

1 International Criminal Court

2 Pre-Trial Chamber I - Courtroom 1

3 Situation: Republic of Côte d'Ivoire

4 In the case of The Prosecutor v. Laurent Gbagbo - ICC-02/11-01/11

5 Presiding Judge Silvia Fernández de Gurmendi,

6 Judge Hans-Peter Kaul and Judge Christine Van den Wyngaert

7 Confirmation of Charges Hearing

8 Tuesday, 26 February 2013

9 (The hearing starts in open session at 2.31 p.m.)

10 THE COURT USHER: All rise.

11 The International Criminal Court is now in session.

12 Please be seated.

13 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Good

14 afternoon. Court is called to order.

15 Court officer, please kindly call the case.

16 THE COURT OFFICER: Situation in the Republic of Côte d'Ivoire, in the case of The

17 Prosecutor versus Laurent Gbagbo, ICC-02/11-01/11.

18 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.

19 We will now continue with the Defence presentation. Mr Altit, please.

20 MR ALTIT: (Interpretation) Thank you, your Honour. Maître Fauveau Ivanovic

21 will continue with her presentation.

22 MS FAUVEAU IVANOVIC: (Interpretation) Your Honours, yesterday we started

23 explaining the situation in Abobo. We stated that armed bands were spreading

24 violence. We also stated that the members of the population and the FDS were

25 attacked. The FDS was chased out of Abobo. The members of the population were

1 left to their own devices. They were targeted in violent and repeated attacks. The  
2 evidence of the Defence confirmed the endless attacks of armed rebels in Abobo, and I  
3 refer to Defence materials 0561 and 0582.

4 They confirm the murders of supposed supporters of President Gbagbo. Defence  
5 document 0782, pages 0788 to 0789, document 1273, pages 1283 and 1285; document  
6 2371, pages 2377; and video 1024.

7 An entire village, Anonkoua Kouté, inhabited mainly by members of the Ebrié ethnic  
8 group, was attacked and people were compelled to leave their houses.

9 You will see video footage, that is video 0561.

10 (Viewing of the video excerpt CIV-D15-0561)

11 MS FAUVEAU IVANOVIC: (Interpretation) During that attack on Anonkoua  
12 Kouté, there were 28 dead and 40 injured, document 2371, page 2378. As a result,  
13 there was an exodus of the members of the population. It was a massive exodus and  
14 tens of thousands of inhabitants fled the neighbourhood, including people from all  
15 ethnic groups and religions, and this is in document 3446, 3219, and video 0565.

16 At the beginning of 2011, Abobo was under the control of armed bands. A former  
17 member of the Invisible Commando wrote as follows, "We were the ones controlling  
18 Abobo and nothing could happen in this commune without our being aware of it.

19 Regarding Witness P-44, a Prosecution witness, he stated, and I quote, "There were  
20 attacks and murders against all those who were not members of the RDR. All those  
21 who were not on their side were forced to leave Abobo. In Abobo, policemen and  
22 gendarmes were killed. The FDS were in Abobo to do their duty, provide security,  
23 maintain law and order and not to attack the population. They were the ones who  
24 were attacked." These are the words of Prosecution Witness P-44, document 3704,  
25 page 3715.

1 Document 0025-0056 confirms that the RDR set up a destabilisation unit. On page  
2 0057, the document states that that unit was supposed to organise destruction,  
3 killings and fires. It was in this context that the incidents -- or the incident of  
4 3 March 2011 took place.

5 In paragraph 54 of the DCC, the Prosecutor describes a peaceful women's march. Of  
6 course, we did not receive any information about the origin of that march and yet that  
7 women's demonstration was definitely not spontaneous. It was organised at the  
8 Golf Hotel. Documents 0255, page 0256, and document 0472.

9 The former member of the Invisible Commando states, "Everything happened  
10 according to the orders of Dramane," and "Dramane" here refers to Alassane Dramane  
11 Ouattara, document 2381, page 2391.

12 The march was never announced to the Ivorian authorities - document 1396, page  
13 1401, as well as Witness P-156, 0028 to 0219 - and yet Ivorian law requires that such  
14 demonstrations should be notified. Prosecution Witness P-9 confirmed that the  
15 Ivorian authorities were not informed of that demonstration and so the army was not  
16 aware.

17 The Prosecutor merely recounts the version of facts broadcast by anti-Gbagbo media  
18 outlets, which stated that government forces opened fire on women and killed seven  
19 of them, but is that the truth? An article states that Alassane Ouattara's men did not  
20 hesitate when they were in difficulty to perpetrate reprehensible acts in order to  
21 blame Laurent Gbagbo, and cautioned against hasty accusations, document 0264.

22 The video showing the event raises certain doubts regarding the reality of the event.  
23 How can we explain that scene which has been mentioned by the Prosecutor in which  
24 a woman who is supposed to have been fatally injured suddenly raised herself up  
25 before being pushed down again?

1 (Viewing of the video excerpt CIV-OTP-0003-0716)

2 MS FAUVEAU IVANOVIC: (Interpretation) This scene raised doubts regarding its  
3 authenticity. It should have intrigued the Prosecutor and prompted him to carry out  
4 further investigations, but he did nothing.

5 But let us begin with the nature of this march. Was it really a peaceful march? On  
6 17 January 2013, the Prosecutor disclosed to the Defence certain documents, including  
7 videos and photos that are supposed to have been taken during that march. Let us  
8 watch, and it is 0021-4083. There is 0021-4084 and photo 0021-4085. We can also  
9 refer to video 0021-4087.

10 (Viewing of the video excerpt CIV-OTP-0021-4087)

11 MR MACDONALD: (Interpretation) I'm sorry to intervene. I do not know  
12 whether the Defence also wishes to show the screen-shot of YouTube indicating that it  
13 was filmed on 24 February 2010, and this accompanies this video, so we should not  
14 mislead the Chamber, just like the Defence mentioned yesterday that we were the  
15 ones who also informed them that the video we had disclosed had been from Kenya  
16 and not from Côte d'Ivoire. We will avoid coming back to this in opening -- in  
17 closing arguments, because this video was filmed on the 24th.

18 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Can you  
19 clarify, please?

20 MS FAUVEAU IVANOVIC: (Interpretation) Yes, your Honour. I mentioned the  
21 issue of disclosures from the OTP and I wanted to refer to this video within this  
22 context, and I will clarify. We received this video footage, alongside the  
23 photographs, on 17 January this year and this was part of 19 documents disclosed to  
24 us under Rule 77, that is as an exonerating material, and it was indicated to us that  
25 these images were filmed during the march of 3 March.

1 On 18 February, on the eve of this hearing, we received the same video, with an  
2 indication from internet that this march was supposed to have been filmed on  
3 24 February 2011.

4 This means that we received this information much too late for it to be cross-checked  
5 and we checked in the internet and it is stated there that a march did indeed take  
6 place on 24 February, but strangely, this video was uploaded to the internet on  
7 3 March. The first thing is that we have never heard of a women's march on  
8 24 February.

9 Now, secondly, why is it that this video, which was on the internet as from 3 March,  
10 was only disclosed to us on 17 February this year? And I would have informed you  
11 about that detail, your Honour, even without the intervention of the Prosecutor.

12 Now, we have the information that this footage could have been filmed on  
13 3 March 2011, or on 3 March. It is not up to the Defence to cross-check. We should  
14 have done that if we had the time, but it is incumbent on the Prosecutor to verify.

15 MR MACDONALD: (Interpretation) I'm sorry to interrupt, but this video was  
16 disclosed in May 2012 with a different ERN number. Just like anyone else, the  
17 Prosecution goes to open sources, such as the internet, and sometimes we find certain  
18 things that we did not discover before that but, to be precise, this footage was  
19 disclosed in May 2012 and it is only recently that we realised that the information on  
20 the internet indicated that it referred to events of 24 February, but to say that the  
21 Prosecution disclosed the video footage late is incorrect.

22 MS FAUVEAU IVANOVIC: (Interpretation) We have to clarify something here.  
23 It is clear that the images were disclosed, but there was no indication of where or  
24 when they were filmed. We received information for the first time on 17 February  
25 that the footage was filmed on 3 March 2011, so if we do not have any date or location

1 we cannot cross-check where or when the images were filmed. The crucial  
2 information was provided to us on 17 February.

3 Now, let me continue. What is clear is that the images were filmed on the same road  
4 as the road taken by the women's march.

5 According to the allegations of the Prosecutor, pro-Gbagbo forces arrived in  
6 armoured vehicles, including in a tank, and opened fire on the crowd. The  
7 Prosecutor never identified the units involved. They simply mentioned the vehicles,  
8 or rather the units in the area, including the Commando Camp, but this does not give  
9 us any information on the identity of the units involved.

10 The weapons that were used to shoot the women are also not identified. The  
11 Prosecutor mentioned a heavy weapon. The Prosecutor stated that some of the  
12 women were killed by heavy weapons, while others were killed by bullets. This is  
13 much too approximate for a criminal case.

14 The accounts of Prosecution witnesses are in fact quite troubling. Witness P-184,  
15 after having said that the forces of law and order, when they came out of the Camp  
16 Commando, were firing indiscriminately, 0032-0011, page 0023, paragraph 73, also  
17 states that the women started applauding when they saw the tank, page 0026,  
18 paragraph 88.

19 Witness P-112 stated that people were afraid to pass in front of Camp Commando;  
20 0019 to 0306, page 320, paragraph 69, and then he subsequently stated that during the  
21 women's march people started applauding when they saw the tank. Page 320,  
22 paragraph 71.

23 And Witness P-117 said that soldiers fired each time they came out of Camp  
24 Commando whenever they went to fetch supplies; 0020 to 0033, page 57, paragraph  
25 175.

1 But he also stated that during the women's march the women applauded when they  
2 saw the tank and exclaimed, "Here are the soldiers who are going to protect us."

3 Page 0055, paragraph 159.

4 It is difficult to imagine why women would be applauding the forces of law and order,  
5 whereas these forces of law and order were the cause of the march, and they had shot  
6 at the population prior to that. It seems to me that there is a flagrant contradiction in  
7 these accounts.

8 Furthermore, at the time of the march on 3 March 2011, the road taken by the women  
9 had become too dangerous by the FDS. They were used only -- they were no longer  
10 used by vehicles transporting supplies and they had been using another road for  
11 more than one year. Defence document 2371, page 2376. And now we are  
12 wondering where were these armoured vehicles from? Where was this tank from  
13 and who were inside those vehicles? We do not know the answers but the -- but it is  
14 only this -- from this fact that we do not know the provenance of these vehicles which  
15 indicates that if this event did take place it cannot be attributable to the republican  
16 forces loyal to President Gbagbo.

17 The victims, their burial and the events at the hospital.

18 We had to wait until 19 November 2012 to finally know the identity of the victims  
19 allegedly killed during the women's march. The circumstances of the death and  
20 burial of these women remain mysterious. It appears that five of the victims were  
21 buried together with other bodies after the arrest of President Gbagbo and upon  
22 instructions received from the Golf Hotel. P-172, 0028 to 0550, page 561, paragraphs  
23 85 and 88.

24 Witness P-172 claims that the bodies of two of the victims had been taken to their  
25 parents, page 562, paragraph 92, and yet according to a report 0038-0192 the body of

1 one of those two victims was transported directly from the site of the incident to the  
2 Banco Forest where it was buried. None of the families of the victims has ever  
3 lodged a complaint, even after the arrest of President Gbagbo. Document 3689, page  
4 3693.

5 The information that was given to us raise a certain number of questions. Why were  
6 the bodies of the victims separated? Why is it that the bodies of the five other  
7 victims were not handed over to their families for a dignified burial? Why is it that  
8 these women, who all have families, were immediately buried after the arrest of  
9 President Gbagbo in a grave with other unidentified bodies? And why is it that the  
10 authorities at the Golf Hotel gave instructions for these bodies to be buried as soon as  
11 President Gbagbo was arrested? Why is it that the families never lodged a  
12 complaint? All these questions should have stirred the curiosity of the Prosecutor  
13 and prompted him to carry out further investigations, but nothing was done.

14 And what can we say about the frivolous allegation according to which around 2 p.m.  
15 men in fatigues went to the South Abobo Hospital to see whether women's bodies  
16 had been brought there? The Prosecutor bases this allegation on the statement of  
17 P-172 and P-172 never saw these men and did not speak to them. He stated that  
18 (Redacted) at the hospital told someone about it and the Defence does not know the  
19 identity of this person, because it was redacted.

20 However, the account of P-172 is not coherent, because after saying that (Redacted)  
21 has -- had explained what had happened, he states that (Redacted) did not describe  
22 how these people were dressed and did not explain why they had come there.

23 0028-0550, page 0563, paragraph 104, and we are not mentioning the fact that  
24 everyone was wearing fatigues and fatigues are not a reliable means of identification,  
25 so I'm wondering how come it is known that these people were in fatigues and that



1 they came to look for the bodies? And also what was the link between these people  
2 and President Gbagbo? Apparently, once again there is no link.  
3 It is difficult to know what really happened on 3 March in Abobo. It is clear that on  
4 the eve of that day, the former commando of the gendarmerie squadron in Abobo  
5 handed over to the rebels who had infiltrated Abobo all the strategic positions;  
6 document 0018-0031, pages 0032-0033. It is also intriguing that this march, which  
7 was not announced to the authorities, should have been protected by members of the  
8 Invisible Commando; document 0255, page 0256 and document 0472.  
9 Even without specifically identifying the forces that might have been in Abobo at the  
10 time of the women's march, the Prosecutor dares to state, in paragraph 54 of the DCC,  
11 that these forces were acting under orders from their immediate superiors. This  
12 allegation is based on the statements of two witnesses, P-45 and P-49. None of those  
13 witnesses ever heard any such order.  
14 Witness P-45 stated that as far as he knew the murder of women in Abobo happened  
15 at the orders of members of the special police and the Republican Guard; statement  
16 0005-0002, paragraph 94. He never explained where he got that information from  
17 and he stated that he did not have any personal knowledge of that event; paragraph  
18 96.  
19 Regarding Witness 49, whose identify is not known and who has provided only a  
20 summary of his statement, the affirmations on the women's march are based on an  
21 alleged general knowledge that the gendarmerie group in Abehi and the Republican  
22 Guard were involved in the murder of the women.  
23 Apart from the fact that this witness does not have any personal knowledge of the  
24 events, I would like to point out that according to the jurisprudence of the Court the  
25 summaries of anonymous witnesses do not have a high probative value.

1 From both Prosecution and Defence evidence, it is clear that in March 2011, Abobo  
2 was an arena of fighting between regular forces and the various rebel groups,  
3 particularly the Invisible Commando. All the rebel groups had the same weapons  
4 and all of them could have been responsible for firing on the women.

5 According to Witness P-9, there were civilians in Abobo who possessed RPGs and  
6 Kalashnikovs. There were also people who disguised themselves as soldiers and  
7 gendarmes so that their crimes should be attributed to the Defence and security forces.  
8 0011-0556, pages 0560 and 0563.

9 The evidence shows that during the fighting in Abobo as from January 2011, members  
10 of the forces of law and order were attacked with rocket launchers, RPG-7s.

11 Document 0508, page 0509.

12 There were people who did not belong to the police force who wore police uniforms,  
13 while some policemen worked for the rebel forces. P-46, 0014-0326, pages 0329 and  
14 0331. There is no credible evidence that links government forces to the gun-shots  
15 that allegedly killed women during that march.

16 The Prosecutor acknowledges that the firing was the subject of discussions amongst  
17 FDS commanders. Transcript of 25 February, page 36. If those commanders had  
18 been involved in that gun-fire, why would they be discussing it? And in fact, the  
19 government, and particularly the Minister of the Interior and the Minister of Defence  
20 as well as the defence and security forces, denied any involvement in this incident  
21 and stated that on 3 March 2011 they never left their barracks and did not carry out  
22 any intervention in Abobo. Documents 0265, 0267, video 0002-1065, and  
23 communiqué 0017-0035.

24 The FDS communiqué was published after preliminary investigations carried out by  
25 the police and the gendarmerie. Documents 0017-0035 and Defence documents 1273,

1 page 1287, and 1396, page 1401.

2 It is clear that the Prosecutor is not obliged to believe the statement of the armed  
3 forces, but in order to provide evidence, including substantial grounds to believe that  
4 this crime was perpetrated by forces supporting President Gbagbo, he should have  
5 carried out his investigations properly. If the Prosecutor had investigated both  
6 incriminating and exonerating circumstances, he should have found items of evidence  
7 showing that everything had been prepared.

8 A member of the Invisible Commando states that the women's march had as an  
9 immediate goal to draw the attention of the international community and a montage  
10 was constructed. He also states that the footage used for that montage allegedly  
11 exists. Document 2381, page 2393, 2394.

12 This member of the Invisible Commando recounts as follows, and I quote, "When the  
13 march had to begin, there were advance marchers who were supposed to co-ordinate  
14 and give orders to certain women. Some elements of the Invisible Commando were  
15 made to shoot or to fire warning shots into the air. When the women were  
16 simulating the march, several militiamen and die-hard supporters of Dramane were  
17 carrying concealed rockets and Kalashnikovs and they were hiding in the crowd.  
18 They had received these weapons from the mosque of the Mali neighbourhood with  
19 the aim of shooting at loyalist troops in case they did not accompany the march, and  
20 since the loyalists were not present, seven women were selected to perform in this  
21 masquerade. Each one of them was supposed to receive 100,000 francs CFA. All  
22 the organisers and participants were to receive 50,000 francs CFA. Each and all of  
23 them received that money at the mosque in the Mali neighbourhood at the  
24 roundabout near the rear right. So while some women pretended to march, others  
25 were lying down and sheep's blood was poured on them, and this footage was used

1 by our computer technicians to construct the montage and this is how it happened.  
2 At the end of the montage, the footage was put together and given the impression  
3 that it was reality attributed to President Gbagbo."  
4 This account that I have given comes from a member of the Invisible Commando who  
5 was the commander of the theatre of operations. Once again, the Prosecutor is not  
6 obliged to accept this version of the facts, but he should in the course of the  
7 investigations have found this account. He should have wondered why the official  
8 communiqué of pro-Gbagbo forces coincided with important points of an account  
9 from a member of the Invisible Commando.  
10 He should have tried to identify members of pro-Ouattara forces present in Abobo at  
11 the time. He should have tried to identify members of pro-Gbagbo forces present in  
12 the Commando Camp in Abobo on 3 March 2011. He should have questioned  
13 inhabitants of the buildings around this area, and I come back to the images that we  
14 have seen.  
15 If we look at these images attentively you can also hear the words said in Dioula, "Lie  
16 down, it is not over," and to conclude, contrary to what the Prosecutor stated,  
17 investigations were carried out on this event.  
18 On 24 March 2011, the military tribunal of Abidjan was instructed to carry out a  
19 thorough investigation of the events that took place during the women's march.  
20 0001-0285, page 0286. This document that is relating to the investigation was  
21 disclosed to us by the Prosecutor, so he must have known that an investigation was  
22 commissioned.  
23 Madam President, your Honours, the Prosecutor has not produced sufficient evidence  
24 to support his allegations relating to the women's march on 3 March 2011 that would  
25 enable the confirmation of charges against President Gbagbo.

1 I will now hand over to Jennifer Naouri who will talk about the shelling of the Abobo  
2 market and the events at Yopougon after the arrest of President Gbagbo.

3 MS NAOURI: (Interpretation) Madam President, your Honours, would you mind  
4 giving us a moment to just set up the second PowerPoint presentation? I thank you.  
5 (Pause in proceedings)

6 MS NAOURI: (Interpretation) I thank you for your patience.

7 Madam President, your Honours, we have just shown that the Prosecution has failed  
8 to bring sufficient evidence in support of his allegations concerning the women's  
9 market in Abobo. The same holds true of the alleged bombing of the Abobo market.  
10 Let us briefly revisit the situation in Abobo in March 2011. We now know that in  
11 February 2011 the law enforcement forces had disappeared and tens of thousands of  
12 inhabitants had fled the neighbourhood.

13 The Minister for Defence at the time of the events explains, and I quote, "As a result  
14 police stations and gendarmerie stations in Abobo had been targeted by the Invisible  
15 Commando in February 2011 which forced the FDS Chief of Staff, the FDS which had  
16 been under an embargo for seven years, to concentrate its security services within the  
17 commune. It had become the last operational security service of the seven initially  
18 present in Abobo. It continued to provide security to the remaining population in a  
19 new context of urban guerrilla imposed by the Invisible Commando." Defence  
20 document 1273, pages 1285 and 1286.

21 He further recalls, and I quote, "That with all the police and gendarmes of Abobo  
22 stationed at the gendarmerie camp, commune security had been given back to the  
23 Invisible Commando and its snipers, and snipers had been assassinated on  
24 28 February 2011, 15 policemen on regular patrol or fulfilling a normal security  
25 mission," end of quote.

1 So at the beginning of March 2011, with the exception of the gendarmes under siege at  
2 Camp Commando, the entire neighbourhood is in the hands of the Invisible  
3 Commando and the FAFN. The neighbourhood of Abobo is therefore not as alleged  
4 by the Prosecution an area frequented solely by civilians. Quite to the contrary,  
5 Abobo was the scene of bloody clashes between different rebel groups.  
6 Prosecution Witness P-10 explains that at Abobo there were many people equipped  
7 with weapons of war. One of the major Prosecution witnesses, P-9, says that  
8 members of the Invisible Commando and other groups blended in with the  
9 population. Witness P-9, 0011-0556 to 0561.  
10 Rebel groups had therefore infiltrated the population and it was not possible to  
11 distinguish between a civilian zone and a combat zone. The civilian population was  
12 one massive human shield used by the rebels.  
13 We have already shown on a number of occasions that the invisible commando was  
14 using heavy weaponry and attacking the civilian population, but yet more important  
15 Witness P-44, the key Prosecution witness, says, and I quote, "The police and FDS  
16 were in Abobo to do their duty, to provide security in Abobo and maintain law and  
17 order and not to attack the population. They were the ones who came under attack,"  
18 end of quote.  
19 Exhibit 3704, page 3715, P-44 also recalls that general instructions were to secure the  
20 area, ensure law and order, restore peace, but never to the detriment of the  
21 population.  
22 So, for P-44, it seems impossible to imagine that the FDS shot at civilians.  
23 However, the Prosecution alleges in paragraph 55 of its DCC, and I quote, that "On  
24 17 March 2011, FDS operatives based at Camp Commando fired on a  
25 densely-populated area of Abobo with mortars. This area was

1 frequently -- frequented exclusively by civilians and comprised a local market, a  
2 mosque and several private houses. Mortars were set up at Camp Commando.  
3 Several mortar shells were launched towards the market and the neighbouring area."  
4 This is the only material produced by the Prosecution on this event, one sole  
5 paragraph in his DCC, just the one. This is not sufficient.  
6 It was only during the hearing of 21 February last that the Prosecution transmitted  
7 further elements to the Defence. The Prosecution indicated that the pro-Gbagbo  
8 forces based at Camp Commando allegedly fired at least six mortar shells at midday  
9 on civilian neighbourhoods in the centre of Abobo. These shells allegedly landed on  
10 Siaka-Koné market near Abobo town hall, as well as on neighbouring -- surrounding  
11 neighbourhoods such as SOS Village d'Enfants and Dierrière Rails, transcript of  
12 26 February. Far from shedding light on the matter, the Prosecution in fact confuses  
13 the issue.  
14 So, according to the Prosecution, what exactly happened in Abobo on 17 March 2011?  
15 Was one or were several markets bombarded? What location was in the sights of the  
16 attackers? Did all these events occur simultaneously, or separately? It is not at all  
17 clear. What is more, if we delve into the Prosecution's allegations in detail, we are  
18 obliged to note that they are sketchy and supported by weak and contradictory  
19 evidence.  
20 The Prosecution did not carry out a true investigation into the matter in order to  
21 understand what really happened in Abobo on 17 March 2010, nor did the  
22 Prosecution reflect in any depth on the matter or suggest various hypotheses to shed  
23 light on the events and their context. He did not therefore realise the incoherence of  
24 his account.  
25 Sketchy allegations, vague locations: In paragraph 55 of the Document Containing

1 the Charges, the Prosecution alleges that the FDS units based at Camp Commando in  
2 Abobo used mortar shells to fire on an area which included a local market, a mosque  
3 and several private houses. He then goes on to indicate that several shells were fired  
4 towards the market and the surrounding area.

5 On 21 February last, the Prosecution makes matters yet more confusing by explaining  
6 that mortar shells were fired at civilian neighbourhoods. So what was or what were  
7 the locations targeted during the mortar shelling? Were -- was it a zone where there  
8 were, amongst other things, a market, a mosque and several private houses, or a  
9 market and its surrounding area, or civilian neighbourhoods? It is not at all clear.  
10 Whatever the case may be, none of his locations allegedly targeted by mortar shell  
11 was sufficiently well-defined.

12 The Prosecution provides very sketchy descriptions. We should recall that Abobo is  
13 not just any old neighbourhood in Abidjan. It is a town within a town. Abobo  
14 covers an area of 78 square kilometres, with a population of 1,500,000 inhabitants. It  
15 is the most densely populated area of Abidjan. So, by way of comparison, the city of  
16 The Hague covers an area of 98 square kilometres, with a population of 480,000  
17 inhabitants. Imagine having to look for an area in The Hague where there is a  
18 church, some houses and a large store, or a store and its surrounding area, or a  
19 civilian neighbourhood. There are scores of locations corresponding to this  
20 description.

21 It is yet more difficult to make out where the so-called area or market or civilian  
22 neighbourhood is to be found in Abobo, this town where there are many markets,  
23 many sub-areas and many residential areas.

24 The same can be said of the location where the shells allegedly landed. The  
25 Prosecution does not specify in its Document Containing the Charges which market it



1 is talking about. There are at least eight markets in Abobo.

2 On 21 February last, only five days ago now, the Prosecution indicated that shells

3 landed on Siaka-Koné market near Abobo town hall, in addition to the surrounding

4 neighbourhoods, notably that of Village d'Enfants and Derrière Rails.

5 On what basis does he found this claim that it was these locations rather than any

6 others? Indeed, witness testimony presented in support of his allegations differ.

7 The witnesses do not always indicate the same markets. Some of the witnesses for

8 the Prosecution mention the Siaka-Koné market, P-105, 117 and P-184.

9 Others such as P-105 talk of the Derrière Mai (phon) market, not the Derrière Rails

10 neighbourhood. Others talk about the Grand Marché or the central market.

11 Why did the Prosecution opt for Siaka-Koné market rather than the Grand Marché or

12 the central market of Abobo? Did the shells fall on the Dierrière Rails market, or on

13 the neighbourhoods surrounding Siaka-Koné market known as Dierrière Rails? The

14 allegations of the Prosecution -- the allegation of the Prosecution is very vague and

15 based on contradictory testimony.

16 Vague time frames. The evidence presented by the Prosecution is equally sketchy

17 with regard to the timing or the alleged timing of the bombing on the market.

18 Nowhere in the document containing the charges does the Prosecution provide a time

19 or a time frame for the shelling.

20 Witness testimony presented by the Prosecution sheds no further light on the matter,

21 quite to the contrary. Witness P-105 talks of fire of shots heard between

22 11 a.m. -- between 11 and 11.30 a.m. Witness P-105, 0019-0245, paragraph 18. He

23 does not mention midday, as suggested by the Prosecution during the hearing of

24 21 February. He is putting words in the witness's mouth.

25 This is not serious. Witness P-106 explains that he heard explosions like tank fire at

1 approximately 10 o'clock. However, during the hearing of 21 February, the  
2 Prosecution stated that the witness heard noises at approximately midday. He is  
3 once again taking liberties with the facts.

4 Witness P-107 indicates that he heard gun-fire between 14 -- between 2 and 3 p.m.  
5 According to Witness P-117, gun-fire occurred between 3 p.m. and 4 p.m. Witness  
6 P-47 says the gun-fire took place between 1 and 2 in the morning. Witness P-164  
7 says the gun-fire took place in the night of 16 to 17 March 2011.

8 On 21 February last, the Prosecution stated that the shelling took place at midday.  
9 At midday, not around midday, but at midday, but the witness testimony does not  
10 allow such an affirmation, as we have just seen. So what is he relying on? Did the  
11 Prosecution calculate the average time from all the potential times provided by the  
12 witness and reach a conclusion of midday?

13 The Prosecution should conduct additional investigations in order to determine the  
14 exact hour of the alleged shelling on the market and the surrounding area.

15 A vagueness also with regard to the number of shells allegedly fired. Nowhere in  
16 the DCC does the Prosecution state the precise number of shells fired upon Abobo  
17 market. Once again, during the hearing of 21 February, the Prosecution bothered to  
18 state that at least six shells were fired. However - however - there is only one  
19 witness who provides a figure close to that retained by the Prosecution, that is  
20 Witness P-184. Indeed, Witness P-184 is the only witness to have heard shelling of  
21 four to five shells, 0032-0011, page 0030, paragraph 116.

22 The other witnesses speak of only one or two shells at the most. Furthermore, the  
23 witnesses are not very clear with regard to the circumstances under which they heard  
24 the shelling. Some do not even remember when they heard it. Others state that  
25 they heard people speaking about shelling, but that they did not personally hear any.

1 Is this hearsay, or rumours? For example, Witness P-105 talks about two noises.  
2 P-107 says that he heard tank cannon fire, but he does not remember quite when he  
3 heard it. Witness P-172 heard only one noise. Witness P-164 did not witness the  
4 event, but heard people say that two shells had been fired on Abobo.  
5 This witness testimony is not sufficient to show whether there was one or two shells  
6 fired. What is more, it does not enable the Prosecution to claim that there were at  
7 least six shells fired.  
8 During the hearing of 21 February last, the Prosecution claimed, and I quote,  
9 "Prosecution testimony accounts are further corroborated by highly-detailed reports  
10 of the UN and Human Rights Watch, as well as by the accounts of victims gathered  
11 by NGOs. As we have just seen, the Prosecution witness accounts are sketchy and  
12 contradictory. This testimony has a greater probative value than the NGO reports,  
13 so the Prosecution cannot corroborate vague, sketchy and contradictory testimony by  
14 relying on anonymous sources with a very low probative value, as we have just said.  
15 He cannot force reality using testimony to correspond to the picture he is seeking.  
16 The onus is upon him to prove, to show. We should recall that William R. Pace,  
17 co-ordinator of the ICC Coalition, stated that human rights organisations are lousy  
18 investigators. They do not produce sufficient evidence that can be used by the  
19 Prosecution, or the Prosecutor. Lubanga judgment, paragraph 130.  
20 Furthermore, the Prosecution referred during the hearing of 21 February to a visit  
21 conducted by Human Rights Watch in July 2011 to the alleged location of the  
22 bombing, thereby suggesting that several shells were fired. However, he does not at  
23 any moment provide any figures which might have shed light on his final choice of  
24 the figure six.  
25 The Prosecution is therefore relying on only one witness testimony in support of his

1 claim that at least six shells were fired from Camp Commando, whilst the other four  
2 witness testimonies available to him mention one or two shells, and the Human  
3 Rights Watch report provides no such figure.

4 He is extrapolating the testimony at his disposal, thereby partly deforming their  
5 contents.

6 We should recall according to the adage "testis unus testis nullus," that one witness is  
7 no witness. The testimony of one witness alone is insufficient to establish the  
8 veracity of a fact in judicial terms.

9 There is also a vagueness surrounding the alleged number of victims. We would  
10 like to emphasise that during the hearing of 21 February, the Prosecution indicated  
11 that he is relying on testimony from Prosecution witnesses, the UN, and Human  
12 Rights Watch as the basis of his calculation of the number of civilians who were  
13 injured or killed during the alleged bombing of the market.

14 However, on the one hand the testimony presented is vague. The Prosecution is  
15 extrapolating the testimony in his possession to increase the alleged number of  
16 victims.

17 For example, at the hearing of 21 February, the Prosecutor states that Witness 105  
18 allegedly learned that four men who had been in an argument had been killed. How  
19 did he learn of this? Witness P-105 is also alleged to have heard mention that a  
20 woman and her husband were killed at the market on that day. How did she come  
21 by that information? Who were they? We know nothing about this.

22 According to Witness P-106, and according to the Prosecution, he had sought refuge  
23 at his home so he was not at his home at the time of the shelling and it is only the next  
24 day that he learned that 15 people had died at the market, while others are said to  
25 have died subsequently following their wounds. Who did he get that information

1 from? Who was it about?

2 Witness P-184 was at his home, in his case, when the alleged firing was heard. The  
3 Prosecutor at the hearing of last February 21 states that shortly after she received  
4 phone calls regarding the victims of these attacks, phone calls, phone calls, hearsay  
5 from anonymous unidentified persons. That is not good enough.

6 Furthermore, the Prosecutor himself has harped on the details of Witness P-1 -- of the  
7 duties of Witness P-184 and it -- in fact it is indeed because of the duties of this  
8 witness and his political affiliations that his statement must be taken with much care  
9 and caution.

10 In a further attempt to follow up on the number of victims, the witness, or to increase  
11 the number of witness victims, the Prosecution has relied on NGO reports which we  
12 submit are of very low probative value.

13 Would this be a good time to break, your Honour?

14 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (No interpretation).

15 MS NAOURI: (No interpretation).

16 THE COURT USHER: All rise.

17 (Recess taken at 3.34 p.m.)

18 (Upon resuming in open session at 4.04 p.m.)

19 THE COURT USHER: All rise.

20 Please be seated.

21 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Please  
22 proceed.

23 MR ALTIT: (Interpretation) Thank you, your Honour. Jennifer Naouri will  
24 continue her presentation.

25 MS NAOURI: (Interpretation) Madam President, your Honours. Relying on the

1 reports of major human rights organisations is not good enough to cause any facts to  
2 stand. Regardless, at the hearing of 21 February, the Prosecutor went even further to  
3 rely on an investigation that was conducted by Human Rights Watch. In fact, the  
4 Prosecutor underscores the fact that "Human Rights Watch allegedly went to the site  
5 of the shelling in July 2011 and reported that hundreds of impacts were still visible  
6 within a range of about 20 metres from the impact point of the shells," end of quote.  
7 Why did the Prosecutor himself not go to the site? Why did he settle for a few  
8 fragmentary pointers in NGO reports? Why did he not conduct an investigation  
9 himself? The onus is on him at the very least to cross-check the information  
10 contained in the NGO reports on which he relies.

11 The Prosecutor for example could have gone to the site with a number of experts,  
12 military experts or experts in ballistic tests. Neutral experts, not witnesses. These  
13 experts could have been able to test the plausibility and circumstances in which the  
14 alleged shelling would have taken place.

15 Judicial ballistics is a branch of forensics which studies the effects of projectiles from a  
16 firearm in order to determine the type of arm from which a bullet was fired or the  
17 grooves on spent casings, and also the trajectory of shells and its impact and the  
18 attendant resulting injury.

19 In order to identify the firearm from which a bullet is fired the various markings  
20 resulting from the shot are tested. This study of the trajectory could impact and its  
21 impact makes it possible to highlight the angles and distances travelled by a shot.  
22 Had the Prosecutor reverted to ballistics experts he could have been in a position to  
23 establish the source of the shots, the possible trajectories, the bullets, and determine  
24 whether the bullets were diverted or otherwise hit their targets. The Prosecutor  
25 could also have recorded their impact. Nothing points to the fact that he did so.

1 Similarly, had the Prosecutor requested the advice of a military expert he would have  
2 been apprised of the protocols relating to the use of mortars such as the use of  
3 log-books or reports and tank movements and the use of military equipment. It  
4 appears that the Prosecutor failed to cross-check any documents relating on -- relating  
5 to military movements and the movements of soldiers and a record of the arms  
6 available to the soldiers.

7 It is crucial for the Prosecutor to revert to such expertise, but since neither -- since the  
8 Prosecutor was not able to make any efforts to do so it is impossible for him today,  
9 not having reconstructed the events, to produce specific concrete and tangible  
10 evidence. Without such a serious investigation, what does the Prosecutor rely on to  
11 show us a Google Earth map with arrows indicating that shells were shot from the  
12 Camp Commando? These trajectories cannot be established except by military  
13 expert who will then give them probative value.

14 The Prosecutor also failed to conduct serious investigations into the perpetrators or  
15 the authors of this shelling. The Prosecutor himself on 21 February conceded that a  
16 large number of victims could not tell where the firing was coming from. Then he  
17 goes on to assert that according to NGO reports everyone knew that it was the  
18 pro-Gbagbo forces who were shelling.

19 How did he know? It was for the Prosecutor to investigate this.

20 The Prosecutor also relies on two witnesses, P-164 and P-239, in an attempt to identify  
21 the authors of the shooting, but these two witnesses were not at Camp Commando on  
22 17 March 2011. Furthermore, regarding the alleged authors or perpetrators of the  
23 shelling, the Prosecutor was in possession of all the necessary elements to verify the  
24 allegations made by P-146 and P-239, but he did not do anything in that connection.

25 Before I proceed, could we please move into private session, your Honour?

- 1 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (No interpretation)
- 2 (Private session at 4.09 p.m.)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
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- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)



1 (Redacted)

2 (Redacted)

3 (Open session at 4.12 p.m.)

4 THE COURT OFFICER: We are in open session, your Honours.

5 MS NAOURI: (Microphone not activated).

6 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Your  
7 microphone, please.

8 MS NAOURI: (Interpretation) I'm sorry.

9 Finally, contrary to what the Prosecutor asserted at the hearing of 21 February 2013,  
10 the military court in Abidjan was seized on 24 March 2011 with a motion to conduct a  
11 full investigation into the shelling - the alleged shelling - at Abobo. This is contrary  
12 also to the assertions by Witness P-9 and it is therefore important to monitor the  
13 results of these investigations as part of the serious work of the Prosecutor.  
14 We also realise that the Prosecutor failed to conduct serious investigations into these  
15 alleged shellings. He starts off with an allegation that this area was exclusively  
16 populated by civilians, but he offers no probative element in support of this assertion.  
17 He fails to consider evidence in his possession that would have opened the doors for  
18 other considerations. For example, P-9, a key Prosecution witness, testifies that  
19 members of the Invisible Commando had infiltrated the population; transcript P-9,  
20 transcript 0011-0056, page 0561.

21 The Prosecutor therefore must have been aware that there was no exclusively civilian  
22 zone in Abobo in March 2011. It is for that reason that the Prosecutor should have  
23 looked at other options other than an alleged attack on the civilian population.  
24 First hypothesis: This was not an attack on a civilian population. At paragraph 14  
25 of the DCC, the Prosecutor himself asserts that there was an armed conflict of a

1 non-international nature -- character rather, from 25 February 2011. So if there is a  
2 non-international -- armed conflict of a non-international character in Abobo in 2011,  
3 this must mean that combatants were pitted against each other on the one hand and  
4 civilians on the other. The combatants had infiltrated the civilian population which  
5 they used as a human shield. The Prosecutor therefore must have had to take this  
6 into consideration in order to determine the targets of such shelling.  
7 We have already submitted that the targeted location is not specifically identified.  
8 Had the Prosecutor bothered to grasp the entire reality of the situation in Abobo in  
9 March 2011, he would have raised a number of questions regarding the areas targeted  
10 by the shelling.  
11 Even more surprisingly, the Prosecutor failed to do so since at the hearing of  
12 21 February he uses war terms which specifically relate to the law of armed conflict;  
13 that is, *jus in bello*. For example, he talks of the use of mortars in urban areas or  
14 the -- and fails to distinguish between combatants and civilians, military targets,  
15 doesn't mention the prohibition under international law for using mortars in  
16 populated civilian areas and the position of the army as well as terms such as the  
17 position of the enemy.  
18 Prosecution Witness P-9 who held a very high position testified that Ivorian soldiers  
19 had received training in International Humanitarian Law, so why then did they target  
20 civilian population who supported them? This does not add up, your Honours.  
21 Let us recall that President Gbagbo's Minister of Defence at the time clearly explained  
22 that as of February 2011 the forces of law and order were constantly being targeted.  
23 Police precincts were attacked, officers were attacked at their homes and executed,  
24 and that the rebels, that is the FANA and the Invisible Commando, had full control  
25 over Abobo commune from end of February 2011.

1 At the hearing of 21 February, the Prosecutor himself said that troops travelling by  
2 vehicle to the Camp Commando had come under fire. Furthermore, we have seen  
3 that the combatants had infiltrated the population. How can the Prosecutor claim  
4 that there was not a single military target, not even a single soldier present in those  
5 areas that had come under shelling, whereas combatants could be found everywhere?  
6 In an attempt to support his argument that the targeted area was populated only by  
7 civilians, the Prosecutor ignores the reality in Abobo in March 2011. It is in doing so  
8 that he makes it impossible for the Chamber and the parties to have a full  
9 understanding of what happened in Abobo in March 2011.

10 We must underscore a burdensome coincidence, namely that the very day on which  
11 the so-called shelling occurred Alassane Ouattara created by an ordinance the Forces  
12 républicaines de Côte d'Ivoire, FRCI, which was a merger of the armed forces and the  
13 Forces Nouvelles into this new configuration.

14 Second hypothesis: The potential gaps -- or rather, the potential perpetrators were  
15 not of the FDS. The Prosecutor ignores - completely ignores - the presence of the  
16 Invisible Commando in Abobo, whereas Prosecution Witness P-11 testified to the  
17 contrary that they had heavy weapons and were well-equipped with mortars.  
18 These shells that rained on Abobo, why should we believe that they were not the  
19 shells of the Invisible Commando who were heavily armed with mortars and what  
20 have you as we have already established? The Minister of Defence explained that  
21 the Invisible Commando did not hesitate to use heavy weapons. Prosecution  
22 Witness P-107 also states that the Invisible Commando even shot at its own people.  
23 Document 0020-0064, paragraph 162.

24 Furthermore, President Gbagbo's Minister of Defence at the time of the events states  
25 that the government spokesperson, Minister Don Melo Ahoua said that this whole

1 case or scenario was a pure fabrication.

2 For these reasons, the Prosecutor should have examined these various hypotheses  
3 and conducted investigations in order to ascertain whether it was the FDS who  
4 actually fired these shells. This would have made it possible -- or rather, the onus is  
5 on the Prosecutor to exclude any other possibility.

6 Third hypothesis: A technical error. The Prosecutor provides information that the  
7 Chief of General Staff of the FDS had not authorised the use of mortars or shells in  
8 Abobo. Transcript 0011-0556, page 0559 for Witness P-9. And for Witness P-47,  
9 transcript 0015-0244, page 0267. And went on to say that any shelling of the Abobo  
10 market would have been in error. Therefore, the shelling was not intentionally or  
11 deliberately targeted at the market.

12 Had the Prosecutor reverted to military experts and forensic experts, these  
13 hypotheses would have been cross-checked. In fact, some of the aspects of the  
14 Prosecution's version raise questions as to their technical and factual feasibility. For  
15 example, we have said there were no exclusively civilian areas in Abobo in  
16 March 2011. Furthermore, the Prosecutor failed to explain how it is that shells  
17 landed allegedly at the SOS village d'Enfants.

18 If we analyse carefully the map provided by the Prosecutor, we note that this village  
19 is very close to Camp Commando. In fact, too close to Camp Commando for any  
20 shells to have been launched from the Camp Commando because, you see, if that had  
21 been the case the shrapnel from the shells would even hurt those who had fired them.  
22 Shelling of such weapons must target areas that are at least one kilometre away from  
23 the launch site. We want to point out also that Witness P-164 had drawn the  
24 Prosecution's attention to this point. Page 00 -- rather, document 0028-0481, page  
25 0489, paragraph 54.

1 The Prosecutor should -- could have and should have called for a military expert to  
2 provide these technical details and a more exhaustive investigation. The information  
3 on the alleged shelling of the market is too sketchy and too vague and too  
4 contradictory to form a solid and tangible enough basis for the Confirmation of  
5 Charges. They are so inconsistent that one wonders if shelling took place at all on  
6 17 March 2011. There is a total absence of any military report on the alleged shelling.  
7 Furthermore, neither the Minister of Defence nor the high-ranking officers of the  
8 army were aware of the alleged shelling. The minister was only informed of this  
9 possible shelling by a journalist as he left a cabinet meeting.  
10 Surprisingly, no political or military official was aware of this event, that journalists  
11 and the international media were already broadcasting. Why? Because this alleged  
12 shelling echoes the Sarajevo market bombing and resonates with people's consciences.  
13 The Prosecutor himself refers to the media coverage of this event.  
14 In conclusion, the Prosecution cannot claim that the leadership turned a blind eye to  
15 this incident. The Minister of Defence at the time explained that, having been  
16 informed by the journalist, he contacted the commanders of the gendarmerie and the  
17 Chief of General Staff to find out what the truth was. So he said they didn't know  
18 what was going on. I asked -- according to the minister, he asked them to  
19 investigate and report to him accordingly. There is therefore no substantial ground  
20 to believe that these so-called pro-Gbagbo persons committed the acts as charged by  
21 the Prosecutor.  
22 Regarding the events of 12 April in Yopougon, in paragraph 56 of the DCC, the  
23 Prosecutor alleges that on 12 April 2011 young militias, policemen and pro-Gbagbo  
24 mercenaries attacked several areas of Yopougon, including Duékoué, leading to more  
25 than 80 dead and injured. Once again, this allegation is concerned -- is contained in

1 a single paragraph. Whatever the case, this attack is supposed to have taken place  
2 after the arrest of President Gbagbo.

3 Let us briefly revisit a situation in Yopougon shortly before the arrest of President  
4 Gbagbo and after his arbitrary arrest.

5 Before everything, let us point out that the majority of Yopougon inhabitants are  
6 members of ethnic groups reputedly favourable to President Gbagbo. As early as  
7 31 March 2011, Yopougon was targeted by rebels. For example, about 15 civilians  
8 were killed by forces fighting in support of Alassane Ouattara. The rebels resorted  
9 to all sorts of abuses. For example, the rebel chief, Chérif Ousmane, and his men  
10 carried out a large number of extrajudicial killings. Document 3737.

11 Prosecution Witness P-11 confirms the presence of forces loyal to President Ouattara  
12 in Yopougon. Transcript 0016-0256, page 0258.

13 During the days preceding the arrest of President Gbagbo, the rebels carried out  
14 several arbitrary arrests of young people in the entire town including Yopougon.  
15 During those arbitrary arrests, several students were molested and killed.

16 The Defence Minister of President Gbagbo's government at the time of the events  
17 clearly explains, and I quote, "I have no knowledge of all the events after the arrest of  
18 President Gbagbo because the High Command of the FDS had pledged allegiance to  
19 the new authorities on 11 April 2011 and as a result I no longer received any reports."  
20 This means that in April 2011 the security forces no longer existed, including the  
21 police, the gendarmerie and CeCOS. In fact, the majority of those who had not  
22 pledged allegiance to the new authorities were detained in the Hotel du Golf.

23 During the hearing of 21 February, the Prosecutor stated that roadblocks were erected  
24 almost everywhere in Yopougon and yet the reality in Yopougon was the exact  
25 contrary of what the Prosecutor says. The inhabitants of Yopougon had barricaded

1 themselves as the rebel forces advanced in order to avoid destruction, looting, rapes  
2 and murders, and these were barricades and not roadblocks. These were makeshift  
3 barricades erected by the civilians to protect themselves.

4 After the arrest of President Gbagbo, various groups supporting Alassane Ouattara  
5 reinforced the offensive in Yopougon. In fact, the rebel forces were supported by the  
6 French forces. This means that the Licorne force shelled the Yopougon  
7 neighbourhood as well as the military camp, Toits rouges, Nouveaux quartier and  
8 Koweit. They fired on residential houses and civilians. Document 2402, pages 2403  
9 to 2404.

10 As we have stated in our statement of facts, after the fall of President Gbagbo on  
11 11 April 2011, the rebel leaders divided Abidjan into several tactical zones. Defence  
12 document 15-3859.

13 Yopougon specifically was handed over to Ousmane Coulibaly, aka Ben Laden. We  
14 should point out that Ousmane Coulibaly and his men were accused of several  
15 international crimes, including systematically targeting civilians and repeatedly  
16 perpetrating acts of sexual violence denounced by international human rights  
17 organisations.

18 In a report dated October 2011, on post-electoral violence, Human Rights Watch  
19 identified Coulibaly as one of the leaders of the FRCI under whose command soldiers  
20 carried out dozens of summary executions and acts of torture during the final battle  
21 for Abidjan in April and May 2011.

22 The rebel attacks were repulsed by the self-defence groups made up of the local  
23 inhabitants. In order to secure their surrender, the rebel leaders initiated  
24 negotiations and asked former pro-Gbagbo officials to negotiate for the disarming of  
25 the inhabitants, and this is explained by Prosecution witness P-44, and I quote, "At

1 one point, the leaders were contacted to go to Yopougon with other leaders, to ask  
2 pro-Gbagbo militants to lay down their weapons. They accepted." D-15 3704 (sic),  
3 page 3716. I would like to underscore the importance of Witness P-44 relating to this  
4 information. These leaders managed to persuade the inhabitants to lay down their  
5 arms and to pull down their barricades, and this is confirmed once again by Witness  
6 P-44.

7 Once the inhabitants had been disarmed, rebel groups fanned out in Yopougon and  
8 carried out several abuses and committed several crimes. It is characteristic of the  
9 Prosecutor not to have said a single word about this, because if he had done that, he  
10 would not have arrived at the DCC. This is all the more surprising because the  
11 crimes are documented, and the Defence has transmitted to the Prosecutor damning  
12 photographs.

13 As we said during our statement of facts, several civilians were rounded up and  
14 detained in Yopougon, particularly at the Lubafrique station. We saw young people  
15 sprayed with petrol and about 100 young men detained arbitrarily in inhuman  
16 conditions. In fact, Ben Laden's men carried out dozens of summary executions and  
17 acts of terror in April and May 2011.

18 Relating to the events that happened in Yopougon on 12 April 2011, on the one hand,  
19 the Prosecutor relies on vague testimonies. For example, during the hearing of  
20 21 February the Prosecutor referred to the testimony of P-185, who is supposed to  
21 have heard gun-fire and discovered dead bodies the following morning. This  
22 witness, who was barely a major and still a student, does not have any qualification  
23 that enables him to analyse the impact and injuries on the bodies that he saw. The  
24 witness makes a number of assumptions, and that is not sufficient. We should recall  
25 that at the time of the events in Yopougon, Yopougon was the theatre of several



1 skirmishes. It is not possible to deduct from the sound of gun-fire heard on the eve  
2 that the victims that the witness saw were the result of the gun-fire from the so-called  
3 mercenaries.

4 On the other hand, the Prosecutor, during the hearing of 21 February, relied on an  
5 affidavit compiling statements from witnesses taken by NGOs on Human Rights  
6 Watch reports and similar resources to try to inflate the number of victims and the  
7 weight of his evidence regarding the events that are supposed to have taken place in  
8 Yopougon in April 2011.

9 We can follow the same procedure and arrive at a different reality in a  
10 neighbourhood which was carved up by the rebels. In the report, "They killed them  
11 as if it was nothing. The Need for Justice in Post-Electoral Côte d'Ivoire in  
12 October 2011," Human Rights Watch documented six murders in Kuwait perpetrated  
13 by Republican Forces.

14 A statement taken on 25 May 2011 described five men being robbed, lined up and  
15 machine-gunned. Four of the victims died on the spot and the fifth victim, who was  
16 shot in the thigh, pretended to be dead and crawled to a neighbouring house. The  
17 witness, a friend living nearby, went up to the man and he asked for water. When  
18 he returned after fetching the water, he found his friend dead, with a bullet on  
19 his -- in his arm and another bullet hole on his chest and an exit wound on his back.

20 In the same Human Rights Watch report, a man described the murder of his brother  
21 in Kuwait on 3 May 2011: "They took my youngest brother who was 21 years old  
22 and asked his ethnic origin. He said he was a Bété. Two of them grabbed his legs.  
23 The other seized him by the arms and the back, while the fifth person held his head.  
24 Then one of them took out a knife, recited a mystical prayer, and slit his throat. He  
25 was screaming. His legs went into a spasm when they slit his throat. Blood was

1 flowing over his body. I could not turn my eyes away. He was my brother. They  
2 said that they had to eliminate all the patriots."  
3 Still in the same report, and I quote, "A member of the Republican Forces in  
4 Yopougon declared to the Human Rights Watch that men under the control of  
5 Ousmane Coulibaly, a former commander of the new forces, had been responsible for  
6 the offensive and a mopping-up operation in Kuwait in Yopougon. Several  
7 journalists of Ivorian origin and other sources also identified Coulibaly as being the  
8 commander in charge of operations in this area. They stated that they looked at his  
9 identity card and shot him dead. A witness stated to Amnesty International that, on  
10 that day, a policeman who was -- who belonged to pro-Gbagbo forces was taken and  
11 then shot at close range.  
12 These extracts show that in April 2011 Yopougon was in the hands of the rebels and  
13 they attacked civilians considered to be pro-Gbagbo. This was all the easier because  
14 the rebels could attack the population since the security forces no longer existed and  
15 their population could no longer defend themselves. The Prosecutor, if he had  
16 investigated appropriately, could have seen that these incidents could not have been  
17 feasible.  
18 In a report entitled 200 -- or, rather, in a report dated 2012 and entitled "A Long Way  
19 From Reconciliation" Human Rights Watch states that "A good number of abuses  
20 were associated to the massive arrests committed under Ousmane Coulibaly."  
21 Coulibaly was the commander of the former BAE camp in Yopougon from May 2011  
22 right up to the end of September 2012 and he was also placed at the head of  
23 operations in Dabou.  
24 Yopougon was still in the hands of the rebels, and this is what is revealed in the  
25 Human Rights Watch document published today and entitled "The Victors' Justice:

1 The Situation of Human Rights Two Years After the Post-Electoral Crisis."  
2 Regarding rapes, the Prosecutor identified a single victim in Yopougon. We are  
3 deeply saddened by what this person was subjected to. However, nothing links  
4 these perpetrators of the rape to the pro-Gbagbo forces. Her description indicates  
5 that these were criminals who seized the opportunity offered by the general  
6 confusion to perpetrate rapes and, in fact, a single testimony is not sufficient to  
7 demonstrate that there was a policy. The Prosecutor tries once again to inflate the  
8 number of rape victims that are supposed to have been the victims of pro-Gbagbo  
9 forces in Yopougon and he bases himself on forms compiled by local NGOs and  
10 Human Rights Watch.  
11 We can use the same procedure to show that the rapes perpetrated in Yopougon are  
12 the tragic consequence of the general chaos that happened at that time.  
13 Let us look at the report of Human Rights Watch. They killed as if it was nothing in  
14 2001, and this relates to a rape that happened in Koweit, in Yopougon, on 8 May 2011,  
15 and I quote, "There were men in military uniform who arrived at 9 o'clock and said  
16 that they were looking for weapons. They were tall. They were soldiers of the  
17 FRCI and they were wearing clean uniforms. One of the leaders said, "You are Bétés,  
18 Guérés, Attiés. You are the ones who made war. Where are the young people?  
19 We are going to kill all of them. Their leader, a man, grabbed me and took me to my  
20 neighbour's house. He threw me on the mattress and told me to open my legs.  
21 And I told him, please, do not do that. I begged him to stop, but he beat me and told  
22 me to shut up. He took me by force and raped me. He held me there and raped me  
23 for about one hour. He was violent throughout this time. I was bleeding between  
24 my legs. Throughout this entire time the other members of the FRCI were there  
25 looting. He was their leader. I could hear them call him 'Commander Teo.' After

1 raping me, he took his Kalashnikov and tried to violently penetrate me with it. I  
2 closed my legs and their rifles struck my thigh. He laughed and said 'Bravo,' and  
3 then he left the room."

4 Rape is an unspeakable act, rape is a revolting and reprehensible act, but before  
5 everything else it is a common law crime which can take place in a situation of chaos.  
6 And for rape to be characterised as a crime against humanity, it must meet the legal  
7 criteria. It cannot be characterised as an international crime if the authors are  
8 unidentified.

9 It is crucial to note here that the NGO report mentioned by the Prosecutor mentions  
10 the rape of 17 women, but the rapes are perpetrated by young people in the  
11 neighbourhood without any link to any of the two parties to the conflict.

12 CIV-OTP-0021-0955, page 0982. There is no doubt that the women who suffered  
13 from the war deserve justice, but it is up to Ivorian justice to perform that duty.

14 The victims have not been identified. The victims in Yopougon in April 2011 were  
15 many from all different backgrounds. The testimonies mention figures, but  
16 practically none of them provide the names of the victims. They all -- NGO reports  
17 relied on by the Prosecutor gives figures and relates what people were saying, but  
18 who are these people?

19 Regarding the so-called pro-Gbagbo victims, it cannot be established merely on the  
20 basis of someone's ethnic origin that they were victims of pro-Gbagbo forces. It  
21 would be too simplistic to claim that all those who hailed from the north were victims  
22 of so-called pro-Gbagbo forces. We should point out that there were several  
23 northerners who supported Gbagbo.

24 Considering that the Prosecutor was unable to provide probative evidence to support  
25 his theory, he claims that the government organised armed groups to reinforce the

1 troops and to carry out attacks against civilians. It is important to note that the  
2 Prosecutor deliberately never distinguishes between the youth wings of the political  
3 parties, militias and mercenaries; paragraph 56 of the DCC.

4 In fact, during the hearing of 21 February 2013, he did not distinguish at any time  
5 between the young militias, the elements of the police force and the pro-Gbagbo  
6 mercenaries who are supposed to have been the perpetrators of the crimes in  
7 Yopougon on 12 April 2011. He systematically lumped all these groups together and  
8 yet these are different categories of people.

9 The militias in the Ivorian context are inhabitants of a neighbourhood who, when  
10 faced with a danger use -- arm themselves with traditional weapons and erect  
11 barricades so as to defend themselves, especially when the forces of law and order  
12 have disappeared, so these are inhabitants who tried to defend themselves against  
13 rebel attacks.

14 In fact, the definition of "militia" in the Manuel Dictionary of Diplomacy and Public  
15 and Private International Law states that the use of militia refers to the temporary  
16 mobilisation of the inhabitants of a country occurring in special circumstances. The  
17 Young Patriots were a loosely structured movement similar to the youth wings of the  
18 various political parties such as the youth wing of the FPI. These groups of young  
19 people had a purely political activity organising rallies, meetings and marches as well  
20 as information sessions. They were not armed. The Prosecutor does not provide  
21 any evidence to show that they were armed in any way and that they had a combat  
22 structure.

23 The Prosecutor also referred to the "parlement," in quotes, or parliaments where  
24 young people are supposed to have stocked weapons, but this is preposterous  
25 because the parliaments were places of meetings where young people gathered to

1 discuss current events, politics and also arts, culture and history. These were places  
2 of peaceful meetings which were part of the citizens' lives in Côte d'Ivoire.  
3 We should also point out that during the major offensive towards the south the senior  
4 army officers called on the young people to join the army. This shows that the  
5 groups were not armed and they were looking at the fight only from the perspective  
6 of the defence of the institutions, and I will propose that we look at video footage of a  
7 meeting organised by Blé Goudé in January 2011, at the Champroux Stadium in  
8 Marcory, which was attended by the Chief of Staff who addressed the meeting. It is  
9 OTP-0003-0010.

10 (Viewing of the video excerpt CIV-OTP-0003-0010)

11 MS NAOURI: (Interpretation) We would like to underscore the importance of the  
12 presence of the Chief of Staff on this video footage. This was a peaceful appeal  
13 which was a way of avoiding unrest, if in case young people were left without  
14 instructions.

15 Regarding the mercenaries, it should be pointed out that at no time does the  
16 Prosecutor provide any specific facts about the mercenaries. He mentioned them  
17 amongst the members of the FDS and the militias, and yet according to the definition  
18 given by the dictionary I quoted, mercenaries are troops or soldiers from a foreign  
19 country whose services have been bought.

20 Where is the evidence? Why is the Prosecutor incapable of distinguishing between  
21 these two groups, because in the absence of a serious investigation he cannot make  
22 any precise accusations? These allegations are all the more surprising because a key  
23 Prosecution witness, P-44, stated and I quote, "I never saw a single mercenary in  
24 Yopougon, even a single stranger. I only saw Ivorians," document 3704, page 3716.  
25 We have already said that in an attempt to corroborate his testimony, the Prosecutor

1 relies on reports from human rights organisations, and we stated in the beginning of  
2 our presentation that NGO reports lack clarity. These anonymous sources have a  
3 lower probative value; that is in accordance with the jurisprudence of this Court,  
4 given the difficulties of cross-checking the truthfulness and authenticity of such  
5 information.

6 In fact, if we follow the same procedure, we would arrive at a different reality. It is  
7 therefore up to the Prosecutor to carry out the proper investigations.

8 Witness P-106 provided the OTP with a video showing a terrible massacre. He  
9 stated that this video had been filmed by one of his friends in Yopougon. According  
10 to him, the perpetrators of the massacre were members of the LPM and the victims  
11 were supporters of the RDR. Statement 0019-0211, paragraphs 98 to 100. And yet  
12 this video footage was not filmed in Yopougon.

13 It was not even filmed in Abidjan. It was not filmed in Côte d'Ivoire. In fact, it was  
14 filmed in Kenya in March 2009.

15 In Kenya. And how do we know this? Because the people in the video footage  
16 speak Swahili.

17 MR MACDONALD: (Interpretation) And who told you that it was a video from  
18 Kenya? It was the Prosecution. Your Honour, we are coming back to this same  
19 document repeatedly in the opening statement, in the first day of presentation, and  
20 yesterday the Defence admitted reluctantly that the Prosecution provided the  
21 information, and they are coming back once again to this document, whereas the  
22 witness has stated clearly the circumstances under which he received that video.  
23 We are not concealing any evidence here. In fact, we are investigating both  
24 incriminating and exonerating circumstances.

25 I believe that the public that is being targeted has understood.

1 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) I want a  
2 clarification. Are we talking about that same video?

3 MS NAOURI: (Interpretation) Yes, it is the same video, but we are talking about  
4 Yopougon but -- and so it was important to mention it. This is essential, because it  
5 contained -- it concerned Yopougon and I would like to make a clarification.

6 We were informed that this video was filmed in Kenya, but not because the  
7 Prosecutor investigated. It was by pure coincidence that the languages service  
8 realised this and we wanted to provide that information.

9 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) But the  
10 Prosecution disclosed it.

11 MR MACDONALD: (Interpretation) It is either the languages services or the  
12 Prosecution. It did not fall from the sky.

13 MS NAOURI: (Interpretation) To conclude, with this experience of fabricated or  
14 false evidence which has been discovered, the Defence considers that the vague and  
15 general allegations of the Prosecutor relating to the events that are supposed to have  
16 happened in Yopougon after the arrest of President Gbagbo are not supported by  
17 sufficient evidence to prove that the alleged crimes were committed in Yopougon.

18 The Prosecutor relies on vague and fuzzy elements that lack credibility and some of  
19 which have even been tampered with. The Prosecutor also does not provide  
20 evidence that on 12 April in Yopougon people from the north were targeted.

21 During the hearing of 21 February, the Prosecutor specifically mentions only one  
22 witness, Witness P-109, and we have already stated *testis unus testis nullus*; that is  
23 one witness, no witness.

24 Therefore, there was no policy. We have also showed that this was a situation in  
25 which there was general chaos, so it is impossible to show a known and



1 well-rehearsed model. There are no substantial grounds therefore to believe that the  
2 so-called pro-Gbagbo elements who have not been identified committed the acts  
3 charged by the Prosecutor.

4 In conclusion, regarding the four events and the issue of responsibility, I will hand  
5 over the floor to Maître Fauveau Ivanovic.

6 MR ALTIT: (Interpretation) Are you thinking the same thing as myself?

7 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, that is  
8 the time to break. We will come back in half-an-hour, 25 minutes past 5.

9 THE COURT USHER: All rise.

10 (Recess taken at 4.58 p.m.)

11 (Upon resuming in open session at 5.28 p.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Maître Altit,  
15 you may address the Court.

16 MR ALTIT: (Interpretation) Thank you, Madam President. Maître Fauveau  
17 Ivanovic will now talk to you about responsibility.

18 MS FAUVEAU IVANOVICH: (Interpretation) Madam President, your Honours,  
19 even if the Defence considers that the evidence presented by the Prosecution does not  
20 establish substantial grounds to believe that the facts charged occurred in the manner  
21 described by the Prosecution, it shall show that, whatever the case may be, none of  
22 these acts can be ascribed to President Gbagbo. These acts cannot be ascribed to him  
23 under either Article 25(3)(a), nor under Article 25(3)(d) of the Statute. What is more,  
24 the subjective and mental elements of the crimes, as required under Article 30 of the  
25 Statute and Article 7 of the Statute, are not present.

1 We shall first start by analysing the elements of Article 25(3)(a) of the Statute and we  
2 shall establish the legal framework therefore.

3 In paragraph 57 of the amended DCC, the Prosecution alleges that President Gbagbo  
4 is criminally responsible as indirect co -- as indirect perpetrator under Article 25(3)(a)  
5 of the Statute of the Court. Under this Statute, a person can be found guilty for this  
6 crime. In accordance with this Statute, a person shall be criminally responsible and  
7 liable for punishment for a crime within the jurisdiction of the Court if that person  
8 commits such a crime whether as an individual, jointly with another, or through  
9 another person regardless of whether that other person is criminally responsible.

10 Article 25(3)(a) therefore comprises the notions of direct co-perpetration,  
11 co-perpetration, or indirect co-perpetration. The case law of the Court allows for  
12 indirect co-perpetration, a combination of co-perpetration and indirect  
13 co-perpetration and in this case the Prosecution has chosen this mode of liability.

14 We shall hark back to this later on.

15 Under the well-established case law of the Court, one must examine the criminal  
16 responsibility of an individual as to whether this individual acted alone, jointly or  
17 with another person or through another person, according to the degree of control  
18 exercised over the crime.

19 Under the jurisprudence established in the Katanga or Ruto cases, a co-perpetrator is  
20 somebody who exercises control jointly with another individual over tasks assigned.

21 An indirect person is somebody who exercises control, who exercises control over the  
22 willingness of those individuals who carry out the objective elements of the crime.

23 An individual who exercises no control over a person whom -- through whom the  
24 crime is alleged to have been committed cannot be deemed to have committed the  
25 crime through that person. However, if jointly with another individual this person

1 acts, the crimes can be ascribed to him according to the principle of mutual  
2 attribution.

3 In setting forth the rules pertaining to the commission of a crime through another  
4 responsible person, the Rome Statute is focussing on the category of cases where the  
5 perpetrator exercises controls -- control over an organisation. It is essential for the  
6 leader or person in charge to exercise authority and control over the apparatus and  
7 for this authority and control to be obvious in the effective execution of his orders by  
8 his subordinates.

9 The objective conditions common to direct and indirect co-perpetration based on joint  
10 control exercised over the crimes are the existence of an agreement or common plan  
11 between two or more people; the essential co-ordinated contribution of each of the  
12 co-perpetrators resulting in the objective elements of the crime.

13 What is more, when we are talking about indirect co-perpetration, it is  
14 well-established in the case law of the Court that the suspect must have control over  
15 the organisation; that the organisation must have had a hierarchical structure and that  
16 the execution of the crimes must be ensured by the automatic execution of the orders  
17 given by the suspect.

18 Indirect co-perpetration applies to the context of crimes committed by organised  
19 hierarchical groups. The leaders of the organisation are deemed to be those mainly  
20 responsible for the crimes committed by their subordinates by virtue of the control  
21 exercised within the structure of the organisation. This approach designates the  
22 organisation and its members as instruments in the hands of its senior members who  
23 may make use of them.

24 In the Katanga case, the Pre-Trial Chamber found that the leader must exercise his  
25 control over the apparatus in order to execute the crimes, which means that as a

1 perpetrator behind a perpetrator, he is using his authority and power within the  
2 organisation to ensure that his orders are carried out.

3 The execution of these orders must include the commission of one crime falling  
4 within the jurisdiction of the Court. This is the decision on the Confirmation of  
5 Charges of 30 December 2008, paragraph 714.

6 For a person to be found responsible for the crimes levelled against him as an indirect  
7 co-perpetrator, he is required to have made an essential contribution resulting in the  
8 realisation of the material elements of the crime. The essential contribution is  
9 something that has been repeatedly requested before this Court, as confirmed by the  
10 Trial Chamber in the Lubanga case. And I refer here to the judgment.

11 The degree of contribution marks the distinction between principal responsibility and  
12 accessory responsibility. Essential contribution of the accused to the common plan  
13 must therefore -- with regard to the common plan, therefore, if the common plan  
14 involves both aspects, legal and criminal, the accused cannot be held criminally  
15 responsible under Article 25(3)(e) of the Statute for his contribution to the legal  
16 aspects of the criminal plan.

17 Finally, for there to be indirect co-perpetration, the subjective conditions must be met.  
18 The suspect must satisfy the subjective elements of the crime concerned, the suspect  
19 and co-perpetrators and other co-perpetrators must all share the knowledge and  
20 admit to the fact that the implementation of their common plan could result in the  
21 realisation of the objective elements the crime and the suspect must know the  
22 circumstances under which he has control over the crime.

23 Even if the jurisprudence before this Court has been developing in this matter  
24 through the first cases in terms of acceptance of this notion of indirect co-perpetration,  
25 the Defence emphasises that this is a contested mode of liability not explicitly

1 outlined in the Statute and it is the fruit of a particular interpretation of the Statute as  
2 a combination of co-perpetration and indirect perpetration. This combination has  
3 been invented by the jurisprudence in order to bridge the gap presented as such in  
4 Article 25.

5 THE INTERPRETER: The speaker is going too fast.

6 MS FAUVEAU IVANOVICH: (Interpretation) This approach seems dangerous as it  
7 automatically leads to the broadening of the scope of criminal responsibility, whilst  
8 this should be subject to strict interpretation.

9 Combating impunity does not warrant an extensive interpretation of the crimes and  
10 modes of liability, as at the very heart of criminal proceedings is the principle of  
11 legality. In this regard, the Defence recalls that this Court is the first international  
12 court to explicitly recognise this principle in its Statute, which is in itself  
13 commendable.

14 Under Article 22(2) of the Statute, the definition of a crime shall be strictly construed  
15 and shall not be extended by analogy. In case of ambiguity, the definition shall be  
16 interpreted in favour of the person being investigated, prosecuted or convicted. This  
17 article applies equally to the modes of liability.

18 In the Bemba case, on the decision of 3 March 2009, paragraph 26, the Pre-Trial  
19 Chamber found that crimes and modes of liability go hand in hand. The material  
20 elements or -- are defined according to the modes of participation described in  
21 Articles 25 and 28 of the Statute.

22 The fact that a person bears responsibility for a crime as a perpetrator, accomplice or  
23 hierarchical superior has an influence on the very structure of the crime. And the  
24 Chamber continues, in paragraph 27, saying that this correlation is reflected for  
25 example in the wording of Article 25(3) and Article 31 of the Statute, which states that

1 the mental or subjective element shall necessarily characterise the crime as defined  
2 under Article 6, 7 and 8, read in conjunction with Article 25 of the Statute, under  
3 which the material or objective elements of the crimes are set out.  
4 Indeed, any broadening of the scope of modes of liability results in the weakening of  
5 the nexus between the alleged perpetrators of the crime and the crime and has a direct  
6 influence on the subjective element of the crime.

7 It transpires therefore from the application of the principle of legality that any  
8 application of indirect co-perpetration must be based on a strict interpretation. A  
9 link must be shown to exist between liability and the specific crimes and events  
10 underpinning the charges. However, we shall see that the Prosecution does not at  
11 any point do this.

12 If we accept the concept of indirect co-perpetration, this shall not allow proceedings  
13 to be instituted against one individual unless still, for that person to be convicted, if  
14 the charges do not meet all the objective and subjective elements required by the  
15 Statute for the establishment of the crime.

16 Therefore the concept of indirect co-perpetration based on a common plan should  
17 be -- only be allowed if the person charged contributed on the basis of a common plan  
18 to the commission of a crime in all willingness and with the intention of committing  
19 the crime.

20 We have discussed this previously, but we should recall that for proceedings to be  
21 instituted against an individual, the Prosecution must present sufficient evidence  
22 establishing substantial grounds to believe that criminal acts can be ascribed to the  
23 person charged.

24 In order to satisfy these requirements in the context of indirect co-perpetration, the  
25 Prosecution must therefore present the following evidence: He must prove that

1 there is an existence of an agreement or a common plan between two or more persons;  
2 that there is an essential co-ordinated contribution of each of the co-perpetrators  
3 resulting in the crime itself; that there's existence of an organisation with a structured  
4 hierarchy; that there is control of the person charged over the organisation; that there  
5 is its automatic execution of orders given by the suspect; that there is an  
6 existence -- that the existence of subjective elements of the crime concerned; that there  
7 is knowledge and admission on the part of the alleged co-perpetrator; that the  
8 implementation of the common plan can result in the realisation of the objective  
9 elements of the crime; and lastly, that the knowledge of the person charged over the  
10 circumstances -- the factual circumstances enable him to exert joint control over the  
11 commission of the crime. We shall show that despite the allegations on the part of  
12 the Prosecution, he has not satisfied any of this criteria.

13 Absence of responsibility of President Gbagbo under Article 25(3)(a). In order to  
14 show that the Prosecution has not brought any evidence establishing at this stage of  
15 proceedings a nexus between President Gbagbo and the crimes charged, the  
16 Defence will first analyse the existence of an organisation with a hierarchical structure  
17 which is the necessary element for the responsibility of an indirect co-perpetration  
18 and over which President Gbagbo would have had control. We shall show that such  
19 an organisation did not exist and that as a result President Gbagbo could not have  
20 had any control over it.

21 The Defence shall then go on to analyse this alleged contribution on the part of  
22 President Gbagbo to the implementation of the common plan and shall show that no  
23 common plan ever existed. Lastly, the Defence shall show that the subjective  
24 elements required in application for Article 25(3) do not exist and that therefore none  
25 of these crimes can be ascribed to President Gbagbo.

1 The absence of the existence of an organisation under Article 25(3)(a) of the Statute:  
2 For a person to be found responsible as an indirect co-perpetrator, they have to have  
3 control over an organisation which has to possess a structured hierarchy. Such an  
4 organisation does not exist in this case.

5 In paragraph 60 of the DCC, the Prosecution -- in paragraph 60 of the DCC the  
6 Prosecution alleges that the implementation of the common plan was executed by an  
7 organised structure, comprising the FDS and reinforced by youth militia and  
8 mercenaries, that President Gbagbo as President of the Republic should have in  
9 theory had an apparatus with a hierarchical structure that would have fulfilled the  
10 criteria of case law.

11 President Gbagbo was the President of the Republic and, logically speaking, he  
12 should have had a hierarchical and structured apparatus. However, Laurent  
13 Gbagbo, President of Côte d'Ivoire, by virtue of mismanagement of the Ivorian crisis  
14 on the part of the international community and by virtue of a lack of support, did not  
15 have a hierarchical and functional structure over which he could have exercised  
16 control.

17 The apparatus of power to which the Prosecution is referring and which would have  
18 consisted in the defence forces and security forces, reinforced by youth militia and  
19 mercenaries, does not constitute a hierarchical and organised structure under the  
20 terms of the Court's jurisprudence.

21 In order to show that President Gbagbo had the necessary force to implement the  
22 policy he designed, the Prosecution is attempting to present in paragraph 61 of the  
23 DCC the forces of defence and security as well-equipped and heavily armed, adding  
24 that these forces received regular payment. Once again, we shall show that the  
25 Prosecution is deforming reality.



1 The FDS: The defence and security forces were regular republican forces. It would  
2 seem normal that a sovereign state possess armed forces and it would also seem  
3 normal that the members of these forces be remunerated. The fact that salaries were  
4 paid to these people would be a difficult basis to show that the policy - the violent  
5 policy, or criminal policy - was implemented.

6 Salaries were paid to all members of the FDS without distinction, irrelevant of the  
7 political background, and we shall see that the FDS was divided and that the  
8 members of the FDS were supporters of Alassane Ouattara and his political  
9 movement, but this allegation does not show the existence of any particular  
10 organisation.

11 Then we shall talk about soldiers loyal to President Gbagbo. According to the  
12 Prosecution, they were well-equipped and they had heavy weaponry. All the  
13 components of this allegation are erroneous. These were not soldiers loyal to  
14 President Gbagbo, but these were lawyers (sic) belonging to the armed forces of a  
15 sovereign state, amongst whom, I repeat, there were supporters of Alassane Ouattara.

16 The FDS comprised people hailing from different ethnic origins, of different religious  
17 belief and who quite naturally had different political views or preferences. Witness  
18 P-239 stated that within the army there was a division. The people from the west of  
19 the country were pro-Gbagbo and those from the north were pro-Ouattara.

20 0038-0002, page 0003, paragraph 10.

21 Witness P-164 led us to understand quite clearly that the FDS also included Alassane  
22 Ouattara supporters and that they were working in support of him. 0028-0481.

23 It would seem that at the Hotel du Golf there were policemen, gendarmes and  
24 soldiers who were working with them. "With them" means for Alassane Ouattara,  
25 which is also confirmed in Defence document 1014, page 1015, and this comes from

1 statement 0014-0479, pages 045 (sic), 0506.

2 With regard to these well-equipped soldiers we are here talking about the armed  
3 forces of Côte d'Ivoire, so it would be quite normal for a sovereign state to have a  
4 well-armed armed force, also armed with heavy weaponry, but this was not the case  
5 for the armed forces of Côte d'Ivoire, who were very much lacking in weapons and  
6 men -- and strength. And, once again, all the members of the FDS were not  
7 supporters of President Gbagbo. However, they were all equally armed without  
8 regard to their political affiliations, or any other affiliations.

9 With regard to the equipment that the FDS had, all of the commanders of the armed  
10 forces were constantly complaining about the lack of weapons. The only person  
11 who saw many weapons was Witness P-44, but this Witness P-44 is not a soldier.  
12 What represents a lot of weapons for a civilian in fact represents very few weapons  
13 for a soldier. What is more, Witness P-44 declared himself that he is not  
14 well-acquainted with weapons. Transcript 0014-0646, page 0706. If he was not  
15 well-acquainted with weapons, then how was he in a position to pass judgment  
16 thereon?

17 With regard to the statement of Witness P-48, this witness talks about a dozen soldiers  
18 who were heavily armed. How can we conclude, on the basis of a civilian who was  
19 faced with approximately ten soldiers, that an entire army was well-equipped?

20 But let us look closer at the statement of Witness 48. It is entirely fabricated and is  
21 not in the least bit credible. Witness 48 talks to us of a killing which occurred on  
22 8 April 2010, the day where he encountered these so-called heavily armed soldiers  
23 during which four people are said to have been killed. This is statement 0004-0002,  
24 page 0011, paragraph 57, pages 11 to 12, paragraph 67, 78 and 79.

25 THE INTERPRETER: The speaker is going too fast.

1 MS FAUVEAU IVANOVICH: (Interpretation) If the speaker -- if these people did  
2 indeed die, they died on 15 April 2011 at 12.15. The documents are 0004-0034,  
3 0004-0035, 0004-0036 and 0004-0037.

4 THE INTERPRETER: Could the speaker please be asked to slow down?

5 MS FAUVEAU IVANOVICH: (Interpretation) Now, Witness P-48 is trying to  
6 explain that this date is the date of the day when the corpses were recuperated by the  
7 Red Cross, but this story is quite unbelievable. Why would a doctor say that he  
8 examined these bodies if -- on 15 April if these people had died on 8 April?  
9 It would seem to me that any forensic doctor would be able to examine these bodies.  
10 What is more, the Prosecution would have needed to ask why he said that these  
11 people died on 15 April, but he did not do so.

12 Whatever the case may be, in addition to the fact that P-48 is not credible, nor is  
13 Witness -- nor does Witness P-48 or Witness 444 have the competence to assess the  
14 equipment of the armed forces.

15 We shall now present the reality of the armed forces in Côte d'Ivoire and, Madam  
16 President, might we use -- move into private session, please?

17 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Could we  
18 move into private session, please.

19 (Private session at 5.54 p.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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19 (Redacted)  
20 (Redacted)  
21 (Redacted)  
22 (Redacted)  
23 (Open session at 5.58 p.m.)  
24 THE COURT OFFICER: We are in open session, your Honours.  
25 MS FAUVEAU IVANOVICH: (Interpretation) Thank you.

1 The Prosecution seems to consider that, if Côte d'Ivoire bought arms and ammunition  
2 in 2003, they were still in possession of these arms, of these weapons and ammunition  
3 in 2010 and 2011, but Côte d'Ivoire experienced an armed conflict throughout this  
4 period between 2003 and 2010 and these weapons having served, some of them were  
5 out of use and they no longer had any ammunition. 0011-0376, page 0389.  
6 The police and the gendarmerie why under-equipped and they still are. These forces  
7 were and still are so under-equipped that it is a matter for concern for the group of  
8 experts of the United Nations. Document 0021-0125, paragraph 151. Indeed,  
9 Côte d'Ivoire had some weapons to speak of and nothing would seem more normal  
10 for a sovereign state to be -- to have an army and a police force.  
11 But if the army nor the police force -- but the army nor the police force can exist  
12 without arms, without weapons. The fact is that -- and this is confirmed by the  
13 Prosecution witnesses, that these forces were under-equipped, that they had weapons  
14 that did not function well, and that whatever the case there was a distinct lack of  
15 weapons and ammunition.  
16 Conscious that in reality the Defence and security forces were neither well-equipped  
17 nor armed, the Prosecution goes on to add that the militia and mercenaries in order to  
18 show their force, that was imposing, as Gbagbo had.  
19 Militia. Regarding the militia, the Prosecutor does not hesitate to morph part of the  
20 Ivorian youth into pro-Gbagbo militia and most of them alleged to have been  
21 involved in notorious political activities.  
22 In the chaos obtaining in March 2011, it is possible that some young Ivorians may  
23 have taken up arms, but they were not all members of the Galaxie Patriotique, which  
24 by the way was a patriotic non-violent movement. This was a movement that was  
25 involved in fighting through demonstrations and rallies. P-9, 0011-0482, page 0500.

1 It is quite strange to refer to a movement that was involved in a political struggle  
2 through demonstrations and rallies as one that was violent. This is all the more  
3 surprising in a country that was divided into two following unprecedented violence  
4 by the rebels.

5 May I recall that Witness P-11, a Prosecution witness, was more of a pro-Ouattara  
6 witness who stated that the youth being referred to by the Prosecutor as militia were  
7 not armed. 0016-0372, page 0376.

8 P-168, by virtue of his past, knows what he is talking about very well when he  
9 testified upon questioning by the Prosecutor that he had seen groups of youth but did  
10 not think that they were armed or organised. Better still, this witness specified that  
11 he did not believe that President Gbagbo's government wanted these groups to be  
12 organised. 0029-0366, page 0369, 0370, paragraphs 27 and 28.

13 According to the Prosecutor, President Gbagbo systematically recruited thousands of  
14 volunteers from the Galaxie Patriotique to contribute in the execution of the common  
15 plan hatched by the Prosecutor. These youths simply subscribed to  
16 President Gbagbo's political programme. President Gbagbo did not need to recruit  
17 them. He is a politician who belongs to a political party which has its members. So  
18 there's nothing abnormal or illogical about such membership, particularly -- in fact,  
19 nothing illegal in President Gbagbo's political programme.

20 By the way, and this must be said, all the youth who rallied behind  
21 President Gbagbo's political programme or platform were not members of the Galaxie  
22 Patriotique, but let us return to the issue of the youth. Yes, indeed, some of the  
23 youth tried to defend themselves and to defend their loved ones when Abidjan was  
24 invaded by rebels at the end of March 2011. They were not recruited for that  
25 purpose. They were not even called up for that. They did so spontaneously

1 because they wanted to defend their families and their homes. They did not take up  
2 arms to attack the population, but rather to defend themselves against the Forces  
3 Nouvelles. And that is not my testimony; it is the testimony of Witness P-11, a  
4 Prosecution witness, who says so at 0016-0347, page 0360.

5 The Prosecutor also charges or blames President Gbagbo for appointing Blé Goudé to  
6 the position of Minister for Youth. Blé Goudé was the best-suited person for that  
7 position because he had been close to the youth for several years.

8 When the Prosecutor alleges that President Gbagbo and his inner circle remained in  
9 contact with the youth militia before and after the post-electoral crisis, what he really  
10 wants to say is that they maintained contact with President Gbagbo's supporters. Of  
11 course, before the post-electoral crisis, President Gbagbo was in contact with the  
12 youth. They were his electors.

13 Of course Minister Blé Goudé was in contact with the youth during the crisis, he was  
14 the Minister of Youth affairs, and the youth went on to the streets in order to defend  
15 their cities against those who according to them were the attackers.

16 Yes, indeed, Blé Goudé talked to them and he asked them to defend themselves  
17 without arms, but with their bare hands. Once again, it is the Prosecution Witness  
18 P-11 who stated so. 0016-0372.

19 Yes, indeed, at the end of the month of March Blé Goudé called on the youth to join  
20 the army but at that time the war was already raging, and at that time that was the  
21 only way to contain and channel the activities of the youth and in so doing attempt to  
22 remain within the limits of legality, but we shall address this subsequently.

23 According to the Prosecutor, he alleges that some youth were trained in the official  
24 training centres of the armed forces and that they received weapons from the army  
25 and that they acted under the authority of the offices of the armed forces. If those

1 youth were trained and armed by the army and were placed under the orders of the  
2 army, we can no longer say that they were militia because they had become soldiers  
3 of the regular army.

4 By the way, at paragraph 65 of the DCC, the Prosecutor concedes that the youth were  
5 integrated into the command chain of the FDS. That is only normal for an army to  
6 mobilise people of age to be soldiers under such circumstances. And by the way, it  
7 is better to place these youth under the authority of the military command rather than  
8 leave them to their own devices without any guidance, but we don't have any  
9 evidence that such recruitment took place.

10 When the Prosecutor refers to youth who were recruited by the army, he is probably  
11 thinking about youth who were recruited before the post-electoral crisis at the behest  
12 of the Chief of General Staff. We will refer to this later on, but for now let us simply  
13 state for the record that this was a normal recruitment exercise, open to all youth,  
14 regardless of their political leaning.

15 The problem which the Prosecutor carefully avoids was not one of integrating the  
16 youth into the army, but one of the various groups that were acting on their own  
17 without any ties to the presidential majority, some of which were rather close to the  
18 rebels.

19 By the way, what were the various armed groups at the time? In Abobo, for  
20 example, we had the Invisible Commando. We heard mention of the Dozos here,  
21 and these were militia, the true militia. These were the opponents of  
22 President Gbagbo at the time. What did they do? They were involved in recruiting.  
23 An RDH document states so at 0025-0056, page 0058, at which it is stated that the  
24 Chief of General Staff had called for a massive recruitment of youth with a promise to  
25 integrate them into the army of President Alassane Ouattara.



1 In the end, what is the structure of this Galaxie Patriotique which the Prosecutor  
2 alleges to be militia? The Prosecutor alleges that the Galaxie Patriotique and its  
3 member groups had a hierarchical structure, but what evidence does he adduce to  
4 substantiate that assertion? None, except Charles Blé Goudé, who was indeed the  
5 leader of the Galaxie Patriotique.

6 Of course, Charles Blé Goudé had some authority over those youth, but how could  
7 that authority have been incorporated to the FDS structure into which members of the  
8 Galaxie Patriotique were integrated?

9 By the way, where was Blé Goudé at the end of March, early April, when according to  
10 the Prosecutor these youth were particularly active? There is no evidence as to  
11 where Blé Goudé was at that time from the Prosecutor.

12 Let me now turn to mercenaries. When it comes to mercenaries, everybody talks  
13 about mercenaries but no one actually saw them. Yes, indeed, there were Liberians  
14 in Côte d'Ivoire, but they were not necessarily mercenaries. These were Liberians  
15 who had settled in Côte d'Ivoire over several years. They were close to  
16 President Gbagbo who had enabled them to live peacefully in Côte d'Ivoire. They  
17 had been forced to leave their homes during the crisis.

18 And so rather than talk about the so-called Liberian mercenaries that everyone talks  
19 about but about whom no concrete, solid and tangible evidence has been adduced,  
20 rather than do that, the Prosecutor ought to have wondered why the Liberian  
21 refugees who had been living peacefully in Côte d'Ivoire when President Gbagbo was  
22 in power, why did they have to suddenly leave their homes?

23 You see, the Prosecutor saw the tragic pictures of Liberians being expelled from their  
24 homes because it is the Prosecutor himself who provided us with these images. I'm  
25 referring to video 0015-0393. Those people were not mercenaries; they were

1 hopeless people, desperate people, who had fled the war in Liberia several years  
2 before and who again had been subjected to the consequences of their situation.  
3 Yes, indeed, they were mercenaries in Côte d'Ivoire during the post-electoral crisis,  
4 but the evidence before this Court points to the fact that most of these mercenaries  
5 came from Burkina Faso, Senegal, Mali, Niger, Nigeria and even from Liberia, but we  
6 shall revisit this point subsequently. But these mercenaries were fighting on the side  
7 of the rebels and subsequently with the Forces Nouvelles and the FRCI. I'm  
8 referring to document 0027-0190, Defence exhibit 0681, 0687, pages 0688, 0696.  
9 And at this juncture I would like us to view an excerpt of video 0569.

10 (Viewing of the video excerpt CIV-D15-0001-0569)

11 MS FAUVEAU IVANOVICH: (Interpretation) It must be stated that at paragraph 14  
12 the Prosecutor acknowledges that Burkinabé - or Burkina Faso - militia were fighting  
13 alongside the rebels.

14 It then becomes difficult to understand why the Burkina Faso combatants were  
15 referred to as militia while those from Liberia were referred to as mercenaries, but in  
16 any event none of them were fighting on behalf of President Gbagbo and their actions  
17 and misdeeds cannot be imputed to him.

18 This apparatus that was made up of forces, or defence forces, young militia and  
19 mercenaries, never existed. This structure as presented by the Prosecutor is so  
20 fragmentary that it does not even meet the requirements of a structured, organised  
21 and hierarchical structure as defined in the case law of the Court.

22 And by the way, we do not even know the nature of the hierarchical structure of this  
23 imaginary structure that merges the regular armed forces with militia and  
24 mercenaries.

25 Let us now look at the control that President Gbagbo is alleged to have had over this

1 apparatus, or should I say the lack of control that he is indeed -- he had over this  
2 structure.

3 The structure of this imaginary or imagined organisation is so fragmentary that the  
4 Prosecutor is unable to present any evidence as to the control that President Gbagbo  
5 may have had in part or in totality over such a structure, because the organisation as  
6 we have said is an imaginary organisation.

7 In fact, according to the Prosecutor, President Gbagbo had de jure authority over the  
8 armed forces and the Prosecutor relies on the constitution to argue that the President  
9 of the Republic is the commander-in-chief of the armed forces.

10 That is not questionable, because it is outlined clearly in Article 47 of the constitution  
11 of Côte d'Ivoire, document 0521 page 0537. However, the Defence submits that the  
12 Prosecutor only refers to the constitution of Côte d'Ivoire when it works for him, but  
13 completely sets it aside when it doesn't work for him.

14 If the Prosecutor felt that at the time of the facts President Gbagbo had de jure  
15 authority over the armed forces at the time of the events, he must therefore also  
16 acknowledge that on the basis of that very constitution President Gbagbo was the  
17 legitimate and legal President of Côte d'Ivoire, because it is only in his capacity as  
18 President of the Republic that he could have had de jure authority over the armed  
19 forces.

20 Turning to the allegation whereby President Gbagbo also had de jure authority over  
21 other sections of the FDS, whose respective leaders reported to him, this theory is  
22 wrong both logically and legally.

23 Now, had President Gbagbo received reports, a matter which the Prosecution has  
24 failed to demonstrate, that would have given President Gbagbo de facto authority,  
25 not de jure authority. However, what we must underscore is the total lack of

1 evidence to confirm the Prosecution theory whereby President Gbagbo received  
2 reports from the various sections of the FDS.

3 We have only seen three reports from CeCOS, three reports for a period exceeding  
4 four months, a period of more than five months; three brief summary reports without  
5 any significant information. I'm referring here to documents 0018-0104, 0018-0159  
6 and 0018-0274.

7 Now, let us look at the so-called de facto authority on the FDS. The Prosecutor  
8 claims that President Gbagbo consolidated his authority and control of the FDS of the  
9 Ivory Coast, but it must be said that President Gbagbo was the President of Côte  
10 d'Ivoire, the commander-in-chief of the armed forces of the Côte d'Ivoire. His  
11 authority and control over these forces was legitimate and natural.

12 However, at the time of the events charged, President Gbagbo had no authority. He  
13 had no control over these forces. Part of the FDS, in fact at some times entire units,  
14 were acting for and on behalf of the rebels. Document 1014, page 1015, page 45, that  
15 is a Defence document, and Defence document 0014-0479, pages 0505, 0506.

16 Contrary to the allegations contained in paragraph 69 of the DCC, President Gbagbo  
17 did not appoint his close collaborators to key positions. He's the only President of  
18 the Côte d'Ivoire who did not appoint people of his ethnic group to key positions.

19 The new government was formed after the 2010 - December 2010 - elections in all its  
20 legality and with due respect to the laws of the Côte d'Ivoire. Evidence adduced  
21 shows that President Gbagbo acted compliant to the constitution by appointing the  
22 prime minister as -- upon proposition and then went on to appoint members of the  
23 government pursuant to Article 41 of the constitution. Document 0018-0047, pages  
24 0049 to 0050.

25 Regarding the FDS, they were not under the command of persons loyal to

1 President Gbagbo, but simply by persons who at the time were in the positions of  
2 commanders. The evidence from the Prosecutor shows that none of these  
3 commanders was appointed during the post-electoral crisis, or in the period  
4 preceding the crisis. They were already holding those positions before the events,  
5 and most of them were appointed by the prime minister who was appointed by the  
6 defence subsequently. Document -- Defence document 1273, page 1276. This  
7 document states that all those military officials had been in place or in their positions  
8 for at least three years and remained in those positions regardless of their ethnic,  
9 religious or political leanings.

10 The promotions referred to by the Prosecutor, which we have already mentioned,  
11 were normal promotions which did not in any way change the existing military  
12 configuration. Those promotions were proposed by the Minister of Defence, without  
13 any intervention from President Gbagbo. Document 4499, page 4503, 4504.

14 By the way, it is President Gbagbo who made it possible for the generals of the  
15 rebellion to be integrated into the army with the ranks that Guillaume Soro had given  
16 them as reward for their role played in the rebellion. Document number 3764.

17 The Prosecutor appears to assume that the pledge of loyalty by the officers of the FDS  
18 to President Gbagbo, after his swearing-in, were proof of their loyalty to the President.  
19 Yes, they did make a pledge of loyalty, but that is only normal because all civilians do  
20 so, particularly given that President Gbagbo had been declared president by the  
21 Constitutional Council. And, by the way, the Constitutional Council was the only  
22 competent institution to declare the final results of the presidential elections. So the  
23 officers of the FDS at the time simply acted in respect of the results that had been  
24 announced, pursuant to the provisions of the constitution and in respect of the  
25 desiderata of the people of the Côte d'Ivoire.

1 By the way, these very people are the same officers who made a pledge of loyalty to  
2 Alassane Ouattara after President Gbagbo was arrested. None of these commanders  
3 can be said to have been particularly loyal or close to President Gbagbo.  
4 Can we say that the commander of the gendarmerie, who was not opposed to the  
5 government created at the Hotel du Golf and who throughout the crisis was in  
6 contact with Mr Alassane Ouattara and Guillaume Soro and pointed out the positions  
7 of the gendarmerie to them, can we say that that was loyalty, document 0016-0256,  
8 pages 0265, and who by the way we must say is today an ambassador of the  
9 Côte d'Ivoire. Document 1568 -- 1562, rather.

10 Can we say that the commander of CeCOS and the director of the national police  
11 were loyal, whereas they were already trying to pledge allegiance to  
12 President Gbagbo? Document 0014-0204, page 0221.

13 Can we say that the director-general of the national police at the time of the events  
14 and who is still in that very position today, can we say that he was loyal? That is  
15 General Detho Letho.

16 Can we say that that Chief of General Staff of the army, who is today the Deputy  
17 Chief of General Staff of the army and who even before President Gbagbo was  
18 arrested was at the Golf Hotel, can we say that he was loyal?

19 What about General Mangou, Chief of General Staff of the armed forces of  
20 Côte d'Ivoire? Was he faithful or loyal to President Gbagbo? Today Alassane  
21 Ouattara has appointed him ambassador to the Côte d'Ivoire. Documents 1562 and  
22 1564. During the crisis, he actually did seek refuge at some time at the Embassy of  
23 South Africa at the very time when the rebel forces attacked Abidjan.

24 By the way, how is it then that these so-called loyal companions of President Gbagbo,  
25 who according to the DCC committed crimes with their forces against Alassane

1 Ouattara -- I'm referring to the Chief of General Staff, the chief of the land forces, the  
2 commander of the gendarmerie and what have you, the director-general of the  
3 national police, have all been rewarded today and hold offices in Alassane Ouattara's  
4 government? Document 1561 and 1562, video 2109.

5 The State of Ivory Coast is a sovereign state and of course has the full power of the  
6 state apparatus and the armed forces, as we have described. The state institutions of  
7 Côte D'Ivoire and it's army were functional, organised and hierarchical.  
8 President Gbagbo had been proclaimed president by the Constitutional Council, and  
9 in that capacity he should have had control over that apparatus and over the events.  
10 That is not what happened. The State of Côte d'Ivoire was deeply divided and split  
11 into two. In the state structures some persons supported President Gbagbo, while  
12 others supported Alassane Ouattara's political movement. Within the armed forces  
13 and the defence forces some were pro-Gbagbo, while others were pro-Ouattara.  
14 And, by the way, it even seems that most of the Ivorian generals were closer to France  
15 and thereby to the rebels than to President Gbagbo. Defence document 3695, page  
16 3699.

17 President Gbagbo never sought to find out who was loyal to him. He never tried to  
18 dismiss anybody from office who appeared to support Alassane Ouattara. He never  
19 intervened to impose any control over the forces.

20 Madam President, would this be a good time to break?

21 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, this is a  
22 good time to break, but before we adjourn let me address some housekeeping matters  
23 here. Tomorrow, Wednesday, you are expected to conclude your presentations.

24 Do you intend to work throughout the day?

25 MR ALTIT: (Interpretation) Yes, Madam President, we will need three hours, plus

1 the additional half-hour you promised us because of the overlap by the Prosecutor, if  
2 possible. So tomorrow we will need the three hours and the additional 30 minutes.  
3 So we may finish tomorrow or go to Thursday at the very beginning of the day.

4 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, I do recall  
5 that you have to your credit some 30 minutes, but we would appreciate if you attempt  
6 to finish tomorrow, with a little overlap on Tuesday. Is that what you're saying?

7 MR ALTIT: (Interpretation) Yes. We will not need more than half-an-hour.  
8 Maybe less than half-an-hour. But I just wanted to mention that we might be  
9 needing a half hour.

10 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you  
11 very much. I see that the Prosecutor is already on his feet, but please don't worry, if  
12 they need a little more time, it doesn't mean that you're going to have less time.

13 MR MACDONALD: (Interpretation) Your Honour, the only point I wish to make is  
14 that, immediately after, the Prosecutor is expected to make their final oral  
15 submissions and we will probably not be able to have time to look at the additional  
16 30 minutes, so rather than adjourn, we may need to reorganise our schedule and  
17 maybe meet in the morning. Maybe we can then listen to our colleagues in the  
18 morning and then reconvene in the afternoon. That's the first point.

19 Second, we have not received any written documents from the Defence, although we  
20 made the request yesterday and today. For these reasons, the Prosecution cannot  
21 use the Defence presentations in preparing its case. You see, many things have been  
22 said and we need to address them in our response, and we need at least an hour to be  
23 able to respond without reopening the entire process, and this in spite of the fact that  
24 the Chamber has given us the opportunity to provide written submissions.

25 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.



1 There are two things. You will of course file written submissions; is that correct?

2 MR ALTIT: (Interpretation) Regarding the first point, the additional one hour, it is  
3 because of the extra time taken by the Prosecutor himself.

4 Secondly, the organisation of the hearings takes into account the health situation of  
5 our client. It is out of the question that President Gbagbo not attend a hearing  
6 because he attended in the morning and cannot attend in the afternoon. I believe  
7 everything was organised around this fact. And I would like to remind the  
8 Prosecutor that this half-an-hour is not that exceptional. I'm sure if you want to heed  
9 his request, we may organise ourselves to end a little bit later tomorrow evening, but  
10 take into consideration President Gbagbo's health and the fact that not everyone  
11 might be able to organise themselves in the afternoon, but from our point of view, a  
12 hearing in the morning is totally out of the question.

13 Secondly, the Prosecutor asked us to send our presentations yesterday and today.

14 Well, we will send them today and that would not be late, but regarding this point, I  
15 would like to ask Jennifer Naouri, who has some clarifications to make to the  
16 Prosecutor.

17 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Do you want  
18 to make a clarification?

19 MR ALTIT: (Interpretation) It seems that I said everything.

20 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes. That  
21 makes it easier.

22 MR MACDONALD: (Interpretation) Regarding the first point, I believe I would  
23 leave that to the wisdom of the Chamber. I believe we took 30 minutes extra.

24 Now, beyond that, regarding point 2, the presentations need to be given to us the  
25 same evening, not the following day, because tomorrow will be the eve of the closing

1 arguments. So it was decided that these presentations be given to us at the close of  
2 every day. You can either give us CDs or hard copies. And this is particularly  
3 because tomorrow we will be preparing for our closing arguments the next day.

4 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, it would  
5 be preferable if you submit all your presentations on the same day.

6 MR ALTIT: (Interpretation) Your Honour, I didn't quite understand you.

7 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, I believe  
8 you stated that you would give in the presentations the following day, but it would  
9 be better to give them on the same day.

10 MR ALTIT: (Interpretation) Very well. The Prosecutor will receive the  
11 presentations that have been already made this evening, as planned.

12 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Very well.

13 We will see how to reschedule that half-hour, if you need it, and I have understood,  
14 Mr Prosecutor, that you need some time to integrate that presentation in your closing  
15 arguments. I would like to discuss with my colleagues what we can do tomorrow.  
16 The hearing cannot take place in the morning because that is not possible with the  
17 Court, but we will try to see how to arrange to finish earlier.

18 MR MACDONALD: (Interpretation) We have the day of tomorrow, so the hearing  
19 of tomorrow can be extended by some few minutes so that we not have to continue  
20 the following day. I think all of us have goodwill and we can arrive at a solution  
21 that is satisfactory to everyone.

22 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) I think you  
23 should be reassured that a solution will be found.

24 The hearing is adjourned. We will meet tomorrow again at 2.30.

25 (The hearing ends in open session at 6.37 p.m.)