

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 Thursday, 28 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 afternoon.

14 Court is called to order.

15 Court officer, please call the case.

16 THE COURT OFFICER: Thank you, Madam President. Situation in the Republic of
17 Côte d'Ivoire, in the case of The Prosecutor versus Laurent Gbagbo, ICC-02/11-01/11.

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

19 Based on our schedule, we are going to move on to the final arguments of the parties and
20 the legal representative of the victims. We begin with the Prosecution. Mr MacDonald,
21 you can now address the Court.

22 MR MACDONALD: (Interpretation) Thank you, Madam President, your Honours.

23 Let me come back to the opening observations of the Prosecutor. The charges in these
24 proceedings concern only the individual acts and criminal responsibility of Mr Laurent
25 Gbagbo. Those charges are not being made against the people of

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1 Côte d'Ivoire or against any specific segment of the population.

2 The charges are not being made against any national, ethnic, political or religious groups
3 of Côte d'Ivoire. The charges have been brought against Mr Gbagbo, who has
4 perpetrated crimes against the entire population of Côte d'Ivoire.

5 It should also be recalled that the Prosecution, as part of its investigations and its
6 prosecution, selected four incidents which are representative of the crimes committed by
7 pro-Gbagbo forces during the post-electoral crisis in 2010 and 2011, and which engage the
8 criminal responsibility of Mr Gbagbo.

9 This afternoon, we do not intend to revisit all the presentations of the Prosecution. The
10 Prosecution, in a precise and concise manner, dwelt on the most important items of the
11 evidence.

12 The Chamber now is in possession not only of the documents containing the charges, the
13 list of Prosecution evidence, but now you also have our presentations. It is now
14 incumbent on this Chamber, and only this Chamber, to decide whether to refer
15 Mr Gbagbo to trial or not.

16 In its closing arguments, the Prosecution will review some of the submissions and
17 arguments put forward by the Defence of Mr Gbagbo. It is obvious that we cannot deal
18 with all the arguments and submissions made by the Defence, but with your leave, we
19 will examine some of the elements that would be representative of their position, and then
20 I will hand over to my colleague, Mr Gallmetzer, who will deal with the criminal
21 responsibility of Mr Gbagbo, before I come back to conclude.

22 Let us start with the incident at the RTI. In transcript number 18, line 17 to 18, the
23 Defence states that video 0001-0570 of the Defence shows Guillaume Soro addressing
24 soldiers supporting the Ouattara camp, asking them to be ready and to mobilise to go to
25 the television station.

1 This video shows that there were instructions given to Ouattara's soldiers to gather on
2 Thursday, 16 December 2010, with all their combat equipment.

3 The Defence showed us only a short extract of this video. There is the beginning of the
4 newscast presented over the RTI. We would like to propose that you watch the
5 beginning of this video, which ends with 0570, and this is a Defence document. So we
6 will view it from the beginning to minute 02.31.

7 (Viewing of the video excerpt CIV-D15-0001-0570)

8 MR MACDONALD: (Interpretation) The next extract is an extract that was produced
9 by the Defence. I believe that video should be viewed in context, and also the statements
10 made therein should be viewed in perspective. In fact, the Prosecution appeals to the
11 Chamber to view the entire footage because the Chamber will realise that one of the
12 objectives of the RTI is to show, and I quote minute 752, "a collusion between the United
13 Nations Organisation and the political organisation of Alassane Ouattara."

14 We submit that this video also confirms that at that time the RTI was at the service of
15 Mr Gbagbo. In fact, the RTI associates the crisis at its very peak to the UNO and its
16 representative, Mr Choi, who, and I quote, "Tried to have the illegal results accepted in the
17 eyes of the constitution of Ivory Coast after the second round of the elections," and that is
18 minute 802. And that association, that collusion, leads us to Prosecution document
19 0002-0598 and particularly page 0608, and the report has no French version. I will
20 mention it is English.

21 (Speaks English) "The report of the United Nations High Commissioner for Human Rights
22 on the Situation of Human Rights in Côte d'Ivoire.

23 Paragraph (Interpretation) 34. (Speaks English) Through the state-ran media
24 Radiodiffusion-Télévision Ivoirienne (RTI), the Gbagbo camp systematically sent out
25 messages with hate and xenophobic contents directed specifically towards ONUCI,

1 pro-RHDP individuals, and nationals of ECOWAS member states. The RTI regularly
2 presented the store of information and pictures aimed at encouraging the public,
3 particularly the Young Patriots, to attack ONUCI staff members.

4 (Interpretation) Madam President, your Honours, let us now come back to the issue of
5 the Young Patriots and militias.

6 In transcript number T-19ET, page 39, line 8, the Defence states, and I quote, "The
7 parlements or parliaments were places of meetings where young people met to discuss
8 and to talk about current events, politics and also arts, culture and history. It is a place of
9 peaceful meetings and exchanges that are part of the lives of citizens in Côte d'Ivoire."

10 I would like to show you an extract of Prosecution video 0002-0995. That footage was
11 presented on 4 February 2011 on France 24, as part of the reporters' programme. The
12 information is still available on the website. We will look at it from minute 4.46 to
13 minute 9.23. In order to follow, I would also like to refer you to Prosecution transcript
14 0007-0181, pages 0185 to page 0187.

15 I would like to apologise for the lengthy nature of the extract, but we believe that it would
16 be instructive to allow these Young Patriots to speak, to give us their message.

17 (Viewing of the video extract CIV-OTP-0002-0995)

18 MR MACDONALD: (Interpretation) It is our submission that this video footage
19 reflects the state of mind of the members of those parliaments, and this was the Yopougon
20 group, or parliament, and the office for recruitment was in Yopougon. This video also
21 shows clearly that the Young Patriots were at the service of Mr Gbagbo.

22 The video corroborates the testimony of Witness P-108, who states that Guy Gberti, the
23 person we saw in this footage, was the President of the Yopougon parliament, one of the
24 right-hand men of Blé Goudé, who distributed weapons and was involved in the events
25 that took place in Yopougon. I would like to refer you to his statement 0013-0108,

1 paragraphs 28, 87 and 154.

2 Madam President, your Honours, I would like to come back to the book. The "Invisible
3 Commando" recounts the Abidjan battle. The Defence relies on this book to support its
4 thesis on the women's march and the atmosphere that was prevailing in Abobo at the time
5 of the crisis.

6 In transcript T-19, page 12, lines 13 and 25, the Defence stated, and I quote, "While certain
7 women were pretending to march, some of them were lying down and sheep's blood was
8 poured on them. That is what our computer technicians filmed and they constructed
9 their montage. That is how it happened and that is how these fabrications were used by
10 our computer technicians to give the impression that it was a reality, and at the end of the
11 montage the product was presented and attributed to Gbagbo. "

12 This is supposed to have come from the Invisible Commando, the commander of the
13 theatre of operations. Once again, the Prosecution is not compelled to accept this
14 without cross-checking the statements of the former member of the Invisible Commando,
15 but he should have carried out investigations and he would have found this account. He
16 should have wondered how it was possible for this official communiqué of pro-Gbagbo
17 forces to have coincided with the important points of the account of the Invisible
18 Commando. The Defence presented only an extract of that book, the chapter titled "The
19 war in Abobo."

20 Now, who is that commander? Who is the author of the book? Apparently, the name
21 of that commander is Sémeffia Sekou, also known as Colonel Sékouba. The author of the
22 book also has a pseudonym, but the page - the cover page - has the name Germain
23 Séhouhé. He says he is a self-taught individual and a journalist in the daily newspaper
24 Le Temps.

25 The newspaper Le Temps, it should be pointed out, is a pro-Gbagbo newspaper. It

1 should be recalled that that newspaper on 24 July 2012 had a title, "The Judges of the ICC
2 Confess." It is stated that the commander was detained in the prison in Abidjan known
3 as MACA and the interviews are supposed to have taken place by telephone and SMS.

4 Yes, SMS.

5 The Invisible Commando, according to the book, would like to testify before the ICC. He
6 claims to have evidence that Mr Gbagbo is innocent of all the charges against him, but
7 then a question arises: Why is the Defence relying only on this book?

8 Why is it that like for the other witnesses, about 12 of them on the Defence list, there is no
9 statement for this witness? The answer is simple: Because there is no commander who
10 bears that name. There is no commander with that name who is detained or was
11 detained in Côte d'Ivoire after the post-electoral violence.

12 Now, let me tell you why the journalist in question never met with the commander in
13 prison. Let me quote, "But it is out of the question that I should go there. In any case,
14 not so early. In fact, at this time, I have a physical handicap and this visit would create
15 problems for me. Trying to meet with an Invisible Commando at MACA, with all the
16 allegations against him at that time, that would not be cautious." So if the journalist
17 never went to MACA, it is simply because the Invisible Commando was not there.

18 And let me come back to the quote of the Defence. This book is at the service of
19 Mr Gbagbo. It only serves to corroborate. It was written with the purpose of
20 corroborating the official communiqué of the pro-Gbagbo forces and not the reverse as
21 alleged by the Defence. In fact, this book was written in 2012. It was published in
22 June 2012.

23 Madam President, your Honours, the Prosecution does not deny the existence of the
24 Invisible Commando. The Prosecution does not deny that they possibly attacked and
25 killed FDS and police elements in Abobo, but the existence of that commando does not

1 justify the gratuitous murder of civilians. It does not justify the murder of women on
2 3 March 2012 or the shelling of the Abobo market on 17 March 2011.

3 Let me come back to the Defence quote, "testis onus testis nullus." The Defence
4 referred to that adage during its presentation about the incident of 17 March 2011.
5 Transcript 19, page 20, line 15.

6 The Defence also referred to that adage when talking about a witness of sexual violence
7 during the incident at Yopougon. Transcript 19, page 36, and also in transcript T-19,
8 page 42, line 13, dealing with the Yopougon incident, but what does this adage signify?
9 It is an old adage which means that one witness is not enough to establish the truth.

10 In the past, people paid -- gave more validity to the quantity or to the number of witnesses
11 rather than to the quality of the witness. A single witness provided only half the
12 evidence, while two witnesses gave the entire evidence. We should recall that law has
13 evolved ever since and when you look at Rule 62 of the Rules of Procedure and Evidence
14 it is clear that it deals with the existence of crime and particularly sexual violence, but let
15 us come back to the number of civilian victims during the Yopougon incident. I would
16 remind you that video 0020-0395 corroborates the incident and the death of several
17 victims.

18 Madam President, your Honours, the Defence makes a big case out of the potentially
19 exculpatory evidence provided by certain witnesses, such as P-9, P-11 and P-46. It
20 should be pointed out that the witnesses were interviewed in application of the provisions
21 of Article 55(2) of the Statute and this was the very first interview with him.

22 In light of the authority and their allegiance to Mr Gbagbo at the time of the events, they
23 tried to protect themselves. In the final analysis, the Chamber must assess these
24 statements in light of the entire body of evidence admitted into the case file and
25 particularly in light of the specific object of the hearing; of the confirmation charges

1 hearing.

2 Madam President, your Honours, I would like to mention the next witness who reflects

3 the state of mind of Mr Gbagbo at the time. I'm sorry to the interpreters, because I

4 skipped a paragraph and I skipped that paragraph so as to keep within the time limits.

5 Let us go to document 0014-0590, page 0597, lines 2 to 5 and following, and I'm quoting

6 Witness P-44, "I did not really appreciate what happened at the end because, as it is said,

7 whether it rains or it snows we were going to go. This means that the president accepted

8 to go to the elections and he had to accept everything that came after that. In that

9 country, we could have avoided spilling even one blood -- even one drop of blood. If

10 only President Gbagbo could have accepted to relinquish power nothing would have

11 happened to anyone, but this hurt me a lot because he did not want to. He did not want

12 to. He did not want to relinquish power, but at the same time he did not take into

13 consideration all the people supporting him, all what was going to happen to them. He

14 did not take into account what was -- those who were going to die. He did not want to

15 leave, he did not want to leave, and too many people died, too many people lost their

16 property and I believe that was his fault."

17 This is what Witness P-44 said about President Gbagbo's reluctance to leave power, and

18 this was reflected by the High Commissioner for Human Rights, who on 29

19 December 2010 sent a letter to Mr Gbagbo and some of his advisers indicating that they

20 were responsible for the disquieting situation in the area of human rights and that their

21 duty was to protect civilians. He reminded them that they were personally responsible

22 for the violations of human rights perpetrated by forces of law and order under their

23 command. See document 0002-0010, page 0022.

24 Your Honour, we submit that, in light of the entire body of evidence of the Prosecution,

25 you have substantial grounds to believe that the four incidents selected did occur and that

1 civilians were the target. It is not a matter of determining whether such incidents did
2 happen because the evidence is there, but the purpose of this confirmation hearing is to
3 determine whether there are substantial grounds to believe that the responsibility of
4 Mr Gbagbo is engaged in relation to those incidents.

5 We believe that that is the case, and now I will hand over to my friend, my colleague
6 Mr Gallmetzer, who will deal once again with this aspect.

7 Thank you.

8 MR GALLMETZER: Good afternoon, your Honours.

9 Before I go into detail, I wish to recall that the evidence clearly demonstrates that the four
10 incidents were perpetrated by pro-Gbagbo forces in a co-ordinated manner, in pursuance
11 of the common plan and following the orders of their direct superiors. This, I reiterate, is
12 important linkage evidence from the bottom up and it constitutes an important feature of
13 our case theory, so please consider the linkage also with respect to the crime-base
14 evidence.

15 I am now going to address some of the elements of the modes of liability, and in particular
16 I am going to address some of the arguments raised by the Defence.

17 One of the key arguments of the Defence to deny the existence of an organised structure
18 of power is the alleged shortage of weapons of pro-Gbagbo forces.

19 The evidence abundantly shows that pro-Gbagbo forces did have enough weapons.

20 They had weapons of war and had conventional weapons which they used to commit the
21 crimes. In addition to the evidence already referred to during the earlier stage of the
22 hearing, I would like to refer you to the statements of Witnesses P-146, at page 0491, and
23 Witness P-239, at page 0006.

24 Some of the insider witnesses indicate that there was a shortage of weapons and that
25 Mr Gbagbo was concerned about a shortage of weapons. Nevertheless, there is no

1 doubt - there is no doubt - that pro-Gbagbo forces had enough weapons to commit the
2 crimes against unarmed civilians.

3 Moreover, Mr Gbagbo himself took steps to provide his forces with additional weapons.

4 The evidence shows that his subordinates, they followed his order to buy such weapons.

5 See in addition also document 0021-1290. As stated by the UN expert group at 0021-0125
6 at paragraph 33, as well as by Witness P-249 at 0007, these efforts were successful.

7 Shortly prior to and during the post-election crisis, the Gbagbo regime received additional
8 weapons.

9 Also on the structure, your Honour, during the hearing you asked the Prosecution to
10 provide an organigram of the youth militia and the mercenaries that shows that they were
11 controlled by Mr Gbagbo, as well as their structure and how they were integrated in the
12 FDS.

13 Your Honours, I would like to present these organigrams at this stage. My colleague will
14 bring them up on the screen and hard copies will be handed out.

15 So the first -- the first slide that you have now on your screen shows the structure of the
16 youth militia. At the bottom of the slide, you have the organisations that have been
17 identified to be part of the Galaxie Patriotique and to participate in the violence.

18 Please let me also mention that the term "Young patriots," or "Jeunes Patriots," frequently
19 referred to by witnesses, refers to the overall umbrella organisation of the Galaxie
20 Patriotique.

21 Charles Blé Goudé was their unquestioned leader, and we know from the evidence that he
22 was very close to Laurent Gbagbo and that Laurent Gbagbo controlled the youth militia
23 through Charles Blé Goudé. The money signs indicate that Laurent Gbagbo through the
24 cabinet, through his own cabinet, provided payments to the leaders of these various youth
25 groups.

1 In addition we have Simone Gbagbo, who Witness P-44 tells us issued direct orders to
2 Charles Blé Goudé, and we also know from the evidence that Simone Gbagbo would do
3 nothing without the knowledge of her husband.

4 I now would like to refer you to the next slide, and that shows how the CNRD is
5 integrated into the structure. The CNRD, as we have explained in our previous
6 presentation, is a political platform that includes political leaders, among others, and
7 leaders of numerous of the violent youth groups.

8 Simone Gbagbo was the leader of this group and Blé Goudé was a member, and again we
9 know also from the minutes of CNRD meetings that Simone Gbagbo would consult her
10 husband before taking any action.

11 We will also provide your Honour with a separate sheet that includes all the sources - the
12 ERN references - that confirm what exactly we have presented in this show.

13 Please allow me now to turn to the second and parallel structure through which
14 Mr Gbagbo controlled the youth militia, and that is the official structure of the FDS.
15 On your screen, you see now the five branches of the FDS were involved in the
16 commission of the crimes.

17 MR ALTIT: Madame le Président --

18 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Excusez-moi.

19 Oui?

20 MR ALTIT: (Interpretation) I am sorry to interrupt, Madam President. Defence
21 would like to know the origin of those documents, whether they were prepared by the
22 OTP? In fact, the Defence is surprised at these document that are sprung at us at the last
23 minute, these organigrams which should have been provided at the beginning by the
24 Prosecutor. We would like to know what the source of these documents are because
25 they were not disclosed to us.

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

2 Mr MacDonald?

3 MR MACDONALD: (Interpretation) Madam President, first of all the Prosecution
4 relies exclusively on the documents on its list of evidence, and as my colleague has said all
5 the elements will be provided. This is simply a PowerPoint presentation in support of
6 our final arguments at the behest -- at the request of the Chamber itself. It is for this
7 reason that this is being done. We could have done so in writing, but we decided to
8 proceed in the courtroom and why not?

9 So, please don't be afraid. There is no ambush or surprise here. We did not fabricate
10 anything. We are simply relying on evidence that is available.

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

12 Please proceed.

13 MR GALLMETZER: Thank you, your Honours.

14 So the second slide shows the structure of the FDS, with the five units that were involved
15 in the commission of the crimes. Philippe Mangou, the Chief of Staff, co-ordinated their
16 activities during the armed conflict, or during the post-election violence, and he
17 responded to President Gbagbo either through the Minister of Defence, or often he
18 reported to him directly.

19 Please turn now to the next slide. We are having some technical difficulties, I apologise.

20 Okay. This slide shows those units of the FDS into which youth militia were integrated,
21 and in particular it is those that are highlighted with an orange frame. On the top left
22 you also see boxes with the names "Dogbo Blé" and "Charles Blé Goudé," who had specific
23 tasks in relation to the youth militia, both in relation to their co-ordination as well as to
24 their integration and their training. And finally the last slide shows how the mercenaries
25 were integrated into the FDS, and it is in particular for those units that are highlighted in

1 green and again on the top left you have names of people who played key roles in the
2 recruitment and financing and on other tasks, and also here we will provide you with
3 specific ERNs.

4 Now, let me continue on the presentation. The Prosecution relies, among others, on the
5 fact that President Gbagbo, or Mr Gbagbo, had de jure authority over pro-Gbagbo forces.
6 However, by doing so, the Prosecution did not make any indication as to who won the
7 election. We made it very clear in the opening statements that it is not an issue in this
8 case who won the election. Rather, the Prosecution contends that the pro-Gbagbo forces
9 continue to regard Mr Gbagbo as the legitimate Head of State and
10 the -- Commander-in-Chief of the Armed Forces pursuant to the relevant legislation,
11 which secured his control over them.

12 Mr Gbagbo continued to rely on the same state actors who had been in power before the
13 election, as well as the same state structure and system of power. Whether or not
14 Mr Gbagbo won the election, the same state organisation that existed before the election
15 continued to exercise power after the election and was used by Mr Gbagbo to implement
16 the plan and to commit the crime.

17 Under "contribution to the crimes," and in particular, on the co-ordination of the common
18 plan, the Defence argues that there is no evidence that demonstrates that the meetings of
19 Mr Gbagbo, with members of his inner circle, as well as the FDS meetings and the General
20 Staff of other meetings held by Simone Gbagbo, were aimed at the implementation of the
21 common plan.

22 The evidence discussed during the hearing shows at these meetings and discussions that
23 Gbagbo issued orders to deploy the army against political protesters and to ensure that
24 the pro-Gbagbo protest came to a quick end. It was during these meetings that
25 Mr Gbagbo ordered his subordinates to stand firm in Abobo, to buy additional weapons,

1 and to recruit youth militia into the FDS. The generals then discussed the orders that
2 they received from Mr Gbagbo and they discussed how to implement them. In fact, they
3 implemented the orders even if they disagreed with the orders. In particular, the
4 evidence shows that the order to deploy the army against the street protesters was not
5 justified by the situation on the ground and that the entire FDS leadership recommended
6 against it. Why did they do so? Because the protesters were not armed. Nevertheless,
7 Mr Gbagbo insisted on the implementation of this order.

8 Similarly, the meetings convened by Simone Gbagbo, including the CNRD meeting, also
9 had the purpose to ensure that Mr Gbagbo stay in power, and we have showed that
10 during our presentation of Mr Dutertre.

11 Let me emphasise in this context that at T-20, page 16, lines 6 to 7, the Defence misquotes
12 Simone's Gbagbo's agenda on a very important point. They quote, "Incitation à une
13 réplique par les FDS à armes rebelles." However, the agenda clearly states as follows:
14 "Incitation à une réplique par les FDS à armes réelle." And in this context this quote
15 makes a big and a significance difference.

16 Witness P-44 sums it up. He states that during the crisis, all the leaders of the LMP were
17 really attached to the president. They supported Mr Gbagbo in the fight to keep him in
18 power.

19 Also, contrary to the suggestion of the Defence, Mr Gbagbo did not just hold three
20 meetings with the FDS generals. According to Witness P-46, during the post-election
21 crisis, there were at least ten meetings with the president that were attended by all the
22 FDS generals and some of the government ministers, and there is also evidence that the
23 Chief of Staff of the Army was in constant contact with the president and often called him
24 late at night, on the instructions, your Honour.

25 The Prosecution issues wishes to emphasise that it has presented evidence that stems

1 directly from the recipients of these instructions and orders. Not only can these persons
2 provide reliable evidence as to their existence, but they can also tell us that the orders
3 have actually been implemented, which they did.

4 The Defence confirms that Mr Gbagbo did give instructions to his forces. The Defence
5 claims that Mr Gbagbo's only instruction in relation to Abobo was to, and I quote, "Put a
6 stop to the Commando Invisible's misdeeds in Abobo and to free up the international
7 passage through Abobo." This is at transcript 20, page 24, lines 11 to 13.

8 The evidence shows that this was not the only instruction that Mr Gbagbo gave in relation
9 to Abobo. Nevertheless, the claim of the Defence corroborates that Mr Gbagbo had the
10 authority to instruct his forces, to take action, and that he was under the impression and
11 he was aware that his forces had the means to implement this order in relation to the
12 Commando Invisible.

13 Let me make a few final remarks in relation to the mode of liability.

14 The Prosecution chose to charge Mr Gbagbo pursuant to Articles 25(3)(a) and 25(3)(d)
15 because these modes of liability best capture the totality of the criminal conduct of
16 Mr Gbagbo, and the Prosecution submits that the Chamber should allow that the entire
17 conduct be the subject of the proceedings before the Trial Chamber, subject obviously that
18 they are proven to the relevant standard.

19 However, as stated earlier, all other modes of liability, with the exception of direct
20 physical perpetration under Article 25(3)(a), are made out by the facts and circumstances
21 and by the evidence presented in this case.

22 This also applies to Article 28. The question that the Chamber put to the Prosecution
23 during the hearing effectively puts the parties on notice. The parties had an opportunity
24 to address this issue and they continued to have this opportunity also during the closing
25 written briefs.

1 Therefore, the Prosecution submits that the Chamber should, in addition to confirming the
2 charges under Article 25(3)(a) and (d), also include the charge pursuant to Article 28.

3 The Defence argues, in addition, that Article 25(3)(a) and 25(3)(d) are incompatible, as a
4 person cannot at the same time be considered as a main perpetrator and as an accomplice.

5 The Defence therefore submits that the Chamber should not consider the charge under
6 25(3)(d) if it is satisfied that the Prosecution has met the burden under Article 25(3)(a).

7 First, the Prosecution stresses that this Chamber, it is not the task of this Chamber to make
8 findings of guilt or innocent, so therefore the Chamber makes no definite finding on either
9 mode of liability. That is the task of a trial chamber.

10 Second, as a matter of law, all mode of liabilities remain open for discussion, and that is
11 throughout the entire trial proceedings. This is why both Article 74, paragraph 2, and
12 Regulation 55 allow a Trial Chamber to re-characterise the facts and circumstances up
13 until the very end of a trial, subject to provisions of fairness be in place and the fairness of
14 the proceedings be guaranteed, and third, we submit that it is in the interests of the
15 Defence and it is to promote the rights of a fair trial that the Defence be put on notice
16 already at this early stage of all possible modes of liability that this Chamber would
17 concede.

18 This concludes my submissions and I hand the floor back to my colleague,
19 Mr MacDonald.

20 MR MACDONALD: (Interpretation) Madam President, your Honours, we have some
21 five more minutes to go and I would like to crave the indulgence of the Court if I do not
22 conclude in five minutes, but I think I will attempt to do so.

23 Let me now state, as referred to by my colleague, that there will be written submissions,
24 which in theory are limited to 20 pages. I would like to request from the Chamber at this
25 stage, and I am in your hands entirely, I would like to apply for an extension of the

1 number of pages from 20 to a little more than that so that we may revisit some of the
2 issues that speak to the very crux of this case.

3 The Prosecution recalls that Mr Gbagbo is charged for being an indirect co-perpetrator or,
4 in the alternative, a contributor to the death of about 168 persons, and rape of a number of
5 girls, and also of having caused bodily and serious harm and suffering to a number of
6 victims, or in the alternative, of having attempted murder.

7 Mr Gbagbo also has to answer for crimes against humanity of persecution against at least
8 284 persons. Furthermore, for one of these -- each of these incidents, we took the lower
9 figure.

10 Madam President, your Honours, the Prosecution has provided the evidence in support of
11 its case, relying on insider witnesses. The Prosecution relies on victim witnesses as well.

12 The Prosecution also relied on eyewitnesses. The Prosecution also relied on excerpts of
13 video recordings, as well as NGO and United Nations reports.

14 The Prosecution also relied on evidence, documentary evidence, as well as
15 computer-based information, including documents that were seized in the presidential
16 palace; that is the residence of Mr Gbagbo.

17 Defence may allege that we should have done this or that or investigated into this or that.
18 What matters in the end is not the quantity of the evidence, but rather the quality of the
19 evidence.

20 Thank you for your kind attention.

21 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) I thank you. We
22 shall now break for 30 minutes and resume our proceedings at 4 p.m.

23 (Recess taken at 3.28 p.m.)

24 (Upon resuming in open session at 16.00 p.m.)

25 THE COURT USHER: All rise.

1 Please be seated.

2 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) We shall now
3 continue with the closing statement by the legal representative of victims, Madam
4 Massidda. Please, you may address the Court.

5 MS MASSIDDA: (Interpretation) I thank you, Madam President.

6 Madam President, your Honours, Laurent Gbagbo is suspected of being an indirect
7 co-perpetrator of four counts of crimes against humanity; notably murder, rape,
8 persecution and other inhumane acts committed during the post-election violence in
9 2010/2011.

10 Mr Gbagbo's refusal to recognise the election victory of his opponent Alassane Ouattara,
11 and to step down from his position after ten years in power, plunged Côte d'Ivoire into a
12 violent crisis lasting six months, which led to the deaths of nearly 3,000 people
13 irrespective of their political preference.

14 The victims have heard the Defence explain, and I quote, "That it was President Gbagbo
15 who introduced the multi-party system to Côte d'Ivoire. His commitment to democracy
16 is a life-long commitment," end of quote. It would seem that the events under scrutiny
17 over the past two weeks might cast a shadow of doubt over such a statement.

18 The attacks committed by the pro-Gbagbo forces between 27 November 2010 and 8
19 May 2011, within the context of the plan as described by the Prosecution, were
20 widespread and systematic and were directed against specific ethnic or religious
21 communities. Hundreds of civilian opponents were attacked, looted, injured or raped as
22 a result of this policy.

23 The Defence has attempted to have you believe that an armed conflict not of an
24 international character was ongoing in Côte d'Ivoire from 2002 up until 8 May 2011, and
25 that on one side there were combatants, and on the other civilians who were coming

1 under attack, and that whatever the cause it is the rebels who were solely responsible for
2 the violence perpetrated against civilians with the support of the international community,
3 France in particular.

4 But paradoxically, the Defence is -- is able to show that the FDS, a regular army, was not
5 under the control of Gbagbo as it was made up of pro-Ouattara soldiers, and therefore
6 deeply divided for political reasons. They were lacking in means, and even at the very
7 same hearing the Defence conceded that Blé Goudé encouraged enlistment in order to
8 supposedly channel the actions of the young pro-Gbagbo supporters.

9 Were that to be the case, I would merely be representing collateral damage or people used
10 as human shields by their rebels -- by these rebels. Bearing in mind that the FDS had no
11 weapons, and that according to the Defence the motto was "to defend oneself," I quote,
12 "without weapons, with one's own bare hands, or to remain courteous towards the
13 population and to use only conventional means."

14 This would also explain the existence of a weapons cache at the president's residence. In
15 fact, they were there just because Mr Gbagbo did not want for them to be used.

16 Madam President, your Honours, the Defence repeatedly stressed the need for gravitas.

17 The victims urge you not to let the Defence disparage them in such a manner and urge
18 you to hear their cries, as Maître Baroan requested during the hearing of 20 February last.

19 She said that, as a human rights defender in Côte d'Ivoire, and born of a Malinké father,
20 she knew what she was talking about when it came to victims. She was very glad to see
21 that, and I quote, "For the first time, international criminal justice is producing a glimmer
22 of hope in the darkness of an increasing violent civilisation and making room for victims
23 in the international arena," end of quote.

24 Now, what room has been made, Madam President, your Honours? The victims listened
25 to the Defence state that the women's march was pure fabrication, that the march on the

1 RTI was an uprising, that the bombing of the Abobo market did not take place as the
2 Prosecution's evidence is sketchy, that the Yopougon massacre did not take place because
3 no military or ballistics expert was called to corroborate the statements of the Prosecution
4 or to analyse the plausibility of the so-called shelling and the circumstances under which
5 it took place.

6 In support of its conclusions, the Defence has preached to the Defence about what it
7 should have done. However, it never saw fit to produce any evidence in this regard
8 itself, claiming that it was a de facto reversal of the burden of proof.

9 In addition to a great number of gratuitous assertions, the Defence has relied heavily on
10 an anonymous book, or even on, I quote, "The best informed French newspaper, the
11 Canard Enchaîné," end of quote, according to the Defence or NGO reports which cannot
12 provide a basis for the Prosecution's evidence, which really is not reciprocal and this when,
13 as the Defence itself admits, anonymous evidence has but a very low probative value.

14 Maybe the Defence could have read the requests for participation on the part of my clients
15 more attentively, transmitted in keeping with the requirements of Rule 89.

16 The Defence would doubtless have found answers to their questions, including that a
17 great number of the victims were women, and unless the Forces Nouvelles comprised a
18 majority of women, the Defence's arguments are hard to follow when they say, and I
19 quote, "A certain number of victims and certainly a large number of victims may be
20 soldiers from the Forces Nouvelles and various rebel groups active in Côte d'Ivoire since
21 2002, and who were particularly active at the time of the facts charged in this case." Ad
22 impossibilia nemo tenetur.

23 We would be forgetting that, according to the Defence, they can't be considered victims as
24 the violent acts allegedly committed by the pro-Ouattara clan are not being prosecuted.

25 But let us recall that on the second day of the hearing the Defence itself admitted, and I

1 quote, "There aren't any good or bad victims."

2 Incidentally, and since the Defence yesterday once again tried to explain to you the
3 significance of the election slogans, in order to show you that gratuitous assertions based
4 on dictionary definitions cannot be taken into consideration, I would like to draw your
5 attention to a speech given by Simone Gbagbo on 15 January 2011 during a youth meeting
6 at the Abidjan Cultural Centre, and I quote. "As you don't want me to say his name, I
7 suggest we call him 'the chief bandit,' and so when I say 'chief bandit' you'll know who
8 we're talking about." And she goes on to add, I quote, "The truth always prevails and the
9 truth has once again prevailed. The chief bandit has not won the elections."

10 The former First Lady went on to say, "The nation, your Mother Nation, is calling upon
11 you. You only have one Côte d'Ivoire, and therefore you only have one Mother Nation.
12 Today, the devil and his acolytes is threatening her and you must defend her against he
13 who is attempting to misrepresent her or sell her off with lives and crime. Alassane
14 Dramane Ouattara must be sent home to Sindou, in Burkina."

15 Madam President, your Honours, the evidence presented to you clearly shows that the
16 events reflect Mr Gbagbo's desire to retain power at all costs, including by the use of lethal
17 force, and that the victims were indeed civilians.

18 The victims contend, in keeping with the Prosecution, that the crimes for which
19 Mr Gbagbo is charged were perpetrated in the context of the implementation of a
20 well-organised plan with the aim of maintaining the suspect in power by way of both
21 private and public means.

22 All of the victims that I represent are, and I repeat, civilians, who were arrested whilst
23 they were on their way to peaceful marches. Sometimes they were abducted, tortured or
24 detained without reason for weeks on end in police stations or detention centres. They
25 were raped, or their loved ones were killed during attacks against them in public places,

1 in places of worship or in their houses and properties. They were persecuted because of
2 their family name, their country of origin or their neighbourhood of residence.

3 Once again, the Defence has attempted to have us believe that Mr Gbagbo had no
4 discriminatory intent and that even within his government there were members of various
5 ethnic groups. My Ivorian colleague also said that in Côte d'Ivoire there is no difference
6 between Ivorians from the north, south, east and west. This is not true.

7 All of the victims that I represent recount the events as targeting specific ethnic groups.

8 Their attackers identified them as Ouattara supporters, or perceived Ouattara supporters,
9 by virtue of their origins, ethnic group, religious belief or place of residence, or according
10 to the perception that their attackers had of their origins, ethnic group, religions, et cetera.

11 Contrary to what the Defence seems to believe, some of the victims that I represent know
12 the identity of their aggressors or attackers only too well because, as I said in my opening
13 statement, they live in the same neighbourhood; they are their neighbours or their former
14 school mates.

15 In this context, it is difficult for them to bear when the Defence claims to be wounded by a
16 victim's account of rape, stating that rape -- without stating that rape is an appalling,
17 shameful, horrendous and unspeakable act, whilst emphasising that unfortunately rapes
18 is rife at times of public unrest because this creates, and I quote again, "an environment
19 that encourages crime," or when they quote an NGO report which, and I insist, can only
20 be done by the Prosecution, they tell us of a rape victim who is obviously a pro-Ouattara
21 supporter.

22 The evidence presented by the Prosecution throughout this hearing show that people
23 were targeted according to their origins, ethnic group or religion, and also show that there
24 are substantial grounds to believe that Mr Gbagbo committed the crimes of which he is
25 charged.

1 Contrary to the Defence claims, the evidence presented by the Prosecution clearly shows
2 that the attacks were widespread, recurrent and systematic.

3 Madam President, your Honours, I shall not dwell on the judicial definitions and case law
4 interpretations of the various elements of the crimes which shall be amply developed in
5 our written submissions.

6 For my presentation today, it is sufficient to recall with regard to the attacks that it was
7 indeed a campaign, or an operation, which was directed against the civilian population
8 within the meaning of "a conduct" under Article 7(2) (a) of the Statute. The civilian
9 population was indeed the main target of the attack in the implementation or furtherance
10 of the policy of the State.

11 Nor can one deny that the attacks were widespread. They were committed on a massive
12 scale, on a frequent basis. They were led collectively and were extremely serious attacks
13 directed against a very large number of people.

14 The Prosecution evidence has shown that there were many attacks against civilians from
15 the north of Côte d'Ivoire and neighbouring countries from West Africa. The
16 Prosecution indicated that the four episodes chosen in its amended Document Containing
17 the Charges are mere examples, and that the number of victims has been estimated in, I
18 quote, "... the lower range."

19 The description of events provided by the victims corroborates the evidence presented by
20 the Prosecution; notably in referring to recurrent attacks on mosques and rapes often
21 perpetrated with the threat of a weapon in very violent, humiliating and disturbing
22 circumstances, sometimes before family members who were incapable of coming to their
23 aid.

24 These acts have had an impact on the daily and long-term existences of the victims I
25 represent. Many victims still suffer from humiliation and stigmatisation. Some still

1 suffer from the injuries inflicted, or the illnesses contracted, during the inhumane
2 treatment inflicted upon them in detention centres, or in the streets where they were
3 demonstrating peacefully.

4 Madam President, your Honours, it was indeed the civilian population that was targeted
5 during these attacks, not the rebels. This is the only conclusion to be drawn from mortar
6 attacks on a densely populated neighbourhood, on a market, or attacks on mosques and
7 quelling of peaceful demonstrations, whether they had been authorised previously or not.
8 It is very difficult for the victims to tolerate when they hear the Defence explaining that
9 the events they experienced and suffered under were just part of ordinary crime in
10 Abidjan during the post-election period and that they were, and I quote again, "... part of
11 inherent criminal activity that unfortunately occurs in all societies during times of unrest,"
12 or worse still that they didn't even exist.

13 With regard to the responsibility of the suspect and envisaged mode of liability, the
14 Prosecution claims that Laurent Gbagbo bears responsibility as a co-perpetrator pursuant
15 to Article 25(3)(a) of the Rome Statute, including those crimes perpetrated by individuals
16 he used in the context of the common plan he designed in order to maintain power.

17 Co-perpetration can therefore be understood to mean a functional division of criminal
18 tasks between at least two perpetrators linked by an agreement, or common plan.

19 The existence of a common plan has been established by the Prosecution, who also
20 explained that the pro-Gbagbo forces led concerted and co-ordinated actions in the
21 knowledge that the implementation of the common plan would result in the commission
22 of the crimes.

23 The Chambers of the Court have identified eight elements defined in the scope of
24 individual criminal responsibility as joint commission through another person, pursuant
25 to Article 25(3)(a) of the Rome Statute.

1 The elements are as follows: The suspect must be part of a common plan, or an
2 agreement between one or several persons;
3 (2) the suspect and the other co-perpetrators must make an essential and co-ordinated
4 contribution resulting in the realisation of the material elements of the crime; (3) the
5 suspect must have control over the organisation; (4) the organisation must enjoy an
6 organised and hierarchical apparatus of power; (5) the commission of the crime shall
7 result from the automatic following of orders given by the suspect; (6) the suspect must
8 satisfy the subjective elements of the crime; (7) the suspect and the other co-perpetrators
9 must be commonly aware and acknowledge that the realisation of the objective elements
10 of the crimes will result in the implementation of their common plan; and (8) the suspect
11 and co-perpetrators must be aware of the factual circumstances enabling them to jointly
12 exercise control over the crimes.

13 In this case the Prosecutor has shown, inter alia, that the suspect sometimes gave direct
14 orders to General M'bia Bredou; that the suspect and his inner circle gave orders to their
15 subordinates within the various units of the FDS and that their orders were executed in a
16 co-ordinated fashion; that the suspect gave instructions to Blé Goudé, Minister of Youth;
17 that the suspect ordered the Minister of Defence to recruit soldiers within the FDS before
18 and after the post-election violence; that the suspect ordered his subordinates to buy
19 weapons abroad; that the suspect ordered his subordinates to buy weapons abroad; that
20 the suspect gave instructions to his commanders during operations; and, finally, that the
21 suspect ordered his subordinates to implement the common plan.

22 The theory of individual criminal responsibility, as presented by the Prosecution under
23 Article 25(3)(a) and relative to co-perpetration, has been widely substantiated.

24 The victims hereby submit that the other forms of criminal responsibility under Articles
25 25(3)(b), 25(3)(c), 25(3)(d) and 28 of the Statute are in the alternative to those of Article

1 25(3)(a). They will only come under scrutiny if the Chamber were to decide that the
2 suspect cannot be considered the main perpetrator of the crimes charged as
3 co-perpetrator.

4 Lastly, a few words as to the prejudice suffered by the victims I represent.

5 All of the victims that I represent here today have endured mental suffering and material
6 loss. They have endured sexual and physical violence, acts of torture and violation of
7 their dignity through the murder of their loved ones and because they witnessed attacks
8 and massacres. They have lost their means of subsistence and their resources even if the
9 crime of looting is not included in the crimes charged by the Prosecution.

10 By way of conclusion, the Prosecution has shown that there is sufficient evidence to
11 establish substantial grounds to believe that the suspect, Mr Laurent Gbagbo, committed
12 the crimes of which he is charged, thereby reaching the probative threshold requested by
13 the texts at this stage of the proceedings pursuant to Article 61(5) of the Statute.

14 In particular, there is sufficient evidence to believe that Mr Gbagbo implemented a
15 common plan, with the assistance of his inner circle and armed forces, in order to
16 maintain power at all costs; that Mr Gbagbo was co-perpetrator of the crimes of attacking
17 his opponent and his supporters, or perceived supporters, on the basis of their origins,
18 nationality or religion; that Mr Gbagbo was aware of the systematic and widespread
19 nature of the attacks perpetrated, which targeted the civilian population on the basis of
20 their ethnic origin, declare religious beliefs or their nationality (Dioula, Mossi, Senoufou,
21 Baoulé), their religious beliefs (Muslim), or their nationality (citizens from West African
22 States such as Mali, Burkina Faso and Niger); that during the attacks massive violations
23 were committed, notably rapes, murder and inhumane acts; that these events are crimes
24 of persecution on political, national, ethnic and religious grounds committed against a
25 great number of victims.

1 All these facts have been established and are supported by sufficient evidence to enable
2 the Chamber, at this stage of the Confirmation of Charges, to reach a determination that
3 the charges against Mr Laurent Gbagbo must all be confirmed and that he should be
4 committed to trial.

5 Lastly, even if the prejudice suffered by the victims has not been covered in this hearing, I
6 hope that their voice will be heard through their participation in the proceedings and that
7 these proceedings will make it possible for the prejudice suffered to be addressed.

8 I thank you.

9 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: I thank you, Madam Massidda,
10 and I shall now turn to the Defence.

11 Maître Altit, you may address the Court.

12 MR ALTIT: (Interpretation) Thank you, Madam President.

13 Madam President, we will try to conclude by 5 p.m. If we have to go beyond for about
14 two or three minutes, then we will request your leave. Otherwise, if we have too much
15 else to say, then we will stop at precisely that time.

16 Maître Baroan and myself will do the presentation, and she will make a brief presentation
17 after me and then subsequently President Gbagbo will make a statement.

18 Madam President, your Honours, I would like to begin with a few brief observations on
19 the Prosecution case.

20 The Prosecutor asked about our thesis. This is not our role right now. The burden of
21 proof rests with the Prosecutor and not the Defence. We should not confuse roles.

22 The Prosecution must substantiate its allegations, and from that perspective, from the
23 point of view of the Defence, it is strange that the Prosecution is using closing arguments
24 to try to respond to the Defence, rather than to demonstrate once and for all the validity of
25 its evidence.

1 Regarding testis unus testis nullis, even though law evolves, common sense remains the
2 same, particularly when the quality of the testimony is not very high.

3 Regarding P-44, he obviously adapts himself depending on who he is speaking to. In
4 order to know what he really thinks, why not interview him?

5 And regarding responsibility, the Defence notes the growing confusion in the choices of
6 the Prosecutor. He has a responsibility. He has a choice to make. He must have a
7 strategy, a logic that he must follow.

8 Regarding the intervention of the legal representative of victims, she focused on the
9 Defence evidence and transformed herself into a Prosecutor bis.

10 Madam President, your Honours, my presentation could be entitled "In Search of the
11 Truth," because the fact of the matter is that we need to know what precisely is the issue at
12 this stage of the proceedings -- of the proceedings after ten days of hearing. The issue is
13 to determine whether the reality as depicted by the Prosecutor before this Chamber is
14 anywhere near the truth.

15 The way in which the Prosecutor seems to have understood the Ivorian crisis has
16 important consequences. It is on the basis of his comprehension of this situation that
17 leave was granted to open an investigation and that an arrest warrant was issued against
18 President Gbagbo.

19 It is the Prosecutor's perception of the reports on the field that explains his decision to
20 focus his efforts on prosecuting members of the Gbagbo administration and to deal with
21 the former rebels who are now in power, with such leniency.

22 These issues were never discussed in depth by the Prosecutor and because of that the
23 Prosecutor is able to present his thesis without fear of contradiction. In the absence of
24 adversarial proceedings, the Chamber did not have the opportunity to assess the
25 relevance and basis of the Prosecution case. At last, this has now been done.

1 During this hearing, we have dealt with every single one of the Prosecutor's accusations,
2 assumption, arguments, affirmations, evidential materials and the conclusions derived
3 therefrom.

4 The end result is obvious. At the end of this in-depth examination, nothing of the
5 original edifice is left standing. The carefully constructed tower has all come crumbling
6 down, and why is that? Because it was built on sand. It was built on false premises, on
7 assumptions, on historical, cultural and political generalisations; in other words, because
8 the edifice was constructed based on a distorted reading of the events, a distorted but
9 pleasant view of the reality, so pleasant that the Prosecutor did not see any need to
10 investigate. Such was his conviction that the work had already been done.

11 The case of the Prosecutor rests on two pillars. One: The affirmation of the absence of
12 unrest in Côte d'Ivoire prior to the elections of 2010; and two, the fact that those elections
13 produced an undisputable winner, a result that President Gbagbo allegedly refused to
14 accept.

15 On the basis of those two pillars, the Prosecutor claims that President Gbagbo, in a bid to
16 stay in power at all costs, just before the presidential election of 2010, surrounded himself
17 with a small group of accomplices who shared the same objective. Together, they
18 allegedly hatched a plot to wrest control of the crucial machinery of the state for the
19 purpose of using the institutions as tools to hang on to power. Assured of the loyalty of
20 the security forces, they supposedly unleashed them against peaceful demonstrations
21 demanding the departure of President Gbagbo.

22 We have examined that theory from different perspectives during the hearings. From
23 our point of view, the opposition theory did not stand up to close examination and the
24 pillars of his arguments turned out to be built on sand.

25 Let us begin with the foundation of the Prosecution case. To begin with, the Prosecution

1 is not aware of the various coup d'états that shook Côte d'Ivoire, and particularly the coup
2 of 19 September 2002 which led to the partition of the country and the carving up of the
3 north of the country by rebels suspected of perpetrating the most serious crimes.

4 In the view of all the observers, the post-electoral crisis is only a stage of the conflict
5 which can only be understood in light of the unrest, tearing apart the country since 2000.

6 The post-electoral crisis itself was characterised by the taking of Abidjan by rebel forces
7 who had infiltrated themselves, even before the elections, and by the offensive of other
8 rebel troops which came from the north, and which had been armed and equipped,
9 amongst others by France, and made up in the majority of foreign mercenaries and Dozos
10 militias.

11 Why is it that the Prosecutor is so discrete when it comes to explaining the presence of
12 these forces in Abidjan, and in the south of the country, their organisation and the
13 reprehensible crimes that they perpetrated? One can only understand the events if one
14 acknowledges that there was indeed a war and that the south of the country was invaded.

15 The Prosecution sees the elections in a very simplistic manner. In order to achieve peace
16 as quickly as possible, President Gbagbo accepted to organise elections even though the
17 conditions for the disarmament of the rebels, who had committed themselves to
18 disarming, had not been fulfilled, but President Gbagbo focused first on national
19 reconciliation.

20 The elections were prepared very well. The political parties, including the party of
21 Mr Ouattara, received subsidies and air time on television. The parties were able to
22 organise meetings and rallies. President Gbagbo requested the presence of international
23 observers. He appealed to major companies specialised in censuses to carry out a census
24 of the population and update voter rolls.

25 The Prosecution does not explain why there was massive fraud mostly in the north of the

1 country and to the detriment of President Gbagbo. Isn't this clear that it was instead
2 President Gbagbo's opponent who wanted to grab power by all means?
3 To transform the CEI into a Constitutional Council bis in violation of the provisions of the
4 Constitution certainly reveals a will to accede to power by all means.
5 One can see that everything happened as planned. Why should President Gbagbo be
6 accused of having waited for the Constitutional Council to proclaim the results?
7 As from the time of his election, President Gbagbo appointed a government made up of
8 technocrats and personalities from the civil society. Why should this be held against
9 President Gbagbo?
10 More importantly, he immediately proposed a recount of the votes, which was stubbornly
11 refused by the Ouattara camp.
12 A simple analysis of the Prosecution case shows its fragility. President Gbagbo did
13 everything possible, the facts are there and the facts are stubborn, to ensure that the
14 elections take place according to democratic rules.
15 Faced with these irrefutable facts, the case of the Prosecutor collapses the alleged intention
16 of President Gbagbo, the alleged organisation on which he relied for -- or the alleged
17 orders that he is supposed to have given. Intent is the crucial requirement in a criminal
18 proceeding, without which the responsibility of an individual cannot be engaged.
19 The alleged intent of President Gbagbo to hang on to power is only valid in the reality
20 depicted by the Prosecution, and if that framework is disassembled, then this alleged
21 intention disappears.
22 Why would such a man, who has fought for democracy all his life, because it is thanks to
23 him that Côte d'Ivoire enjoys multi-partyism, why would he suddenly change his
24 attitude?
25 I would like to point out the coherence in his conduct during the entire ten years of his

1 presidency, and specifically his attachment to dialogue. This is a man who always
2 wanted peaceful reunification for his country and who, because he wanted peace,
3 appointed in his government rebel ministers and he even appointed Guillaume Soro, who
4 was head of the rebellion, as Prime Minister.

5 He gave the rebels a place in the armed forces and guaranteed their political presence,
6 treated them like privileged interlocutors, and managed to organise an election in a
7 difficult situation.

8 Polls indicated that he was the winner, and why would that person make plans to hang on
9 to power a few months before the elections?

10 There were legitimate reasons not to organise the elections and to hang on to power for
11 much longer. First of all, there was the security situation. You would agree with me
12 that under these circumstances it was a really complicated plan that President Gbagbo is
13 supposed to have implemented, whereas he had a much simpler solution.

14 In order to prove that President Gbagbo tried to hang on to power at all costs, the
15 Prosecution relies on a campaign slogan which, according to him, reveals the hidden
16 intent: "We win or we win." If he had questioned a single Ivorian, he would have
17 realised that this is a common expression in Côte d'Ivoire, which is even used by the
18 football team of the country, The Elephants, and you would have realised that the singer
19 who turned this slogan into a song was a communications officer in the Alassane Ouattara
20 campaign. Why, therefore, should this slogan be attributed to President Gbagbo?

21 The Prosecutor then claims that a speech made at Divo, on 27 August 2010, was a
22 harbinger of the violence to come, but this speech, which was made before a group of
23 police officers, involved explaining the institution of a republican security company in
24 Divo.

25 It was intended to reassure the population of the area, who were subjected to banditism

1 during every cocoa season. This is a speech that any Head of State and any Minister of
2 the Interior can regularly make. You will realise that the Prosecutor systematically deals
3 with facts out of context.

4 The Prosecutor then claims that President Gbagbo prepared people's minds for future
5 violence by identifying in advance the enemies and stigmatising them. You would have
6 realised that the Prosecutor is incapable of mentioning a single hate speech or a single
7 denigrating comment.

8 He is compelled to refer to that same Divo speech and to the fact that pro-Gbagbo forces
9 used a slogan of violence. There is nothing on the other side. It is only con. But, once
10 again, this is a common expression in Côte d'Ivoire, which originated in a reality TV show.
11 We should also point out that the group of singers who sang that song are from the north,
12 in the majority.

13 Now, let us move to the affirmation, according to which there was a shadowy
14 organisation with a structured hierarchy tasked with implementing the policy to stay in
15 power. The Defence has shown that such a policy and such an organisation never
16 existed.

17 The Prosecution claims that President Gbagbo surrounded himself with a clique of
18 hardcore supporters, and the Prosecution claims that several months before the election,
19 President Gbagbo laid a foundation of the organisation that would implement his policy
20 of attack against civilians.

21 Once again, the reality is not consistent with his affirmation. Why would a man who
22 prepares elections that are so free and fair act in this way?

23 The Prosecution relies on the fact that in August 2010, President Gbagbo sent a degree
24 appointing military officers, thereby strengthening the position of the so-called close, or
25 loyal, soldiers, according to the Prosecutor. According to the Prosecutor, the intention of

1 President Gbagbo to stay in power was demonstrated by those appointments that he
2 made.

3 The Prosecution is thereby suggesting that those officials were parts of an inner circle or a
4 clique loyal to President Gbagbo, who placed their political or ethnic interests over and
5 above those of the nation.

6 On the one hand, the Prosecutor fails to substantiate his allegations, and on the other hand,
7 upon scrutiny, these allegations are false. Yes, indeed, generals were promoted to a
8 higher rank at that time, but their duties or functions did not change. They all
9 maintained the positions they had held for several years. Therefore, the military
10 hierarchy was not altered at that time. In fact, and above all, the generals who were
11 promoted hailed from different parts of the country.

12 We must also point out that Guillaume Soro at the time was Prime Minister, and all
13 appointments of civilian or military officials were at least subject to agreement, at least
14 tacit agreement.

15 Finally, the majority of these high-ranking officers were subsequently promoted by
16 Alassane Ouattara as soon as he assumed power. Is that not the best rebuttal to the
17 Prosecutor's allegations? Would Alassane Ouattara have promoted pro-Gbagbo officers?
18 In fact, the fact is that, on the one hand, there were the regular forces of law and order of a
19 democratic state, and on the other hand, there were rebels who had streamed in, in
20 columns from the north, many of whom were from Burkina Faso, Mali and Nigerians, and
21 who terrorised people of the northern part of the country over an eight-year period.

22 The Prosecutor argues that such a clique, or inner circle, existed because Simone Gbagbo,
23 the president's wife, had a political role, but that in itself is not news. Simone Gbagbo
24 was a female politician, an activist for democracy, even before she met her husband. She
25 was a member of parliament before her husband was elected. She had relations with

1 other members of parliament and members of government who belonged to her party,
2 and that is only natural.

3 The Prosecutor expresses surprise at her efforts in March 2011 to draw the attention of
4 state officials to the plight of the inhabitants of Abobo. That was following the massacres
5 committed by pro-Ouattara forces on 4 March 2011, in the Anoukoua-Kouté village in
6 Abobo. It was only normal for her to be concerned about the fate of her subjects and to
7 call on officials to work towards the maintaining of peace and order.

8 Furthermore, it is interesting to note that the Prosecutor has not provided a single order
9 issued by President Gbagbo, which was either illegal or questionable, not a single order of
10 that nature from the government, not a single repressive order issued by any military
11 officials, let alone any orders aimed at repressing or attacking civilian populations.

12 Even when the forces of law and order came under attack, for example, during the march
13 on the RTI on 16 November 2011, or in Abobo, in February 2011, orders from the military
14 hierarchy were only issued for the purposes of defence.

15 Since The Prosecutor has no orders to show the Court in support of his theory, he
16 attempts to convince the Chamber that the orders of President Gbagbo were implied or
17 implicit, flowing from the holding of meetings. President Gbagbo's attendance at
18 meetings to discuss security matters is alleged by the Prosecutor to be proof of his role in
19 the so-called repression and thereby his desire to remain in power.

20 We must note that it is normal for a Head of State to play his role, particularly in times of
21 war. These briefings bring together law enforcement officials, irrespective of their
22 political leaning. They are designed to be situation reports to the president, as the case
23 may be, in the event where a state is under attack. All testimonies in this regard are
24 consistent. The president listened. He asked questions, thereby proving that he was
25 not the one who initiated the issues. Then he complied with the decisions made by the

1 officers of law and order, these very officers who were subsequently promoted by
2 Alassane Ouattara, and this must be recalled.

3 The Prosecutor faces a simple problem. He cannot prove intent. He cannot prove that
4 an organisation existed regardless of its form. He cannot prove that President Gbagbo
5 gave any illegal or illegitimate orders whatsoever. Therefore, the Prosecutor attempts to
6 circumvent those difficulties by highlighting the so-called crimes, in the hope that the
7 absence of evidence will be offset by the nature of the crimes. That is why the Prosecutor
8 is bound to piece together these allegations whose very broad scope reflects their artificial
9 and fabricated nature.

10 The Prosecution's entire presentation is like a deck of cards which comes crumbling down
11 once one drops. The events themselves must then take on a difference meaning.

12 Now let us quickly revisit a few points.

13 The four incidents retained by the Prosecutor form part of an unchanging modus
14 operandi. Civilians assemble, for whatever reason. Provocation and firing at the forces
15 of law and order occurs. Civilians are used as human shield. Accusations are leveled at
16 the law enforcement forces in the international media. At all times, the Ivorian
17 government was placed before a fait accompli by the very people who were behind the
18 events.

19 Let us talk about the march on the RTI.

20 The Prosecution has stated and repeated a short while ago that Guillaume Soro invited the
21 people to take part in a peaceful march; peaceful march. You see how reality can be
22 distorted?

23 During the proceedings, we all saw excerpts, we all saw and heard Guillaume Soro calling
24 on his soldiers to attack the RTI. We heard Ouattara saying, "We should be ready for the
25 last day" on Thursday, with all their military equipment, ready to fight. You do

1 remember pictures of fighting between rebel forces at the Hotel du Golf and forces of law
2 and order. Well, the Prosecutor did not see any of that. He did not hear any of that, or
3 maybe he chose not to see.

4 Why did endorse the idea that the forces of security fired in a sustained manner with
5 weapons of war on peaceful crowds and then go on to say that three people only died?
6 Three deaths, we know nothing about. We do not know their identity and we do not
7 whether they were combatants or not. The only deaths identified on 16 December are
8 said to be FDS who had been attacked with heavy weapon, and we can only say that this
9 needs to be clarified.

10 Regarding the march of the women, the Prosecutor asserts that on 21 February, that
11 three -- that on 3 March, security forces loyal to Gbagbo used heavy weapons against a
12 group of 3,000 women. Let us also remember that in Abobo on 3 March, there were
13 forces of law and order. They were evacuated except those who were in the camp
14 commando. Now, what the Prosecutor asserts regarding this march, namely, the
15 organisation of women's demonstration hoping that pro-Gbagbo forces will not shoot at
16 them is false, because there was no more force for the maintenance of law and order in
17 Abobo, and on 3 March the FDS vehicles could no longer drive around in Abobo without
18 coming under attack by heavy weapons.

19 In support of his theory of massacres, the Prosecution pieces together a loosely disjointed
20 video, where it is impossible to distinguish anything in at least three segments, one
21 relating to the group of women of the RDR, which amounts to only about ten women, as
22 against the 3,000 mentioned.

23 Second, armoured vehicles which drive quickly along the road, and it is impossible to
24 determine whether they are driving along the same street where the women were
25 gathered. It is interesting to note there are no signs of fighting in that footage.

1 Third, a woman alleged to be dead, who gets up before falling down again, following
2 orders, apparently, from a man. Is that the Prosecutor's evidence?
3 Can he convince the Chamber with such questionable evidence? Can he convince us
4 with such questionable evidence, with such a compilation of facts in this manner? These
5 manipulations, if taken into account by this Chamber, will have a serious bearing on the
6 credibility of the Court.

7 Turning to the shelling of the Abobo market: The Prosecution allegation that between 13
8 and 22 March, there was a repression using heavy weaponry at the Abobo -- in Abobo,
9 between 17 -- or, rather, on 17 March, insisting that throughout the month of March
10 Abobo was being shelled consistently.

11 Now, witnesses say that shells were raining on Abobo, but where, what was the position
12 from which the shelling was taking place?

13 The problem here is that it is necessary to investigate the very nature of these shellings;
14 otherwise, the Prosecution case crumbles.

15 The Prosecution argues that on 17 March, there was no single soldier, no armed
16 combatant, in the shelled areas, but this is untrue, because we know that in Abobo there
17 was ongoing fighting between pro-Ouattara forces, and pillaging. The commando -- the
18 Camp Commando was under siege and under attack.

19 The Prosecution fails to mention any of this, particularly when we consider that one of his
20 witnesses talked about the attack on the Camp Commando, on the very day. It is
21 therefore very clear that once again the Prosecution has chosen one school of thought over
22 and above another without investigating, no ballistics tests, no impacts, no cross-checking
23 of the documents, nothing tangible done in terms of further investigation.

24 Now, regarding the events in Yopougon, we must recall that they happened in a
25 particularly specific situation, or context, which the Prosecutor ignores; namely, that the

1 FRCI was attempting to penetrate a neighbourhood, while the inhabitants were defending
2 it.

3 In fact, the Prosecution says that rebels came into Yopougon on 31 March 2011. Were
4 they waiting there arms at ready, these very people who had been involved in fighting,
5 and killing and rapes and pillaging, throughout their bloody march to the north of
6 Abidjan?

7 Now, this is the picture we have, but those there barricaded themselves in order to be able
8 to defend their families; their old people, their women, and their children. This is the
9 reality that we know. It is documented, it is cross-checked and it is different from the
10 Prosecution case.

11 In this specific context, we cannot disregard the incidents in Yopougon. Why, or how,
12 can President Gbagbo be said to be responsible for the attacks by the FRCI on the
13 inhabitants?

14 Let us now talk about the link between President Gbagbo and the alleged crimes.

15 In an attempt to prove that President Gbagbo had control over the FDS, the Prosecution
16 transformed a state ceremony, following the announcement of President Gbagbo's victory
17 by the Constitutional Council, into an occult meeting, so to speak. In order to attempt to
18 prove that President Gbagbo ordered attacks against the population in Abobo, the
19 Prosecution relies on a single meeting which allegedly took place in February 2011, with
20 law enforcement officials at which President Gbagbo allegedly indicated that he agreed
21 with the -- that it was necessary to keep Abobo at all cost.

22 Now, this link between President Gbagbo, and the women's march on 3 March, as well as
23 the bombing of the market, are indeed issues that are questionable.

24 How can we engage in such loose interpretation? This is the method that the Prosecutor
25 has used. Based on an established fact, it was therefore normal for President Gbagbo to

1 hold meetings with his officials during such a difficult period, but the Prosecutor moves
2 from that to some very farfetched conclusions.

3 In fact, these are simple assertions, which are only worth what assertions can be. The
4 question is: Was there an attack on the civilian population? No. Was an offensive
5 organised? No. We must recall that the idea was to reinstate republican regularity and
6 protect populations that had come under attack by pro-Soro bands and the Invisible
7 Commando. It was therefore the duty of the president to secure the destiny of the
8 inhabitants of Abobo.

9 Madam President, I think I will stop here and resume after the break.

10 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. We
11 will break for 30 minutes and reconvene at 5.30.

12 (Recess taken at 5.03 p.m.)

13 (Upon resuming in open session at 5.31 p.m.)

14 THE COURT USHER: All rise.

15 Please be seated.

16 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Maître Altit, you
17 have the floor.

18 MR ALTIT: (Interpretation) Thank you, Madam President.

19 The Prosecutor's accusations imply some ethnic discrimination as its underpinning, to the
20 extent that it simply repeats accusations made by Ouattara's camp at the time of the crisis
21 with an aim to build awareness in the international community as to the alleged injustice
22 perpetrated against him.

23 Using that very tactic today to justify the ethnic nature of current appointments in the
24 administration and major corporations is what the Ouattara administration today refers to
25 candidly as "catching up."

1 There was never any discrimination in Côte d'Ivoire throughout President Gbagbo's
2 presidency. We have already established that fact in relation to the military leaders and
3 the same holds for the troops. FDS were made up of soldiers from various origins.
4 As for President Gbagbo, he was surrounded by Ivorians from all ethnic groups, from all
5 religious groups and from all leanings. Not only was there no discrimination practised
6 under him, but President Gbagbo from the time of his election did everything to fight
7 against all forms of discrimination.
8 Furthermore, after the September 2002 coup d'état and the division of the country he tried
9 to achieve reunification of the country, particularly by appointing ministers from the rebel
10 ranks and appointing rebels to key ministries, such as defence and foreign affairs and
11 particularly in 2007 appointed the rebellion leader, Guillaume Soro, to the position of
12 prime minister.
13 By the way, it was President Gbabo who made it possible for Ouattara to be a candidate to
14 the presidency when he repealed the laws prohibiting those born abroad and of foreign
15 parents to run.
16 From the above, it emerges therefore that the Prosecutor has failed to prove that an
17 organisation existed and that President Gbagbo had set up a structure, or organisation, to
18 implement any plan whatsoever, common plan, with a view to retaining power at all cost.
19 The Prosecutor has not found any element of probative value to corroborate his four
20 versions of the events forwarded in support of his charges. The Prosecutor has failed to
21 prove intent on the part of President Gbagbo, or to establish a link between him and the
22 alleged crimes. In fact, the Prosecution has failed to adduce sufficient evidence
23 establishing substantial grounds to believe that President Gbagbo committed any crime
24 whatsoever.
25 What then remains of the case brought before you by the Prosecutor? Nothing.

1 Now, that is why a short while ago the Prosecutor in his closing remarks rather focused
2 on the Defence evidence, because the initial Prosecution case reflected a different reality
3 and now for the first time you hear another version of the facts and reality has begun to
4 emerge gradually. And when those two versions are pitted, one against the other,
5 increasingly from day-to-day a new story emerges; a story about the reality that they have
6 been attempting to hide so far.

7 The onus is on the Prosecution to do everything possible to provide as undistorted a
8 version of the facts as possible to the Court. That is why the Prosecution is supposed to
9 investigate in order to provide the Chamber with all useful elements, both inculpatory
10 and exculpatory. Was there such inculpatory or exonerating investigation? No. And
11 we demonstrated that during our discussions.

12 The Prosecution did not provide any material relating to President Gbagbo -- or issued by
13 President Gbagbo, and furthermore, provided the Defence with information late in the
14 day. The Prosecutor, without cross-checking, simply lumps together material from
15 articles and NGO reports without cross-checking them. When persons were interviewed,
16 the Prosecution did not bother to identify the inconsistencies and the blurry nature of
17 their statements.

18 Are we any closer to the truth, having heard the Prosecutor? No. We are even further
19 afield from the truth, because the reality painted by the Prosecutor is simply a figment of
20 his imagination. The tragedy of the Côte d'Ivoire was simply covered up. Attempted
21 coup d'états are not mentioned. Constant attacks by rebels on the central authority are
22 set aside. The country is divided and the north is under the control of the rebels with
23 extortions, pillaging and murders having simply not been mentioned.

24 President Gbagbo's attempts towards reconciliation has been set aside. The massive
25 fraud in the north of the country during the second round of the presidential elections

1 simply have been forgotten. Alassane Ouattara's coup de force against the
2 Constitutional Council is transformed into a legal process. For what reason? Simply to
3 accuse President Gbagbo as being at the root of the post-electoral crisis of 2010. So we
4 need to look at another reality to understand what happened.

5 Madam President, your Honours, it is now for you to remind all and sundry that justice
6 without truth is not justice. Failure to investigate, or to investigate fully, is all the more
7 serious given that the onus of the evidence is on the Prosecutor and not on the Defence.
8 Defence is not bound to provide evidence to the contrary at this stage of the proceedings.
9 Defence must simply show that the evidence provided by the Prosecution is not sufficient
10 to warrant confirmation of the charges. The Prosecution has used a number of
11 expressions and words, whereas we have to work on the basis of facts, facts as reflected in
12 reality, and the reality is there. It is here for all to see. The reality is not the biased
13 reality painted by the Prosecutor. Take note of this. Make the attendant conclusions
14 and do not confirm the charges against President Gbagbo. That would be justice done.
15 That would be the best way forward, to foster reconciliation in Côte d'Ivoire.

16 Maître Baroan will now address the Court.

17 MS BAROAN: (Interpretation) Madam President, your Honours, the rebellion of 2002
18 and the post-electoral crisis of 2011 are events that were not narrated to me. In fact, in
19 Abidjan, I live in a neighbourhood between the lagoon and the Abobo neighbourhood.
20 These references would make it possible for the Prosecution and the legal representative
21 of victims to guess where that location is, and so this means that the people fleeing from
22 the authorities were doing so right before me.
23 There were people who fell after being struck by bullets, and some were burnt alive.
24 These are not things that were narrated to me. These are things that I witnessed,
25 including rapes of women.

1 All those experiences, our past and our present, in Côte d'Ivoire, the future of our children,
2 all those elements impose on me the duty not to make an issue of the problem of the
3 victims, not to deal with it like a tennis match.

4 I would simply want to raise three points and say that the Makakuté (phon) village is a
5 village that is right next to Abobo, and on 6 and 7 March 2011, in that village, the
6 inhabitants were attacked. Most of the victims, those who were killed, were members of
7 the Ebrie ethnic group. Does the legal representative of victim have Ebries in her list?

8 I would say no. That is if I look at the list that she has submitted.

9 I can say this, and I repeat, in Côte d'Ivoire people do not live according to their ethnic
10 origin.

11 In the neighbourhoods, there are neighbourhoods where you have a majority of certain
12 groups, but because of the community life in Côte d'Ivoire, and the reflection of our
13 community principles from the villages, compel people to live together irrespective of the
14 constituent ethnic groups.

15 Therefore, the miracle of having only a single ethnic group, or members of a single camp,
16 being killed in a systematic attack in Côte d'Ivoire is a miracle that is only possible
17 through the eyes of the Prosecution or of the legal representative of victims but,
18 unfortunately, this is a miracle that is a tragedy for Côte d'Ivoire.

19 Madam President, your Honours, I would like to move on to a more general presentation.
20 After these 30 hours of hearings, all Ivorians and all those people who quiver with joy at
21 the mere mention of the words of Côte d'Ivoire, those Africans and non-Africans alike,
22 who weep for Africa and for the painful history of this land, find themselves torn between
23 sadness and hope. Sadness because of this accusation which distorts the history of this
24 country, even though so recent.

25 The Prosecution constructed a mere caricature of the history of Côte d'Ivoire, which made

1 it impossible for them to fully grasp the issues at stake or to understand the reality of the
2 crisis in this country. You may tell me that it is Laurent Gbagbo who is at the Bar in this
3 courtroom today, but I should point out that criminal law and criminal cases must first of
4 all draw from the reality of the situation in question. By distorting the facts, the
5 Prosecution is not able to present a solid case before this Court.

6 Madam President, your Honours, there is an anthem that is reverberating all over Côte
7 d'Ivoire at the present time, an anthem of reconciliation. Legal or jurisdictional justice is
8 considered as a crucial and inescapable element. Is it possible to render justice while
9 ignoring reality? The answer is a resounding "no."

10 Let me tell you how reconciliation can be achieved, by listening to everyone, because
11 everyone has his or her own story to tell, their own story of distress. Each one of them
12 needs to be able to start all over again to engage in dialogue and all together to look
13 towards the future.

14 A history that is betrayed opens the door to renewed violence because it fails to
15 acknowledge the suffering of the people and fails to pinpoint the root causes of the
16 conflict and resolve the problems raised. Is it possible under such circumstances to build,
17 or rebuild, a nation together? As you well know, reconciliation can only be achieved if
18 the truth is brought to light.

19 Is it the truth of the Defence that, like moonlight on the plain, shall dissipate the dark tales
20 of winter which make up the allegations of the Prosecution? Madam President, your
21 Honours, in answer to that question, the people of Côte d'Ivoire and elsewhere, the
22 friends of Côte d'Ivoire, say with hope, "Light shall always triumph over darkness and no
23 matter how long the night, day is always sure to come."

24 Thank you.

25 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Mr Altit.

1 MR ALTIT: (Interpretation) Thank you, Madam President. President Gbagbo will
2 now address the Chamber.

3 MR GBAGBO: (Interpretation) Madam President, your Honours. I have followed the
4 discussions and I have heard many things. On occasion I find myself back in the Ivory
5 Coast, but on other occasions I find myself very far afield, sometimes extremely far afield.
6 So many questions were raised, but they were so far afield from what we actually
7 experienced in my country, and I thought to myself: Why is it that in modern justice
8 there are opposing camps? Because on a number of issues the Prosecution, or the
9 representatives of victims, or even yourself, you might have called upon me and I would
10 have been in a position to provide you with information that you could have
11 subsequently checked, but I could have provided information in support of your
12 reasoning. I could have provided you with a lot of information, notably with regard to
13 the fact that I allegedly signed a paper to deploy the army or the troops. I signed a
14 decree, that is not the case, I signed a decree for all the FDS to be mobilised, but this is a
15 practice that dates back to 1961. It dates back to a time when the army was created.
16 The Head of State can, in a period of unrest, sign a decree. The police is the police after
17 all, and then there's the gendarmerie, et cetera, but if these two forces are entirely
18 overwhelmed, then they can call upon the army as reinforcement. And so, of course, the
19 President of the Republic would then sign a decree giving the various leaders, and it was
20 then up to them to use the army or not to use the army, depending on their assessment of
21 the situation.

22 So practical points of information like this, well, I might have been able to explain this
23 when their leader of the FDS came to talk about the situation in Abobo, for example, that
24 there were IB soldiers, and I believe that it was the Invisible Commando and I said, "Well,
25 what should we do? We can always sign a decree and then we'll keep it to one side and

1 if we don't need it, then we don't. But if we do, we do."

2 So there were many things like that. And you should not give me family members that I

3 do not have. And as is often done in Africa, you know, saying that in Africa people

4 govern like this, they -- I do not, I did not govern with members of my family. I am head

5 of the state. I am the head of the republic. My wife was an MP and my -- I have some

6 nephews present here, but Kady (phon) is not my nephew, he was the Minister of Defence.

7 He was Minister of Defence. He was my adviser, but I was not governing hand-in-hand

8 with the members of my family. Maybe it is done elsewhere in Africa, but not in Côte

9 d'Ivoire under Gbagbo.

10 You know, there are little things like that that could have been avoided, because they sort

11 of make the atmosphere more heavy and they stop us from going into the crux of the

12 matter.

13 Madam President, my entire life, and this is a known fact not only back in Côte d'Ivoire

14 but throughout Africa, and throughout France, throughout political France notably, I have

15 been fighting for democracy.

16 I asked my counsel only last week, and I said that I wanted to bring you all the books that

17 I've written, and they said that it was too late to introduce these books, but once we have

18 finished, whatever the result may be, whatever you decide, I will send a batch of books

19 written by Gbagbo to the Office of the Prosecution, and I will send you also a batch of my

20 books, because, well, that is the man that I am.

21 He -- I walk forward and I leave traces behind me. I have been fighting for democracy

22 and this was at a time when we didn't even know whether the Berlin Wall would crumble.

23 We had no idea. So we were fighting, our courage in our hands, but we were convinced

24 that we would not see democracy triumph.

25 But the Berlin Wall did come down and it helped us, it helped us to win, to install

1 multi-party, a multi-party system and democracy.

2 So, Madam President, this is why I would quite simply like to say, and I shall not go any
3 further, I would simply like to say that, Madam Prosecution, I don't know whether that
4 actually exists in the French language, and whether we put an "e" on the end of it or not,
5 but Madam Prosecutor said one sentence, which somewhat shocked me. She said that
6 we were not here to see who had won or who had lost the election. We can't talk about
7 the post-election crisis without knowing how the elections unfolded. Who won the
8 elections? Because it is the person who was not victorious who was the one who was
9 responsible for the unrest. I believe that that is the underlying logic.

10 So this is the issue: Who won the elections? And so when I asked for the votes to be
11 recounted, I wasn't just saying that off the top of my head. You yourself read the
12 documents at the disposal of the Prosecution, where the votes are counted, and you can
13 see that in Bouaké alone 100,000 votes were added to the total of my opponent's final
14 count. So this is the crux of the matter.

15 We were attacked in the year 2002, and I did my job. That is to say that I never believed
16 that Côte d'Ivoire would come out of the crisis by waging war. I never thought that. I
17 always was of the belief that we would come out of the crisis by dialogue. Even if I
18 know that they are wrong, I always thought, and I always believed in dialogue. So I
19 travelled throughout Africa. We negotiated, we conducted the Lombe (phon)
20 negotiations, Lomé negotiations, and the Marcoussis and Klebe (phon) negotiations, but
21 I'll leave those to one side.

22 We also led negotiations in Accra, Accra I, II and III under the Presidency of John Kufuor
23 (phon) and we negotiated from June 2005 at Pretoria I, Pretoria II under the Presidency of
24 Thabo Mbeki. We did everything in our power, we did everything in our power to
25 further negotiations, and it was in Pretoria that I asked Thabo Mbeki to help me find a

1 legal solution for Alassane Ouattara to be able to put himself forward as a candidate.

2 That was in 2005.

3 We, myself and Thabo Mbeki, Konan Bédié, Ouattara and myself, and I asked Ouattara to
4 translate for me, between Thabo Mbeki and myself notably, and that is when I said to
5 them that I wasn't bothered by the fact that Alassane Ouattara be candidate, but in view of
6 the fact that my voters were also present, well, then Thabo Mbeki had to then -- I did not
7 follow Article 48 of the Constitution, it's like Article 16 of the French Constitution that
8 gives you an enormous amount of power, I didn't follow that, but on that day I took
9 Article 48 of the Constitution and I enabled Ouattara and Konan Bédié to put themselves
10 forward as candidates. So, Madam President, that is what I wanted to say to you.

11 Our country, our State, and this will be my last point, our States are fragile, and every
12 time that a Head of State in Europe says to me that we should be democratic in Africa,
13 and I said to him, well, we need democracy not because you're telling us that we need it,
14 because we in fact do need it in Africa in order to construct our States.

15 Madam President, look closely at Côte d'Ivoire. If we do not use democratic means, then
16 how can we choose the Head of State? To the east, there are the Akan, on the Guinean
17 frontier, who have a means of choosing their leaders, whether it be villages or cantons or
18 even their kings, and then to the west of Côte d'Ivoire we have a scattered form of power.
19 To the north we have the Malinké who gather around mosques and the Sérunfo (phon)
20 who are in the sacred forests. So what electoral means are we going to use?

21 So democracy helps us because it makes tabula rasa of this entirely situation and gives
22 each individual the right to be a citizen and the right to a vote, and that is why I've
23 committed to myself to this fight for democracy.

24 And we who come from very modest families, well, if there were no such democracy,
25 never would we have access to such elevated positions. But people I went to school

1 with -- well, when I was elected President, they were not surprised as such, because they
2 knew how committed I was, but they came to greet me and they came to pay tribute to my
3 courage, because I wasn't really the most assisted of all, I was not the most intelligent of
4 all, I was not the richest of all.

5 So really and truly, we do need democracy, Madam President. It's not only your form of
6 democracy, it is he or she who votes - the voter - that is democracy, per se.

7 And when we -- when at night the president of the election of the CEI is taken to the
8 headquarters, the election headquarters of a given candidate, and he is filmed and then
9 this is broadcast the very next day, well, that is not a very democratic approach. A

10 democratic approach is the respect of the legal instruments, notably the greatest of all
11 standards, the Constitution. He who does not respect the Constitution is no democrat.

12 Madam President, this is because -- is it because I respected the Constitution that I have
13 been brought here? I am here, okay, but I am counting on you because I want all

14 Africans, all Africans who are supporting here, who are constantly present here before the
15 Court, outside of the prison, who are demonstrating back in their countries, taking part in
16 marches, et cetera, I want them all to understand that the respect for the Constitution is
17 very, very -- the salvation of all African States is the respect of the Constitution.

18 And I thank you, Madam President.

19 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you,
20 Mr Gbagbo. This concludes our final observations.

21 The Chamber has already announced that the parties and legal representative of victims
22 must have the possibility to present their written submissions in regard to the questions
23 under study in this Confirmation of Charges, and to this end the Chamber hereby decides
24 that the Prosecution and Common Legal Representative of Victims must present their
25 observations by the latest on 14 March 2013. The Defence, for its part, must present its

- 1 written observations by the latest on 28 March 2013.
- 2 The Chamber emphasises that the parties and Common Representative of Victims must
- 3 limit their observations to the points under discussion during the hearing.
- 4 With regard to the extension of written observations, the parties and participants
- 5 might -- are allowed to present a document up to 48 pages in length. And the
- 6 Chamber would also like to inform the parties and participants that it will render its
- 7 decision within a time frame of 60 days in compliance with Rule 53 of the Rules of
- 8 Procedure and Evidence, counting -- starting from the date of submission of the written
- 9 submissions of the parties and participants.
- 10 This concludes the final day of the hearings of the Confirmation of Charges Hearing.
- 11 I would like to thank the parties and participants, the interpreters and the court reporters.
- 12 THE COURT USHER: All rise.
- 13 (The hearing ends in open session at 6.09 p.m.)