12 to 21.
19 And yet nothing, absolutely nothing on the case file allows us to verify what the
20 witness has told us. We have absolutely no information to check the veracity of the
21 statement made by P-436. No account has been provided in these lists. No
22 document is appended to the list. Where are the forms filled out by the people that
23 they allegedly met with? Where are the originals of the documents that these people
24 allegedly provided? We have absolutely nothing.

25 If we look more closely at the methods followed, we realise that none of the

1 collective's work is *reliable. For example, P-433 and P-436 both said that Brahima
2 Bakayoko was uneducated. *Transcript 147, page 106, lines 26 to 27, and transcript
3 148, page 53, line 27 to page 54, line 12.

4 *And yet Brahima Bakayoko, who was illiterate, was *one of the people in charge of
5 gathering information from the victims and other people *who gave statements. Why
6 would he be checking the identity of these people if he could not even read? How could
7 he have reviewed documents provided by these people? How could he have even
8 taken notes?

9 In actual fact, this list at the very best is based on anonymous sources about whom we
10 know nothing; at the worst it is a fabrication.

11 The members of this collective clearly were intermediates between witnesses and OTP
12 investigators. Now, I think it's a good idea to take note that Adama Diomandé,
13 P-436, *a Prosecution Witness, *and Ibrahim Bakayoko, initially *Prosecution Witness
14 P-447, but never called, *first played the role of intermediary for the VPRS. P-436
15 explained during his testimony that members of the collective had all the victims fill
16 out the forms necessary to be participants in the proceedings before the Court.

17 *We know that at this stage of the trial at least 110 victims have indicated that Brahima
18 Bakayoko, otherwise known as Bobby, and/or Adama Diomandé, and/or the CVQDY, were
19 the contact person and/or the person who helped them fill out applications for participation.

20 The members of the collective play a very important role for alleged victims who wish
21 to participate in the procedure and helped them to fill out the applications. P-436
22 said that he personally helped some victims to fill out the forms.

23 We must note that Brahima Bakayoko later continued to serve as the focal point for
24 these victims because he later became the intermediary of the OPCV. Document
25 CIV-OTP-0076-1509, page 1510.

1 Adama Diomandé also explained that the collective was the focal point of the LRV for
2 victims of the crimes explaining as follows. "If she comes and needs the victims, she
3 will call us. If we have to provide information to the victims, she gives us the
4 information. And if she wants to meet them, then we send them to meet her." End
5 of quote. Transcript 149, page 39, line 26, to page 40, line 1.

6 It therefore emerges that *the Prosecutor's witnesses who were also victims were
7 under the CVQDY even before the decision on the confirmation of the charges. That
8 is why we can understand that on 6 *September, *barely three months after the 3 June
9 2012 adjournment, one of the counsels of the OPCV, along with an investigator from
10 the OTP, called Brahima Bakayoko and asked him to contact victims who were
11 represented by the OPCV and to inform them that members of the OTP wished to
12 meet with them in order to enable Brahima Bakayoko to organise a meeting or
13 organise a travel for them to meet with the OTP.

14 *This signifies that when the Prosecutor realised the weakness in his case in 2013, he
15 rushed to find witnesses instead of conducting independent investigations, and he
16 relied on a collective made up of RDR activists. And in that connection Brahima
17 Bakayoko and Adama Diomandé served as intermediaries for the OTP regarding nine
18 potential witnesses, out of which five were called, to which we must add P-0433 and
19 P-0109, who had very close ties with the founders of the collective.

20 That is why we can understand that most of the evidence obtained by *the OTP after
21 the confirmation of charges *hearing in relation to Yopougon comes from the
22 collective, which *would you believe, is attempting to create its bylaws and become
23 an official organization at that time. That is why we must say in relation to this
24 collective, and that will be the last point in that regard, that the intermediaries played
25 a very active role. They did not only provide names and contact *details, Bobby and

1 Adama organised the meetings, they contacted potential witnesses themselves,
2 organised their travel, *that they should testify and what they should testify about.
3 One of the witnesses talking about such meetings with the OTP said as follows, *and I
4 quote: "It was Adama and Bobby who gave us instructions. When they *came,
5 they would call them and then they would say 'We want to see victims.' *So we
6 were reporting to them." End of quote.

7 There are other examples which establish very close links between the witnesses who
8 *came to give testimony and members of the collective. We refer you particularly to
9 transcript T-213, *page 70, line 19 to page 75, line 4, and the prior statement of *P-554,
10 CIV-OTP-0077-0153.

11 THE INTERPRETER: Transcript as read out quickly by counsel.

12 MS NAOURI: (Interpretation) It therefore emerges that several witnesses and the
13 *list of victims obtained through the collective regarding the Yopougon incidents are
14 barely reliable, because they are the product of a political operation put in place by
15 RDR officials following the adjournment decision of 3 June 2013.

16 Mr President, the next point will be on *the massive use of hearsay. And I'm looking
17 at the time. I'm in your hands, Mr President.

18 PRESIDING JUDGE TARFUSSER: [13:01:05] Yes, we make now the lunch break.
19 We come back at 2.30. The hearing is adjourned.

20 THE COURT USHER: [13:01:14] All rise.

21 (Recess taken at 1.01 p.m.)

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

23 THE COURT USHER: [14:31:34] All rise.

24 Please be seated.

25 PRESIDING JUDGE TARFUSSER: [14:31:51] Good afternoon.

1 We start now the third session of today, third and last. I just would like to say that
2 also if we finish 5, 10 minutes early, it's okay, because we have a plenary at 4. So if
3 we finish about 10 to 4, something like this, more or less, we are happy and have
4 more time to commute.

5 Thank you very much. The floor is again to Madam Naouri, I think. Yours the
6 floor.

7 MS NAOURI: [14:32:29] (Interpretation) Thank you, Mr President.

8 Mr President, your Honours, I would now like to deal with another point, namely, the
9 excessive use or the massive use of hearsay evidence by the Prosecutor.

10 In our written submissions, we indicated that the Prosecutor relies on numerous
11 volumes of hearsay in order to establish or attempt to establish various incidents and
12 events. For example, the incident of 16 December 2010 and that of 3 March 2011, the
13 alleged witnesses in relation to those crimes rely mainly on hearsay. *Sometimes
14 even, the Prosecutor exclusively relies on hearsay in order to attempt to demonstrate
15 the reality of an incident, for example, a contextual incident. The Prosecutor also
16 from time to time does provide corroborations of hearsay or to hearsay evidence.

17 We have pointed out that the massive use of hearsay by the Prosecutor has made it
18 impossible for the Prosecutor to establish the reality of an incident or an event. In
19 his written response and oral presentation, what is the Prosecutor's answer? He says
20 that there is hearsay that can be reliable; that is hearsay from someone whom the
21 Prosecutor considers to be reliable or hearsay based on a source which the Prosecutor
22 considers to be reliable.

23 Who would be a reliable source according to the Prosecutor? Someone whom we
24 are told was present at the time of a murder according to the Prosecutor would be a
25 reliable source.

1 Let me take the example in paragraph 481 of the Prosecutor's written response. So if
2 anyone says that they were present when something happened, they become a
3 reliable source. But what does that mean? Somebody whom nothing is known
4 about. Somebody who existed anonymously, so to speak, therefore, the facts and
5 statements cannot be crosschecked.

6 How can we know whether this * anonymous person, who in most cases *we do not
7 even have a name for, how can we know if such a person is reliable?

8 The Prosecutor asks us to rely on a person whose actual existence cannot be
9 established. So we're dealing with information that is not reliable, information that
10 cannot be cross-checked. Therefore, rumours.

11 Let us take a few examples on hearsay on which the Prosecutor has relied in order to
12 attempt to demonstrate some very important allegations.

13 According to the Prosecutor, and I'm referring to paragraph 564 of his response, "Mr
14 Bouazo had received instructions on the march at a meeting with the former minister
15 of the interior, Mr Tagro". End of quote.

16 What does the Prosecutor rely on to put forth such an allegation? *On the testimony
17 of P-435. *But we must remember that P-435, one of the less credible witnesses of the
18 Prosecutor, *provides us with nothing more than hearsay here.

19 *According to P-435, Bouazo Yoko Yoko Bernard allegedly told him that there had --
20 apparently there had been meetings between Désiré Tagro and GPP officials.

21 Apparently he told him this and that's all.

22 P-0435 never attended any such alleged meeting between the officials of the GPP and
23 Désiré Tagro.

24 P-435 does not have any information that enables us to cross-check that what he was
25 told actually happened.

1 Furthermore, when it comes to the so-called meetings, P-435 never provided any
2 information on the date where such a meeting may have taken place, the location at
3 which it may have taken place, and the time at which it may have taken place. These
4 are therefore hearsay statements that cannot be cross-checked, and that happens to be
5 the Prosecutor's only source in relation to such an important allegation in his case in
6 relation to a former minister.

7 Furthermore, without this allegation, the Prosecutor virtually has nothing else that
8 can enable him to link a former minister to any common plan whatsoever.

9 Let's take another example. In an effort to establish the existence of victims, the
10 Prosecutor has also relied on hearsay. For example, in relation to the incident of 16
11 and 19 December 2010, the Prosecutor refers exclusively to the report of the council of
12 Maliens of Côte d'Ivoire in an attempt to establish that Yahia Younoussa, Koné
13 Zoumana, Drissa Diarra and Oumar Banou were allegedly injured. That document
14 is based on anonymous hearsay and we know nothing about the manner in which the
15 document was drafted.

16 Another example, in an effort to establish the circumstances of the alleged death of
17 Doumbia Makaridia, alleged to have taken place on 17 March 2011, the Prosecutor
18 refers to the testimony of P-0297, the brother of Doumbia Makaridia. Well, this
19 person was not present when his sister Makaridia died. P-0297 allegedly learned
20 about the death of his sister Makaridia through a third party, another one of his
21 sisters, that is Naminazan, who allegedly called him and told him that Doumbia
22 Makaridia was dead. Naminazan herself allegedly heard of the death of Doumbia
23 through someone else and we don't know who that other person is. So we have here
24 a two tiered hearsay situation based on *a completely anonymous source.

25 It is therefore important to note here that the said hearsay is not corroborated by any

1 forensic evidence because it emerged that when the body which was said to be that of
2 Doumbia Makaridia was examined forensically, it turned out to be the body of a man.
3 Consequently, the circumstances of Doumbia Makaridia's death are unknown to us.

4 *Where is her body? We have no idea.

5 Another example: In an attempt to establish the circumstances of the alleged death
6 of Kouakou Koffi François and N'Guessan Adjo Therese, the Prosecutor relied
7 specifically on Witness P-0294, whose statement was filed under Rule 68(2)(b). P-294
8 allegedly learned of Kouakou Koffi François' death through his junior brother, who
9 himself learned about it from a colleague of the alleged victim, and the colleague who
10 himself is said to have learned about this from the rebels.

11 I refer you here to his prior statement, CIV-OTP-0041-0388, at page 0392,
12 paragraph 21 to 22.

13 So Kouakou Koffi François heard from a junior brother, and we know that the junior
14 brother doesn't mean a brother from the same parents, through a colleague whose
15 name is not mentioned, and the colleague himself learnt about it from rebels. So we
16 have here four levels of anonymous hearsay.

17 The Prosecutor therefore clearly has relied on rumours and such statements. But his
18 job specifically is to investigate and not simply to follow neighbourhood rumours and
19 hearsay. He is not to take the rumours in the neighbourhoods *at face value, as the
20 truth. If that were to be the case, why would we have a trial?

21 Now, when the Prosecutor *managed to call witnesses to attempt to establish the
22 reality of an important incident such as that of 3 March 2011, the women's march, all
23 those witnesses *only testified about what was said because *none of them saw *what
24 caused the injury or the death of the women.

25 Specifically, out of 14 witnesses, 10 were not at the venue at the time of the incidents.

1 Let us note that the witnesses who claim to have seen dead bodies *a posteriori* cannot
2 considered to be direct witnesses to the causes of the death.

3 Therefore, those witnesses did not see what the cause of injury or death *allegedly
4 was; therefore, their testimonies amount to *mere guesswork about the circumstances
5 of the death based on rumours and hearsay.

6 P-237 was at work outside of Abobo. Paragraph 256 of our annex 3.

7 P-364 was near the gendarmerie station and therefore could not see what *may have
8 happened at the Banco. Paragraph 256, annex 3.

9 Another witness was around the market 10 *or 15 minutes away from Banco. The
10 witness says he heard gunshots but did not see what was happening at Banco.

11 Paragraph 256 of our annex 3.

12 P-105 was at the market at the time of the alleged firing and says that she did not hear
13 the gunshots. Paragraph 256, our annex 3.

14 P-582 went to the market and -- she went to the march, sorry, but when she didn't see
15 her daughter, she returned home and she was not at the Banco at the time of the
16 alleged shootings.

17 P-581 never went to the Banco. He was not present at the time of the alleged firing
18 and never saw any bodies at the Banco.

19 P-172 was at home, at his home and says that he heard gunshots but did not know
20 where they were coming from. He could not see what happened at the Banco. He
21 said he did not -- he only left his house, rather, 30 minutes after hearing the gunshots.
22 He *allegedly saw bodies at Banco, but he did not see or witness the incident.

23 P-106 was in his shop at the time of the alleged shootings. He allegedly heard the
24 shots but did not see what happened at Banco.

25 *Apparently, P-0579 only heard people shouting and * subsequently learned that

1 there had been some gunshots and therefore whatever he testified to is what he was
2 told, namely, hearsay.

3 P-580 was near the Mobile station and says that he was too far away from Banco to
4 see what may have happened there.

5 Finally, P-107 was headed to Banco, but was at the level of the Abobo mosque when
6 he heard gunshots, so he did not see what may have happened at Banco.

7 When it comes to the three other witnesses who were allegedly present at Banco, none
8 of them actually saw what happened there. None of those witnesses was able to
9 confirm that they saw a tank firing on women. They did not see what may have
10 caused injury or death to the alleged victims. These are therefore not eyewitnesses
11 as the Prosecutor *tells us.

12 A witness who may have been at the Banco at the times of the alleged incident *has
13 said that he fled when he heard the shooting and he apparently fell on his knees. He
14 therefore did not see the alleged shooting. I want to refer you here to transcript
15 T-161 page 39, lines 25 to 28, page 61, lines 10 to 11.

16 This witness in particular did not see *what may have injured the women whom we
17 see later on after the convoy goes by on the video.

18 P-184, the major organiser of the march, says that she was at Banco at the time of the
19 incident, but that witness did not see who fired. The witness says that they only
20 heard about -- they only heard the alleged gunshots but did not know where they
21 were coming from. When the firing started, the witness fell down twice in an
22 attempt to flee, she lost consciousness. *That witness, P-194, Sirah Dramé, did not
23 see how the women apparently were injured because it was only when she got back
24 home that she learnt that the women apparently had died. That witness therefore
25 did not see anything.

1 P-190 was allegedly at the Banco at the time of the alleged incident and once again
2 that witness fell at the time when the shots were heard and did not see how women
3 were injured. Paragraph 257 of our annex 3 for references.

4 *The addition of indirect accounts based on guesswork from various witnesses who
5 endorse hearsay in an attempt to explain what is alleged to have taken place does not
6 establish the facts and does not enable us to know what *may have happened on 3 March 2011.
7 However, according to the Prosecutor, indirect testimony *or indirect pieces of evidence can
8 corroborate each other. The Prosecutor, for example, attempts to corroborate the testimony
9 of an indirect witness with a UN report, which by the way is hearsay. It is not simply
10 because the UN stamp is on that document that the information is not hearsay. That type of
11 hearsay cannot be corroborated. Rumours cannot be corroborated. Supputations cannot be
12 corroborated. Let us note for the record that in his mid-trial brief, the Prosecutor never
13 highlights an allegation as being hearsay, *by using the conditional tense, for example. He
14 presents hearsay as the absolute truth, or he uses misleading expressions like "eyewitness" for
15 indirect witnesses.

16 If the mid-trial brief of the Prosecutor were rewritten using the conditional tense for
17 all hearsays, then the entire document will be massively in the conditional and
18 therefore simply hypothetical.

19 In any event, it is not in this manner that any allegations can be proven beyond a
20 reasonable doubt.

21 Now let me address the * weaknesses of the experts. In our filings and submissions
22 we pointed out the * weaknesses in the various expert analyses that were *done
23 often quite late in the investigative phase at the behest of the Prosecutor. We will
24 *not return to this issue here.

25 * One brief remark, on the other hand, about the forensic documents that the

1 Prosecutor attempts to use in order to prove the reality of the death or injury suffered
2 by individuals who have been presented as victims of the incidents. *Most of the
3 forensic documents were issued by Professor Yapo Etté, Prosecution witness P-564.
4 Now, in his written response, the Prosecutor argues that Professor Yapo Etté's
5 answers are reliable and relevant. *Paragraphs 594 to 605 of the Prosecutor's response.
6 But what did Professor Etté say to this Court during her testimony? She said in
7 relation to her mission that it was not her mission to determine whether the bodies
8 examined were the bodies of victims of the post-election crisis.
9 Two, that it was not her mandate to establish the circumstances of death and to link
10 the death to a specific incident.
11 And three, that it was not in her mandate to determine the date of death.
12 She further *told us that she was not the one who identified the corpses, meaning that
13 *she did not determine the circumstances of the deaths in order to identify the corpses.
14 She finally tells us that she does not know the chain of possession of the corpses
15 which furthermore was never presented to her.
16 So what is Professor Yapo Etté telling us here really? *She is saying that she relied
17 on the statements that were made by people who said they were relatives of the
18 concerned victims. Some of them came here -- or rather, by relatives, statements
19 from relatives of the concerned victims. Some of them have come here and testified
20 that they did not see the dead bodies and that they had received information relating
21 to the deaths through hearsay.
22 Annex 4, paragraph 42 and 43 for reference. CIV-OTP-0041-0388, page 0392,
23 paragraph 21 to 22. Another example, transcript 192, page 46, line 6 to 14. Another
24 example, transcript 113, page 77, lines 14 and 15. And statement *CIV-OTP-0084-0079,
25 page 0089, paragraph 41.

1 Therefore, Professor Yapo Etté's testimony does not contribute anything and does not
2 prove anything. The detailed report by 144 -- or, rather, by 564 is based on
3 non-cross-checked information.

4 When it comes to the forensic examinations, what does she say? She said that she
5 was able to conduct 147 external examinations in a day. And in the Prosecutor's
6 written response, the Prosecutor seems to say that it is possible for 147 persons to be
7 examined in a day. Reference, paragraph 600 of the Prosecutor's response.

8 Consequently, let us attempt to analyse what this concretely means. The witness has
9 told us that she's the one who conducted the external examinations and she said so
10 very clearly, I quote, *"The team of two always included me, because I signed all the
11 reports." Transcript T-220, page 11, *lines 3 to 27.

12 Now, when asked, "Did you examine the 147 bodies?" the witness says, "Yes, indeed."
13 Transcript 220, page 11.

14 Now, what the witness is telling us is that she was the one who examined * all those
15 bodies as part of a team of two. *So if she was always one of the team of two, and if
16 there were three forensic scientists in the hall, doctors do not examine the corpses
17 independently, as the Prosecutor implies in his response, no.

18 * Now, the witness told us that she was the one, along with one of the other doctors,
19 who examined these bodies, as part of a team of two. Therefore, if we calculate, this
20 would mean that she would have conducted six external examinations per hour in an
21 uninterrupted period of 24 hours.

22 But then let's be serious, a day's work is not 24 hours. *But if we were to take 12
23 hours, then it would mean that she examined one body every 5 minutes without any
24 interruption. You only have to do the math. Without any interruption whatsoever,
25 without going to the toilet, without eating, without drinking. Now, if you count the

1 time that it takes to move from one body to another and then to jot down notes, which
2 will later form the basis for the external examination reports, then we can see how
3 impossible this is. To understand the inconsistency, to understand that what the
4 witness has told us is impossible, you must realize what an external examination is. It
5 is not about coming close to a body, looking at it briefly, noting that it's a dead body
6 and then moving on to the next one. No. The witness herself explained how an
7 external examination is done. She said that it is a complex examination which
8 unfolds in the following stages:

9 One, the opening of the body bags* and inspection; *two, identification of the person
10 according to the bracelet and the tag; comparing the various observations with
11 information received from the morgue; four, inventory of the corpses; five,
12 examination of the skin, if available; six, examination, external examination proper;
13 and then finally, any samples collected as need be.

14 When forensic practitioners conduct these examinations, they then proceed to
15 cross-check the notes taken by their assistants.

16 *All these stages then help to determine the cause of death. This requires the doctor
17 to be conscientious, to handle tissue samples and gather all type of indicia that can
18 establish the *kind of injury and the types of weapons used.

19 *The notes taken are then used to draft the external examination reports, which were
20 then placed on the record of the case and signed by the witness.

21 *The witness further told the Court that she took time to personally cross-check the
22 identification data and that she took time with the other members to jointly verify the
23 injuries. The others would then stop working and would come look at the injuries and
24 together they took time to look at the lesions and then to discuss together what their
25 observations were. Transcript 220, page 11, lines 10 to 16.

1 Under such conditions it is materially impossible for the witness in a team of two to
2 have effectively examined these bodies. This is only common sense.

3 *But if we are not in a position to establish who actually examined the bodies, or how
4 the external examinations were done, and since we did not hear testimony from the
5 other forensic doctors who allegedly were present, we cannot attach any value to the
6 external examination reports that the Prosecution relies upon.

7 *Either the witness is lying to us and she signed reports for external examinations
8 which she did not take part in, and we don't know who may have conducted these
9 examinations. Or the witness botched the external examinations and the information
10 in the reports is not reliable and certainly not the result of a proper examination. *So
11 in any case it is impossible to attach the slightest credibility to these reports.

12 *As we have just seen, the Prosecutor did not conduct an independent investigation.
13 He relied on anonymous, poor-quality evidence that was unreliable, unauthenticated,
14 non-verifiable and indirect.

15 Therefore, the Prosecutor was not able to answer the questions raised by the Defence
16 in its filings, particularly in relation to the four main incidents. Let us address those
17 incidents now.

18 *In his written and oral responses, the Prosecutor dealt with a number of issues
19 relating to the four main incidents, and simply bypassed a number of questions raised
20 by the Defence in our filings. Now let us first look at the Prosecutor's allegation as
21 follows.

22 *First of all, let us revisit the Prosecutor's allegation that there was a blockade at the
23 Golf Hotel. While arguing their case, they continued to claim that the blockade had
24 been set up at the hotel, allegedly to restrict and monitor the movements of the
25 opposition and other groups. Transcript 221, page 23, lines 16 to 19.

1 But the Prosecutor did not answer the arguments of the Defence claiming that there
2 was no blockade. The Prosecutor does not say anything about the fact that the
3 Golf Hotel, which was a complex situated near the lagoon, was harbouring many
4 RDR leaders, their advisers and hundreds of rebel soldiers who were heavily armed.
5 *No word was said about the fact that Philippe Mangou, the Joint Chief of Staff,
6 explained that given the risks to public order, the presence of so many armed men
7 meant that it was decided to adjust the security arrangements. Transcript T-183, page
8 68, lines 19 to 23.

9 Now let us look at the context, it is fundamental. What did the CEMA do? He
10 deployed one vehicle, a single vehicle to monitor hundreds of soldiers, rebel soldiers,
11 billeted at the Golf Hotel and prevent the authorities -- and informed the authorities if
12 these soldiers attempted to attack the town.

13 *And what happened to this single surveillance vehicle at the checkpoint? *The
14 armed people at the Golf Hotel attacked it, and we know, because the Chief of Staff
15 told us so, that it was only after this incident that with the help of ONUCI, a more
16 robust arrangement, which had never been a blockade, was put in place in order to
17 respond to a concrete security threat. And this context was systematically discarded
18 by the Prosecutor.

19 There was not also a word on the fact that the arrangement put in place had, as its
20 objective, to monitor the rebel soldiers and inform the authorities of any suspect
21 movement towards the town and to avoid possible frictions with the population.

22 There was not a single word on the fact that the FDS was attacked by rebel soldiers
23 present at the Golf Hotel and there was nothing said about the goings and comings of
24 the civilians and journalists or the fact that the hotel had to be resupplied.

25 It seems that the Prosecutor tried to conceal the fact that the restructuring was done

1 under the technical supervision and advice of the representatives of ONUCI. We
2 will come back to that.

3 *But we should note that if the Prosecutor admits that ONUCI played a role, and this
4 seems to be the case in his response, and that's at paragraph 545 of his response, and
5 in transcript 221, page 23, line 28, to page 24, line 3. If the Prosecutor admits that
6 ONUCI played a role, then it cannot be a blockade, unless the Prosecutor considers
7 that ONUCI took part in the blockade and therefore took part in the common plan.

8 Let us now talk about what the Prosecutor alleged to be a march. A legally organised
9 march must be subject to a prior statement, but the Prosecutor did not want to talk
10 about this. He told us in his oral presentation that the fact that the march was
11 declared in advance or not is a distraction. Transcript 221, page 24, lines 24 to 26.

12 A distraction? But this is at the very heart of the proceedings. Things are simple.

13 If this was a peaceful march, as the Prosecutor claims, then there must have been a
14 prior statement, a declaration, a transparent approach from the authorities at the Golf,
15 the people at the Golf would not have tried to conceal the itinerary of the march, the
16 assembly points and who were precisely the organisers of the march.

17 Now, what does the Prosecutor's presentation show us? The concealed preparation
18 of the alleged march, in fact, this would be an insurrectional attack. *In fact, the
19 objective had been announced: it was to forcibly take over the RTI and then the prime
20 minister's office.

21 Evidence was given during the proceedings to the effect that the rebel soldiers in the
22 Golf had received an instruction on 15 December 2010 to prepare their combat
23 equipment for the following day. But the Prosecutor continues to ignore this.

24 He does not tell us any word about Guillaume Soro and Wattao, a ComZone who is a
25 war-lord and who, on 15 December 2010, informed the rebel soldiers at the Golf Hotel

1 that they would seize the following morning the prime minister's office and the RTI,
2 and yet, we have everything here. We saw the images in this courtroom.

3 From the Prosecution witnesses, it is clear that the statements of Guillaume Soro
4 relating to the march planned for 16 December were broadcast before the march on
5 the TCI. For example, CIV-OTP-0020-0064, paragraph 54 onwards,

6 CIV-OTP-0019-0211, paragraphs 27 onwards, and CIV-OTP-0028-0550, page 40

7 onwards. Witness P-547 says that he heard an announcement of Guillaume Soro

8 over the ONUCI radio, the statements made by Soro and Wattao were broadcast

9 during the television news over RTI on 17 December 2010. This was a methodically

10 prepared and concealed attack, just like all attacks against Ivorian authorities. There

11 was no prior statement, no clear and transparent information.

12 So what were the authorities to do? To carry out inquiries to try to cross-check the

13 rumours and to understand what the rebels were preparing. It is as simple as that.

14 And I refer to paragraphs 36 to 46 of our annex 3.

15 Any meeting, any intervention of the FDS was to try to organise themselves to

16 confront or to face an attack which was being prepared.

17 We therefore understand that the fact that the march was not announced, its itinerary,

18 the assembly points and so on do not constitute a distraction. That is the key to the

19 understanding of what happened on 16 December 2010 and the days that followed.

20 And yet the Prosecutor refuses to see that and considers that it is a distraction. A

21 distraction from what, the truth?

22 Now, let me say something on the presence of armed men during the march.

23 The Prosecutor in his oral presentation tried to set aside the fact that FDS soldiers or

24 members were killed during the march. Why? Because the witnesses clearly

25 explained to them that the number of FDS members killed on 16 December 2010 was

1 evidence that armed men had attacked them. And we refer you here to paragraphs
2 185 to 187 of our annex 3.

3 The witness was clear, P-10, that is the commander of CECOS, Georges Guiai Bi Poin,
4 stated that, and I quote,* "Our men who were killed on that day were hit very hard.
5 Many of them were killed by weapons of war, and not just any type of weapons of
6 war. They were anti-tank rockets, RPG-7s, which completely destroyed the troop
7 transport vehicles. We were hit very hard by these events." End of quote. Transcript
8 T-139, page 40, lines 10 to 14.

9 Now, what does P-46 tell us? He was a director general of the national police,
10 Bredou M'Bia. He stated during his testimony, and I quote, "It was not a normal
11 demonstration. You have seen that amongst the victims, there were policemen who
12 were killed. And if policemen were killed, it means that they were killed by firearms.
13 This was not a normal demonstration. *And that is why the dispersion of that
14 demonstration was ordered by the minister of the interior." End of quote. Transcript
15 125, page 79, lines 20 to 23.

16 *So how does the Prosecutor try to circumvent what his witnesses have told him? They
17 presented a map on which he indicated two locations, and we know that the FDS
18 were killed there. And the Prosecutor explains to us, and I quote, "As you can see,
19 you have indicated here the distances between the Carrefour Marie-Thérèse and the
20 RTI, and the distance between PK18 and the other locations. So these two locations
21 were the scenes of the confrontations. In fact, people died amongst the FDS. But
22 the march itself took place around the RTI and near the RTI in Cocody, in the
23 neighbouring neighbourhoods. This was another story altogether.
24 Your Honours, you should not confuse between these incidents and the crimes that
25 were committed by pro-Gbagbo forces against the demonstrators during the march."

1 End of quote.

2 T-221, page 27, lines 3 to 11.

3 Now we are going to review this map of the Prosecutor. And this is

4 CIV-REG-0001-0595. And if the Court officer can hand over control to us.

5 THE COURT OFFICER: [15:20:24] You have the floor. The document will be
6 displayed on evidence 2 channel.

7 MS NAOURI: [15:21:05] (Interpretation) Thank you, court officer.

8 What the Prosecutor tells us is that the incidents that took place at the Carrefour

9 Marie-Thérèse and PK18 were peripheral incidents to the march because they took
10 place at 2.6 kilometres and 12.2 kilometres away as the crow flies from the RTI.

11 * According to the Prosecutor, that march was the only thing that happened, and I
12 quote once again, "The march took place around the RTI and close to the RTI, in
13 Cocody and in the neighbouring areas".

14 *In other words, the incidents that took place at a distance of more than 2.6 kilometres
15 from the RTI intersection were not part of the march itself.

16 Now, we follow the logic of the Prosecutor and on this same map we placed all the
17 locations at which the Prosecutor indicates in his written response from
18 paragraphs 464 to 531 that incidents that were part of the march are supposed to have
19 taken place.

20 We can see on the screen the various locations mentioned, and they will appear as we
21 name them.

22 In his response, the Prosecutor indicates that there were supposedly incidents related
23 to the march at the following locations:

24 In paragraph 464 of his response, the Prosecutor indicates, and I quote, "The FDS
25 erected roadblocks on the main roads leading to the RTI and used them to prevent the

1 demonstrators from reaching their destination and to repress the demonstration violently".

2 *So we have placed this dot by the main roads leading to the RTI. So it is the red dot
3 that says RTI.

4 Now, in paragraph 466 in his response, the Prosecutor mentions an incident at the
5 Marie-Thérèse neighbourhood in Adjamé. * Between Marie-Thérèse and the RTI
6 intersection there is 1.9 kilometres of distance as the crow flies.

7 In paragraphs 467, 468, 512 and 513 of his response, they mention incidents at the
8 headquarters of the RDR at the Lepic street, 1.5 kilometres as the crow flies from the
9 RTI roundabout.

10 *In paragraph 469 in his response there was an incident at the American cultural
11 centre slightly less than 500 metres away from the RTI, as the crow flies.

12 Paragraph 470, an incident at the PDCI headquarters, 1.2 kilometres away as the crow
13 flies.

14 *In paragraph 471 there was an incident at the Carrefour de la Vie and the
15 neighbouring area, 500 metres from the RTI intersection as the crow flies.

16 *Paragraph 473, incidents at the lycée technique on 16 and 17 December, that is, 1.1
17 kilometres from the RTI, as the crow flies.

18 *In paragraphs 474, 531 and 568, incidents at the MACACI intersection in Adjamé,
19 which is 4.4 kilometres away from the RTI, as the crow flies. So it is further away
20 than the Marie-Thérèse roundabout. *So according to the Prosecutor, this is not part
21 of the march itself. Apparently it was a peripheral incident.

22 In paragraphs 474 and 519 of his response, there were incidents at the Djéni Kobina
23 roundabout, and this is between 2.6 and 3 kilometres as the crow flies from the RTI
24 roundabout.*Here we see that Djéni Kobina was the same distance or slightly further
25 away from the RTI intersection than the Marie-Thérèse intersection. So this was a

1 peripheral incident.

2 In paragraphs 475 and 476 *of his response, there were incidents at the Williamsville station.

3 *The distance between the Williamsville station and the RTI intersection is 2.6 kilometres as
4 the crow flies. Again, they said that this was apparently a peripheral incident.

5 *In paragraph 481 of his answer, the Prosecutor mentions an incident at the Samaké
6 roundabout. That roundabout is 8.12 kilometres away from the RTI roundabout, very
7 far away from the RTI. And similarly, they say that apparently it was a peripheral incident.

8 *Still in paragraphs 481 and paragraph 530, there were incidents at the AGRIPAC
9 *intersection, which is 12.2 kilometres away from the RTI intersection, as the crow
10 flies. *Very far away. And once again it is a peripheral incident.

11 And once again in paragraph 481 there were incidents in Anonkoua Kouté.

12 Anonkoua Kouté is slightly less than 11 kilometres away as the crow flies, another
13 peripheral incident.

14 *Still in paragraph 481 of the response, there was an incident at the night market in
15 Avocatier, which is more than 10 kilometres away from the RTI intersection. Once
16 again, a peripheral incident.

17 In paragraph *482 and 528 of his answer, there are incidents mentioned near Abobo
18 Gare. And that is 8.8 kilometres away as the crow flies from the RTI roundabout.
19 Once again, this was an incidental or peripheral incident.

20 We have to note that this was an incident in Abobo, but the Prosecutor had told us
21 that the incidents in Abobo were far away from the march. *Transcript T-221, page 27,
22 line 26 to page 28, line 2.

23 In paragraphs 483, 484, he mentions incidents in Abobo PK18, which is 13 kilometres
24 as the crow flies from the RTI roundabout. *It is worth noting that this is the same
25 location as on the map. And the Prosecutor clearly told us that what was going on

1 here had nothing to do with the march.

2 In paragraphs 487 and 539, it is indicated that there were incidents at the
3 Grand mosquée in Bassam. We were compelled to add a map because this location
4 does not even appear in the Prosecutor's map. And this is 33.23 kilometres away
5 from the RTI roundabout.

6 In paragraphs 487 and 536, there are incidents at the Abobo mosque, which is
7 8.9 kilometres away as the crow flies.

8 In paragraphs 487 and 536 of his response, incidents are mentioned in the
9 Williamsville mosque, which is 3 kilometres away as the crow flies. Once again we
10 point out here that this location is further away from the RTI than the Marie-Thérèse
11 roundabout.

12 In paragraph 489 of his response, there is mention of a location which we have not
13 indicated on the map for reasons of confidentiality, but this location is 8.5 kilometres
14 away from the RTI *intersection, as the crow flies. And we refer you to paragraph
15 128 of our annex 3.

16 Similarly in paragraphs 497 to 499, it is claimed that there were incidents that took
17 place 1.7 kilometres away from the RTI roundabout* as the crow flies. We are not
18 going to mention this location because of confidentiality issues, but we refer you to
19 paragraph 156 of our annex 3.

20 *In paragraph 514 of the response, the Prosecution mentions an incident on the road
21 leading to the headquarters of the PDCI. Since there is no other information that
22 would allow us to situate the incident more precisely, it is not possible to indicate the
23 distance between this location and the RTI intersection because the road itself is 1.22
24 kilometres long.

25 In paragraph 517, there was an incident on the Boulevard des martyrs. *And there is

1 no further evidence to indicate the distance between this location and the RTI
2 intersection. The road itself is 8.6 kilometres long.

3 In paragraphs 521 and 522 of his response, there was an incident at the Liberté
4 neighbourhood, which is 1.9 kilometres away from the RTI roundabout.

5 *In paragraph 523 of his response, there is an incident at the Kablan Duncan
6 intersection, which is 4.1 kilometres away from the RTI intersection as the crow flies,
7 another peripheral incident.

8 *In paragraph 529 of his response, there was an incident at Avocatier, Eau Glacier,
9 10.7 kilometres away as the crow flies, and they claim it was a peripheral incident.

10 And in paragraph 484 there are unidentified locations in his response. So we don't
11 even know whether these locations are in Cocody or not on 16 December 2010.

12 *So the majority of the incidents mentioned by the Prosecutor are supposedly
13 peripheral incidents far away from Cocody and the RTI. And if we follow this logic,
14 what remains of the Prosecution's case? A few scattered incidents around the RTI
15 intersection.

16 So the majority of the incidents that they mention are not part of the march, because
17 they have told us that the march took place at the RTI and its vicinity, in Cocody and
18 the surrounding neighbourhoods.

19 The Prosecutor cannot say something and its opposite as it suits him. *Either the
20 incidents that he mentions in his response are part of what he calls "the march" and
21 thus the incidents during which the FDS members were killed are part of that as well.
22 Or these are scattered incidents, unrelated incidents that took place in Abidjan. If we
23 look at the map of the locations where the incidents took place, it is interesting to note
24 that there seems to be a pincer movement, a simultaneous attack by rebel soldiers
25 coming from the Golf Hotel and armed groups from Abobo camouflaged within the

1 demonstrators. That is a sign of the existence of a military operation targeting the
2 destruction of the security forces and to seize the locations of power such as the RTI
3 and the prime minister's office.

4 And we are fully aware that the FDS were attacked at other locations than the
5 Marie-Thérèse and PK18 roundabouts.

6 At the AGRIPAC roundabout, which was mentioned by the Prosecutor, there was a
7 report from 6 p.m. on 16 December which was signed by the commander of the first
8 legion of the departmental gendarmerie, and it is stated, I quote, "11.45: Abobo
9 (AGRIPAC), a building, housing the FDS, set on fire by demonstrators armed with
10 Kalashnikovs. 3 FDS members killed". It is CIV-OTP-0043-0334, page 0334.

11 In other words, in AGRIPAC, heavily armed men attacked policemen and gendarmes,
12 setting on fire the building in which they had sought refuge.

13 We are also aware that on 16 December 2010 at 9 o'clock, there were confrontations in
14 Abobo between the FDS and demonstrators, and there were exchanges of fire, and the
15 result was one non-commissioned officer killed and three policemen killed with three
16 demonstrators injured. CIV-OTP-0071-0676, page 0677.

17 *And in Yopougon, at the Yopougon intersection, there was a clash between the
18 demonstrators and the policemen. Eight policemen were injured after being hit by
19 buckshot. CIV-OTP-0045-0793, page 0897.

20 *And still in an attempt to downplay the attack of the rebels that took place on
21 16 December 2010, the Prosecutor once again contradicts himself, this time regarding
22 the duration of the march.

23 *The Prosecutor talks about the incidents that allegedly took place between 16 and 19
24 December 2010 as if they were part and parcel of what he calls the march. Paragraph
25 460, 463, 473b, 485 to 487, 505, 511 and 536 of filing 1207.

1 On the other hand, the FDS were killed by RPG on 17 December 2010, but the
2 Prosecutor claims that that was not part of the march, because this took place the day
3 after 16 December 2010. Transcript T-221, page 27, lines 20 to 25.

4 * The Prosecutor cannot simply keep what suits him and bury his head in the sand
5 when it concerns the death of an FDS member.

6 In fact, it is interesting to note that the Prosecutor does not answer the question as to
7 why there were people with RPGs attacking the FDS. The fact is that there were
8 armed groups that were moving about during three days in Abidjan. They had
9 RPGs, they were attacking and killing the FDS, and they had tried to take over power
10 on 16 December using a pincer movement.

11 * It should be pointed out that during the day of 17 December 2010, there were
12 confrontations between the forces of law and order and heavily armed individuals,
13 specifically at Abobo Avocatier at 10.07, and I quote, "heavily armed individuals left
14 Anyama and headed toward Abobo", CIV-OTP-0045-0793, page 0904. *At 13:12 that
15 same day, in Abobo Derrière-Rails after an ONUCI plane flew over the RTI, a shell
16 was fired at the transmitter. The shell missed its target and fell on the Moov telephone
17 building, right beside the annex, causing a lot of damage. The commission of the
18 21st arrondissement went to the location to assess the damage. And that is
19 CIV-OTP-0045-0793, 0906.

20 *On 18 December 2010 at Abobo Avocatier in the 32nd arrondissement, elements on
21 patrol came under fire from automatic weapons at the Royal Station, on the express
22 lane They were wearing overalls and armed with Kalashnikovs. CIV-OTP-0045-0793,
23 page 0908. *In other words, the narrative of the Prosecutor is false and that is why he
24 does not have any evidence to support his narrative and is compelled to manipulate
25 the facts and contradict himself.

1 * But his amateurish methods do not conceal the reality of what happened on 16
2 December 2010. Namely, a pincer attack that had been carefully planned in advance. *

3 *And we will refer you here to paragraphs 190 to 201 of annex 3 of our filing, in which
4 we demonstrate that the Prosecutor refuses to take into account the evidence placed
5 on the record of the case that shows that this was a military operation.

6 Mr President, I have a few more points to raise on this incident, but I am in your
7 hands when I look at the time.

8 PRESIDING JUDGE TARFUSSER: [15:44:09] No, but I think if you complete the
9 incident, I think it would be good. I don't know how long you will take.

10 MS NAOURI: [15:44:18] (Interpretation) Not very long, Mr President. I can
11 complete the incident.

12 PRESIDING JUDGE TARFUSSER: [15:44:24] Okay. Thank you.

13 MS NAOURI: [15:44:25] (Interpretation) *Now we will talk about the rebel groups
14 and the PK18 neighbourhood.

15 In his response, the Prosecutor stated in paragraph 484, relating to the incidents in
16 PK18, and I quote, " The following deceased victims have to be taken into
17 consideration because there is probative evidence that would allow a court to
18 reasonably infer that they were killed by pro-Gbagbo forces at PK18 in Abobo
19 neighbourhood while they were going to the RTI." end of quote.

20 But what the Prosecutor does not tell you is that there was an assembly point for the
21 march at PK18. *What the Prosecutor does not tell you either is that PK18 was one of
22 the rebel bases, and even the rebels' -bastion. And the Prosecutor is fully aware of this.

23 In fact, during his oral presentation, the Prosecutor referred to paragraphs 361 to 389
24 of his response. In that section of his response that he referred to, the Prosecutor
25 described the situation in Abobo between November 2010 and March 2011, and they

1 acknowledged the increasing presence of armed groups in Abobo, groups that started
2 emerging as early as November 2010 at PK18. That is November 2010. And the
3 Prosecutor also acknowledged that PK18 was one of the main bases of the armed
4 rebel groups.

5 So why does he refuse to draw the consequences from that? Why does he continue
6 to ignore the facts?

7 * From the evidence submitted by the Prosecution during their case, the only
8 reasonable deduction or inference or conclusion that can be made --- because this is
9 what the Prosecutor is asking you to do at this point --- is that this was an
10 insurrection with the objective of forcibly taking over power.

11 Mr President, I will stop here, otherwise I will have to move on to something else that
12 will take longer.

13 PRESIDING JUDGE TARFUSSER: [15:47:21] Well, it was short. Okay, so thank
14 you. I think we stop here for today and we adjourn to tomorrow morning at 9.30.
15 Thank you to all. The hearing is adjourned.

16 THE COURT USHER: [15:47:31] All rise.

17 (The hearing ends in open session at 3.47 p.m.)