

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, Judge Hans-Peter Kaul and
6 Judge Christine Van den Wyngaert
7 Confirmation of Charges Hearing
8 Monday, 25 February 2013
9 (The hearing starts in open session at 2.30 p.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Good
14 afternoon. Court is in session.
15 Court officer, could you please call the case? I'm sorry, court officer, yes, could you
16 please call out the case?
17 THE COURT OFFICER: The situation in the Republic of Côte d'Ivoire, in the case of
18 The Prosecutor versus Laurent Gbagbo, ICC-02/11-01/11.
19 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) I thank you.
20 Are there any changes to the various teams, please? No changes?
21 MR ALTIT: (Interpretation) There are no changes to our team.
22 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you
23 very much.
24 I would like to now hand the floor over to the Defence to continue their presentation.
25 MR ALTIT: (Interpretation) I thank you, Madam President.

1 Jennifer Naouri shall now continue with her presentation, which shall continue for a
2 little short of one hour, and then Maître Fauveau Ivanovic will continue -- will start
3 her presentation.

4 MS NAOURI: (Interpretation) Madam President, your Honours, in its statement of
5 the facts the Prosecution was careful not to inform the Chamber of the fact that,
6 despite having been proclaimed victorious by the Constitutional Council on a
7 number of occasions, President Gbagbo until his arrest continued to seek a peaceful
8 solution to the post-election crisis by suggesting, for example, that the votes be
9 recounted. He did this from the very next day after the election, a position he would
10 continue to reaffirm over the months to come and which was repeatedly refused by
11 his opponents, and I suggest that we look at a brief video excerpt.

12 (Viewing of the video excerpt CIV-D15-0589)

13 MS NAOURI: (Interpretation) However, the recount of the votes did not shock
14 anybody when they were recounted; for example when a new president was being
15 elected to the UNP in France, or during the 2011 elections in the USA, or in Haiti
16 during the elections in 2010. It is interesting to note that the former ambassador of
17 Côte d'Ivoire in South Africa and Chief Of State protocol says, and I quote, "I know
18 because he told me and because this is in keeping with his character, but had
19 recounting taken place and had he lost he would have bowed to the results of the
20 ballot boxes."

21 Now, somebody who wanted to remain in power at all costs, would he have bothered
22 to suggest such a peaceful solution as the recounting of votes? No, Madam
23 President. President Gbagbo was not determined to stay in power, rather he was
24 determined to accept the results of the ballot boxes.

25 Let me remind you that it was President Gbagbo who introduced the multi-party

1 system to Côte d'Ivoire. Without him, there would not have been any democratic
2 election process in Côte d'Ivoire. His commitment to democracy has been a lifelong
3 commitment.

4 It is the rebels' refusal to hold discussions and desire to use force that sparked the
5 post-election violence in Côte d'Ivoire. President Gbagbo always wanted to
6 negotiate.

7 On 26 March 2011, Alassane Ouattara refused the appointment of José Brito, former
8 Minister of Foreign Affairs of Cape Verde, as high representative of the African
9 Union in Côte d'Ivoire for the beginning of mediation. It was France and UNOCI,
10 according to the Apostolic Nuncio, who refused to, I quote, "... force the parties to
11 hold discussions," end of quote.

12 According to the Prosecution, I quote, "Gbagbo mobilised forces loyal to him at the
13 end of the election process and ordered them to co-ordinate their activities in order to
14 implement the policy," end of quote. Paragraph 9 of the DCC.

15 So, quote, "On 27 November 2010 to 8 May 2011, the pro-Gbagbo forces allegedly
16 attacked civilians perceived as Ouattara supporters." Paragraph 13 of the DCC.

17 Why is it that President Gbagbo asked the FDS to intervene in order to attack civilians?
18 He had just been proclaimed President of the Republic and his main concern was to
19 establish a new government and ensure the smooth running of the State. The FDS,
20 whom we should recall were official government forces, were involved in
21 post-election crisis because they came under attack.

22 On the one hand the rebels took control in December 2010, January and
23 February 2011 of Abobo, a neighbourhood of Abidjan, and then they attacked other
24 neighbourhoods, and an offensive was launched with the help of the French army
25 and UNOCI from the rebel zone in the north towards Abidjan; the Abidjan offensive.

1 President Gbagbo never saw any particular problem associated with Alassane
2 Ouattara and his rebel leaders setting up at the Hotel du Golf, at the very heart of the
3 town. Quote, "They were there and it didn't bother anybody," end of quote.
4 Document D15-0589, stamp 1 minute and 8 seconds.
5 850 rebel soldiers rapidly moved into the Hotel du Golf and it became a military base
6 where attacks were launched from, for example 16 December 2010 against the RTI.
7 So why authorise so many heavily armed rebels to set up in Abidjan if President
8 Gbagbo was preparing to implement a policy to remain in power at all costs? It is
9 absurd.
10 What is more, the rebels then went on to commit numerous violent acts against the
11 civilian population in Abidjan during this period. Let us take the example of Abobo.
12 Abobo is not just any old neighbourhood of Abidjan. It is a town within a town,
13 with a population of over a million. Even before the presidential elections were held,
14 rebel groups had infiltrated Abobo and had organised weapon caches. They arrived
15 from the north by rail.
16 The neighbourhood of Abobo came into being as a result of the railway and its
17 construction. The commune then came to life around the railway station, which
18 today remains the focal point.
19 Even before the presidential elections rebels had infiltrated Abobo, and on
20 16 December 2010 they launched their first attacks on the security forces. From the
21 outset, the most violent confrontations occurred between the various rebel groups
22 present, including those under Guillaume Soro's orders, and the Invisible Commando
23 under IB. Armed with heavy weaponry, the rebels attacked the police station and
24 the law enforcement forces in general, in addition to civilians.
25 (Viewing of the video excerpt CIV-D15-0001-0582)

1 MS NAOURI: (Interpretation) In order for us to understand the situation in Abobo
2 properly, I would like to read an excerpt from the book entitled, "The Battle of
3 Abidjan Through the Eyes of the Invisible Commando." This is Defence document
4 15-0040, pages 2387, 2388 and 2389.

5 THE INTERPRETER: The interpreter does not have access to the excerpt.

6 MS NAOURI: (Interpretation) "How many elements were amongst the Invisible
7 Commando during this war? We had 5,400 men out on the ground. It was our
8 clan that was represented - mostly represented - by the belligerents. We had first of
9 all received from the Licorne operation the plans and -- or the strategic plans of
10 Abidjan so that we could invade the town. They had also provided us with all the
11 maps of Abidjan and all of the various neighbourhoods and they were well-identified
12 on this map.

13 At the beginning we brought our soldiers in by train and then we went and set up
14 shop in Bois-Sec, a small place near N'Dotre in Abobo, in order to set up a small camp,
15 and when we received the weapons that France had promised to us we then went
16 into action. We invaded Abobo. We inflicted atrocities upon the population in
17 order to make them frightened of us.

18 When the ONUCI would deliver weapons to us and vehicles to us, everything, and
19 then subsequently we invaded Anyama, Bocambo and the centres of Abobo Centre,
20 West and North, and when we took control in Abobo, starting in Abobo West, by
21 Akekoi, around the camp in Abobo, we then became more confident, but as we were
22 not able to flush out the men from the Abobo camp we requested reinforcements in
23 heavy weaponry that Licorne had promised to us.

24 'Who promised it to you? The Licorne forces?' The Licorne forces. It was when
25 we received the heavy weapons that we started to attack Abobo camp. We also

1 attacked the loyalist forces who were living in Abobo commune.

2 'And how did you go about it?' Some of them would burn places and there were
3 two or three places where loyalists were living. We -- with the weapons that we had
4 been given, we were able to burn a number of people alive in that building.

5 'What about the police station? Yes. We then started to attack a number of places
6 where loyalist forces were living in Abobo, and when we had finished, we wanted to
7 take over control slowly of Yopougon, Treichville, Cocody, Klato (phon), and Adjamé,
8 Adjamé was -- we had already conquered -- Treichville had already been conquered.'

9 The situation in Abobo became explosive. There were more and more acts of
10 violence, and law enforcement forces rapidly lost control of the neighbourhood. In
11 January and February 2011, as law enforcement forces had disappeared, tens of
12 thousands of inhabitants of all ethnic origins fled the neighbourhood. Let us see a
13 few images on the screen.

14 We would like to show you video, a video on the exodus of the population in Abobo.

15 (Viewing of the video excerpt CIV-D15-0001-0565)

16 MS NAOURI: (Interpretation) That was the situation in Abobo at the end of
17 February 2011. With the exception of the gendarmes under siege at Camp
18 Commando, the entire neighbourhood was in the hands of the Invisible Commando
19 and other pro-Ouattara groups, the offensive.

20 The Prosecution itself notes, and I quote, "That the FRCI were advancing from the
21 north, to the south of Côte d'Ivoire, reaching Abidjan on 31 March 2011," paragraph
22 14 of the DCC, but the Prosecution draws no conclusions from this, nor does it
23 explain the context in which this advancement occurred and who it was. It was the
24 rebels from the north who were equipped and armed.

25 The Prosecution explains that those loyal to Ouattara included the Forces Nouvelles,

1 who subsequently were rebaptised the Republican Forces of Côte d'Ivoire, the FRCI,
2 and that they enjoyed the support of a tribal defence group called the Dozos and a
3 militia group from Burkina Faso, paragraph 14 of the DCC.

4 The Prosecution has been careful not to go into any further detail. Let us therefore
5 do so.

6 Who are the FRCI? Who are the Dozos? Who are the mercenaries from Burkina
7 Faso?

8 The FRCI was established by order of Alassane Ouattara on 17 March 2011, order
9 2011002, thereby merging the armed forces of the Forces Nouvelles and the Forces
10 Nouvelles themselves.

11 Behind the facade of these abbreviations lie the groups of the various combat zones,
12 the same rebel chiefs and their men who had carved up the north and whose violent
13 acts were denounced by human rights organisations.

14 Alongside the Forces Nouvelles, there was an array of mercenary groups, troops
15 raised on the promise of salaries or lootings. Mercenaries from Burkina Faso await
16 payment for their participation in the conflict, alongside pro-Ado forces. These
17 mercenaries were from Burkina Faso, Mali or Niger. It would seem that units
18 comprising element from Burkina Faso intervened.

19 We should note the cultural similarities between many of these mercenaries and the
20 UN contingents present in the country, notably those from Niger.

21 As for the Dozos militias mentioned by the Prosecution, without dwelling at length
22 on the subject, they were known as the Kamajors in Sierra Leone. This is a caste of
23 hunters of the ethnic groups present in the north of the country and in the
24 neighbouring countries. Need we recall the numerous violent acts committed by the
25 Kamajors?

1 In the Charles Taylor judgment, handed down by the Special Court of Sierra Leone,
2 paragraph 1996, it is stated -- in 1996, it is stated that the Kamajors, and I quote,
3 "Killed and ate people who were accused of sympathising with the RUF." End of
4 quote. In other words, they killed and ate their opponents.

5 The Dozos and Kamajors are one and the same. The Prosecution avoided explaining
6 who they were, merely mentioning them in passing, without explaining where they
7 came from or what they did. In the book "The Battle of Abidjan as Seen Through the
8 Eyes of the Invisible Commando, Gbagbo is Innocent, It's Us," The second deputy to
9 IB, commander of the theatre of operations recounts the practices of the traditional
10 Dozo hunters during the crisis, and I quote, "They committed so many ritual crimes
11 in order to bring to power, and maintain in power, Dramane. They would
12 sometimes abduct innocent people from the population and would even skin them
13 alive and remove their organs for mystical rituals. It was these forces who were
14 advancing from the north to the south in 2011 and who were attacking civilian
15 populations on their way.

16 With regard to their equipment, an officer from the French intelligence services says,
17 in an article from the *Canard enchaîné*, the best informed French newspaper, that
18 France lavished tactical advice upon the FRCI, ahead of the offensive, and equipped
19 them with assault rifles, advancing on Abidjan.

20 From the beginning of their advancement towards the south, the forces rebel
21 conducted acts -- conducted atrocities.

22 In the west of Côte d'Ivoire, the rebels systematically targeted perceived pro-Gbagbo
23 civilians, men, women, the elderly and children.

24 In February 2011, the town of Zouan-Hénien is attacked. In February and
25 March 2011, rebels massacred hundreds of civilians and raped scores of women in the

1 west of the country.

2 In approximately ten villages, between Bloléquin and Toulepleu, executions, acts of
3 mutilation and immolation by fire were committed by the rebels. Elderly people
4 who were not able to flee were summarily executed. Tens of thousands of civilians
5 fled the massacres.

6 In the village of Dibokié, near Duékoué, those civilians who did not flee were killed
7 by the rebels. Four individuals had their arms cut off and were disemboweled while
8 still alive.

9 Let us now concentrate our attention on the martyred city on Duékoué. In this
10 region, massacres killed hundreds and caused tens of thousands more to become
11 refugees.

12 We would like to now suggest an excerpt of a video illustrating the events in
13 Duékoué at the cross-roads.

14 (Viewing of the video excerpt CIV-D15-0001-0392)

15 MS NAOURI: (Interpretation) Between 29 March and 31 March 2011, more than
16 800 people were massacred in the Duékoué Carrefour neighbourhood, by virtue of
17 their Guéré ethnic origins. The massacre was perpetrated by rebels, Dozos and
18 military -- and militias from Burkina Faso under the command of Amaday Wereni
19 (phon), a zone commander from Burkina Faso.

20 In and around Duékoué, between 28 March and 10 April 2011, populations from
21 Douha, Delobly, Bahébé, Pinhou, Guéibli, Guinglo-Zia, and Diéhiba were massacred.
22 On 28 March 2011, the village of Diawin once again fell victim to rebel violence.
23 Twenty-four died on that day.

24 In the village of Diékoué (phon), to be distinguished from Duékoué, civilians were
25 tortured, raped, amputated, thrown into wells and killed.

1 In the town of Kilyo (phon) , the civilian population was massacred. Lastly, in Alépé,
2 many violent acts of committed upon the civilian population by the Dozos. I believe
3 that the images will speak for themselves. For example, we can see here the body of
4 a man who was the victim of a Dozo ritual.

5 The rebels would humiliate their victims. They would force them to sing "Goodbye
6 Gbagbo. Gbagbo's on his way."

7 I suggest we listen to the following.

8 (Viewing of the video excerpt CIV-D15-0001-3965)

9 MS NAOURI: (Interpretation) Once they arrived in Abidjan, the zone
10 commanders divided up the town, but their attacks on regular forces failed. This is
11 why the contingent of the UNOCI and Force Licorne came to their aid at the
12 beginning of April 2011.

13 I suggest that we listen to a very brief excerpt from the Arte French television
14 programme.

15 (Viewing of the video excerpt CIV-D15-0001-3948)

16 MS NAOURI: (Interpretation) During the fighting, there were further atrocities.
17 For example, the rebels also used the civilians as human shields. We can see an
18 example of this on the screen. I suggest that we also look at a very brief excerpt
19 from the very same documentary, Arte documentary, on the subject of human
20 shields.

21 (Viewing of the video excerpt CIV-D15-0001-3948)

22 MR MACDONALD: (Interpretation) With your leave, if I may intervene for a
23 second, this is just a practical question for everybody. We are talking here
24 about -- well, in the transcript, there are video references do not appear. There is no
25 indication being given of the ERN or the -- or the actual timing, time-stamp. This

1 might be important for us to do, even though it might make matters somewhat
2 heavier, because of course we won't be able to find where we are at or where we are.
3 All we do have in the transcript, in brackets, is the showing of a video excerpt. It's
4 going to be very difficult for the parties and the Chamber to find where they are
5 subsequently.

6 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, it
7 would seem to me as well that you need to give more references, for us to know
8 precisely what you're talking about and which minute you're talking about. Of
9 course it's going to render your presentation somewhat piecemeal, but I do believe
10 that we need all the references and clarify subsequently what you have already
11 shown.

12 MR ALTIT: (Interpretation) Yes, Madam President, of course we're going to give
13 as much information as we possibly can. Jennifer Naouri would like to say, or
14 would like to give a few pieces of information in response to the Prosecution. There
15 is some information that should, yes, be emphasised but we shall do what you have
16 just said.

17 MS NAOURI: (Interpretation) Yes, Madam President, there is no problem for us at
18 all to give the references before each video, but this is indicated in the PowerPoint
19 presentation. You can see at the bottom of each page there is reference made to the
20 exhibit given and the time-stamp, commencement point, with regard to the exhibit.
21 Now, as the Prosecution did, we are going to give you a DVD which will enable you
22 to see precisely which exhibit is being referred to.

23 MR MACDONALD: (Interpretation) Of course there is no problem. I am of
24 course abiding by the five-second rule.

25 Now, we would thank the Defence for giving us the PowerPoint presentation and the

1 ERN, et cetera. However, in the transcript, when in a week or two or three we are
2 writing our observations, we will not -- well, we do have access to the PowerPoint
3 presentation but it is going to be difficult to link it up to the actual transcript.

4 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Maître Altit,
5 yes, indeed.

6 MS NAOURI: (Interpretation) The rebels set up in Abidjan. After the fall of
7 President Gbagbo on 11 April 2011, the former rebel chiefs divided the capital up
8 amongst themselves like war booty. I quote here the title of an article from Jeune
9 Afrique from 22 July 2011. This is exhibit 3859.

10 "Abidjan was divided into several battle groups by the rebels. For example, Chérif
11 Ousmane took control of the Plateau commune of Adjamé. Wattao took control of
12 the southern neighbourhoods of Abidjan, including the port and many companies.

13 As for Ben Laden, he took control of Yopougon. Abobo remained within the hands
14 of the Invisible Commando and other pro-Ouattara forces over the next few weeks.

15 The offensive against Yopougon. After the arrest of President Gbagbo various rebels
16 groups attempted to attack Yopougon, the second most populated neighbourhood of
17 the capital with more than 1 million inhabitants. Yopougon is populated, for the

18 most part, by ethnic groups perceived as loyal to President Gbagbo. The rebel
19 attacks failed when faced with the resistance of the inhabitants, self-defence groups.

20 The rebels then requested the assistance of former pro-Gbagbo leaders to negotiate
21 the disarmament of the inhabitants, as explained by Prosecution Witness P-44. He
22 explains how the civilians accepted. Defence exhibit 3704, page 3716.

23 Once the inhabitants had been disarmed, the rebel groups continued to Yopougon
24 committing numerous acts of violence and crimes. For example, civilians were
25 rounded up and detained at the Lubafrique service station. We can see on the

1 photographs young people being showered with fuel, and in the following video we
2 can see approximately 100 young men who were arbitrarily detained in inhumane
3 conditions. This is the time code and we will give the time code once we have
4 shown the video.

5 THE INTERPRETER: The interpreter did not catch the reference to the video.
6 (Viewing of the video excerpt CIV-D15-0001-2115)

7 MS NAOURI: (Interpretation) 015 to 027 seconds on the video. Côte d'Ivoire is
8 the theatre of an armed conflict, non-international in character, before
9 25 February 2011. In paragraphs 14 to 15 of the DCC, the Prosecution claims, and I
10 quote, "That by 25 February 2011, the situation in Côte d'Ivoire had become a
11 non-international conflict between pro-Gbagbo forces and forces loyal to Ouattara,"
12 end of quote.

13 However, this is a simple claim based, as we have just seen, on an incomplete and
14 deformed statements of facts. It is not acceptable to use non-judicial criteria to
15 describe a conflict. This is reiterated in the ICRC comments on Article 1 of the
16 Protocol Additional to the Geneva Conventions, and I quote, "The application of the
17 protocol should not be at the discretion of the parties. The protocol immediately
18 enters into force as soon as the material conditions as described in the article are
19 fulfilled. A legal definition of a non-international conflict is therefore required."
20 Pursuant to Article 8(2)(f) of the statute, the existence of an armed conflict not of an
21 international character requires the demonstration of a, I quote, "... A protracted
22 armed conflict between governmental authorities and organised armed groups or
23 between such groups," end of quote.

24 Protocol II Additional to the Geneva Conventions ratified by Côte d'Ivoire on
25 20 September 1989 provides this definition, emphasising that such a conflict is one

1 which, I quote, "... takes place in the territory of a high contracting party between its
2 armed forces and dissident armed forces or other organised armed groups which,
3 under responsible command, exercise such control over a part of its territory as to
4 enable them to carry out sustained and concerted military operations and to
5 implement this protocol."

6 In order to characterise a non-international armed conflict, the Prosecution should
7 therefore have shown the existence of organised armed groups pitted allegedly
8 against the authorities of Côte d'Ivoire. The Prosecution does not take the trouble to
9 divine what it means by non-international armed conflicts, because it does not take
10 the trouble to divine the parties to the conflict.

11 The organisation of an armed conflict has been enshrined by the ICTY, notably in
12 Mladic judgment. This is based on the existence of a command structure. We have
13 seen the organisation of the Forces Nouvelles which was based on that of the national
14 army with General Soumalia Bakayoko, as Chief of General Staff. The existence of a
15 headquarters in Bouaké, the control of a delimited territory, the Forces Nouvelles had
16 been controlling the north of the country since September 2002 and the capacity to
17 source arms and other military means, we saw that the Forces Nouvelles, enriched by
18 racketeering, had recruited further forces.

19 The capacity to plan, co-ordinate and lead military operations and move troops, in
20 addition to logistical support on the part of the Forces Nouvelles, enabled them to
21 lead a number of operations against the law enforcement forces in the north, and we
22 saw that their troops led a number of offensive towards the south of the country.

23 The capacity to define a military capacity and use military tactics, and all the military
24 operations of the Forces Nouvelles since the year 2002, aimed to overthrow power
25 and was successful in 2011. The ability to conclude agreements, ceasefire

1 agreements, or peace agreements, as we showed in -- on Friday, they signed a
2 number of peace agreements with the government, even if they never respected them.
3 We have therefore shown throughout our presentation of the facts that the Forces
4 Nouvelles were fulfilling this criteria and had done so since the year 2002. In
5 addition to the organisation of an armed group, the existence of a non-international
6 conflict is characterised by the intensity of the combat and this can be assessed in the
7 jurisprudence of the ICTY court. This is notably the type of weapons and equipment
8 utilised.

9 As we said, the Forces Nouvelles were heavily armed, and they had military
10 equipment, the number of individuals and the type of forces committed to the
11 fighting.

12 The north was divided into ten zones, each under a zone commander who had many
13 men under his command. The number of victims, the extent of the destruction and
14 the number of civilians having fled the combat area, and we have shown that since
15 the year 2002 the Forces Nouvelles has made many victims, has destroyed entire
16 villages and neighbourhoods, and has resulted in the flight of the population towards
17 the south of the country or towards neighbouring countries.

18 The commitment on the part of the UN Security Council also bears witness to the
19 intensity of the conflict. We should recall that the Security Council was set up on
20 30 May 2003 and the UN mission in Côte d'Ivoire became in 2004 ONUCI, or UNOCI.
21 It multiplied its resolution. 26 resolutions were made between 2003 and 2010, in
22 order to ensure ONUCI's presence in Côte d'Ivoire in view of the fact that the
23 situation was still a threat to peace.

24 The Prosecution does not define what he means by "international conflict of a
25 non-international character," but he does not, nor does he define -- had he done so, he

1 would have described the forces active in Côte d'Ivoire. He would have been
2 also -- he would have also focused on the means used to control the north and part of
3 the west of the country, means by which this army became well-equipped, and he
4 talks at length about the various commanders of the commander of the zones. He
5 should also have admitted that the FRCI were in fact the Forces Nouvelles that he
6 does not want to pay any attention to.

7 The Prosecution is attempting to have us believe that the FRCI was only created and
8 set up after the 2010 presidential elections, but this is not true. He says himself, in
9 paragraph 11 of the DCC, "These were the forces that were rebaptised." They are the
10 FRCI. They were the former Forces Nouvelles who had been controlling the north of
11 the country since 2002. These are the very same forces that committed many violent
12 acts of which we have reminded you of a few.

13 The question is: Why does the Prosecution want to ignore the existence of the Forces
14 Nouvelles, because it would have obliged him to review his entire argument. He
15 would have had to review all of his theory.

16 Not only would it have forced him to present the story from both sides in an
17 impartial manner as an attack upon unarmed civilians, but it would have caused him
18 to revisit his entire theory which is based on one assumption: That President
19 Gbagbo bears sole responsibility, that he allegedly let loose the armed forces to attack
20 the unarmed civilian population and in order to maintain power. That is why he
21 relies on the date of 25 February 2011.

22 This wish to lay all the responsibility squarely on President Gbagbo's shoulders
23 explains why the Prosecution would want to concentrate his inquiry on the events in
24 the Côte d'Ivoire from 28 November 2010.

25 In keeping with this strategy, he now claims that there was an armed conflict not of

1 an international character between 25 February 2011 and 8 May 2011. In so doing,
2 he makes assumptions on the basis of preconceived notions in favour of one camp
3 over another. Moreover, he presents (sic) the Chamber from understanding the train
4 of events and what caused the crisis.

5 The Prosecution failed to take into account the elements in his possession. Had he
6 analysed what we have discussed during this presentation, he would have identified
7 an armed conflict not of an international character before 25 February 2011, stemming
8 from the coup d'état of 19 September 2002.

9 A general overview of the facts and the situation enables us to better understand the
10 situation and especially to realise that the rebels were responsible for the crisis.

11 Before 25 February 2011 it was indeed an armed conflict, meaning that two armed
12 forces were present. It is essential for us to analyse the facts presented during this
13 hearing through this prism. On the one side there are combatants fighting each
14 other and, on the other, there are civilians.

15 As part of an armed conflict, not international in character, there is therefore no doubt
16 at all that combatants are present during the events referred to in the Prosecution's
17 DCC and not one single armed force attacking the civilian population.

18 What is more, these are not mere combatants, but highly organised armed groups as
19 we have shown. To ignore the fact that these combatants were fighting each other,
20 that armed men were fighting one another and that they were organised factions,
21 there were organised factions involved, is a distortion of the facts and the conflict. It
22 is a distortion of the account of what happened and even more so of the country's
23 history.

24 In refusing to enter into any detail in his characterisation of the conflict, in refusing to
25 place the facts in context, the Prosecution is distorting the account of events and

1 distorting the very facts that he is presenting before this Court. He refuses to
2 identify the protagonists of the armed conflict. Worse still, he is only interested in
3 one side of the conflict.

4 Conclusion: We are now in February 2013. More than ten years have gone by since
5 the beginning of the conflict. It has been ten years since the first massacres and
6 human rights organisation reports.

7 In maintaining, despite all the evidence to the contrary, his course of action as if
8 nothing has happened in the interim, the Prosecution has disregarded available
9 evidence in order to transform reality, but facts come back like a bad penny and the
10 Prosecution's posteriori approach - a posteriori approach - is clear for all to see.

11 It is all the more surprising, as the Prosecution claimed to have led investigations
12 whilst examining the situation in Côte d'Ivoire since 2003.

13 In Duékoué, the civilians are still being targeted. A special envoy in Côte d'Ivoire
14 talks about the violent acts. The civilian population is still being persecuted. 3652,
15 Defence exhibit, every day the Côte d'Ivoire continues to suffer. Human rights
16 reports continue to denounce this violence which is everywhere and impunity is
17 wide-spread.

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

19 Maître Fauveau Ivanovic will be speaking next, and I think it is maybe a good time
20 for us to break now and resume shortly. I'm in your hands, your Honour.

21 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) We still have
22 ten minutes. Do you want us to break now and start later? Do you know how long
23 your next presentation will be?

24 MR ALTIT: (Interpretation) Maître Fauveau Ivanovic's presentation will deal or
25 will take the two slots that we have for today and spill over to tomorrow.

1 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Are
2 we -- I think we can now say that it is proper to break now and resume at
3 five-minutes-to-4, is that fine? Okay, thank you.

4 THE COURT USHER: All rise.

5 (Recess taken at 3.20 p.m.)

6 (Upon resuming in open session at 3.56 p.m.)

7 THE COURT USHER: All rise.

8 Please be seated.

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

11 MR ALTIT: (Interpretation) Thank you, Madam President. Maître Fauveau
12 Ivanovic will now be speaking to the substance of the Prosecution's evidence.

13 MS FAUVEAU IVANOVIC: (Interpretation) Madam President, your Honours, the
14 Prosecution would like to have you believe that President Gbagbo was responsible
15 for implementing, defining a policy aimed at retaining power at all costs as President
16 of the Republic of Côte d'Ivoire, particularly through conducting sustained, carefully
17 planned, deadly, wide-spread and systematic attacks against civilians opposed to him
18 which allegedly culminated in the allegations charged in the DCC.

19 The Prosecutor fails to provide any probative evidence in support of his allegations.

20 The Defence submits that established case law in this Court in the following cases,
21 namely, Lubanga, Katanga, Abu Garda and Mbarushimana, as well as in the Kenya
22 case, is to the effect that evidence adduced by the Prosecutor at this stage of the
23 proceedings must be sufficient to establish substantial grounds to believe that the
24 person committed each of the crimes charged.

25 For the Chamber to be able to rule in favour of the Prosecution, the Prosecution must

1 provide concrete and tangible evidence to substantiate each specific allegation. But
2 even before we delve into the so-called evidence that the Prosecutor has submitted,
3 we must underscore the vague, imprecise, blurry and highly political nature of these
4 allegations. It is indeed so because they are not based on reality.

5 Defence would like to recall that the purpose of the confirmation hearings is to
6 commit to trial only persons against whom sufficiently serious charges have been
7 brought. This provides a mechanism which protects the rights of the
8 Defence against abusive and entirely baseless accusations.

9 We have shown that regarding the period of our case, that is from November 2010 to
10 8 May 2011, there was an armed conflict in the Côte d'Ivoire. The Prosecutor has
11 simply disregarded this armed conflict and based his entire case on an imaginary
12 situation which never existed in the manner in which presented by the Prosecutor.

13 We have also shown that the election -- or the Prosecution's version of the unfolding
14 of the elections is inaccurate and that the announcement of the provisional election
15 results by the electoral commission cannot be taken to have been the declaration of
16 the final results, which is a matter that lies with the Constitutional Council.

17 Therefore, relying on such erroneous premises which the Prosecutor puts forth as
18 gospel truth, it is only normal for the DCC to be an ambiguous, vague and
19 non-specific document. We therefore want to start by highlighting the vagueness,
20 the inconsistencies and ambiguities of the charges against President Gbagbo, and we
21 also want to talk about the attitude of the Prosecutor, which we must say has failed to
22 discharge his duty to investigate both inculpatory and exoneratory circumstances
23 under Article 54(1) of the Statute.

24 We will then show the weaknesses in the Prosecution evidence, and after those
25 introductory remarks, we shall analyse the four incidents which underpin the charges,

1 and then we shall move on to a discussion on the alleged responsibility or liability of
2 President Gbagbo.

3 The last part of our presentation will demonstrate that the elements constituting the
4 crime, the crimes against humanity, have not been established.

5 Regarding the inconsistencies and contradictions in the DCC, under Article 67(1)(a) of
6 the Statute, the accused person -- I'm sorry. The accused person has the right to be
7 informed promptly and in detail of the nature, cause and content of the charge in a
8 language which the accused fully understands and speaks.

9 This is a fundamental right of any accused person, which is further reflected in
10 Regulation 121(1), which kicks in as somebody appears before the Court and applies
11 throughout the proceedings, including the Confirmation of Charges hearing.

12 Regulation 52 specifies that the DCC is a statement of facts, including the time and
13 the place of the alleged crimes, which provides a sufficient legal and factual basis to
14 bring the person or persons to trial, including relevant facts for the exercise of the
15 jurisdiction of the Court, and a legal characterisation of the facts to accord both with
16 the crimes under Article 6, 7 and 8 and the specific -- the precise form of participation
17 under Articles 25 and 28.

18 The right to be informed promptly and in detail of the nature and cause and content
19 of the charges requires of the Prosecutor to absolutely produce a clear, precise and
20 unambiguous document. Obviously, that is not the case with the DCC put forth
21 against President Gbagbo.

22 Let me point out some examples of inconsistencies, contradictions, vagueness and
23 ambiguities of this Document Containing the Charges. The vagueness of the DCC in
24 terms of time frames, to begin with, let us begin with the time frames that the
25 Prosecutor chose.

1 In paragraph 1 of the DCC, the Prosecutor alleges that President Gbagbo designed a
2 policy over a period before November 2010 until he was arrested on 11 April 2011.

3 This allegation in itself is unfair insofar as it relates to a fair trial, to the extent that it
4 does not provide specific information as to the period the Prosecution is referring to.

5 In fact, the period said to be before November 2010 does not mean anything. This
6 means that it could have started at any time. Would it be the year 2000? 2002?

7 2005? 2010? We do not know. It is impossible to know.

8 Then, later on, at paragraph 4 of the DCC, the Prosecutor somewhat shortens the
9 period, or the time frame, alleging that the policy was adopted shortly before the 2010
10 elections. This is still vague and non-specific, because shortly before the elections is
11 not a clearly defined time frame for the purposes of a trial.

12 As previously underscored, the Prosecutor sets the beginning of his statement of facts
13 in 2002, but we have already argued that unrest started in Côte d'Ivoire before 2002,
14 in 1999, and that was prior to President Gbagbo's coming to power. We have also
15 shown that the Prosecutor has avoided to look into the history of the Côte d'Ivoire,
16 and in so doing disregarded the causes of the 2010 crisis. How can one set aside ten
17 years of history - I repeat, in fact, the tragic history of Côte d'Ivoire - and expect to
18 adduce strong and concrete evidence?

19 The charges in this case have been brought against a person who was the president of
20 a sovereign state for a ten-year period. Out of respect for the sovereignty of the state
21 of Ivory Coast, respect for its people, respect for the history of its people and, above
22 all, respect for justice and for the rights of the accused person who, may I say again,
23 was the president of a sovereign state, out of that respect the Prosecutor should have
24 narrated the story of the events which, over a period exceeding ten years, plunged
25 Côte d'Ivoire into the darkest moments of its history and which are at the basis of the

1 alleged crimes.

2 The Prosecutor, in choosing to charge only President Gbagbo, turned a blind eye to
3 the causes and effects of the events. In doing so, the Prosecutor protected those who
4 are at the very origin of the unrest.

5 Victims have not been identified, so time frames are not the only unsettled matter in
6 the DCC. According to the Prosecutor's allegations, there were victims in relation to
7 the four mentioned incidents, and that there were victims as well, according to the
8 Prosecutor, at other incidents. However, no other incident is mentioned or
9 identified.

10 There is also a failure to identify the perpetrators. Victims are unknown. Who are
11 the perpetrators? Do we know them? Then Gbagbo is charged as an indirect
12 co-perpetrator, and this must mean that there are direct perpetrators who personally
13 committed the crimes. Who are the direct perpetrators? Who are they? We do
14 not know. None of them has been identified.

15 Now let us look at the legal concepts that the Prosecution has used. Although they
16 are rare in the DCC, but even when the Prosecutor uses some legal concepts, it is
17 done in an incomprehensible manner.

18 There are contradictions in the DCC, first of all regarding modes of liability. In
19 paragraph 1 of the DCC, the Prosecutor alleges that President Gbagbo is responsible
20 for the crimes charged as an indirect co-perpetrator, as provided for under Article
21 25(3)(a) of the Rome Statute. He simply mentions indirect co-perpetration under
22 Article 25(3)(a) of the Statute. No reference is made to any other mode of liability.
23 Then, in the following 100 paragraphs, the Prosecution seeks to demonstrate the
24 manner in which Article 25(3)(a) of the Statute can be applied, and then when you
25 think that you have gotten to the end of the Prosecutor's document, everything

1 suddenly switches to Article 25(3)(d) of the Statute, an article which is not mentioned
2 in the DCC before page 86.

3 The Prosecutor captions the part dealing with Article 25(3)(d) as "other possible legal
4 characterisations of the facts." The question then must be the following: The
5 document which was forwarded to us on 17 January 2013, is it really a DCC, or a
6 draft document, or an internal memorandum requiring further consideration by the
7 Prosecutor before he settles on a specific mode of liability?

8 Of course --

9 MR MACDONALD: (Interpretation) I'm sorry to interject. Let me recall what
10 was said at the first hearing. I don't want to personalise our work - we are all here
11 as professionals - and it is clear that the DCC of the Prosecution is not a draft.
12 I think that you can use legal arguments, but if you want to make this a street fight,
13 then it is wasting the Court's time. I'm sorry to say so. Thank you.

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

15 MS FAUVEAU IVANOVIC: (Interpretation) Madam President, I have nothing
16 personal in what I have just said.

17 Of course, in some circumstances and under certain conditions, the Prosecution can
18 present substantive charges and charges in the alternative, but this has to be made
19 clear. Failing that, it is the very fair nature of the trial that is jeopardised.

20 President Gbagbo has the right to know, in detail and with specificity, the why, the
21 what, and the nature of the charges against him.

22 Reading the DCC does not offer help in that direction. We all had to wait for these
23 confirmation hearings for the Prosecutor to specify that his position was to commit
24 President Gbagbo to trial under the two modes of liability, and I'm referring to the
25 transcript of 19 February, page 58, a point which we will revisit.

1 Let me take another example, that will be Counts 4 and 8 of the DCC. This is also a
2 point in inconsistency pertaining to the manner in which the Prosecutor presents
3 persecution committing a crime against humanity under Counts 4 and 8.

4 The Prosecutor alleges that the crimes were committed on grounds of politics,
5 nationality, ethnicity and religion. Clearly, only one -- any one of these grounds
6 would be sufficient to constitute the crime of persecution where the other elements of
7 the crime have been met.

8 However, the facts charged must be specific, including intent, when intent is a
9 constituent element of the crime.

10 The Prosecution allegations that crimes were committed on grounds of nationality,
11 ethnicity and religion, are not substantiated by any probative evidence. In fact, the
12 allegations are even contradictory, or in contradiction, to the Prosecution's case.

13 In fact, at paragraph 21 of the DCC, after noting that the victims were targeted on
14 grounds of ethnicity, religion and nationality, the Prosecutor goes on to argue that
15 members of the targeted groups were targeted because they were perceived to be
16 Alassane Ouattara's supporters. Therefore, according to the Prosecutor's DCC, the
17 members of those groups were not targeted on grounds of their ethnicity, nationality
18 or religion but rather solely because of their political leanings.

19 Persecution, therefore, should only be assessed from the political angle. This in fact
20 is the only conclusion to which you can come, going by the Prosecutor himself,
21 particularly at paragraph 4, which alleges that the policy adopted sought to attack a
22 political rival, namely Alassane Ouattara, and members of his political circles, as well
23 as civilians alleged to be his supporters.

24 Then at paragraph 21 the Prosecutor also specifies that the targets were selected
25 because they were deemed to be pro-Ouattara. And finally at paragraph 33, the

1 Prosecutor reiterates the allegations at paragraph 4 of the DCC.

2 Of course, the Defence challenges the entire allegation of persecution in its entirety,
3 including persecution on grounds of politics, or policies, and we shall show
4 subsequently that President Gbagbo was not a man given to discrimination, as all
5 good faith witnesses have acknowledged.

6 It may also be possible that the Prosecutor was aware of this, but simply added this
7 pseudo ethnic, national and religious ground simply or solely for the purpose of
8 covering up the political nature of his charges. We have therefore talked about these
9 things that show lack of thoroughness in the drafting of the DCC, and on that ground
10 alone the charges against President Gbagbo should have been thrown out. We shall
11 then show that this lack of thoroughness in the evidence by the Prosecutor is blatant.

12 Failure to investigate. Before we analyse the evidence brought forth by the
13 Prosecutor, the Defence would like to underscore that under Article 54(1) of the
14 Statute, in order to establish the truth, the Prosecutor must extend the investigation to
15 cover all facts and evidence relevant to an assessment of whether there is criminal
16 responsibility under the Statute, and in doing so investigate incriminating and
17 exonerating circumstances equally.

18 In the case before us, the Prosecutor has failed to investigate incriminating and
19 exonerating circumstances, and Defence will now highlight a few blatant examples of
20 this point.

21 Defence is particularly intrigued by the lack of official documents. From the DCC, it
22 emerges that the Defence forces and security forces, the army and the gendarmerie
23 and the police, were allegedly involved in the implementation of the policy allegedly
24 hatched by President Gbagbo.

25 How then is it that this Court is not in possession of a single order from the

1 commanders of these forces to their subordinates? How is it that this Court only has
2 possession of a few reports from subordinates to their superiors? Why is it that this
3 Court is not in possession of any documents that can be used to track the activities of
4 the military units mentioned above?

5 Why do we not have any documents dealing with the activities of the rebels which
6 can help us to understand the situation?

7 In spite of the several years of unrest in the Côte d'Ivoire, it was an organised state.

8 Therefore, these official documents must exist, and they surely do exist somewhere.

9 It is therefore very astonishing that the Prosecutor only offered what is now available
10 to the Defence and to the Chamber.

11 Only two possible options can apply here: The Prosecutor did not investigate or the
12 Prosecutor did not find what he was looking for.

13 If the Prosecutor had sought to obtain the official documents of the Forces of
14 Defence and Security, he would have been in a position to trace troop movements,
15 movements of the armies and the types of vehicles used. He failed to do so. We do
16 not have any concrete evidence relating to troop movements, to deployment of units,
17 equipments available to various corps of the army, ammunitions and what have you.

18 We do not even have access to any information that was being disseminated,
19 including information that was available to President Gbagbo. The Prosecutor has
20 failed to provide us with that information. By failing or refusing to provide all this
21 important material to Defence and to the Chamber, the Prosecution leaves them with
22 no other choice but to reject its requests.

23 In the same vein, the Prosecutor similarly fails to provide any necessary material to
24 enable us to understand this matter, material which was available to the main
25 stakeholders in this case; namely, the United Nations and French authorities. As we

1 stated on the very first day of the hearings, the UN and France played a key and
2 central role in the post-electoral crisis, and it is unimaginable that the Chamber would
3 come to a determination without having access to this information that is only
4 available to those stakeholders.

5 These are crucial documents for the understanding of this case. Only France and the
6 ONUCI had observers on the ground who were able to provide useful reporting on
7 what was happening on the ground, particularly relating to the four incidents chosen
8 by the Prosecutor.

9 This makes it impossible for this Chamber to come to a determination in the absence
10 of all this useful information.

11 The Chamber must have access to the intelligence available to France in relation to
12 the preparation, training and arming of the rebel forces before the crisis, as well as
13 reports dealing with relations between civilian and armed French persons and
14 Alassane Ouattara during the crisis, information on the presence of the French
15 soldiers, as well as other information gathered in that connection during the various
16 incidents relating to the crisis.

17 It should also have information on the presence of observers, experts and ONUCI
18 soldiers in the surrounding neighbourhoods of the areas where there were clashes
19 during the post-electoral crisis, as well as information from reports made after the
20 incidents.

21 ONUCI and the United Nations clearly are in possession of crucial information.

22 May we recall that they have been present in Côte d'Ivoire since 2003.

23 In this case, the Prosecutor has distorted the truth. Why is this so? Because he
24 refuses to accept the existence of an armed conflict in Côte d'Ivoire for years. He
25 refused to accept the attacks of rebels and the violence perpetrated by rebels against

1 civilians. He even refused to accept the presence of the Invisible Commando in
2 Abobo by referring to it, and I quote, "alleged or so-called Invisible Commando,"
3 paragraph 22 of the DCC. This refusal is motivated by an assumption of the guilt of
4 President Gbagbo, and this assumption is explained by the fact that at no time the
5 Prosecutor uses the exculpatory materials that he has, simply because if these
6 materials were used, they would unveil a reality that is different from what we have
7 today.

8 We have to talk about the difficulties also prompted or brought about by the
9 last-minute disclosure of hundreds of documents by the Prosecutor. These of course
10 were not incriminating materials, and the Prosecutor is not using them to support his
11 allegations, but these are materials that could contain exonerating evidence, and in all
12 fairness these materials should have been disclosed in a timely manner in order to be
13 reviewed by the Defence.

14 We have seen that the Prosecutor has refused to take into account exculpatory
15 materials, and yet they exist. They call into question the entire thesis of the
16 Prosecutor. It is not fair for the Prosecutor to keep these materials to himself in
17 order to hide them from the Defence and prevent them from carrying out their
18 preparation.

19 The Defence would like to recall that the Confirmation of Charges procedure was
20 designed primarily to safeguard the interest of the Defence. It should make it
21 possible for the Defence to challenge the charges, as well as Prosecution evidence,
22 and to produce its own evidence.

23 The disclosure of the essential materials on the eve of the hearing, which was even
24 postponed several times, goes against the spirit of the Confirmation of Charges
25 Hearing. And why are we talking about this? Because materials were disclosed to

1 us on 15 January, 17 January, 22 January, on 6 February, 13 February and, as
2 unbelievable as that may sound, also on 18 February, and this involves hundreds of
3 documents and actually more than 1,000.

4 MR MACDONALD: (Interpretation) I would like to object because the
5 Chamber has already handed down its decision. This is res judicata. We can be
6 accused of everything, but in this case this is Prosecution bashing. Ever since my
7 colleague, my learned friend started, but the Chamber has rejected motions filed by
8 the Defence on this matter and they are coming back to it. I think we are losing
9 court time here.

10 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you.
11 Mr Altit?

12 MR ALTIT: (Interpretation) Thank you, your Honour. I believe that it would be
13 in everyone's interest to listen to us. Maître Ivanovic is developing her presentation.
14 I would like to call for the necessary courtesy and also tact that can be useful to the
15 Prosecutor.

16 We tried not to interrupt him, whereas some of his affirmations were questionable.
17 I believe it would be in the interest of everyone not to interrupt -- not for us to be
18 interrupted, particularly in the interests of justice.

19 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you,
20 but it is true that we are coming back on things that have already been decided by the
21 Chamber. The Chamber does not wish to interrupt you, we wish to allow you to
22 have the opportunity to make a presentation, but it is really pointless to come back on
23 matters that have been already examined and ruled upon by the Chamber. So
24 please do not come back to procedural matters, particularly in relation to disclosure
25 dates, because this has already been dealt with by the Chamber.

1 MS FAUVEAU IVANOVIC: (Interpretation) I want to come back to the low
2 probative value of the evidence of the Prosecutor. Based on jurisprudence, in order
3 to assess the value of the evidence the Chamber will take into account the probative
4 value and admissibility.

5 For any particular item of evidence to be relevant, there is need to establish a link
6 between that item of evidence and the charge against the accused. An item of
7 evidence is relevant only if it is -- it has a probative value, and it is only on this case
8 that it can be considered as constructive and decisive.

9 In order to assess the value of evidence, several elements have to be taken into
10 account, including the nature, credibility, reliability, provenance of that item of
11 evidence and its link with the charges made against the alleged perpetrator of the
12 facts.

13 The evidence that the Prosecutor has provided does not reach the threshold of
14 reliable and credible evidence. That evidence is neither concrete nor tangible and, as
15 a result, does not make it possible to establish the existence of substantial grounds to
16 believe that that person perpetrated the crimes charged.

17 Let us now examine what the Prosecutor has done in this case. The Prosecutor's
18 sources: In the present case, most of what the Prosecutor refers to as "evidence" is
19 only newspaper articles and reports of non-governmental organisations. In those
20 reports the sources of the information and the facts recounted lack clarity, and yet in
21 light of the settled law of this Court -- and I refer to the Confirmation of Charges
22 decision handed down in the Mbarushimana case on 16 December 2011, and I quote,
23 "Information based on anonymous hearsay must be given a low probative value in
24 view of the inherent difficulties in ascertaining the truthfulness and authenticity of
25 such information."

1 We should also refer to what an investigator said in the Lubanga case, the Lubanga
2 judgment, paragraph 130, and I quote, "ICC investigators also sometimes find it
3 difficult to corroborate information provided by human rights groups, who are eager
4 to call international attention to crises. The gap between the assessment of the
5 human rights groups and the evidence was sort of a surprise."

6 In the same judgment, in paragraph 131, the Court also referred to the words of
7 Mr William Pace, co-ordination (sic) of the ICC coalition, who stated that,
8 "Humanitarian groups are lousy investigators. They do not produce scientific
9 evidence that may be used by a Prosecutor."

10 The same is applicable for the several videos that come from unidentified sources.
11 One can only wonder whether those video clips were actually filmed in Côte d'Ivoire.
12 Here the Defence would like to talk about the incident concerning video 0020-0058,
13 which was disclosed to the Defence by the Prosecutor as an incriminating item of
14 evidence and is supposed to be of the massacre in Yopougon. This turned out to
15 have been filmed in Kenya in March 2009, document 0021-0004, and I would like to
16 point out that it was in fact the Prosecutor who informed us that this video footage
17 was filmed in Kenya.

18 It should be pointed out that most of the video clips presented by the Prosecutor,
19 including for example the video on the women's march, are results of a montage and
20 the Prosecutor does not seem to have subjected that footage to expert review, thereby
21 leaving the door open to all sorts of manipulation.

22 Lack of credibility of Prosecution witnesses: Regarding the statements of
23 Prosecution witnesses, the Defence would like to underscore the fact that those
24 statements contain several inconsistencies and intrinsic contradictions that will be
25 highlighted and analysed during the discussion on the four events and responsibility.

1 The Defence would like to point out that inconsistencies can have an impact on the
2 probative value of evidence, and in the Mbarushimana case the Pre-Trial
3 Chamber stated as follows, "Where such evidence is found to contain
4 inconsistencies, ambiguities or contradictions, the Chamber will exercise caution in
5 using it to affirm or reject any assertion made by the Prosecution." This approach
6 was confirmed by the Appeals Chamber in its decision of 30 May 2012.

7 Madam President, can we briefly go into private session?

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

9 Court officer, can you move us into private session, please.

10 (Private session at 4.39 p.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Open session at 4.42 p.m.)

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

16 MS FAUVEAU IVANOVIC: (Interpretation) Thank you, your Honour.

17 After these general considerations, it will be necessary to examine each case event by
18 event, the credibility or rather the lack of credibility of each of the Prosecution
19 witnesses, and this is what we will do in the course of our presentation.

20 Let me simply mention here the case of Witness P-106, who provided video number
21 0020-0058 to the Prosecutor, a video that was filmed in Kenya and he claimed that
22 this was a massacre perpetrated in Yopougon by agents of the LMP, and this is
23 document 0019-0211, pages 0229 to 0230, paragraphs 98 to 103. Obviously, this
24 witness is not credible. He cannot be credible.

25 The Defence also has doubts about the credibility of other witnesses, particularly

1 Witnesses P-48, P-107, P-164, P-172 and P-184, whose statements will be analysed
2 subsequently.

3 Lastly, the Defence would like to point out that we do not know the identity of
4 Witnesses P-49 and P-239 and that we have received only the summaries of their
5 statements, and yet according to the jurisprudence of the Court, and I refer to the
6 decision of the Pre-Trial Chamber on Mbarushimana, paragraph 49, the summaries of
7 statements from anonymous witnesses have a very low probative value.

8 Now, let me move on to authenticity. In the final analysis, the Defence also has
9 doubts on the authenticity of certain items of evidence. To begin with, we have
10 questions regarding certain video-clips from unidentified sources and which seem to
11 be the result of video montage. We are referring here to several videos of the
12 women's march.

13 Secondly, there are documents seized at the residence of the president in Abidjan,
14 which raise a certain number of authenticity issues. In accordance to a document of
15 the Prosecutor, 0021-0641, some Ivorian authorities explained to the OTP that the
16 residence had remained intact ever since the arrest of President Gbagbo. Of course
17 we have no proof that the residence remained intact from 11 April 2011, but this
18 seems to be questionable. It is also questionable whether the residence was guarded
19 or if anyone could enter the residence.

20 Now, even if the residence had remained intact since the arrest of President Gbagbo,
21 it was pillaged, ransacked and demolished. Pro-Ouattara forces and -- which were
22 assisted by international forces, entered that residence. The documents found by the
23 Prosecutor were scattered everywhere, and we have photographs to prove that.
24 0024-0064 to 0024-0591. So who is in a position to prove that the documents found
25 in this residence are authentic and that they were there when President Gbagbo was

1 there? No one.

2 Madam President, no one can confirm that the documents found in the residence
3 were truly authentic or whether they were not placed there for the purposes of the
4 cause.

5 In the Mbarushimana case, decision of 30 May 2012, paragraph 39, the Appeals
6 Chamber ruled that the confirmation hearing exists in order to separate the cases that
7 have to be referred to trial from those that do not have to. The Chamber also ruled
8 that the Confirmation of Charges hearing makes it possible to ensure judicial efficacy
9 and to protect the rights of people by verifying that referral to trial is only done when
10 it is justified by sufficient evidence.

11 It is therefore incumbent on the Pre-Trial Chamber to examine with the keenest
12 attention the evidence presented by the Prosecutor, including the inconsistencies, the
13 ambiguities, the contradictions and credibility, and then make the necessary
14 determination.

15 The issue of evidence is all the more important today because in the Ngudjolo
16 judgment the Court highlighted the importance of the value or quality of the
17 evidence. This judgment compels us to reflect on whether charges based on
18 evidence with questionable probative value should be confirmed or not. The
19 judgment also shows to what point the Confirmation of Charges is important, both
20 for the rights of the suspect and for judicial economy.

21 And yet in this case the evidence provided by the Prosecution does not make it
22 possible to confirm the charges. Their nature, that is the newspaper articles, reports
23 of NGOs, videos and so on, compel the Chamber to consider them with caution.
24 Regarding the substance of the testimonies, they must be assessed in light of the
25 multiple contradictions and the general vagueness of the items of evidence presented

1 by the Prosecutor.

2 The Defence will first of all demonstrate that the Prosecutor has not provided
3 sufficient evidence to establish that there are substantial grounds to believe that the
4 facts alleged in the DCC actually occurred. The evidence provided by the
5 Prosecutor does not establish that these events actually took place on
6 16 December 2001 and the attempt to take over the RTI; that all these events should
7 actually constitute a basis for the crimes charged.

8 In the event that the Pre-Trial Chamber rules that the factual basis for the alleged
9 crimes in the DCC have been substantiated, the Defence will prove that the
10 Prosecutor did not provide enough evidence to establish the existence of substantial
11 grounds to believe that these crimes can be attributed to President Gbagbo. The link
12 has not been established between President Gbagbo and the facts charged.

13 Lastly, in the event that the Pre-Trial Chamber rules that the Prosecutor has provided
14 enough evidence to indicate that there are substantial grounds to believe that the facts
15 presented did occur during the four events, the Defence will demonstrate that the
16 Prosecutor did not provide sufficient evidence to establish substantial grounds to
17 believe that these facts occurred as part of a systematic and wide-spread attack
18 against civilians.

19 In fact, the Prosecutor has not provided sufficient evidence to indicate the existence of
20 elements constituting crimes against humanity, and particularly the existence of a
21 systematic and wide-spread attack against civilians. And without these constituent
22 elements, no crime against humanity can be constituted.

23 We have already demonstrated that the context within which the Prosecutor situates
24 the crimes charged is distorted. The grounds and allegations made by the
25 Prosecutor are defective, and it follows that the entire Prosecution thesis is defective.

1 I will now move on to the four events selected by the Prosecutor. The four events:
2 The charges against President Gbagbo comprise eight counts, concentrated around
3 four distinct events; the 16 December 2010 RTI demonstrations; the 3 March 2011
4 women's demonstration in Abobo; the 17 March 2011 shelling of Abobo market; and
5 12 April 2011 incident in Yopougon. The Defence shall show that none of these
6 events is properly documented by the Prosecution and that the evidence presented by
7 the Prosecution does not support its own description of the facts.

8 The Defence recalls that the evidence provided by the Prosecution at this stage of the
9 proceedings should provide substantial grounds to believe that the individual
10 committed each of the crimes charged. In order to reach a favourable conclusion in
11 support of its theory, the Prosecution should therefore provide concrete and tangible
12 evidence showing a clear line of thought in support of its specific allegations.

13 If the presentation of the facts providing a factual basis to a crime does not
14 correspond to the true facts and is not supported by the evidence provided, the
15 Prosecution cannot claim that there are substantial grounds to believe that the alleged
16 crimes were committed and that they may be ascribed to President Gbagbo.

17 Madam President, I am going to move on to the event of 16 December 2010. I think
18 it might be a timely moment to take the break.

19 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, we shall
20 take a break once again, and we shall return at 5.25, I was able to say at this time. In
21 fact, no. Sorry. 5.25, yes.

22 THE COURT USHER: All rise.

23 (Recess taken at 4.55 p.m.)

24 (Upon resuming in open session at 5.26 p.m.)

25 THE COURT USHER: All rise.

1 Please be seated.

2 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) You may
3 continue.

4 MS FAUVEAU IVANOVIC: (Interpretation) Thank you, Madam President.

5 The first event on 16 December 2010, the march on the premises of the RTI. I'm
6 referring here to paragraph 43 of the DCC, according to which on 16 December 2010
7 Alassane Ouattara supporters, all of whom were civilians, marched towards the RTI
8 premises.

9 During the hearing on 21 February, page 25, lines 20 to 21, the Prosecutor says as
10 follows, "As I wanted to say earlier, the Prosecution witnesses said that this march
11 was a peaceful one." However, the evidence presented by the Prosecution shows
12 that not all those taking part in the demonstrations on 16 December 2010 were
13 civilians.

14 What does the Prosecution evidence or Prosecution witnesses say to us? They said
15 that on that day, armed soldiers loyal to Ouattara came out of the Hotel du Golf in
16 order to take control of the RTI, at the behest of Alassane Ouattara and Guillaume
17 Soro. They tell us that there were many demonstrators bearing rifles and weapons
18 of war, that there were armed individuals, some of whom carried RPGs and heavy
19 weaponry, and that they were mixing with the crowd.

20 I refer here to witness statements of Witness P-10, transcript 0016-0152, pages 0154
21 and 0155.

22 I also refer to Witness P-11, transcript 0016-0130, page 0149, and to Witness P-69,
23 transcript 0017-0144, page 0152, and transcript 0017-0186, page 0192.

24 On the basis of the evidence gathered by the Prosecution and presented before this
25 Chamber, it would be better to say that the civilians joined in or were involved in this

1 uprising march which was meticulously prepared. Of course, the Prosecution
2 ignores the armed elements amongst the demonstrators on 16 December 2010, as well
3 as the planned nature of their actions, preferring to allege that the demonstration was
4 supposed to be a peaceful one.

5 However, in light of the evidence provided, as mentioned previously, it would be
6 more accurate to say that the demonstrators or, rather, the armed elements, attacked
7 the regular forces. This is what Prosecution witnesses P-10 and P-11 say when they
8 talk about the so-called peaceful demonstration, quote: "The soldiers from the Hotel
9 Golf attacked the soldiers positioned at the cross-roads near the residence of Madam
10 Houphouët-Boigny," P-10, transcript 0016-0130, page 0149. Also P-69, transcript
11 0017-0144, page 0156.

12 The Forces Nouvelles also attacked the police station in the 18th neighbourhood at
13 Riviera, P-69, 0017-0186, page 0196.

14 Demonstrators armed with rifles fired on the law enforcement force. P-10, transcript
15 0016-0152, page 0155.

16 There were casualties amongst the regular law enforcement forces, P-100, 0016-0130,
17 page 0150. In Abobo, three police officers were killed and soldiers living in a
18 building died when it was burned down. P-10, transcript 0016-0152, page 0154.

19 The death of the policeman in Abobo is confirmed in the document from the Minister
20 of Defence, the Ministry of Defence, 0018-0577, as well as in further Defence
21 documents, notably 0782, page 0786, and the Ministry of the Interior stated that the
22 rebels were attacking the police and the Republican Guard in Cocody with heavy
23 weaponry. They killed two on the spot. Defence document 1396, page 1398.

24 Witness P-47, interviewed by the Prosecution, stated that the RTI was attacked with
25 heavy weaponry and weapons of war, 0015-0164, page 0176.

1 Indeed, this was no demonstration. It was an attack. What is more, the march was
2 announced by those who were preparing it as the final assault, Exhibit 1012.

3 The Prosecution quoted Witness P-117, who stated that Mr Soro called for a peaceful
4 demonstration, 21 February, page 12. Why refer to the witness's account when we
5 have images of Guillaume Soro in the midst of preparing the march, which totally
6 discredit P-117's claims?

7 Video 0570 shows Guillaume Soro addressing the pro-Ouattara soldiers, requesting
8 that they be at the ready and mobilised to go to the television premises. The video
9 then shows the precise instructions given by -- given by Alassane Ouattara to the
10 soldiers to assemble on Thursday 16 December 2010, with all the military equipment
11 for combat.

12 We can see this in the images that speak for themselves.

13 (Viewing of video excerpt CIV-D15-0001-0570)

14 MS FAUVEAU IVANOVIC: (Interpretation) I believe that these images require no
15 further comment. And how is it that the Prosecution dares to tell you and dares to
16 tell this high international Court that this was a mere peaceful demonstration of
17 civilians?

18 Madam President, when speaking of the events of 16 December 2010, it is not possible
19 to present the events as an ordinary demonstration, as a movement of the population.

20 In reality, it was an uprising, a planned action aimed at taking control of the RTI by
21 all means possible, including weapons.

22 What is more, a commander of the Forces Nouvelles openly voiced his intention two
23 days before these demonstrations to provide security at 16 December 2010
24 demonstrations, weapons in hand. This was reported in an article in the Figaro
25 newspaper on 14 December 2010, document 0002-0366.

1 Maintaining order amongst the FDS, a difficult task. Whilst hiding the planned
2 nature of the march, whose aim was to take control of the RTI by all means possible,
3 including weapons, the Prosecution alleges that pro-Gbagbo forces planned their
4 action. However, the Prosecution itself concedes that the RTI had always been
5 under guard. Nevertheless, the Prosecution fails to mention, despite this being
6 apparent in the evidence gathered by the Prosecution itself, that the law enforcement
7 forces positioned there had already been attacked by the forces from the Hotel du
8 Golf before the events of 16 December 2010, which gave rise to the presence around
9 the RTI being reinforced.

10 P-9, 0011-0430, pages 0445 and 0454; also, 0011-0455, pages 0462 and 0463. P-10,
11 0016-0152. P-47, 0015-0164, pages 0174 and 0176.

12 What is more, the evidence shows that on the eve of 16 December 2010
13 demonstrations, law enforcement forces in position in front of Madam
14 Houphouët-Boigny's residence were attacked and disarmed by the Forces Nouvelles
15 from the Hotel du Golf, document 0018-0028.

16 Witness P-69 stated that the measures taken by the regular forces came as a result of
17 these attacks and as a result of statements from the pro-Ouattara camp which
18 announced disturbances to come.

19 P-9 stated that this demonstration was not peaceful and that fighting was in the back
20 of the demonstrators' minds.

21 Witnesses P-9 and P-10 stated that the measures taken by the republican institutions
22 were merely aimed at containing the demonstrators and stopping any public
23 disturbances. P-9, 0011-0455 page 0469, P-10, 0016-0130, pages 0145 and 0146.

24 What is more, Witness P-9 confirmed that the forces of law and order received orders
25 not to open fire on the demonstrators. 0011-0455, page 0456.

1 Madam President, may we move briefly into closed session, or into private session?

2 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Court officer,
3 might we move into private session, please.

4 (Private session at 5.41 p.m.)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Open session at 5.42 p.m.)

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

18 MS FAUVEAU IVANOVIC: (Interpretation) This evidence which, as I underscore,
19 is the Prosecution's evidence, directly and completely refutes its own allegations
20 according to which the orders to attack the crowd were given. This evidence proves
21 that the law enforcement forces were in a situation where they were forced to defend
22 themselves and this is what they were trying to do, by using conventional means
23 against weapons of war, for they had been told not to open fire on the crowd, not to
24 use weapons and to use only conventional means.

25 In paragraph 44 of the DCC, the Prosecutor alleges that the alleged attack on the part

1 of the forces of law and order was planned and organised. This is not at all the case.

2 The law enforcement forces knew that the rebels could create disorder. What is

3 more, we have just seen that the rebels themselves had announced their intentions.

4 The Prosecution indicates in this very same paragraph 44 that an email was sent

5 warning the private secretary of Simone Gbagbo of possible dangers or risks for the

6 demonstrators, 0018-0441, indeed, but this email was a warning, yes, but it warned

7 that those taking part in the march were tasked with provoking the population by

8 break-ins, attacks and fires, describing the scenario envisaged, hoped for and planned

9 for by the pro-Ouattara camp according to which, and I quote, "In the confusion, the

10 sleeping columns of the rebellion sprung into action. Dressed in gendarme and FDS

11 uniforms they shot on the marchers. The blood-bath was filmed live," end of quote.

12 This evidence shows unambiguously that the regular forces were not the source of

13 risk for the demonstrators; that the danger came from the forces stationed at the Hotel

14 du Golf, those supporting Alassane Ouattara.

15 So, yes, the forces of law and order were warned of the risks that the demonstrators

16 were running and therefore took the necessary measures to prevent the blood-bath

17 announced by Alassane Ouattara supporters.

18 The Prosecution seems surprised that the Chief of Staff convened a meeting before

19 the demonstration, but what could he do when a blood-bath had been announced?

20 Of course he convened a meeting. He needed to discuss the measures to be taken in

21 order to protect the population, but remember the instructions I just mentioned. "Do

22 not fire on the demonstrators. Do not use weapons. Use conventional means."

23 And why was it that the soldiers tried to dissuade the demonstrators from continuing?

24 Because the demonstrators were marching towards those places where fighting was

25 taking place between rebel forces and regular forces and in continuing their march

1 the demonstrators would find themselves at the heart of the very fighting, and
2 despite all attempts on the part of the forces of law and order they ended up there.

3 The regular forces tasked with maintaining public order tried to protect the
4 population. They tried to stop the disturbances by conventional means, as any
5 police force of any state would have done in order to maintain order and defend itself
6 against attacks.

7 There is no concrete or solid evidence to the effect that the forces of law and order
8 opened fire on the demonstrators without having been attacked previously, and the
9 forces of law and order were indeed attacked on 16 December 2010. They were
10 attacked with weapons of war and they sustained heavy losses. At least ten of their
11 members were killed on that 16 December 2010.

12 On the number of victims and the lack of identification, the Prosecution states itself in
13 paragraph 46 of the DCC that during the march there were three deaths, so these
14 three deaths would have occurred during a violent action using heavy weaponry and
15 opening fire on the crowd.

16 Let's be serious. Whilst deploring these victims and sharing compassion for
17 their -- with their families, we must note that the FDS did not lead any violent action
18 on 16 December 2010, as had they done so there would have been far more victims.

19 The FDS was tasked with protecting the population, which they did.

20 The identity of the victims, of these three individuals who were allegedly killed on
21 16 December 2010, is unknown. The only individuals identified as killed or having
22 been killed during the 16 December 2010 march are members of the FDS. Document
23 0018-0577, page 0578.

24 The circumstances under which these three people alleged to be victims by the
25 Prosecution met with their death during the march remain unknown, nor is it known

1 whether these three people were civilians or members of the rebel forces; that is to say
2 pro-Ouattara combatants. Whatever the case, the Prosecution fails to provide
3 tangible and concrete evidence establishing substantial grounds to believe that the
4 regular forces attacked the demonstrators during the 16 December 2010 march, and
5 that the crimes were committed on this occasion by forces loyal to President Gbagbo.
6 Incidents separate from those occurring at the market, occurring during the march,
7 correction. The Prosecution's allegations with respect to the offence during the
8 march on the RTI are so unfounded that it attempts to associate any other real or
9 imaginary events which occurred or may have occurred in Abidjan on the same day
10 as the march, the same day or the days following the march. So in paragraph 45 of
11 the DCC the Prosecution claims that there were deaths on the morning of
12 16 December 2010 when the forces of law and order attacked the PDCI headquarters
13 in Cocody.

14 The account of this attack is based solely on the statement of Witness P-184, a witness
15 who was not present and who in reality knows nothing of the attack. 0032-0011,
16 page 0021, paragraph 58.

17 If the Prosecution believes that an attack occurred on the morning of
18 16 December 2010 at the headquarters of the PDCI, it should have found tangible and
19 concrete evidence in support of this. It did no such thing. It relied merely on
20 uncorroborated hearsay.

21 In paragraphs 47, 48 and 49 of the DCC, the Prosecution mentions a series of events
22 which allegedly took place in Abidjan between 16 and 18 December 2010 during
23 which a given number of individuals, according to the Prosecution all Ouattara
24 supporters, lost their lives, but the Prosecution did not investigate these events. He
25 merely relayed facts contained in various reports. He did not even verify that

1 the -- that these events really took place. He lists the murders committed without
2 providing the identity of the victims or the aggressors, or stating the circumstances of
3 the murders, or the location where the murders are said to have taken place. No
4 event is properly identified and, of course, none is properly documented.

5 In such a situation, it is impossible to believe that these incidents really occurred, or
6 that they occurred in the manner described by the Prosecution.

7 It was interesting to hear the Prosecution explain to us on 21 February, page 26 of the
8 transcript, that the incidents in which the FDS members were killed were not linked
9 to the march. How is it possible that the incidents in which FDS members were
10 killed were not part of the march if the Prosecution is trying to link all of the incidents
11 occurring in Abidjan in the following days to what happened during the march?

12 The Prosecution's logic is warped, or the Prosecution is biased, a practice that is
13 ethically unacceptable and contrary to Article 54 of the Statute. 54(1) of the Statute.

14 In reality, the incidents which occurred during the days following the march, if they
15 indeed occurred, are not linked to the march of 16 December.

16 The incidents which did occur are isolated events that are a consequence of the total
17 disorder resulting from violent demonstrations, or should I say rebel forces attacks
18 throughout the country in response to calls by Alassane Ouattara, Guillaume Soro
19 and their rebel leaders.

20 Let us remind ourselves of the orders from the Hotel du Golf to provoke the
21 population by break-ins, attacks and fires.

22 The rapes: Furthermore, in paragraph 43 the Prosecution alleges that at least 17
23 women were raped during the events of 16 December 2010. It provides the identity
24 of two rape victims who were allegedly raped at the police academy. Without
25 seeking to cast doubt on the credibility of the accounts, in order for the Prosecution to

1 prevent substantial grounds to believe that these crimes can be ascribed to the person
2 charged in these proceedings, the Prosecution should have led additional
3 investigations. Did he interview the person in charge of the police academy at the
4 time of the alleged misdeeds? Maybe, but nobody knows.

5 Did the Prosecutor seek out the policemen who were present at the police academy at
6 the time of the events? Maybe, but still we do not know. Did he take the women
7 who were allegedly raped to the police academy for them to identify the rooms where
8 they were allegedly raped? Did he interview the leaders of the police on these rapes
9 that were -- that allegedly took place at the academy? Did he interview one of the
10 policemen on these rapes? No, Madam President, the Prosecution did nothing of the
11 kind. He did not lead any investigations. He merely based himself on media
12 reports and reports based on non-identified witnesses and unverifiable sources. So
13 this is not sufficient to launch criminal proceedings. These elements quite simply do
14 not provide substantial grounds to believe that these crimes, were they to have been
15 committed, can be ascribed to President Gbagbo.

16 Let us now turn closely to the allegations relating to rapes. In paragraph 50 of the
17 DCC, the Prosecutor alleges that on 18 December 2010 a group of soldiers and militias
18 allegedly gang-raped a young girl after having abducted her from her home. This
19 description has practically been taken word verbatim out of an Amnesty International
20 report, document number 0002-0647, pages 0675 and 0676.

21 It does not provide us with any information. It doesn't tell us in which
22 neighbourhood that girl was abducted. We don't know where the rape was
23 allegedly committed. We do not know the identity of the victim. We do not know
24 the identity of her attackers. These are simply identified generically as soldiers and
25 militias, so anyone could have committed that rape for a variety of reasons.

1 Unfortunately, women are particularly targeted during times of unrest and they are
2 the first victims of these unrests. This is tragic, unacceptable, disgusting, but the
3 facts do not ascribe this to President Gbagbo. Like all other allegations, no details
4 are provided to enable us to verify the facts and to link them to the forces loyal to
5 President Gbagbo.

6 In the same paragraph, paragraph 50, the Prosecutor alleges that six women were
7 raped after having been detained in a house that was guarded by gendarmes. They
8 were raped allegedly by a group of three men. These facts have been culled from
9 the same Amnesty International report and once again we know nothing about the
10 perpetrators of these rapes, nor do we know anything about the victims.

11 The question we raise then is: What is the link between this rape and the forces loyal
12 to President Gbagbo? Only one answer can hold. None.

13 The same applies to the rape of two women at a roadblock. The Prosecutor fails to
14 provide any details as to the perpetrators of this rape and the victims. The alleged
15 roadblock where the victim -- the rape took place is not identified and once again the
16 Prosecutor simply relies on the Amnesty International report 0002-0647, page 0680.
17 Furthermore, it would appear that the rape that the Prosecutor attempts to show as
18 another rape committed at another roadblock is exactly the same rape as that
19 reported by Amnesty International with the exception that this other rape was
20 allegedly reported by another NGO, reference 0022-0042.

21 Out of respect for these women, who suffered these violences, let us again state that
22 women are particularly targeted during times of unrests and these are the results of
23 the actions of criminal minds and criminal individuals. Nothing, absolutely nothing,
24 establishes any link between these rapes and the forces of President Gbagbo.

25 The victims of these rapes are said to have been pro-Ouattara women, that we have

1 no means by which to verify this and we do not know the identity of these victims,
2 but even if they were pro-Ouattara women that were raped at these roadblocks, who
3 were the perpetrators of these rapes? We know nothing. Nothing about that.
4 Then there is the issue of the gang-rape of three young sisters who used to live in
5 Abobo. The description of that event is culled once again from another Human
6 Rights Report, 0002-0166. The victims of the rape are not identified in the report and
7 the Prosecutor made no attempt to identify them. Worse still, these young girls are
8 alleged to have been raped by men who said they were policemen. The Prosecutor
9 is not even in a position to assert that those men were effectively policemen.
10 In fact, the Prosecutor knows nothing about the victims, he knows nothing about the
11 perpetrators of the rape, and once again there is no link between this rape and the
12 forces loyal to President Gbagbo.
13 All the women who were raped were neither Dioula or pro-Ouattara. A former
14 member of the Invisible Commando asserted that women were raped in Abobo
15 because they were Bété and close to the LMP. His testimony strangely resembles
16 that contained in the Prosecutor's report, except that this person knows what he's
17 talking about. He was there and this is what he had to say.
18 For example, in Ebrié and Anonkoua Kouté villages we had several of those cases,
19 even at Abobo centre, Abobo west and towards Kennedy or Tchatcha, in Samaké as
20 well. Several cases of women having been raped were reported, some even being
21 burnt, killed, and their husbands slaughtered simply because they were Bété.
22 Simply because they were LMP. That is it.
23 There were several cases of rape. In fact, too many cases of rape and we even
24 complained about it, but we could not make too much noise about it because they
25 were close to Dramane and Dramane was the one in control. I'm referring to

1 document 2381, page 239, Defence document.

2 Prosecution evidence relating to these allegations of rape are -- is void. Let's take
3 report 0022-0042, for example. First of all, the report in itself raises the issue of
4 credibility - of the Prosecutor's credibility - to the extent that it was compiled at the
5 behest of the Prosecutor initially therefore indicated to support the Prosecution case.
6 Despite the best efforts to help the Prosecutor, the organisation which drafted this
7 report did not achieve that purpose. That organisation trained teams that were
8 deployed to various communes in Adjamé, Abobo and Yopougon to gather
9 information. In spite of all the efforts made, the investigators of that organisation
10 were unable to gather information except on two cases of rape committed on
11 16 December 2010, page 0045 of the report.

12 Curiously, they did not gather any information on the rapes allegedly committed at
13 the police school or the police academy. By the way, there is no mention of rape in
14 any report relating to rape on 16 December 2010 at the police academy. That alone
15 should have prompted the Prosecutor to further investigate the cases of rape alleged
16 by different organisations and yet the Prosecutor did not do so.

17 The Prosecutor simply carried forward the content of the report without any
18 additional evidence to support it and we do say that rapes do take place in times of
19 trouble or unrest, but what is the link with President Gbagbo in this case? We
20 submit that the Prosecutor has not established such a link.

21 Conclusion on the events of 16 December 2010: In order to be able to understand the
22 events of 16 December 2010, we must situate them in their context, that is in the
23 context in which they unfolded; namely, in a state that was deeply divided into -- was
24 divided into two between the north under the rebel control and the south under
25 government controlled forces.

1 We must recall that these elections took place in an atmosphere of fear without all the
2 necessary conditions for the elections having been met, and this was said clearly by
3 Mr Thabo Mbeki, former president of South Africa, in his report and he was a
4 mediator in the Côte d'Ivoire crisis. I am referring to document number 0666.
5 President Gbagbo's government deployed significant efforts to satisfy the
6 requirements of the international community and even of the rebels, but they failed to
7 uphold their commitments and the rebels in the north of the country were never
8 disarmed. Document 0020, page 0023, and 0666, page 0668. The contrary is true.
9 The rebels were more armed than ever before.
10 Now, with the weapons and support of the international community, the rebels did
11 everything to disrupt elections in the north of the country and they did not hesitate to
12 intimidate, to attack and even to kill supporters of President Gbagbo.
13 According to Prosecution Witness P-47, everywhere else RHDP supporters were
14 causing havoc, and I'm referring here to transcript 0014-0233, page 0234.
15 When the independent commission hastily announced the results without ensuring
16 that the elections had taken place under normal conditions, the situation was only
17 further exacerbated following the announcement of the final results by the
18 Constitutional Council, which is the only competent body to declare such results in
19 Côte d'Ivoire. The country, which for several years had been divided into two, was
20 now found to have two presidents and two governments.
21 At that time, President Gbagbo was in a position to consider himself as legitimately
22 elected, but he offered to take up negotiations and asked for a recount of the ballots;
23 but the other, President Ouattara, opted for the use of force. This is not surprising,
24 because Alassane Ouattara over the years had used the rebels and their weapons to
25 prosper his own purposes.

1 With the support of the international community, he did not hesitate to use the rebels
2 during the second round of elections as well as after the announcement of the results
3 in order to meet his own purposes. It is therefore not surprising that violence broke
4 out in Côte d'Ivoire when the international community recognised, in spite of the
5 decision of the Constitutional Council and regardless of the sovereignty of the State of
6 Côte d'Ivoire and its people, that Alassane Ouattara had won the elections.

7 Within the context of these well thought out and well planned acts of violence, the
8 march on the RTI was organised, but it was not to be a peaceful demonstration by the
9 RHDP, but rather an action aimed at taking over the RTI by all means, including the
10 use of force.

11 Now, when the forces of law and order intervene in a demonstration, they are bound
12 to respect the law. They are also bound to abstain from any excessive use of force,
13 but when the forces of law and order come under attack by heavily armed people,
14 they are no longer to be seen to be in a normal peacekeeping operation, but to be in a
15 situation of combat. They are in a situation of armed conflict. They are at war and
16 that is what happened on 16 December 2010. The forces of law and order were
17 attacked by the rebels. Their duty was a difficult duty. It was almost an impossible
18 duty because the armed rebels were in the crowds. Worse still, it was difficult to
19 identify them because they were wearing civilian clothes according to P-9-0011-0455,
20 page 0475.

21 Yes, indeed, on 16 December 2010 there were incidents, incidents took place, but the
22 Prosecutor failed in his primary duty, namely to verify that the incidents actually
23 happened. Checking these incidents and circumstances to confirm that they actually
24 took place identified the perpetrators of the acts and determined whether they were
25 acting spontaneously or in self-defence or for some other reason.

1 You see, at paragraph 51 of the DCC, the Prosecutor asserts that although the attacks
2 were widely reported, there is no evidence that Gbagbo - President Gbagbo - or his
3 associates sought to investigate those who had participated in them.

4 This rather strange wording suggests that maybe some investigations had been
5 conducted, but that the Prosecutor had not gathered evidence to come to such an
6 assertion, but the Prosecutor is in possession of a document which states that
7 investigations were conducted into the events that took place on 16 December 2010
8 and in the days following, reference 0001-0226, page 0232.

9 If the Prosecutor had any doubts as to whether there were any investigations or not,
10 as mentioned in that document, the Prosecutor should have opened further
11 investigations. He failed to do so.

12 Rather than conduct more in-depth investigations, the Prosecutor hastily charged
13 President Gbagbo based simply on the information contained mainly in reports by
14 the media and to a lesser extent by international organisations and non-governmental
15 organisations in their various reports.

16 By acting in that manner, the Prosecutor does not only put to question his
17 independence and his impartiality, but also casts doubt on the capacity or ability of
18 international justice to achieve its goals. Prosecuting President Gbagbo for the
19 events of 16 December 2010, without having cross-checked them and without having
20 deployed the decency to define their context, the Prosecutor in so doing subjugated
21 justice to politics.

22 Madam President, your Honours, the Prosecutor has not provided sufficient evidence
23 in support of his allegations relating to the march on the RTI which would warrant
24 confirmation of the charges against President Gbagbo regarding this event.

25 Let me now turn to the second event, that is the march by women, and let me start by

1 presenting the prevailing situation in Abobo in early 2011.

2 In order to fully understand what happened in Abobo, we need to look at what the
3 situation was in Abobo in early 2011. Unfortunately, the Prosecutor has continued
4 to set aside that context and to distort the realities relating to the period of the unrest
5 in Côte d'Ivoire. At paragraph 52 of the DCC, it emerges that the alleged attacks by
6 pro-Gbagbo forces against Alassane Ouattara's forces intensified, I'm sorry,
7 intensified in early March 2011, following calls to demonstrate from Alassane
8 Ouattara. In fact, and going by the evidence from the Prosecutor, the unrest, the
9 disorder and the incidents in Abidjan intensified in Abobo because of the emergence
10 of various groups that had taken the law into their hands, the most notorious of
11 which was the Invisible Commando, which operated in Abobo in January and
12 February 2011, giving rise to many victims including members of the forces of law
13 and order as well as the population at large.

14 In paragraph 53 of the DCC, the amended DCC, the Prosecutor alleges that as of
15 1 March there was a position to supply more heavy weapons to -- and reinforcements
16 particularly by way of mercenaries to the pro-Gbagbo forces at the Camp Commando
17 in Abobo. These allegations are based on two wrongfully interpreted documents by
18 the Prosecutor. The first one being document 0018-0067, a document of obscure
19 origin, which states that from the beginning of the post-electoral crisis there has been
20 a mass infiltration of rebels into Abidjan, particularly to Abobo and Adjamé, and
21 that there has been an urban warfare, guerrilla warfare, in the communes.

22 Now, regarding the alleged arming and the use of rebels, this document offers a
23 theory, but does not state that the theory was accepted let alone implemented. Let
24 me repeat again that we do not know the source of this document.

25 Now, as for the other document, 0018-0240, it depicts the gendarmerie as lacking the

1 resources that would enable it to carry out its mission of defence and security.

2 None of these two documents argues that President Gbagbo nor his loyal forces had
3 planned to provide heavy weapons or to bring mercenaries to Abobo. In fact, the
4 contrary is true. Both documents actually underscore the lack of resources available
5 to the republican forces at the time against the forces or, rather, as opposed to the
6 weapons available to the forces that were causing disorder in Abidjan, particularly in
7 Abobo.

8 As to two witnesses, P-10 and P-46, they never made any such assertions. In fact,
9 they continually testified or stated that the forces of law and order were regularly
10 under attack in Abobo and that the police and CeCOS were bound or forced out of
11 those neighbourhoods when they lost too many of their men.

12 Now, let us look at what actually happened in Abobo during the first months of the
13 year 2011. Abobo had been infiltrated by rebel combatants before
14 28 November 2010. We have already explained to the Court that rebel combatants
15 had infiltrated Abobo before 28 November 2010, and that they had organised arms
16 caches.

17 The truth is that weapons had been distributed to rebels in Abobo since January 26.

18 Document 0018-0727. At the beginning of the year 2011, many people in Abobo
19 were armed and an armed aggression was organised by the Commando -- the
20 Invisible Commando. P-10, transcript 0016-0065, page 0076; P-47, 0014-0135, pages
21 0159 and 0160. P-69, transcript 0017-0124, page 0138.

22 Witness P-10 asserts that the Invisible Commando was more armed or had more
23 weapons than the army itself. They had armoured vehicles, rocket launchers and
24 mortars. 0016-0084, pages 0090 and 0091.

25 Witness P-107 also states that members of that group did not hesitate to kill their own,

1 even some of their own; statement 0020-0064, paragraph 162.

2 Defence evidence confirms that the Invisible Commandos were present in Abobo as
3 well as Guillaume Soro's forces who were pitted against each other for the control of
4 Abobo; document 1396, page 1400.

5 The commander of the theatre of operations for the Invisible Commando, document
6 2381, in the statement, provides information regarding the other groups that were
7 active in Abobo, such as Koné Zaccaria, a rebel leader's group and Touré Nzanga. It
8 also explains how the Invisible Commando used weapons or heavy weapons in
9 Abobo and this we have already mentioned.

10 We must also underscore that the rebels used men and forces of law and order in
11 document number 0025-0056, page 0058, and they used those people within
12 the -- their forces in order to assign those crimes, so to speak, to the regular forces.

13 Madam President, would this be a good time, a good time to stop right here and
14 adjourn for today?

15 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) You don't
16 want to continue for another five minutes?

17 MS FAUVEAU IVANOVIC: (Interpretation) No problem. I'll proceed.

18 In January and February 2011, men shot at police officers and policemen were killed,
19 police vehicles were destroyed. P-9, 0011-0505, page 0520.

20 Rebel forces increased their attacks on the forces of law and order. Let us now look
21 at video CIV-0562.

22 (Viewing of the video excerpt CIV-0562)

23 MS FAUVEAU IVANOVIC: (Interpretation) On 12 January 2011, on that single
24 day, nine police officers were killed in Abobo. P-46, 0014-0326, page 0350 and 0351.

25 In February 2011, a police vehicle was destroyed by an RPG and some soldiers were

1 killed at their homes when those homes were torched, and the forces of law and order
2 from the beginning of the conflict lost 36 men in Abobo. P-9, 0011-0455, page
3 0479 -- 76, rather.

4 In March, all police precincts or all police precincts had come under attack in Abobo
5 and the police was no longer operational. P-46, 0014-0326, page 0328. CeCOS
6 withdrew from Abobo on 26 February 2011 after several of its members had been
7 killed in its headquarters; 0016, 0104, pages 0105, 0107 and 0108.

8 On 22 February, a detachment of CeCOS was ambushed; 0002-0277.

9 According to the release from the Commando Invisible or the Invisible Commando,
10 on that 22 February 2011, at least 27 members of the FDS lost their lives and the
11 Invisible Commando took over a huge quantity of arms and ammunition.

12 Document 001-0396.

13 Towards the end of February, the FDS was absent from Abobo. Only a few troops
14 were confined to the Abobo camp besieged by rebels that attacked them on a regular
15 basis. Heavily armed rebels with Kalashnikovs, heavy weapons, RPGs, rocket
16 launchers, mortars and attacked even Camp Commando. P-153, 0028-0035, page
17 0037, paragraph 12.

18 Madam President, would this be a good time?

19 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, we have
20 now come to the end of our proceedings for today. We will adjourn here and
21 resume tomorrow at 14 hours 30. This sitting is adjourned.

22 (The hearing ends in open session at 6.28 p.m.)