

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Status Conference - Courtroom 1
9 Wednesday, 3 October 2018
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:11] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:32:31] Good morning. Good morning.
15 Last rush for the OTP, for the Office of the Prosecutor. Mr MacDonald, the floor is
16 yours.
17 MR MACDONALD: [9:32:59] Thank you, Mr President, your Honours.
18 If you allow me to begin with three corrections I'd like to make to my presentation of
19 yesterday and on a specific point, actually to supplement it.
20 Your Honours, yesterday I referred to Witness 440's evidence about youths saying
21 that only Mr Blé Goudé could tell them to remove the roadblocks. And you will find
22 this at the English realtime transcript, page 90, starting line 18.
23 And then I went on to say this, from line 24 onwards:
24 "We also have a video on record when you can hear the youths themselves saying
25 that, that only Mr Blé Goudé can call them to bring down the roadblocks."

1 So I wish to make a correction here. We have indeed a video in which you can see a
2 youth from a roadblock saying: (Interpretation) "It is the general who made the call."
3 (Speaks English) Now this was the video actually I had in mind, but it's not the same
4 message, obviously, and the reference for this video can be found at
5 CIV-OTP-0028-0008. I will not be giving the time codes and neither the transcript,
6 unless the Chamber wishes to have them.

7 As for the evidence of the youth saying that only Mr Blé Goudé could tell them to
8 remove the roadblocks, that comes from the testimony of Witness 440 himself.

9 Another correction, although of a different nature, yesterday at page 93, lines 18 to 20
10 again of the realtime transcript, I referred to the documentary "Shadow Work" in
11 describing Mr Blé Goudé's mindset and the influence Mr Blé Goudé held over the
12 pro-Gbagbo youth. I simply want to clarify that the documentary itself is not in
13 evidence. What is submitted on the record are the number of tapes and tape logs
14 which were produced by Witness 431 in making the documentary "Shadow Work".
15 Nevertheless, to supplement that point or to delve a little bit more deeply, Witness
16 41's interview with Mr Blé Goudé, which was submitted at CIV-OTP-0062-1041 -- it's
17 Witness "431". And I will quote Mr Blé Goudé in that interview in English, because
18 actually it was in English:

19 "So now, I am not afraid of anything because I have seen so many things. I have
20 suffered so much. You know. So, this why I have influence of ... on the majority of
21 the Ivorian youth, because they know me, they know the constance of my battle.

22 They know how I can't give up when I am determined. How I can lead them."

23 Later, in the same interview, Mr Blé Goudé was asked about the capacity of the
24 Young Patriots to which he responded, and I quote:

25 "Now, I want them to rest and I told them, the day I will feel the danger, I call you."

1 Now, finally from this video and perhaps most importantly, Mr Blé Goudé states his
2 political ambitions, and I quote:

3 "Before talking to people, before giving a message, before giving a speech, there is, I
4 mean, shadow work to do, I want to do that."

5 Now, in video CIV-OTP-0059-0025, we see youth leaders delivering a message on
6 behalf of Mr Blé Goudé to the crowd, and Witness 431 testified that this message was
7 to paralyse the city of Abidjan the following day. Now we're in the summer, your
8 Honour, again of 2006, just to make it clear.

9 In addition to this footage, I refer your Honours to Witness 431's testimony that at a
10 rally he filmed in Yamoussoukro in June 2006, Mr Blé Goudé was addressed as the
11 leader of the Young Patriots and referred as "the General", and this you can find at
12 transcript 36, the English version, edited transcript, page 27.

13 Now, he was asked, Witness 431, how he would describe Mr Blé Goudé's relationship
14 with the audience he was addressing, and Witness 431 stated clearly and simply,
15 "they loved him."

16 The third correction I want to address finally is at page 86, line 13 of yesterday's
17 English transcript, and I stated and I quote, "Mr Blé Goudé was aware of the African
18 Union's decision of 10 March and also encouraged Mr Gbagbo to step down."

19 Now, to be clear, what I meant is the following, that Mr Blé Goudé was aware of the
20 African Union's decision of 10 March, which encouraged Mr Gbagbo to step down,
21 not Mr Blé Goudé, but the African Union decision, which encouraged Mr Gbagbo to
22 step down because they recognised or were recognising Mr Ouattara as the winner of
23 the election.

24 I will now address the last topic, your Honours, which is the individual mode under
25 Article -- individual criminal responsibility under Article 28, which obviously applies

1 only to Mr Gbagbo.

2 Now, this last mode of liability, that is, superior responsibility, we address in our
3 response at pages 994 and following.

4 In his motion, Mr Gbagbo recites Article 28 of the Statute and jurisprudence. As far
5 as the legal requirements are concerned, as we explain at paragraphs 2059 to 2062 of
6 our response, we disagree that causality is a requirement of superior responsibility.

7 And I will return to this element before the end of my presentation.

8 Throughout the post --

9 My console is doing free games. I don't know if we can hear me, but I have no
10 sound.

11 Throughout the post-election crisis, Mr Gbagbo and the FDS leadership failed to
12 properly investigate and/or punish FDS elements who had committed serious crimes
13 against the civilian population. It is the Prosecution's position that the failure to
14 prevent and/or repress the criminal activity of the FDS coupled, coupled --

15 Yes, it's back. Thank you.

16 If you allow me just one second.

17 (Counsel confer)

18 MR MACDONALD: [9:43:46] Sorry about that, your Honours.

19 It is the Prosecution's position that the failure to prevent and/or repress the criminal
20 activity of the FDS, coupled with an official pattern of denial of these criminal acts,
21 demonstrates that Mr Gbagbo and the FDS high command condoned it.

22 This pattern was not a novelty in Côte d'Ivoire. Perpetrators of crimes against
23 perceived Ouattara supporters and against political opponents were hardly
24 investigated, let alone prosecuted from the years 2000 to 2010. This encouraged the
25 FDS to continue committing serious crimes in total impunity, as the facts of this case

1 demonstrate.

2 The Trial Chamber has heard evidence relating to the Wassakara incident of the night
3 of 1 December 2010. Despite having been informed of the four RDR militants had
4 been killed in cold blood at the seat of the RDR in Wassakara and seven others had
5 been wounded by a squadron of the gendarmerie, the Procureur de la République
6 never initiated an investigation into the matter and it never resulted in a legal or
7 criminal procedure.

8 As stated on the first day of our presentation with regards to the 16 December
9 incident, despite that many civilians were seriously wounded, killed and raped by the
10 FDS, Mr Gbagbo and the FDS high command did not investigate the crimes while the
11 evidence was fresh. Instead, Mr Gbagbo waited until early January to create a
12 commission of inquiry to allegedly look into the matter. The delay was exacerbated
13 in the way the commission was created and by its shortcomings. These factors
14 demonstrate that it was not created to genuinely look into the crimes committed by
15 the FDS in December but was an exercise in covering up the actions of the
16 perpetrators. The commission was designed to exonerate Mr Gbagbo and the FDS
17 high command. And I will explain this further later in my presentation.

18 Turning to the 3 March incident, the Chamber heard the testimony of FDS high
19 ranking officers, such as Witness 9, 47, 156, all of whom were very much aware on the
20 day of the march of allegations that seven women had been killed.

21 Mr Gbagbo too was informed of the incident that day. The very next day, as I've
22 stated and the evidence on record demonstrate, both spokespersons Mr Ahoua Don
23 Mello and Hilaire Babri of the government and respectively of the FDS on national
24 television denied any FDS responsibility for the attack. Further denials by the
25 minister of interior and the Conseil de Ministres respectively on 5 and 8 March

1 further solidified the government's stance. No formal investigation or Prosecution
2 was conducted.

3 The 17 March incident was treated in a similar fashion. Notwithstanding the
4 information that reached Mr Gbagbo and high ranking FDS officers such as Witness 9
5 and Witness 47, the pattern of failing to investigate continued and a denial was issued
6 on 22 March. Worst, the BASA commander, Commander Dadi, received the
7 perpetrators as heroes at Camp Commando and celebrated their attack on Abobo.
8 Finally, with respect to the 12 April incident, Mr Gbagbo was on notice that crimes
9 would be committed but decided nevertheless to remain in power and extended the
10 conflict. The Trial Chamber heard evidence that by early April, Mr Gbagbo's
11 residence was home to several members of militia groups such as the GPP as well as
12 Liberian fighters. Mr Gbagbo was aware of the lack of discipline and criminal past
13 of the GPP. He was also aware of allegations against the FDS with respect to the
14 prior incidents, including the charged incidents. Mr Gbagbo's awareness was
15 heightened by recent incidents where his subordinates were alleged to have
16 committed crimes. By congratulating them and encouraging them to continue to
17 fight, Mr Gbagbo failed to prevent the killings and rapes committed on 12 April 2011
18 in Yopougon.

19 I will now focus on the remaining issues argued by Mr Gbagbo in his motion. First, I
20 will respond to arguments regarding Mr Gbagbo's knowledge. Second, I will
21 discuss Mr Gbagbo's failure to prevent. And third, I will address the issue of
22 Mr Gbagbo's effective control. Fourth, I will discuss the means that were at
23 Mr Gbagbo's disposal to prevent and punish the perpetrators. Last, I will address
24 the causality criteria.

25 Mr Gbagbo's knowledge. Mr Gbagbo begins his challenge by addressing the

1 question of Mr Gbagbo's knowledge of the crimes. He raises two arguments.

2 In his first argument on this point at annex 5, paragraph 614, Mr Gbagbo quotes an
3 excerpt from the Prosecution's trial brief which refers to direct or indirect knowledge
4 to claim that there is no such thing as indirect knowledge. Going back to our trial
5 brief, your Honours, paragraph 756, we stated that Mr Gbagbo had knowledge, either
6 directly or indirectly, that crimes were about to be committed or had been committed.
7 Essentially, the distinction here is between direct evidence of actual knowledge and
8 circumstantial evidence pointing to Mr Gbagbo's knowledge.

9 Your Honours, direct evidence includes evidence of witnesses stating that they
10 reported crimes to Mr Gbagbo or statements made by Mr Gbagbo himself, such as on
11 21 December 2010, a statement that he made on national television on the RTI in
12 which he acknowledged that 10 civilians were killed during the 16 December
13 incident.

14 Indirect evidence refers to circumstantial evidence, which together allows the
15 Chamber to make a reasonable inference as to his knowledge. For example, the fact
16 that General Mangou testified that Mr Gbagbo had been informed by Minister Dogou
17 of the 3 March incident, coupled with the denial made on the RTI by the
18 spokesperson of his government, this is not direct evidence of Mr Gbagbo's
19 knowledge, but a reasonable inference at this stage of the proceedings is that
20 Mr Gbagbo was aware that there were allegations that his subordinates killed seven
21 women on 3 March 2011 in Abobo.

22 In his second argument on this point, Mr Gbagbo argues at paragraph 615, still of
23 annex 5, that the Prosecution does not rely on evidence showing that he knew that
24 crimes were about to be committed. The difficulty with this argument, your
25 Honours, is that Mr Gbagbo fails to make reference to the trial briefs when attributing

1 a position held by the Prosecution.

2 Nevertheless, and for the sake of clarity, the Prosecution argues failure to prevent and
3 punish for all incidents, except obviously for 12 April incident, where we argue that
4 Mr Gbagbo's failure relates to preventing the incidents.

5 Let me now address Mr Gbagbo's failure to prevent.

6 On this point, Mr Gbagbo's argument is that the Prosecution did not prove that he
7 had advance information that crimes were about to be committed.

8 Indeed, your Honours, this is not a case of a commander in the field who receives a
9 call or a message from a subordinate or from any source that his troops are preparing
10 or are in the midst of committing a crime. What the Prosecution argues is that given
11 the context, Mr Gbagbo should have known that crimes were about to be committed.

12 The following factors placed Mr Gbagbo on notice that crimes were about to be
13 committed or that had he not failed to control his forces, he would have received
14 information putting him on notice that these units were about to commit crimes.

15 The evidence demonstrates that since Mr Gbagbo's election in 2000, Ivory Coast was
16 marked by impunity as a result of a lack of investigation and Prosecution of crimes
17 committed against civilian militants and political opponents. And I refer to our
18 response, paragraph 1139.

19 Informed of allegations that the FDS had killed civilians during past demonstrations,
20 in particular December 2000, March 2004, Mr Gbagbo nevertheless requisitioned the
21 armed forces on November 2010. He ordered the curfew on 26 November, again, for
22 no military operational reason. From the very beginning, the fact that Mr Gbagbo
23 unleashed heavily armed units in an urban setting should have put him on notice that
24 crimes would be committed, given the similar context and setting of the past protest
25 marches.

1 The preparatory activities prior to the elections, such as the training of the FESCI and
2 COJEP students by armed militia, the GPP, should have also provided notice to
3 Mr Gbagbo that crimes were likely to take place.

4 As stated in Divo in August 2010, Mr Gbagbo insisted on the role of the FDS was to
5 tame his enemies, that the FDS role was not the thing before acting but to execute
6 orders. He said to leave the thinking to the judges who will repair afterwards
7 should there be any damage.

8 Mr Gbagbo ignored the killing, like I've mentioned, of the four RHDP militants killed
9 in the night of 1 December in Wassakara. This again went unpunished and sent a
10 signal at the time of the post-election crisis at its very beginning that their crimes
11 would go unpunished.

12 By 15 December 2010, the moment when Mr Gbagbo instructs the army and police
13 that the march on the RTI is prohibited and that it must be stopped, Mr Gbagbo
14 should have known that by confronting civilian demonstrators to armed units, it
15 would result in crimes by his subordinates.

16 By failing to punish the crimes committed on 16 December, he allowed impunity to
17 reign, thereby giving carte blanche to these units to commit crimes repeatedly, such as,
18 for instance, the killing of Burkinabés in Adjamé-Washington by the GPP or the
19 killing of two French men and two other foreigners from the Novotel by Liberian
20 fighters.

21 Mr Gbagbo was also informed or should have known that various FDS units had
22 committed crimes since the second round of the elections. We recall the letters on 31
23 December that Mr Gbagbo himself as well as his close subordinates, Generals Dogbo
24 Blé, Vagba Faussignaux and Guiai Bi Poin received from the High Commissioner for
25 Human Rights, Mrs Pillay, this letter informing them of serious violations of human

1 rights. I am at paragraph 290 of our response, your Honours -- 2090, 2-0-9-0 of our
2 response.

3 In fact, according to the same letter, if you read the beginning of the letter, Mrs Pillay
4 had already warned Mr Gbagbo on two previous occasions: 26 November, coincides
5 with the curfew prior to the elections and 1 December 2010 of FDS involvement in
6 crimes. In the crux of the debate about who had won the elections and the contest
7 between the challenge raised by Mr Gbagbo before the constitutional council as to
8 disregarding votes in the north and other parts of Côte d'Ivoire, that's the 1 December.

9 To be clear, the letters addressed to Generals Dogbo Blé and Guiai Bi Poin informs
10 them of allegations that the Garde Républicaine and CECOS had participated in
11 killings, kidnapping, torture, arrest and detention during the 16 December march
12 incidents.

13 With respect to the 3 and 17 March incidents, the following factors added to
14 Mr Gbagbo's notice in a cumulative fashion that crimes would be committed: His
15 failure to punish the above-mentioned incidents in December 2010; his instructions to
16 the FDS to carry out operations in the residential commune of Abobo on 24 February;
17 declining to declare Abobo a war zone; and giving instructions that there should not
18 be too many dead, referring here to civilians. This instruction, your Honours,
19 manifestly was insufficient.

20 With respect to the 12 April incident, Mr Gbagbo knew that the perpetrators, at least
21 the GPP, had a criminal past so much so that he adopted a presidential decree in
22 December 2003 which gave the appearance of dismantling the group. However, as
23 Witness 435 testified, the GPP was never dismantled and there are corroborating
24 documents showing the existence of the GPP up to and including April 2011.

25 But further, the GPP trained pro-Gbagbo youth and collaborated with the CECOS

1 BMO during the crisis. Had Mr Gbagbo carried out a genuine investigation in
2 relation to the 16 December incidents -- incident, sorry, he would at a minimum have
3 sent a strong message that such behaviour was not accepted and could have
4 prevented the commission of future crimes.

5 Let me now turn to the Defence arguments with respect to effective control.

6 Unfortunately, we submit, at annex 5, paragraphs 618 to 620, Mr Gbagbo's arguments
7 are not based on any substantive analysis of the submitted evidence. Instead,
8 Mr Gbagbo limits his arguments to three isolated items in our trial brief that I will
9 summarise. In a nutshell, Mr Gbagbo argues:

10 First, with respect to his ability to issue orders to the FDS and government officials,
11 Mr Gbagbo argues that the Prosecution relies on the evidence of mid-level officers 238
12 and 239, who were not in a position to make such observations as to Mr Gbagbo's
13 ability to control his forces.

14 However, Witness 239 reported, we submit, Colonel Dadi's speeches about his
15 closeness to Mr Gbagbo in that he received instructions directly from Mr Gbagbo.
16 Nothing in his testimony calls into question his ability to make the observations he
17 told the Chamber, we submit, your Honours.

18 Witness 239 provided a firsthand account of what he saw and heard. Second, it is
19 incorrect to say that we refer only to these two witnesses. As we explain at
20 paragraph 2120, subparagraph ii of our response, we rely on the evidence also of
21 Witness 9, 10 and 11 and various presidential decrees, such as, the order to General
22 Mangou not to move his forces towards the Golf Hotel on 16 December 2010. That's
23 another order we haven't discussed but it is on the record. Mr Gbagbo's instructions
24 to hold Abobo.

25 Second, with respect to Mr Gbagbo's ability to remove subordinates, Mr Gbagbo

1 argues at paragraph 619 of annex 5 that the sources provided in our trial brief at
2 paragraph 755(g) do not support this allegation.

3 Now, indeed, upon further verification, there is an error as to the source cited in the
4 footnote, which relates to a different topic altogether. However, we remind the
5 Chamber, and the Defence could not have forgotten the testimony of Witness 46, who
6 stated that when Mr Gbagbo ordered the removal of Youssouf Kouyaté, the then
7 préfet de police adjoint in charge of public security, Witness 46 abided. Therefore,
8 the second -- the second, the préfet de police adjoint, and I think if I'm not mistaken,
9 specifically for the city of Abidjan, if not, it's for the whole country, but it's upon
10 Mr Gbagbo's order, indeed, that Witness 46 removed him.

11 Therefore, here you have a clear example of Mr Gbagbo's ability to remove
12 subordinates, which stems from his powers as president and commander in chief.

13 As for Mr Gbagbo's ability to finance youth groups, the final point, Mr Gbagbo
14 engages at annex 5, paragraph 620, into credibility assessments of Witness 435 and
15 625. As previously stated by Mr Stewart, which I'll again repeat, at this stage, your
16 Honour, we submit that the Chamber should refrain from evaluating the credibility
17 and reliability of the evidence, except in extremely limited circumstances.

18 Nevertheless, the Prosecution has explained in detail that Mr Gbagbo controlled and
19 financed youth groups, including the GPP, through his subordinates, including
20 Mr Blé Goudé and including the FDS generals who allowed the recruitment and
21 integration of such groups in the FDS.

22 Putting aside these three challenges, the Prosecution notes that Mr Gbagbo has not
23 challenged in his motion that the FDS, the youth, the militia or mercenaries were
24 under Mr Gbagbo's effective control. Be that as it may, we detailed in our response
25 how Mr Gbagbo exercised effective control over his subordinates.

1 Since our presentation was to be responsive to the Defence motions, I will simply
2 refer the Chamber to paragraphs 2075, 2075 to 2084 of our response.

3 I will now address the means that were at Mr Gbagbo's disposal to prevent or punish
4 the perpetrators.

5 At paragraphs 621 to 624 of annex 5 of his motion, Mr Gbagbo claims that the
6 Prosecution never indicated which measures were at his disposal to prevent or
7 punish the perpetrators. To this end, Mr Gbagbo refers to paragraph 755 of the
8 Prosecution's trial brief, which deals with effective control. Mr Gbagbo ignored
9 paragraphs 760 and 761, where the Prosecution provided specific examples of
10 measures Mr Gbagbo could have taken to prevent and punish the crimes.

11 In our written response at paragraphs 2118 and 2120, we detail the measures that
12 were available to Mr Gbagbo. I will provide a summary of these measures.

13 Mr Gbagbo, and there is a few of them, Mr Gbagbo had the full judicial apparatus at
14 his disposal through his minister of justice as well as the gendarmerie, an institution
15 empowered to investigate crimes committed by the FDS.

16 The judicial system was actually functioning during the conflict. The evidence
17 demonstrates that at least 257 demonstrators were arrested during the march on the
18 RTI of 16 December. Several days of hearings were held before courts in Abidjan,
19 resulting in the release of most demonstrators and the sentencing to one-month
20 imprisonment of 28 demonstrators. All of this was completed by 3 January 2011.

21 Mr Gbagbo had communication channels to instruct pro-Gbagbo forces not to commit
22 crimes and denounce their commission. How? First, through his direct
23 subordinates, his minister of defence and interior, the chef d'état-major and so on.
24 Second, as well as through the RTI, the RTI.

25 Mr Gbagbo could have denounced and condemned the crimes committed by his

1 subordinates both in public speeches and in private conversations.

2 Mr Gbagbo had the power and the capacity to instruct his subordinates, like I said,
3 the minister of defence or the head of the Garde Républicaine and of the CECOS with
4 respect to the use of militia groups and the importance of discipline.

5 As I mentioned earlier, Mr Gbagbo could appoint, promote, demote or dismiss
6 officials in the government or senior commanders in the FDS, even at the very top of
7 the hierarchy.

8 Mr Gbagbo could dictate the line of conduct to be adopted by members of these youth
9 movements and mercenaries.

10 Mr Gbagbo could order the deployment and withdrawal of FDS units from certain
11 sectors and his subordinates would have complied.

12 Mr Gbagbo had the resources to trigger and ensure the effective conduct of genuine
13 investigations and Prosecutions of the crimes allegedly conducted by the pro-Gbagbo
14 forces.

15 I will now address the last argument of Mr Gbagbo, the causality criteria.

16 This argument relates to the causal effect between Mr Gbagbo's failure and the crimes
17 committed on the ground.

18 As explained in our written response, the Prosecution's position remains, despite the
19 jurisprudence, that superior responsibility does not require causation.

20 However, if the Chamber was to decide that Article 28 requires a causal link between
21 the commander's failure to exercise control properly over his forces and the
22 subordinate's crimes, the standard to establish Mr Gbagbo's responsibility under
23 Article 28 should be no higher than the commander's failure increased the risk of the
24 commission of the subordinate's crimes.

25 Indeed, the above-mentioned failures of Mr Gbagbo increased the risk that his forces

1 would commit crimes. As the crisis evolved and worsened, as crimes were being
2 committed, reported and went unpunished, as Mr Gbagbo entrenched himself into
3 his position as the legitimate winner of the presidential election, in other words, as
4 Mr Gbagbo clung to power, so did the pro-Gbagbo forces. And they had carte
5 blanche in support of the effort of their president, of their commander-in-chief.

6 Let me now address Mr Gbagbo's failure to punish. And this will lead to my
7 conclusion.

8 The evidence shows that Mr Gbagbo failed to take reasonable and necessary
9 measures to investigate and punish these perpetrators who were under his effective
10 control for the 16 December, 3 March and 17 March incidents.

11 Let me begin with the international commission of inquiry established by Mr Gbagbo
12 on 7 January 2011. This largely relates to the crimes committed in November and
13 December, in particular during the 16 December march.

14 Mr Gbagbo knew that civilians had been killed, a fact that he acknowledged on
15 national television. A necessary and reasonable measure would have been to ensure
16 that investigative bodies such as the gendarmerie or the police would exercise their
17 responsibilities and duties genuinely.

18 Instead, in his 21 December televised speech to the nation, Mr Gbagbo emphasised
19 the loss of FDS troops, and he emphasised that, we submit, in order to support his
20 struggle to remain in power, which he repeated at the beginning of February, your
21 Honours, where there was a mass commemoration for all the FDS that died during
22 the conflict.

23 Coming back to 21 December, ten days after his speech, he received letters, like I
24 mentioned, from the UN High Commissioner for Human Rights, and on that same
25 day he announced that a commission of inquiry would be established.

1 The Prosecution submits that this commission served as a cover-up and delayed the
2 possibility of a genuine investigation and prosecution of those responsible for the
3 killings.

4 And we explain at paragraph 2110 of our response the shortcomings of this
5 commission including:

6 The manner in which it was established, which excluded from its composition any
7 members of the Ivoirian judicial and investigative bodies.

8 Its activities did not focus on interviewing the leadership of the FDS nor consult FDS
9 organs in charge of investigations, because neither General Kassaraté nor any of the
10 generals mentioned appear to have been interviewed or consulted. They were
11 certainly not questioned by the Defence on those points when they had a chance here
12 before this Chamber.

13 Police records that were submitted, that we submitted contained the details relating
14 to the march and the specific units responsible for killing demonstrators. Nothing in
15 the report of the commission indicates that they were consulted.

16 After six weeks of work, the conclusions of this commission can be found in seven
17 brief sentences, and I will just summarise very briefly that the commission notes for
18 Abidjan, the kidnapping and forcible confinement of two persons in Abobo in breach
19 of the curfew. It also further refers to the disappearance of one person after his
20 kidnapping by the FDS, again, against the curfew, and this takes place on 14
21 December also in Abobo. Further, as to Cocody, the report refers to one person
22 being killed and many others injured at the headquarters of the PDCI during the
23 execution of a search by the authorities. PDCI headquarters, search, executed by the
24 authorities. The report refers to the 16 December incident, but limits itself to the
25 racketeering that took place against demonstrators that were under arrest and

1 brought to police stations. That's the only reference that we have on 16 December,
2 racketeering, but nevertheless, by the authorities against demonstrators, and the
3 demonstrators that day are perceived or actual Ouattara supporters.
4 The other conclusions referred to incidents in the west and in another locality outside
5 of Abidjan.
6 As Mr Gbagbo created the commission by virtue of a presidential decree, we submit
7 that he was entitled and expected to correct the commission's shortcomings. The
8 lack of specificity and the brevity of this report betray a lack of interest, we submit, in
9 conducting a proper investigation on the killings, persecution, rapes and inhumane
10 treatment which took place from 28 November 2010 onwards.
11 Referral of allegations to manifestly incompetent or non-functioning authorities is
12 insufficient, and that is the Bemba trial judgment at paragraph 208, as is the knowing
13 implementation of measures which will necessarily be ineffective, and that's the
14 Bemba appeals judgment at paragraph 180.
15 For further details, your Honours, we refer the Chamber to paragraphs 2108 and 2111
16 of our written submissions.
17 What is clear from the record is that Mr Gbagbo did not take necessary or reasonable
18 measures to investigate the crimes committed during the 16 December incident and
19 its aftermath. The Prosecution submits that no such good faith investigation was
20 done as a result of Mr Gbagbo's failure to properly control his subordinates.
21 The demonstrators get convicted, the perpetrators are not investigated.
22 The same can be said of the 3 March incident.
23 FDS soldiers under Mr Gbagbo's effective control killed and seriously injured women
24 in Abobo that were marching in support of Mr Ouattara.
25 As we've already summarised, Mr Gbagbo and his inner circle had evidence

1 implicating the FDS in the killing of these women. And as we've said it a few times
2 in our presentation, less than 36 hours, in less than 36 hours they publicly and
3 officially denied any responsibility. I will not come back on that. The evidence on
4 record is clear.

5 The Prosecution submits that this denial is so close in time to the murders that it is
6 proof in and of itself that Mr Gbagbo and the FDS had no interest in conducting a
7 good faith investigation. It further shows that Mr Gbagbo wanted the FDS to
8 continue their violent repression of pro-Ouattara demonstrations with impunity.

9 The Prosecution also argues that the Gbagbo government was less concerned with
10 accountability for the murder of these women and more concerned with trying to
11 minimise, we submit, the political fallout which they knew could turn the tide against
12 them domestically and internationally. Why is that? Well, the African Union was
13 still debating the issue and was to issue a report, which indeed came on the 10th. So
14 politically, it was also at a crucial time in the negotiations that were taking place at the
15 level at the African Union.

16 Once the Gbagbo government issued its denial on 4 March, they stuck with it. No
17 substantive investigation ever materialised in the weeks that followed. Your
18 Honours heard from the FDS Witness 9, 156 and 47 about this lack of investigation.
19 They corroborated that it amounted to just a few phone calls between the FDS
20 commanders and their subordinates. Nobody was sent to the scene, no formal
21 interviews were conducted, no civilian witnesses or victims' families were
22 interviewed.

23 The immediate official denial, the lack of substantive investigation and the FDS
24 attempts to intercept the victims' bodies show that Mr Gbagbo sought to cover up
25 FDS crimes rather than to punish them.

1 Let me now finish on the 17 March incident, because the pattern continued, the
2 failure.

3 Mr Gbagbo issued an unsubstantiated official government denial of the FDS
4 involvement on the RTI soon after his BASA unit shelled residential areas in Abobo,
5 killing at least 31 civilians and wounding 36 more.

6 Mr Gbagbo was aware of the shelling. We've already summarised this. Witness 47
7 testified about the considerable press coverage of the shelling and a meeting held
8 between the FDS generals and the head of the CPCO where it was reported that
9 mortars had been fired on Abobo on 17 March, and when mortars fall, it's loud, it's
10 loud. You can hear that on the videos, actually. And Mr Gbagbo lives in Abidjan.

11 Despite their knowledge of civilian deaths, no proper investigation was ever done.

12 During questioning by the Presiding Judge, Witness 47 reiterated that none of the
13 military authorities were ever sent to the location to investigate. Witness 9 was
14 aware of the deficient investigation and alleged to have asked the minister of defence
15 for a more general investigation to be conducted, but nothing happened.

16 No formal interviews were conducted. Witness 9 confirmed nobody was ever
17 punished. Rather, what happened is that Colonel Dadi celebrated the members of
18 the BASA that executed his orders -- or this order, sorry, offering them a cold
19 beverage of their choice upon their return to Camp Akouédo, heroes.

20 Only five days after the shelling on 22 March 2011, like I've mentioned, the
21 spokesperson, Mr Ahoua Don Mello, spokesperson of the government, issued a
22 statement on the RTI announcing the result of a sham investigation aimed at covering
23 up their crimes and allowing them to continue to attack civilians with impunity. I
24 recall, and I've said this on the first day, no damage had been observed at the Abobo
25 market; no victims had been registered at the Abobo and Anyama morgue; three, that

1 no complaint had been registered at the police station with respect to an FDS
2 operation. This statement, we submit, from the evidence on record is a lie, because
3 you have the photographs, you have the video evidence, you have the expert
4 witnesses, you have the crime base witnesses, the videos, the videos, that door. The
5 Chamber can also easily see that the register from Anyama morgue clearly identifies
6 victims of the 17 March shelling.

7 In sum, for these March incidents, Mr Gbagbo and his government hastily issued
8 official denials of FDS involvement instead of investigating the murder of dozens of
9 civilians. The evidence is clear that Mr Gbagbo and his government had no
10 intention of conducting a good faith investigation into their soldiers' murder of Mr
11 Ouattara supporters.

12 As stated at the beginning, Mr Gbagbo failed to properly control his subordinates by
13 failing to prevent or punish the crimes he was very well aware of or by failing to refer
14 the matter to competent investigative and prosecutorial authorities.

15 Your Honours, a superior is required to act in good faith when adopting such
16 measures.

17 I'd like now to conclude, your Honour, because this, well, concludes my presentation
18 on Article 28. And now I'd like to conclude the presentation as a whole.

19 Over the past two days we've summarised our evidence. When I say "our" it's the
20 Chamber's evidence, it's submitted, the evidence submitted on record, which includes
21 the speeches, the orders and the instructions of both Mr Gbagbo and Mr Blé Goudé.

22 The accused in their written motions have presented alternative interpretations of the
23 same speeches or orders or instructions. Now, the Chamber may ask why one
24 interpretation should be more credible than the other.

25 Well, I return to part II.B and the importance of assessing the evidence holistically,

1 including within its proper context. Both Mr Gbagbo and Mr Blé Goudé were skilled
2 politicians who also made use of self-serving rhetoric. We submit they sugarcoated
3 unpleasant messages, they put a spin on their messages, and even sometimes
4 presented themselves as victims.

5 In its analysis, we urge the Chamber to go beyond a superficial reading of their words.

6 The Chamber should look at the crux of their message. The Chamber must look at
7 who their message was intended, it was intended to whom, sorry, the audience, their
8 audience and at how the audience interpreted their message and acted upon it. The

9 Chamber must look at the wider context of the message, which is a situation where
10 security forces were collaborating with armed militia, where civilians were being

11 lynched and burned at roadblocks which had been erected with approval of the State.

12 The Chamber must also look at the propaganda messages broadcast on the RTI and
13 the video evidence of pro-Gbagbo youth who were ready to kill. The Chamber
14 needs to ask itself how this level of indoctrination and intoxication came about.

15 Finally, the Chamber must look at the escalating violence against civilians perceived
16 as Ouattara supporters and how Mr Gbagbo and Mr Blé Goudé took responsibility, or
17 not, for the consequences of their actions.

18 It is the Prosecution's submission that throughout the crisis the acts and conduct of

19 Mr Gbagbo and Mr Blé Goudé led inevitably to the violence committed by the
20 pro-Gbagbo forces as outlined in the crimes charged. Therefore, we respectfully

21 request that the Chamber deny both motions in full except with respect to

22 Mr Blé Goudé's responsibility relating to the incident of 3 and 17 March 2011 in
23 Abobo.

24 Before thanking the Chamber for your attention, I would like to also take this

25 opportunity, which I don't think I do very often, to thank the Prosecution's team, the

1 whole team, everybody involved in the last six months in the submission of a trial
2 brief and our response to a no case to answer. It's been a huge effort and I
3 congratulate them from the bottom of my heart and they know who they are. Thank
4 you.

5 PRESIDING JUDGE TARFUSSER: [10:36:55] Thank you, Mr MacDonald.

6 I know that Judge Henderson has a few questions for you, and so I give the floor to
7 Judge Henderson. I myself have no questions just for you to know.

8 JUDGE HENDERSON: [10:37:16] Thanks, Presiding Judge.

9 I do have quite a few questions, Mr MacDonald, but I will just limit myself to just a
10 few, and they do relate to the contextual elements of crimes against humanity.

11 So I'll just perhaps ask about four or five questions.

12 So the first one is: Noting the overlap between the "pattern of crime" pleaded for the
13 purposes of proving a course of conduct, two, that pleaded for the purposes of
14 proving systematic nature of the attack, and three, and that pleaded for the purposes
15 of proving the existence of a policy, is there a difference between proving the three as
16 separate requirements? And if so, yes, what is the difference?

17 I don't know if you prefer if I just ask you all of the questions I would like to ask or
18 you want to do it in seriatim.

19 MR MACDONALD: [10:38:43] I would request, respectfully, if all the questions
20 could be maybe submitted all at once and then we can take it from there. If that's
21 suitable, of course.

22 JUDGE HENDERSON: [10:39:00] Yes, that's fine, because it's really to assist me in
23 understanding fully your submission as we deal with the motion before us.

24 MR MACDONALD: [10:39:10] Of course, of course, your Honour.

25 JUDGE HENDERSON: [10:39:12] All right. So then I'll ask the others and then you

1 will deal with it in due course.

2 Two: Could you clarify what the difference is between a "pattern of crimes"
3 referenced in your paragraph 218 of your Prosecutor's response, a series or flow of
4 events in paragraph 189, 241, and 324, and thirdly, a continuum of violence
5 mentioned during your hearing, during this hearing on 2 October, transcript 222 at
6 page 94.

7 The next question, which would be three: You had pleaded in your response that
8 the systematic nature of an attack can be expressed as a pattern of crimes in the sense
9 of non-accidental repetition of similar criminal conduct on a regular basis. That was
10 at paragraph 218. You also asserted in your response that to establish the necessary
11 "course of conduct" forming the attack, it need not be shown that a reasonable Trial
12 Chamber could find that each or indeed any one of these incidents (nor any of the
13 Article 7(1) acts committed in the context of an incident) are established to the
14 requisite threshold. That was at your paragraph 195.

15 So the question is this: When none of the individual acts alleged to constitute such
16 pattern or course of conduct need be proven to the relevant threshold, how do I rule
17 out the non-accidental repetition of the criminal conduct? Do you follow?

18 And I will stop at this last question. As I said, there are more, but I think we could
19 work it out. But this last question also is something that engages me.

20 During the hearing of 2 October, you submitted that the manner in which the attack
21 was carried out shows that the civilian population perceived as supporting Mr
22 Ouattara was the primary object of the attack. It was not an incidental object. On
23 this basis, a policy to attack the civilian population can be found. And this is at
24 transcript 222 dated 2 October 2018.

25 You also pleaded that motive is irrelevant as a matter of law for establishing the

1 contextual elements for Article 7. And this is at paragraph 200.

2 So the question is: If motive is indeed irrelevant, how does one assess whether or
3 not an act was committed pursuant to the alleged policy?

4 All right. So I'll just leave it at that and I would be happy for your assistance on
5 these issues.

6 PRESIDING JUDGE TARFUSSER: [10:43:40] And I would say we stop here. So I
7 give you also time to reread the questions, which I think are a bit complicated, also to
8 reread the part of your submissions and we come back in half an hour at 11.15 for
9 your -- well, I would say 11.30. So let's go at 11.30, so you will have the time to
10 reflect and give the answer, and then I give the floor to the Legal Representative of
11 Victims.

12 Thank you very much. The hearing is adjourned to 11.30.

13 THE COURT USHER: [10:44:19] All rise.

14 (Recess taken at 10.44 a.m.)

15 (Upon resuming in open court at 11.31 a.m.)

16 THE COURT USHER: [11:31:22] All rise.

17 Please be seated.

18 PRESIDING JUDGE TARFUSSER: [11:31:42] Good morning. The Chamber saw the
19 request of the Prosecutor and has no objection, if there is also no objection by the legal
20 representative.

21 So I will give the floor to the Legal Representative of Victims, Mrs Massidda and then
22 following to the Office of the Prosecutor for the response to the questions of Judge
23 Henderson.

24 Ms Massidda, please.

25 MS MASSIDDA: [11:32:21] Thank you, Mr President. Good morning, your

1 Honours.

2 For organisational purposes, I can already inform the Chamber that my oral remarks
3 will approximately take 30 minutes I think, maximum of 45.

4 Mr President, your Honours, since January 2016, victims have followed the
5 proceedings and they have contributed to this trial by agreeing to share and explain
6 their sufferings and the multiple consequences of the crimes on their lives and on the
7 fate of their families and communities.

8 Victims are now faced with the possibility that proceedings will be halted. A
9 possibility that will have as a consequence that they would be deprived from their
10 rights to know the truth and to obtain justice, reinforcing the sentiment of impunity
11 they have been confronted with since the events of 2002.

12 The written submissions filed on their behalf in response to the motions of the
13 Defence teams contain all our arguments in support of the fact that this trial shall
14 continue. In the course of the last two days, the Prosecution has extensively argued
15 why the evidence in the record of the case supports the conclusion at this stage of the
16 proceedings that the accused shall be asked to respond to the charges brought against
17 them.

18 Victims generally share the arguments presented by the Prosecution, except for the
19 request to dismiss the charges against Mr Blé Goudé related to the 3 and 17 March
20 2011 incidents.

21 In light of the amount of information already before the Chamber, I will limit my
22 observations to two substantive issues: One, some matters linked to the contextual
23 elements of the crimes against humanity; and two, the proposed dismissal of the
24 charges against Mr Blé Goudé.

25 Before addressing these matters, and because the extent of the participation of victims

1 in these proceedings has been constantly challenged by the Defence, allow me, Mr
2 President, your Honours, to recall that victims are, in these proceedings, independent
3 actors with similar but distinct interests from the Prosecution. The core interest of
4 victims in this trial is to effectively exercise their right to truth and justice. And this
5 right necessarily entails the possibility to positively contribute in the debate related to
6 the guilt or innocence of the accused.

7 In this sense, your Honours, this hearing represents for the victims an important
8 juncture in the trial. The two substantive issues I will deal with are particularly
9 important for the victims I represent since the resolution of the underlying legal
10 issues will have a clear impact on their personal interests.

11 As far as the first issue is concerned, the contextual element of crimes against
12 humanity, the recognition of the attack directed against the civilian population is at
13 the core of the interests of the victims because they all suffered harms as a
14 consequence of the attack by reason of their ethnicity, nationality, religion or real or
15 perceived political affiliation.

16 The Prosecution has now decided not to rely on evidence relevant to nine incidents as
17 indicated in paragraphs 183 and 232 of the Prosecution's consolidated response to the
18 Defence's motions.

19 While agreeing with the Prosecution that there is not a minimum number of incidents
20 legally required to establish the contextual element of the crimes against humanity, I
21 wish to reiterate that, in this sense, the five incidents charged are per se sufficient to
22 establish the multiple commission of acts amounting to an attack direct against the
23 civilian population in the sense of Article 7(2)(a) of the Rome Statute.

24 In this regard, in the Katanga case, a single incident was considered sufficient to
25 establish the contextual element of crimes against humanity; namely, the attack on

1 Bogoro, which took place on 24 February 2003 and involved inter alia 33 civilian
2 deaths. The reference, your Honour, is to paragraphs 1134 to 1138 of the judgment
3 of Trial Chamber II of 7 March 2014.

4 In the Bemba case, the Pre-Trial Chamber in the decision confirming the charges and
5 then the Trial Chamber in its judgment under Article 74 indicated that the legal
6 requirements of multiple commission of acts means, and I quote, "that more than a
7 few isolated incidents or acts as referred to in Article 7(1) of the Statute have
8 occurred." And reference for the record is to paragraph 81 of the decision
9 confirming the charges in the Bemba case of 15 June 2009, and paragraphs 149 to 151
10 of the Trial Chamber judgment pursuant to Article 74, issued on 21 March 2016.

11 The jurisprudence, in our view, clearly supports the conclusion that there is not a
12 minimum number of incidents legally required to establish the contextual element of
13 crimes against humanity and, at this stage of the proceedings, as also indicated in
14 paragraph 152 of the Prosecution trial brief, "the multiple prohibited acts committed
15 during the incidents charged against Gbagbo and Blé Goudé, or parts thereof, are
16 sufficient in and of themselves to constitute a course of conduct involving the
17 multiple commission of crimes against a civilian population within the meaning of
18 Article 7(2)(a) of the Statute".

19 In particular, as already indicated on Monday by the Prosecution, at least 142
20 murders, 17 rapes, 110 other inhumane acts and multiple acts of persecution were
21 committed by the pro-Gbagbo forces against civilians perceived as Mr Ouattara's
22 supporters in Abidjan during the post-electoral crisis.

23 I'm referring your Honour to the Prosecution arguments in the transcript 221,
24 realtime, English version, page 84, lines 18 to 23.

25 In any case, the remaining 20 incidents on which the Prosecution relies upon to

1 establish the contextual element of crimes against humanity in this case are described
2 with sufficient detail to prove the existence of a course of conduct involving the
3 multiple commission of acts against a civilian population referred to in Article 7(2)(a)
4 of the Statute.

5 For each incident, the Prosecution provides evidence of the authors of the crimes, the
6 civilian character of the victims, and of their nationality, religion, ethnicity and/or
7 political affiliation. Said details show the existence of similar patterns of violence
8 and that the acts were not random, isolated or coincidental.

9 As argued by the Prosecution during the last two days, these acts of violence mainly
10 took place at the occasion of demonstrations or at political parties' premises against
11 actual or perceived Ouattara political activists and sympathisers, not with
12 conventional and law-enforcement methods, but with indiscriminate fire or grenades.
13 The episode took place in neighbourhoods inhabited by perceived pro-Ouattara
14 supporters following identity checks and with shelling or indiscriminate fire on areas
15 densely populated by perceived Ouattara supporters.

16 This shows the existence, in our submission, of a course of conduct conforming the
17 attack against a civilian population, and I believe it goes to some extent to question 3
18 of Judge Henderson.

19 Now, if an incident has not the characteristics that I have just described in providing
20 the examples, then said incidence will not form part of the attack.

21 And, incidentally, as far as question 4 of Judge Henderson is concerned in relation to
22 the policy, there is practice before this Court affirming that, and I quote, "A State or
23 organisational policy can therefore be inferred by the settlement of inter alia repeated
24 actions occurring according to a same sequence."

25 The examples I just mentioned in our view allowed to assess that the acts were indeed

1 committed pursuant to a policy and the reference, your Honour, is the Katanga trial
2 judgment issued on 7 March 2014, paragraph 1109.

3 I will limit my comments to that because I think that the Prosecution will rightly then
4 address the full extent of Judge Henderson's questions.

5 These elements are sufficient at this stage of the proceedings to conclude that there is
6 enough evidence in the record of the case to support the existence of the contextual
7 element of crimes against humanity.

8 Turning now to the proposed dismissal of the charges against Mr Blé Goudé related
9 to the 3 and 17 March 2011 incidents, victims do not share the Prosecution's position.

10 The Prosecution does not oppose the dismissal of the two charges and indicates that it
11 hopes, and I quote, that "such relief will assist in expediting the proceedings going
12 forward" end of quote. And reference is to paragraph 25 of the Prosecution's
13 consolidated response to the Defence motions.

14 While welcoming the Prosecution's well intended efforts to expedite the proceedings,
15 the need for expeditiousness cannot trump the interests of justice, certainly not, your
16 Honours, the interests of the hundreds of victims participating in this trial.

17 Victims have a right to see the individuals who allegedly caused them harm brought
18 to justice and face a trial which encompasses the full extent of their responsibility in
19 the relevant events, responsibility which may be characterised in different forms
20 depending on the mode of participation of the perpetrator in each event.

21 While the Prosecution might find it suitable to only focus on the incidents for which
22 Mr Blé Goudé is charged with principal liability, the events for which the accused is
23 charged under Article 25(3)(c) and (d) of the Statute cannot simply be put aside.

24 Such course of events will be prejudicial to the interests of the victims and it is in any
25 case premature.

1 Contrary to the Prosecution's submission yesterday, as stated in page 10, line 19 and
2 25 of the transcript 222 English realtime version, the withdrawal of these charges does
3 create substantive changes to the crimes and mode of liability Mr Blé Goudé is facing.
4 The evidence sustaining Mr Blé Goudé's accessorial liability for the events of 3 and 17
5 March 2011 needs to be addressed and discussed before this Chamber because the
6 right of victims to know the truth encompasses the obligation of the Chamber to
7 evaluate the full extent of the accused's responsibility in the common plan and the
8 relevant incidents that derived from his participation in the common plan.

9 All the crimes committed in relation to the five incidents charged, including the ones
10 in March 2011, resulted from the same common plan that was conceived to keep
11 Mr Gbagbo in power by all means. This common plan was, in the words of the
12 Prosecution, also implemented in a coordinated manner by Mr Blé Goudé with Mr
13 Gbagbo and others because they all shared the motivation to keep Mr Gbagbo in
14 power by all means.

15 Reference to the transcript 222, English realtime version, page 8, lines 16 to 22, page 12,
16 line 16 to 18.

17 Even if the evidence presented so far shows that it was the FDS that repressed the
18 women's march on 3 March 2011 and shelled the Abobo market on 11 March 2011,
19 nevertheless, Mr Blé Goudé indirectly contributed to the murder and inhumane
20 treatment of civilians during both incidents through his activity in support of the
21 common plan.

22 Therefore, contrary to the submission of the Prosecution, there is in our view, at least
23 at this stage of the proceedings, a nexus between Mr Blé Goudé and the 3 and 17
24 March incidents.

25 In fact, as argued by the Prosecution in its pre-trial brief, paragraph 893 and 894, the

1 evidence shows, and I quote from the trial brief:

2 "Blé Goudé's contribution provided assistance and material support to the direct
3 perpetrators with respect to all crimes and all counts charged ... his contributions
4 were nevertheless conducted with a view to assist, and did so assist, the direct
5 perpetrators in the commission of the crime." End of quote.

6 The Prosecution does not provide any reasonable explanation about the reasons now
7 justifying a different position. In fact, in his presentation during the last two days,
8 the Prosecutor highlighted elements which support at this stage of the proceedings in
9 our view the non-dismissal of the charges against Mr Blé Goudé and I will refer to
10 said elements quoted by the Prosecution in the course of my presentation.

11 To support the argument that the charges should not be dismissed at this stage of the
12 proceedings, I wish to underline some elements and evidence in the record of the case,
13 incidentally also quoted by the Prosecution mainly yesterday.

14 One, as explained in paragraph 900 of the trial brief and in paragraphs 1991 and 1992
15 of the consolidated response, Mr Blé Goudé was member of a group of persons acting
16 with a common purpose to attack pro-Ouattara civilians in Abidjan between 27
17 November 2010 and about 12 April 2011 and targeted them on ethnic, religious and
18 national grounds. In this regard yesterday, the Prosecution indicated that the inner
19 circle under Article 25(3)(a) of the Statute and the group of persons under Article
20 25(3)(d) are composed of the same individuals.

21 Reference is to transcript 222, realtime English version, page 103, lines 9 until 11.

22 Two, Mr Blé Goudé contributed to the commission of crimes on 3 and 17 March 2011
23 in a significant way.

24 He played a central role in the conception of the common purpose of the group to
25 attack civilians perceived to support Ouattara. He met with Mr Gbagbo and other

1 members of the inner circle to discuss a strategy to implement the common purpose
2 to attack pro-Ouattara civilians. And both circumstances are referred in paragraph
3 2013 of the Prosecution's consolidated response.

4 As argued by the Prosecution yesterday, during the meetings before and after key
5 incidents, Mr Gbagbo received information about the preparation for and conduct of
6 the attack and issued plans, instructions and incitements for its implementation to
7 maintain power, even if this encompassed violence against actual or perceived
8 Ouattara supporters. Page 19, lines 12 and 18, as well as page 40, lines 6 and 13 of
9 yesterday's transcript, 222.

10 Mr Blé Goudé established and organised a structure which allowed the execution of
11 the common plan and occasioned the commission of the crimes on 3 and 17 March
12 2011 as shown in our submission by at least nine factors:

13 One, by securing the allegiance of the youth and galvanising them.

14 Two, by ensuring that the youth acted in unity through his leadership.

15 Three, by acting as a vital intermediary between the youth and Mr Gbagbo.

16 Four, by disseminating instructions through various channels.

17 Five, by mobilising the youth to raise barricades.

18 Six, by financing the activities of the pro-Gbagbo youth.

19 Seven, by providing financial and logistical support to train the pro-Gbagbo youth
20 and militia.

21 Eight, by calling the youth to enrol in the army.

22 And nine, by encouraging cooperation between the FDS and the youth.

23 In particular, as again argued by the Prosecution yesterday, Mr Blé Goudé remained
24 the general of the youth after being appointed minister of youth in December 2010,
25 and in this capacity he played an essential role in the recruitment and enlistment of

1 the pro-Gbagbo youth and gave instructions and incitement to the pro-Gbagbo youth
2 and militia.

3 Evidence shows that Mr Blé Goudé controlled the youth for the implementation of the
4 common plan, sometimes calling on the youth to participate directly in the crimes,
5 such as in the December 2010, February 2011 and April 2011 incidents.

6 At other times, Mr Blé Goudé's control of the youth allowed him to make the youth
7 available to other members of the inner circle for the implementation of the common
8 plan, including as regarding the 3 and 17 March 2011 incidents.

9 For some details on how Mr Blé Goudé controlled the youth and made the youth
10 available, I would refer the Chamber to the transcript of yesterday, it's again

11 transcript 222, English realtime version, page 39, lines 13 to 15; page 57, line 18 until
12 page 59, line 2; page 88, lines 12 to 17, and page 102, lines 4 to 10.

13 For this purpose, Mr Blé Goudé had a role in recruiting and enlisting the youth in the
14 FDS inter alia in September 2010, January 2011 and March 2011.

15 As recalled by the Prosecution yesterday, he called for the GPP to train Young
16 Patriots members of the COJEP and the FESCI who were eventually integrated into
17 FDS units. Page 43, lines 5 to 12. He praised the FDS and announced a rally at
18 Champroux Stadium to pay tribute to the FDS. Page 44, lines 24-25. And he called
19 upon the youth to enlist in the FDS on 19 March at the place CP1 and on 20 March at
20 Port-Bouët.

21 And my apology, because I have actually mixed up the references in the record. I
22 will repeat.

23 The first reference is to page 43, lines 5 to 12 in relation to COJEP and FESCI; second
24 reference, rally at Champroux Stadium is page 43, lines 16 to 20; and the last one, the
25 call for enlistment is at page 44, lines 24 to 25.

1 Your Honours, Mr Blé Goudé's contribution to the crimes was intentional, and
2 Mr Blé Goudé's intent is, in our view, demonstrated inter alia by the creation of and
3 continued relation with the GPP. The recruitment, training and arming of the
4 pro-Gbagbo youth and militia proves Mr Blé Goudé's intention. The use of the GPP
5 alone demonstrates that Mr Blé Goudé was willing to use violence against civilians.
6 And again, I refer to the submission by the Prosecution of yesterday, transcript 222,
7 page 8, lines 16 to 25, page 47, lines 24, 25.
8 Mr Blé Goudé's contribution was made with the knowledge of the intention of the
9 group to commit the crimes. And the knowledge is, in our submission,
10 demonstrated inter alia by his role in the recruitment of youth into the FDS and his
11 call to the youth to enrol in the armed forces on 19 and 20 March 2011.
12 Your Honour, it is therefore the views of the victims that the evidence in the record
13 sufficiently supports at this stage of the proceedings Mr Blé Goudé's responsibility for
14 the events of 3 and 17 March 2011 under Article 25(3)(c) and (d).
15 Indeed, Article 25(3)(c) also encompasses the assistance given after the offence has
16 been perpetrated, especially so if there was a prior offer of assistance or an agreement
17 between the principal perpetrator and the accessory, pursuant to which the latter
18 would lend assistance after the commission of the crime without knowing all the
19 factual circumstances in which the crime is committed. And in this sense, I refer
20 your Honour to paragraph 96 of the trial judgment of 19 October 2016 in the Bemba et
21 al. case, confirmed, recently confirmed by the Appeals Chamber in its judgment of 8
22 March 2018, paragraphs 1399-1400.
23 In turn, Article 25(3)(d) requires a contribution to the commission of the crime. This
24 contribution is qualified in the text of the provision by the phrase "in any other way".
25 While the practice of this Court has considered that the contribution should be

1 significant, and I will argue in a minute that Mr Blé Goudé's contribution was indeed
2 significant, I wish to recall that part of the doctrine, and with one exception, this
3 Court, Judge Fernández de Gurmendi in a separate opinion in the Mbarushimana
4 case in the appeal judgment of 30 May 2012, I will say that part of the doctrine
5 actually has interpreted the phrase "in any other way" as indicating that there should
6 not be a minimum threshold or level of contribution under this mode of liability.

7 In other terms, any contribution to the group crime not covered by another form of
8 participation, especially assistance, establishes the criminal liability of the accessory.

9 Because the provision requires any type of contribution to the individual crimes,
10 Article 25(3)(d) also encompasses, as argued by some commentators, contributions
11 with no direct causal connection with the crime itself. Since a direct connection with
12 the crime itself is not required for Article 25(3)(a), of course it cannot be required
13 either for Article 25(3)(d), which refers to liability as an accessory and not as a
14 perpetrator.

15 On the basis of this interpretation of Article 25(3)(c) and (d), the victims request the
16 Chamber to disregard the request to dismiss the two charges against Mr Blé Goudé
17 because, at this stage of the proceedings, it can be inferred from the evidence in the
18 record of the case that the accused made a significant contribution also to the
19 commission of the crimes on 3 and 17 March 2011 by:

20 One, identifying in his speeches perceived Ouattara supporters as the target of the
21 attacks of the pro-Gbagbo forces and directing the attention of the direct perpetrators
22 to the targeted victims' group. Reference, your Honour, Prosecution trial brief
23 paragraph 895 (vii), and the Prosecution consolidated response, paragraphs 1322-1324,
24 1340, 1897 (iv) and (v).

25 Two, providing moral support to the commission of the crimes with the expression of

1 his support to the army on 20 January 2011 at the État-Major and on 23 January 2011
2 at Champroux Stadium. Reference, Prosecution trial brief, paragraph 895 (v) and
3 yesterday's transcript, 222, page 43, lines 16 to 25.

4 Three, participating - as shown by the logbook entries on 12 January 2011 and 14
5 March 2011 - in key meetings with Mr Gbagbo and FDS generals in which the
6 situation in Abobo, including military issues was discussed. Reference, trial brief,
7 paragraph 895 (v) and (vi) and transcript of yesterday's hearing, 222, page 79, line 25
8 until page 80, line 2.

9 Four, alleging during a press conference on 23 March 2011 that the FDS could not be
10 responsible for the women's death on 3 March 2011 because Abobo was in rebel
11 hands at the time. These statements were made to the press and could be
12 interpreted as providing encouragement and moral support to the FDS.

13 And finally, five, encouraging the youth to support the armed forces and asking them
14 to show up massively on 21 March 2011 at the État-Major to enrol in the army. The
15 reference is trial brief, again, paragraph 895 (vi), but we also wish to refer to the
16 Prosecution comments of yesterday, transcript 222, page 7, lines 19 to 22, in which the
17 Prosecution referred to Mr Blé Goudé's speech of 26 March at the Place de la
18 République in which he stated, and I will quote in English from the transcripts, "In
19 their activities, Alassane Ouattara and his militants slit the throats of many of our
20 compatriots."

21 The Prosecution itself in its trial brief at paragraph 895 (v) and (vii) indicates, and I
22 quote, "Blé Goudé's activities had the effect of strengthening the capability of the
23 pro-Gbagbo forces to commit the crimes". And "Blé Goudé's activities towards
24 recruiting of the youth into the FDS, supplying militia to the FDS and encouraging the
25 youth and militia to enrol in the FDS are all factors that provided support to the

1 armed forces, allowing the army to focus FDS resources on operations such as in
2 Abobo".

3 To conclude, your Honours, the dismissal of charges against Mr Blé Goudé for the 3
4 and 17 March incidents cannot be authorised at this stage of the proceedings because
5 there is sufficient evidence in the record showing that he intentionally assisted the
6 commission of the crimes by other members of the inner circle against perceived
7 Ouattara supporters.

8 In this regard, the Chamber remains free to consider all the evidence submitted so far
9 during the trial and has the power to decide against the dismissal of these charges
10 when looking at the totality of the evidence before it, and to do so in the interests of
11 justice and despite what the Prosecution and the Defence might have agreed.

12 Mr President, your Honours, victims participating at trial have often complained that
13 they have been abandoned by the Ivorian government and that the judicial
14 proceedings undertaken in Côte d'Ivoire against alleged perpetrators of the crimes
15 they suffered from during the post-electoral crisis have not resulted in truth or justice.
16 Now they have the impression that they may face the same fate before this Court.
17 Victims still trust the ability of the Court to render justice. However, if this trial will
18 not continue, victims will be abandoned once again. They will feel betrayed and will
19 likely be retraumatised.

20 Halting the proceedings in this case will mean to end the only credible effort to
21 provide justice to the victims of the post-electoral crisis who were targeted because of
22 their real or perceived support to Mr Ouattara by virtue of their nationality, ethnicity,
23 religion and/or political affiliation.

24 Mr President, your Honours, victims express their views that the two accused have to
25 respond to all the charges brought by the Prosecution in the interest of justice. The

1 only possible avenue is therefore to continue with this trial expeditiously. To do
2 otherwise would actually deprive victims of an effective access to justice.

3 This concludes, your Honours, my observations in this hearing. Thank you.

4 PRESIDING JUDGE TARFUSSER: [12:14:17] Thank you, Ms Massidda.

5 And now I give back the floor to the Office of the Prosecutor to respond to the
6 questions posed by Judge Henderson this morning.

7 MR MACDONALD: [12:14:31] Indeed. Thank you very much, your Honours, first
8 of all for granting the additional time so that we could better assist the Chamber in
9 answering the questions that Judge Henderson is asking.

10 Now my colleague, Ms Martin Salgado, Salgado will be answering the questions for
11 the Prosecution. I'm sorry.

12 PRESIDING JUDGE TARFUSSER: [12:14:57] Thank you very much. The floor is
13 yours.

14 MS SALGADO: Thank you, your Honours, for the opportunity to address you
15 today and for the time given to do so.

16 Before answering your questions I would like to just generally refer to our response,
17 which in its section 3B goes into detail on the law and on the Court's jurisprudence
18 that we say applied to the contextual elements for crimes against humanity.

19 Now beginning with your first question, and with your indulgence I will read it again
20 into the record so that we know which question that is.

21 The question is: Noting the overlap between "pattern of crime" pleaded for the
22 purposes of proving a course of conduct, two, that pleaded for the purposes of
23 proving the systematic nature of the attack, and three, that pleaded for the purposes
24 of proving the existence of a policy, is there a difference between proving the three as
25 separate requirements? And if so, what is the difference?

1 Your Honour, in this case, we have referred to evidentiary patterns as factual
2 indicators or evidentiary indicators that are relevant to establishing the existence of a
3 course of conduct directed against the civilian population, the systematic nature of
4 the attack, as well as the existence of a policy pursuant to which the attack was carried
5 out. And to be precise, we have addressed that in our response at paragraphs 242
6 and 243.

7 Now, there is indeed a difference between the scope of the three elements just
8 mentioned, the legal elements, and there is also a difference in their means of proof.

9 And we have set out the elements under means of proof in detail in our written
10 submissions.

11 But there are also similarities in that, for example, for the element of the course of
12 conduct, we show that it is not an aggregate of random acts that is happening on the
13 ground. We show it's a course of conduct. So the opposite of an aggregate of
14 random acts.

15 For policy, we show that it is not an aggregate of isolated acts that is going on in the
16 ground.

17 And for systematic, we show that it is improbable that these acts occurred randomly.
18 We show the improbability of their random occurrence.

19 So while the scope or the degree of these three elements is different, and it might be a
20 difference of degree, there is similarities in what needs to be shown through them.

21 And for that reason in this particular case there is a significant overlap on the
22 evidence that we used to establish these three elements. Does that not mean that the
23 evidence is completely identical? And as you will have seen in the factual
24 submissions in our brief, we supplement each element with a relevant means of proof
25 that are required.

1 But it is that for all three elements we do rely, among other things, on evidence of
2 patterns of conduct by the pro-Gbagbo forces in carrying out an attack that comprised
3 multiple criminal acts against perceived Ouattara supporters during the post-election
4 violence in Abidjan.

5 Turning now to your second question, the question is: Could you clarify what the
6 difference is between a "pattern of crimes" referenced in your paragraph 218 of the
7 Prosecution's response, a series or overall flow of events in paragraph 189, 241 and
8 324, and thirdly, a continuum of violence mentioned during your hearing and this
9 was in the hearing of 2 October at transcript 222 at page 94.

10 Your Honour, I note you referred to patterns of crimes as described in paragraph 218
11 of our response, which is in the legal part, but I also note that the way we have used
12 pattern is, as I have described earlier, as an evidentiary indicator or a subsidiary fact
13 that is supported by credible evidence put forward in this case. And I also have
14 mentioned we argued that those pattern of crimes -- or, rather, pattern of how the
15 crimes were carried out in this case, but not only, also pattern of who carried out the
16 crimes, what crimes were carried out, when they were carried out and where they
17 were carried out, shows that there was an attack against perceived Ouattara
18 supporters in Abidjan at the relevant time by the pro-Gbagbo forces.

19 Now, you asked also about the meaning of a series or flow of events, and that is an
20 expression that is used in the jurisprudence in this Court to describe the legal element
21 of course of conduct. And, for instance, in the Gbagbo confirmation decision at
22 paragraph 209 and at the Bemba trial judgment at paragraph 149, they define a course
23 of conduct involving the multiple commissions of acts referred to in Article 7(1) as a
24 series or overall flow of events as opposed to a mere aggregate of random acts.

25 Finally, your Honour, regarding the use of continuum of violence as we have used

1 during the hearing, we have used that term to denote another factual indicator to
2 demonstrate that all the crimes charged in this case were part of one and the same
3 pattern of violence. So what we want to say is that the attackers carried out a course
4 of conduct over a certain period of time during which they continued to commit
5 crimes against perceived Ouattara supporters.

6 And we've used continuum of violence specifically in relation to the 12 April incident.

7 We have also used continuum of violence in relation to this incident because we
8 believe it describes how this incident can be attributed to the accused. So in this
9 particular case we have used continuum of violence in those two ways.

10 As for the third question, your Honours, the question is: You had pleaded in your
11 response that the systematic nature of an attack can be expressed as a pattern of
12 crimes in the sense of non-accidental repetition of similar conduct on a regular basis.

13 And that was at paragraph 218 of your response. You also asserted in your response
14 that to establish the necessary course of conduct from in the attack it need not be
15 shown that a reasonable Trial Chamber could find that each or indeed any one of
16 these incidents nor any of the Article 7(1) acts committed in the context of an incident
17 are established to the requisite threshold. And we've said that in paragraph 195.

18 So the question that your Honour posed was: When none of the individual acts
19 alleged to constitute such a pattern or course of conduct need to be proven to the
20 relevant threshold, how do I rule out the non-accidental repetition of the criminal
21 conduct.

22 Our answer: Your Honour, to establish an attack, you don't need to be
23 independently satisfied that each and every individual criminal act is committed.
24 You need to look at all the relevant evidence cumulatively and determine whether
25 there is such attack. We refer in our brief to the analogy of the forest and the trees.

1 And we say again that you don't need to establish the existence of each individual
2 tree to be satisfied that there is a forest.

3 In the words of the jurisprudence, the contextual elements operate at a different level
4 of obstruction.

5 Similarly, therefore, you don't need to focus on the details of each individual criminal
6 act to determine that the pattern of acts or of the conduct shows common features that
7 relate them to each other. You look at whether there is consistency in the criminal
8 conduct, in the overall criminal conduct, without focusing on the minute details of
9 each and every act. And you do this in order to establish that there was an attack,
10 including to establish whether it was a systematic one.

11 It is those common features that we have described in our submissions, so who
12 committed these acts, where they were committed, against whom were they
13 committed, where were they committed and how, that allow you to conclude as an
14 overall assessment that they show these common features and that they were linked
15 together and that they're not an accidental repetition of crimes.

16 And finally - I apologise, I'm finding my way - the fourth question is: During the
17 hearing of 2 October, you submitted that the manner in which the attack was carried
18 out shows that the civilian population perceived as supporting Mr Ouattara was the
19 primary object of the attack. It was not an incidental object. On this basis a policy
20 to attack the civilian population can be found. And this is at transcript 222 dated 2
21 October 2018.

22 You also pleaded that motive is irrelevant as a matter of law for establishing the
23 contextual elements for Article 7, and this is at paragraph 200.

24 So the question is: If motive is indeed irrelevant, how does one assess whether or
25 not an act was committed pursuant to the alleged policy?

1 Our first answer to that question, your Honour, is that it does not need to be
2 established that the act is committed pursuant to a State or organisational policy. It
3 is the attack as a whole that needs to be related to a State or organisational policy.
4 Second, your Honour, we say that motive is irrelevant as a matter of law to link the
5 attack to the policy. As a matter of evidence it may be relevant, but the existence of a
6 military motive of the attackers does not exclude that the attack was directed, in fact,
7 against a civilian population. And this is exactly what we say happened here.

8 And there are other factors, apart from motive, that show that this is what happened
9 here. I have referred to our evidentiary patterns that show how the acts were
10 actually carried out.

11 But there is additional elements and we have set those in our brief. It may be shown,
12 for example, this link between the attack and the State or organisational policy by
13 showing that the persons who carried out the course of conduct were members or
14 associated with the relevant State agencies or the organisation and that their conduct
15 was envisaged by or consistent with the policy.

16 To conclude, your Honour, say that there is -- sorry, apologise. I hope this answers
17 your questions.

18 JUDGE HENDERSON: [12:29:34] Yes. I've heard the response and I could work
19 with what I have. Thank you.

20 MS SALGADO: Thank you, your Honour.

21 PRESIDING JUDGE TARFUSSER: [12:29:49] Also thank you very much to the Office
22 of the Prosecutor and to the Legal Representative of Victims for their submissions.
23 I now revert to the Defence teams, who have now the possibility and the time to
24 respond and to reply to these extensive written and oral submissions made by the
25 Prosecutor and the Legal Representatives.

1 And as I said in introducing this hearing session, this response should be immediate,
2 if feasible, and obviously without prejudice also to the Defence teams requesting
3 additional time and an adjournment of the hearing to prepare and submit their oral
4 response.

5 And therefore I will give now the floor to, I don't know to whom, to one of the
6 Defence teams in order to illustrate to the Chamber if there is a request or if they want
7 to start immediately with their response.

8 Mr Knoops, I see you on your feet, yours the floor.

9 MR KNOOPS: [12:31:05] Yes. Thank you, Mr President, your Honours.

10 The Defence of Mr Blé Goudé seeks an extension of time with 60 days to further
11 prepare our oral submissions and this is based on the following arguments. At the
12 same time the Defence of Mr Blé Goudé will not react instantaneously today but will
13 ask the Chamber to reserve all the arguments for a potential other hearing.

14 First, in the Ruto, Sang case, the Trial Chamber number V(a) in its written order of 18
15 September 2015 granted the Defence to prepare its oral submissions for a no case to
16 answer motion four days with the caveat that the briefs were filed with a limit of 100
17 pages. In that case the Chamber had clearly limited the written submissions of the
18 parties for the no case to answer proceedings.

19 In our case, Mr President, your Honours, we face the following situation. First, with
20 a response of the Prosecution of almost 1100 pages and 6001 footnotes; second, we
21 faced a brief of the LRV of around 100 pages and today's submissions of the LRV on
22 the third and fourth incident which deviates from the Prosecution's view; and, finally,
23 we face around 250 pages transcripts of today's and yesterday's hearing and the
24 hearing of Monday.

25 That equals around 1500 pages we have to delve into to coordinate this work with our

1 preparation already made for today.

2 If we transpose the calculation the Trial Chamber in the Ruto, Sang case made onto
3 this case, that makes 60 days, if you make the calculation of around 1500 pages with
4 the calculation of 4 days per 100 pages, that equals 60 days.

5 And that means that counting from 10 September, the filing of the Prosecution
6 response, we will add up in the second or third week of November of this year to
7 prepare or to present our oral submissions.

8 Further, Mr President, if we have to go through the transcripts of the hearings of the
9 last few days in detail, we will observe quite some inconsistencies, selective reading
10 and also distortion of certain portions of the evidence, and we submit that in order to
11 present an efficient and well-organised oral submission, we would indeed need those
12 days as we just submitted to the Chamber.

13 Therefore, in concreto the Defence suggests, Defence of Mr Blé Goudé that the Court
14 might schedule the hearing for the Defence in the week of 12 November or the week
15 of 19 November, and further in anticipation of that potential hearing if the Court
16 would grant this request, the Defence of Mr Blé Goudé anticipates that we would
17 need probably three days for our submissions in order to actually address all the
18 arguments of the Prosecution's oral submissions and that of the LRV.

19 That concludes my submission and my request to the Chamber, Mr President.

20 Thank you.

21 PRESIDING JUDGE TARFUSSER: [12:35:21] Maître Altit.

22 MR ALTIT: [12:35:23] (Interpretation) Thank you, Mr President. Mr President,
23 your Honours, Laurent Gbagbo's Defence also subscribes to the request made by the
24 Defence of Charles Blé Goudé.

25 PRESIDING JUDGE TARFUSSER: [12:35:45] So thank you very much. So the

1 hearing, I will adjourn the hearing, because I think it's right to give the Defence time
2 to dwell into what the Prosecution and LRV said in these two or three days. So I
3 think there is good reason to adjourn the hearing. The hearing is therefore
4 adjourned to 12 November for the whole week, meaning from Monday to Friday, and
5 that should be sufficient; if not, we could go also to Monday 19.

6 MR MACDONALD: [12:36:24] I'm sorry, just on the scheduling.

7 PRESIDING JUDGE TARFUSSER: [12:36:28] Yes.

8 MR MACDONALD: [12:36:28] Sorry, just on the scheduling, your Honours, the
9 Prosecution senior staff of the office is not available because we are outside of the city
10 with the whole office. We are, basically, it falls on the Prosecution's retreat, which
11 this year is outside of The Hague. I'm just raising that. If I'm not mistaken, we fly
12 in Thursday evening.

13 Anyway, I can send the dates. But there is certainly the Friday, currently we
14 wouldn't be available. We'll make ourselves available. I mean, that's not the issue.
15 But I'm wondering if it's possible to avoid at least the Friday or something.

16 PRESIDING JUDGE TARFUSSER: [12:37:25] Friday 16, you mean?

17 MR MACDONALD: [12:37:26] Yes.

18 PRESIDING JUDGE TARFUSSER: [12:37:27] Friday 16.

19 MR MACDONALD: [12:37:29] The last day of that week.

20 PRESIDING JUDGE TARFUSSER: [12:37:30] Okay. Okay. So from Monday to
21 Thursday and then Monday until, Monday, Tuesday, okay, it's from 12 to 15 and then
22 continuing on the 19-20. Okay?

23 So the hearing is adjourned to 9.30 of 12 November for the responses by the Defence
24 teams.

25 And then you organise yourself who is responding first. And if we have in advance

- 1 an approximate schedule would be also very nice so that we can organise ourselves.
- 2 Thank you very much. The hearing is adjourned.
- 3 THE COURT USHER: [12:38:14] All rise.
- 4 (The hearing ends in open session at 12.38 p.m.)