

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 Tuesday, 13 November 2018

10 (The hearing starts in open session at 9.31 a.m.)

11 THE COURT USHER: [9:31:14] All rise.

12 The International Criminal Court is now in session.

13 Please be seated.

14 PRESIDING JUDGE TARFUSSER: [9:31:41] Good morning.

15 We are here for the second day of the submissions by the Defence for Mr Gbagbo, and

16 to that effect I give back immediately the floor to the Defence of Mr Gbagbo. And I

17 think it's Madam Naouri's turn, so yours the floor.

18 MS NAOURI: [9:32:06] (Interpretation) Thank you very much, Mr President.

19 We are now going to hark back to the incident of 3 March 2011. First of all, I think it

20 must be said that the Prosecution has not responded to the fact that it clearly can be

21 seen from their evidence that on 3 March 2011, the march had been organised by the

22 officials who were at the Golf Hotel.

23 In their written submissions and oral pleadings, the Prosecution has attempted to

24 deny the involvement of the officials at the Golf Hotel. I refer you to transcript T-221,

25 page 43, line 15, to page 44, line 2, as well as to paragraphs 758 and 759 of their brief.

1 It clearly can be seen from the Prosecution's evidence that it was actually
2 representatives of the officials at the Golf Hotel who organised the march. They
3 were doing the organisation in the field.
4 And exactly who were these representatives or go-betweens working for? P-184,
5 Sirah Dramé said clearly what the case was. But the Prosecution has not said a word
6 about the fact that the march was organised at the initiative of Aya Virginie Touré,
7 national president of the RDR women's association, who was at the Golf Hotel during
8 the crisis and now a member of parliament, an RDR member of parliament within the
9 national assembly. Not a single word about the fact that Adama Toungara, the
10 mayor of Abobo, who was also at the Golf Hotel during the crisis was giving
11 instructions to one of his assistants at the time, Maïmouna Touré, who, at the time,
12 was also the president of the RDR women's association in Abobo. Not a word about
13 the fact that Maïmouna Touré had a number of representatives, in particular, Sirah
14 Dramé.

15 I think we must recall that Sirah Dramé, the main Prosecution witness concerning this
16 incident, has been an active supporter within the RDR since 1995. And during the
17 crisis, she was a town councillor within Abobo working with Mayor Toungara, and
18 she was implementing the instructions that came from the Golf Hotel.

19 P-184 clearly explained that --

20 THE INTERPRETER: [9:35:15] Pardon me.

21 MS NAOURI: [9:35:16] (Interpretation) She said that she was often in contact
22 with RDR officials, either the ones who were at the Golf Hotel, people like Aya
23 Virginie Touré or with people who were active in the field like Yéo Kolotchoma.
24 Yéo Kolotchoma was Alassane Ouattara's campaign director in Abobo for the 2010
25 election. He was in constant contact with the Golf Hotel during the crisis. And I

1 make reference: T-216, page 58, lines 6 to 9; page 77, lines 15 to 16.

2 The Prosecution is trying to gloss over the fact that during the crisis, Kolotchoma was
3 in constant contact with the Golf Hotel by focusing on the fact that Kolotchoma was
4 Alassane's campaign director in Abobo and not the general campaign director.

5 But that changes nothing. In actual fact during the crisis, Kolotchoma was in contact
6 with the officials at the Golf Hotel, people like the Mayor of Abobo, Adama Toungara.
7 Witness 184 has said so clearly.

8 Now, the Prosecution if they were to listen to their witnesses, in particular, Sirah
9 Dramé, would not be able to ignore that the march was organised by officials from
10 the Golf Hotel. Now, where was the march organised? At the Banco roundabout.

11 The very heart of the rebel zone along the road that the supply convoys were
12 supposed to travel on.

13 In written filings and oral submissions, the Prosecution tries to downplay once again
14 the fact that the rebels had control over Abobo, particularly at that location, the Banco
15 roundabout. According to the Prosecution, Abobo was, and I quote, "under" -- and I
16 quote -- yes, yes, it was about the *Invisible Commando*, but there were other armed
17 groups that were not necessarily all part of the *Invisible Commando*.

18 So admittedly the Prosecution does not refute the fact that or the presence of these
19 groups in Abobo, but the proof shows that these various groups had not brought
20 Abobo under their control, not under total military control. These were armed
21 groups engaged in guerilla warfare and as one of the names suggests, they were
22 invisible.

23 The Prosecution summarised the evidence in this regard in paragraphs 383 to 381 of
24 their response.

25 THE INTERPRETER: [9:38:36] Reference numbers not provided to the interpreter.

1 MS NAOURI: [9:38:39] (Interpretation) And what does the Prosecution tell us?
2 That the *Invisible Commando* did not have control of Abobo because he was not seen?
3 That the evidence wasn't there? Just because they were called invisible?
4 Let's slow down for a moment. Just because their name is "invisible" that means
5 they don't exist?
6 Now, one of their names would suggest that they were invisible. Is that their
7 argument to try to show that armed-rebel groups did not have total military control
8 over Abobo, the name? Just because they're called the *Invisible Commando*, that
9 doesn't mean you can ignore the evidence that they have.
10 As part of their very own case, in actual fact, what we can see from the Prosecution's
11 evidence, in particular, what these witnesses have said, we can see that in Abobo in
12 March 2011, the rebels were running the show. Nothing happened in Abobo
13 without the rebels not knowing about it, and the FDS, yes, were at Camp Commando
14 where they were under siege.
15 You have to just listen to the Prosecution witnesses and you'll realised that in March
16 2011, when the March was being organised by the officials at the Golf Hotel, the
17 rebels had taken control over Abobo, and the defence and security forces had fled.
18 P-10, CECOS commander, Georges Guiai Bi Poin, stated that as of 26 March 2011, the
19 CECOS group no longer was venturing into Abobo. This witness also stated that
20 armed groups held the main roads in Abobo and were occupying the areas around
21 the Abobo town hall and around Banco intersection.
22 You have to listen to the witnesses, the armed groups held the main roads. He said
23 clearly that Abobo was under the control of the rebels. P-11, superior commander of
24 the gendarmerie, Édouard Tiapé Kassaraté, stated that he no longer had any
25 gendarmes in Abobo before the march of 3 March 2011.

1 THE INTERPRETER: [9:41:24] Once again, transcript numbers not provided to the
2 interpreter.

3 MS NAOURI: [9:41:29] (Interpretation) The director general of the national police,
4 Bredou M'Bia, explained that there was no longer any police in Abobo from
5 November 2010 to March 2011.

6 Williams Toaly, the officer at the planning and coordination of operations centre
7 stated and I quote, "Well yes, Abobo was a zone. Abobo Anyama was a zone that
8 was for the most part occupied. So from a military point of view, when you say that
9 the zone is occupied by the enemy, that means that the roads are controlled by the
10 enemy, positions are being held by the enemy. So indeed, this part of the area
11 gradually slipped out of the hands of the FDS."

12 And he stated that the enemy also controlled the area around the Abobo town hall.

13 And this is transcript 172, page 24.

14 The FDS, you see, had fled Abobo. And you have to realise that as early as February
15 2011, the FDS had to get out of Abobo. They were followed by an exodus, tens of
16 thousands of inhabitants of the area from all kinds of ethnic origins.

17 CIV-D15-0001-0565, which we viewed from the 12 second to 1 minute 15 seconds.

18 The Prosecution witnesses have told us that there were no longer any FDS in Abobo
19 and that the rebels and the Dozos had set up operations in the police stations and in
20 the gendarmerie centres.

21 This is what we have learned from (indiscernible) P-363, P-364.

22 For example, P-363 stated that there were no longer any police stations really during
23 the crisis and the rebels had taken over the police stations in the area. Transcript 191,
24 page 26, lines 21 to 28, and then moving on to page 57, line 7 and onwards.

25 The witness also said that there were no longer any gendarme in Abobo and the

1 Dozos were staying in the ...

2 Transcript numbers: 190, page 16, line 15.

3 The brother of one of the alleged victims, well, you see, it was the FDS who were
4 providing security. Transcript 187, page 75, lines 8 to 14 on 3 March, the day of the
5 march. It was the rebels who held Abobo and there were only FDS holed up at
6 Camp Commando under siege.

7 The military witnesses of the Prosecution have been quite clear: the FDS were only
8 present in Abobo at Camp Commando.

9 The chief of general staff explained that the FDS were at the camp, but they could not
10 venture outside of the camp. They were not able to defend themselves. They didn't
11 have enough weapons. But they did not leave the neighbourhood entirely because
12 they did not want the people to have the impression that they were being abandoned.

13 The CECOS commander, P-10, Georges Guiai Bi Poin, confirmed that Camp
14 Commando was the only place where there were gendarmes in Abobo early in March
15 2011.

16 THE INTERPRETER: [9:46:52] Transcript numbers, page numbers read at top speed.

17 PRESIDING JUDGE TARFUSSER: [9:46:56] Please slow down, because they have
18 problems.

19 MS NAOURI: [9:46:59] (Interpretation) Very well. Allow me to resume.

20 The witness stated that in February and March of 2011, the FDS were under siege at
21 Camp Commando, and it was the only safe area for the FDS. Transcript 171, page 60,
22 line 17 to 19. Page 156, 321 and 330 confirmed that the supply convoys and the
23 supplies bringing in fresh troops were frequently under attack. P-330 stated that the
24 situation was so dangerous for the FDS that the ones who were living in the town
25 could no longer get to Camp Commando, which meant for a shortage of staff.

1 If the Prosecution had listened to their own witnesses, they could not state that there
2 was, and I quote, "indeed, the FDS were present in Abobo and they were able to
3 successfully carry out military operations". T-221, page 42, lines 24 and 25.

4 Even Witness 414, who was a human rights officer at UNOCI, has confirmed that it
5 was the rebels who were running the show in Abobo in March 2011. Transcript 75.

6 And that witness said that they were heavily armed. They had machine guns,
7 Kalashnikovs and rocket launchers. Transcript T-75, page 52, line 8 to line 22.

8 There is no doubt that the organisers of the march decided -- or chose, rather, a
9 gathering point within the very heart of the neighbourhood held by the rebels and
10 surrounded by rebel bases. What is more, it is completely incomprehensible, why
11 does the Prosecution continue to deny this?

12 The same thing holds true when it comes to the fact that they filed a report in which it
13 was recognised that the FDS had attacked Abobo in December 2010 and January 2011
14 and that the number of these attacks increased dramatically in February and March
15 2011, and consequently, the FDS lost control over areas of Abobo.

16 The Prosecution also glosses over their own mappings. They try to muddy the
17 waters were issues dealing with submissions. But the mappings that they prepared,
18 that have been placed on the case file, are these mappings correct or not? If so, why
19 does the Prosecution say nothing about the rebels taking control over Abobo, with the
20 exception of Camp Commando, starting late in February 2011? Because this taking
21 of the area is essential to understand the events of March 3rd, because revealing the
22 true role of the rebels utterly destroys the Prosecution's arguments to the effect that
23 the FDS was attacking civilians. So they find themselves obliged to rewrite history
24 and deny the reality of what happened.

25 The Prosecution evidence supporting these allegations is of very poor quality and

1 only add to our doubts. In their pleadings, and I quote, "We have explicit videos of
2 this event that corroborate the accounts of eyewitnesses who have said that the FDS
3 were shooting upon an unarmed crowd". Transcript 221, page 40, lines 11 to 13.

4 The Prosecution tried to give the impression that they have many items of evidence,
5 good evidence, but the evidence just doesn't stand up to a thorough analysis.

6 Explicit video footage. The Prosecution has spoken a great deal about explicit video
7 footage. Let's take a few examples. Nothing in the videos that have been placed on
8 the file, there is nothing, nothing is explicit.

9 Video CIV-OTP-0042-0587, which was provided by the VJA, video

10 CIV-OTP-0032-0053, which was provided by Witness P-184, Sirah Dramé, and video

11 CIV-OTP-0044-0738, which was provided by the United Nations office of legal affairs,

12 are all fakes that do not allow one to understand what really happened. They are

13 fabrications. Nothing is explicit in these videos. Various bits of footage have been

14 put together. At times you have a black screen or a written item of information on

15 the screen, but you don't really understand the sequence of events on the 3 March

16 2011.

17 Now, the main video footage, CIV-OTP-0077-0411, this item of footage is particularly

18 suspicious. First of all, we do not have the original of this footage. In their opening

19 remarks, the Prosecution told us that they had the original, the original of the video

20 that had been put on YouTube, and I quote, "Because there was a YouTube version,

21 but we, we have the original version which was taken from YouTube. And we will

22 show it to you." End of quote. Transcript 10, page 25, lines 19 to 24.

23 Yet the Prosecution does not have the original of this video footage. They have a

24 copy, a copy that was handed over to them by a member of the VJA. Thus, the

25 Prosecution had experts review this copy, and that does not have probative value,

1 because a copy, making a copy is already a form of manipulation. So what's the
2 point of having experts look at a copy? We know that the chain of custody for this
3 copy is completely -- is incomplete.

4 What is more, and we've already said this point, the metadata for this copy indicate
5 that the footage was not shot on 3 March 2011, but on 7 January 2011 at 4.17 in the
6 afternoon. Thus two months before the march. The Prosecution expert has said
7 that he's not in a position to provide more information about the date of the footage.
8 In other words, the Prosecution has claimed that an event occurred on 3 March 2011,
9 but it seems to have been filmed on 7 January 2011.

10 There is something else that's quite strange. How can it be that Sirah Dramé, the
11 organiser of the march of 3 March 2011 said that she was at the very front, that she
12 was directing people here and there at the very front with her megaphone. How can
13 it be that she is not to be found in the footage? Not a single shot displays her.
14 Surely, because this footage does not date back to March 3, 2011.

15 First and foremost, when one analyses the footage, if you look at the video you just
16 cannot understand what allegedly occurred. You don't understand at all how the
17 events unfolded.

18 The person who shot the footage was filming in a very incomplete fashion, bits and
19 bobs. And so you only see glimpses of this and that. There is no general broad
20 shot that allows one to understand where you are and what's going on. Furthermore,
21 the person who shot the footage often is putting his hands up in the air or is taking
22 shots of the ground. So nothing in this video footage makes sense.

23 All of us here have viewed the footage several times. We know that after the shots
24 of an armoured vehicle, we hear the sound of what seems to be a blast, a detonation.
25 And then we see a convoy go by. Now, if the convoy had shot people facing them

1 on the motorway, everyone there would have fled, and the bodies of the dead and
2 those injured would be sprawled on the ground.

3 Yet we see the opposite on the footage. We see people close to the convoy as the
4 convoy goes by. These people do not show any signs of panic. And we do not see
5 any bodies. People are standing there and watching the convoy. There are no shots
6 of a single victim at that point. On the road, no victim can be seen.

7 All you have to do is look at one of the screenshots from the footage, which we did
8 during one hearing with a witness, and I make reference to --

9 THE INTERPRETER: [10:00:23] Apologies from the interpreters. Transcript
10 numbers not found.

11 MS NAOURI: [10:00:33] (Interpretation) Madam court officer, if you could kindly
12 give us control over the video.

13 THE COURT OFFICER: [10:00:42] You now have the floor and your document will
14 be displayed on the evidence 2 channel.

15 MS NAOURI: [10:01:07] (Interpretation) Thank you, madam court officer.

16 THE COURT OFFICER: In the meantime, could you please confirm the level of
17 confidentiality?

18 MS NAOURI: [10:02:13] (Interpretation) This is a public document, entirely public.
19 And could I ask you which computer you gave me access to.

20 THE COURT OFFICER: [10:02:26] The colleague next to you.

21 MS NAOURI: [10:02:26] (Interpretation) No, actually it's my computer.

22 THE COURT OFFICER: [10:02:32] You have the floor.

23 MS NAOURI: [10:02:43] (Interpretation) Yes, I can see that we have the footage on
24 the small screen, not the large screen.

25 Now, if we look at this screenshot, which was taken as the convoy went by, we can

1 see the rear of one of the vehicles going by. We clearly see that the people are
2 watching the convoy going by. They are going about their usual business and they
3 are not panicking. And in particular, there are no victims lying on the ground, on
4 the road.

5 But what interests us here is what we see at the very background, at the very back of
6 the image. In that spot, if you read from left to right and you look closely at the
7 footage, you see a light blue shop with a darker blue awning with a sign. And the
8 sign has a white frame. And there is something written on the sign. And then we
9 see a yellow shop with a yellow awning with a sign. And the frame is black and
10 yellow. And this seems to be a Western Union store.

11 We have circled it as you can see here.

12 You can also see an air system that's quite particular above the sign. And beside the
13 sign we see another sign. This one is rectangular. It has a black design above it and
14 something that goes around it.

15 If you look closely at the video, and if we slow it down, you can very clearly identify
16 the spot and the details that allow us to identify this specific location.

17 Then we see another shop, light yellow, reddish sort of door and khaki coloured
18 umbrella.

19 And when you continue viewing the footage, you see the convoy heading away from
20 a distance. It's quite clear in the video footage. Time code is 4 minutes 2 seconds to
21 4 minutes 34 seconds.

22 It's only once the convoy has gone and is far away, that is when you hear the sound of
23 shelling. The convoy is far away from the person who is filming the events. It's not
24 possible for the sounds of the shooting mentioned by the Prosecution expert, and I
25 refer you to our annex 3, paragraphs 338 to 341, it's not possible. So why has the

1 Prosecution not taken any interest in these shots? Where do the shots come from?

2 The convoy is far away.

3 On the video footage, it's impossible to determine what is going at the same time on
4 the road and around the road.

5 After we hear the sounds of the shooting or the firing, and once the convoy has
6 disappeared, it is only then that the cameraman turns around quickly from in the
7 other direction, from the other way from where the convoy was coming from. This
8 is timestamp 04.43.10.

9 If you slow the footage down and look carefully, you can see that the person who is
10 shooting the footage gets up -- goes back, rather, and when he marches towards the
11 direction where he came from initially, the convoy, he raises his hands and takes a
12 shot of the sky and the top of the building.

13 So during this time of transition, a crucial transition, instead of shooting what is going
14 on around him, whoever is taking the footage is filming the sky and the top of the
15 surrounding buildings. 04.44.10 to timestamp 4.48. So it's quite clear when you
16 slow down the footage and look at it carefully.

17 I make reference to a number of transcript -- transcript 161.

18 Why is it that the cameraman did not want to show us what was truly going on at
19 that spot? Why was this so artfully designed?

20 The next shot shows a group of people, for the most part men, standing around a
21 body at the same spot as where the convoy had gone by. How do we know that it
22 was the same spot? Well, all you have to do is compare the first screenshot, which
23 we looked at together, to another screenshot that was taken with a witness and that's
24 the point when you can see the bodies.

25 So this screenshot, we see these men gathered around these bodies that are within a

1 very restricted perimeter. And in the background in particular, we see the light blue
2 shop with the dark blue awning with a sign. And the frame around the sign is white.
3 And we see some writing as well on the sign. Once again we see the yellow shop
4 with the yellow awning with a sign, with a black and yellow frame, I'm circling it here.
5 And this seems to be a Western Union sign.
6 Once again, and I'm circling this particular spot, we can see the very distinctive air
7 system exactly on the sign, as was the case with the first image. We can also see, and
8 I'm circling this particular spot, we see the same white sign with the same black
9 sketch on it and the stripe that's reddish. And then we see a shop with a light yellow
10 front and there is a khaki umbrella, sun umbrella, and the doors are open.
11 So we have proven that the bodies were brought there after the convoy went by.
12 This proves that they were not killed by the convoy. There is absolutely no doubt.
13 When the convoy went by, at that same spot, there were no bodies. After the convoy
14 went by, we hear some shots. Then after that, after that some bodies appear. All
15 you need is a little bit of common sense to realise that. You don't need to be an
16 expert.
17 Let's just look very closely. Let us together look at the footage. Let's look at the
18 footage, these shots side by side. When you see the two shots side by side, as is the
19 case here, you can clearly see that this is the same spot, the same location. And the
20 witness who told us that it was not the same spot, I make reference to T-61, page 73,
21 lines 2 to 18, this witness clearly has something to hide. Furthermore, his body
22 language, so important in the eyes of the Prosecution, and I make reference to
23 paragraph 59 of the Prosecution's brief, the witness's body language shows that he
24 was ill at ease when the question was put to him about whether this was the same
25 spot. This is an out and out lie. This was the same spot. It is clear, it is very clear

1 that all of this was fabricated so that the FDS could be accused.

2 Furthermore, you must realise that if a machine gun had fired upon a large group of

3 people, there would have been more bodies of the dead or injured. The bodies

4 would have been in a broader area, a greater radius, particularly since some people

5 would have started running away and would have been shot a further distance away.

6 But we see no one injured here, no injured person in the surrounding area, none.

7 This also casts suspicion upon the footage. Just a few remarks about the

8 eyewitnesses. Eyewitnesses who were supposed to corroborate the footage, who are

9 these eyewitnesses that the Prosecution speaks of? Well, we have Sirah Dramé, a

10 local RDR official, and there is no evidence that she was even at the demonstration,

11 because she is not to be seen on the video footage. And Sirah Dramé was not an

12 eyewitness. She told us that she did not see the tank fire.

13 P-190, who allegedly was at Banco at the time of the alleged incident, the witness said

14 that he fell when the shots occurred and didn't see what had happened.

15 There is a witness who most likely was not there the day of the incident, because what

16 he seems to remember seems to be inspired from the video footage. Transcript 161,

17 page 39, line 11 to page 40, line 22.

18 So the Prosecution has called three witnesses who did not explicitly say that they saw

19 one or several women hit by gunfire from the convoy.

20 As regards Witness P-607, the Prosecution believes that this person should not be

21 listened to. To be found in paragraph 667 of the Prosecution's brief and transcript

22 221, page 44, line 23 to page 47, line 6.

23 Why shouldn't we listen to this witness, the only one who was in a position to tell us

24 about the armed vehicle? Why, why not? Why did the Prosecution suspect that

25 this witness had lied? Why, why not consider another possibility, that this

1 suspicious video is the problem, particularly since nothing shows that the footage was
2 shot on 3 March 2011. Where are the other eyewitnesses? All the other witnesses
3 are indirect witnesses who were not present. We've already explained this point
4 when we talked about hearsay and most of these witnesses, six out of 10 of them, are
5 members of APAFEMA.

6 Just a few words about the forensic evidence and the DNA tests that were conducted.
7 We know that only three out of seven victims, alleged victims could be identified.
8 What about the bodies of the four other alleged victims? We have no idea. There
9 are alleged victims, but no bodies to go along with the victims. The DNA tests have
10 been non-conclusive, thus adding to our doubts. Either no one knows where the
11 bodies of these four other victims have gone to or the witnesses are not family
12 members of the alleged victims and thus they're lying to us.

13 What does the Prosecution have to say about the lack of genetic evidence such as
14 DNA tests? And I quote the Prosecution, paragraph 789 of their brief, "The lack of
15 such evidence does not create reasonable doubt. Thousands of murder cases have
16 been solved before this technology existed. In the instant case, there are plausible
17 explanations for the lack of DNA of these four murder victims." End of quote.

18 If we follow the Prosecution's reasoning, a scientific advance that has revolutionised
19 investigations is not useful to the ICC Prosecution. DNA testing is a new scientific
20 tool that has improved the administration of justice. But the ICC Prosecution doesn't
21 need to worry about DNA? Alleging that before DNA analysis was discovered,
22 people just didn't use this particular tool?

23 Of course when one assesses the quality of the work, the investigation work done by
24 the Prosecution, you have to consider the resources at the Prosecution's disposal.
25 The use of modern tools that allow one to gather more reliable evidence is not an

1 option? It is a professional requirement. It's as if a physician were to explain that
2 an MRI isn't necessary because it was possible to care for people and treat them before
3 MRIs were invented.

4 The reality is that the ICC Prosecution must meet a standard of proof that is changing
5 depending on the tools made available. Since DNA testing exists, the Prosecution
6 cannot just do without it. We need to be more strict today than we were in the past.

7 The Prosecution cannot ignore the number of cases in which men were wrongly
8 convicted because DNA testing did not exist at the time.

9 How can you forget these innocent men walking down the corridor towards the
10 execution room, wrongly accused, who were ultimately freed thanks to DNA testing?

11 What does the Prosecution say before an International Criminal Court such as the ICC,
12 which is supposed to set the example that DNA testing is not an important tool?

13 This stance is particularly unacceptable, because we know what has been done before
14 other international criminal courts. The Prosecution has told us that it is not
15 necessary to identify the victims.

16 But what was done at the ICTY? Despite the difficulties at that court, a different
17 scope than here, investigators at the ICTY were able to identify at least 6,000 victims
18 using DNA testing. The bodies were to be found in multiple mass graves over a
19 large geographical area.

20 What is the difference between the ICTY and our case? The ICC's Office of the
21 Prosecution, as their own witness reminded us, P-584, the person in charge of the
22 forensic science section within the OTP, completely relied upon the authorities of
23 Côte d'Ivoire, particularly when it came to exhumations.

24 This witness, P-584, said during the hearing that he played practically no role in the
25 exhumations that were done by the Ivoirian authorities. He was even unable to

1 exactly recall the date of the operations. Transcript 201, page 48, lines 8 to 19; page
2 50, lines 20 to 24; page 55, lines 4 to 16.

3 This is not acceptable. This just won't do. That the Prosecution tries to say that the
4 circumstances were difficult? They cannot gloss over the fact that they did not carry
5 out a serious independent scientific investigation. This example shatters the
6 argument that there were plausible explanations for the lack of DNA of the four
7 murder victims.

8 Finding the bodies of these four victims would have been a starting point for proving
9 the circumstances of their death. But we have no idea.

10 As for the bodies that were identified, the experts have not provided a date for the
11 actual death. These three bodies were exhumed from a common grave, referred to
12 as *le carré des indigents*, and if we are to go by the witness, the testimony of witness 584,
13 up to 700 bodies are to be found in this mass grave. We know absolutely nothing.
14 We have no information about the date on which these bodies were buried. So we
15 really have no idea when these people died.

16 Let me now turn to the alleged shelling of 17 March 2011. The Prosecutor says that
17 he has substantial evidence, video evidence, photographs and forensic evidence,
18 which prove that the FDS was targeted basically for political reasons. Transcript 221,
19 page 45, line 26 to 28 and then at pages 46, lines 18 to 24. If the so-called vast
20 evidence is analysed, we come to the conclusion that it has no probative value.

21 Let me speak about the testimonies. Once again, it is obvious the Prosecution did
22 not listen to its own witnesses.

23 Let us take the allegation whereby there were 120 millimetre mortars at Camp
24 Commando. Important Prosecution witnesses have testified that this was not the
25 case. The chief of staff of the army, P-9, explained that after the 24 February 2011

1 operations, he had ordered the 120 millimetre mortar, which had been used only once,
2 should be set aside in order to avoid it being captured by the enemy.

3 So there was no 120 millimetre mortar at Camp Commando.

4 Philippe Mangou and Detoh Letho both confirmed that there was no 120 millimetre
5 mortar at Camp Commando because transporting them would have been only
6 possible with the use of a great number of soldiers because of its weight.

7 P-156, Williams Toaly, who was in charge of planning operations at Camp
8 Commando also affirmed during his testimony that the BASA troops were present at
9 Camp Commando and did not have a 120 millimetre mortar. Transcript 172, page 6.

10 The Prosecutor does not listen to his witnesses and would rather rely on witness

11 P-164 who, during his testimony, explained that he used to sabotage the material of
12 his unit following instructions from the Golf Hotel and that he had participated in
13 operations against the army at Port-Bouët.

14 P-0239, a forgetful witness who was unable to indicate the day and time at which he
15 allegedly heard some shots and at which he claims to have been present, he was
16 unable to mention the name of his hierarchical superior, the name of the chief of the
17 detachment he belonged to when he was at Camp Commando. Unable to provide
18 the name of the commander of Camp Commando.

19 He describes the commander as a high-ranking person who may have been a colonel
20 or a commander, "but I don't, I don't remember." End of quote. Transcript 176,
21 page 64, line 28, and page 55, line 7 and 8.

22 Witness 226, who says absolutely nothing about any shots, any mortar shots:

23 "Question: At what time would these alleged shots have been fired? What is the
24 number of shells that was fired?"

25 As we listen to the Prosecution witnesses, it is impossible to find any answers to those

1 questions. I refer you to paragraph 429 and 477 of annex 3 of our filings. There are
2 too many contradictions of such importance that it is impossible to have an exact
3 narrative of the exact accusations.

4 Let me say a word on the only eyewitness, that is P-239, whose testimony only further
5 adds to the confusion and creates further doubt as to the reality of what actually
6 happened.

7 P-239 makes reference to two successive shots back to back and is very clear in his
8 testimony: Two shots were fired, according to him, simultaneously; therefore in the
9 same direction. Transcript 168, page 2, line 22 to -- page 21 to 22, rather.

10 The Prosecutor does not explain, while relying on 239, why such shots may have
11 happened on that day and that they were mortar shots. How could two mortar
12 shots fired in the same direction suddenly transform into six shots fired in six
13 different directions?

14 I insist on this, because in a 1,000-page document, the Prosecutor does not address
15 this difficulty, which one must say is fundamental to his own narrative.

16 The Prosecutor alleges that some shells fell in at least six areas in Abobo. The only
17 supposedly direct witness of the firing that the Prosecutor refers to consistently
18 testifies in paragraphs 918 to 920 and 1633 of the Prosecutor's filing, that witness
19 testifies that he saw, that he saw two fires, paragraph 920. And further says that the
20 shots were simultaneous. Therefore, if he is telling the truth, the shells would have
21 gone in the same direction and therefore could not have landed at six different
22 locations.

23 This is a problem that the Prosecution cannot bypass. The witness's testimony
24 therefore does not tally with the Prosecution's narration. Therefore, there is no
25 testimony for the Prosecution or the Prosecution has no explanation to provide for the

1 alleged four other shots that allegedly were fired on that day.

2 So the Prosecutor is asking us to not be very, very stringent when we come to the
3 assessment of his evidence. But if we follow him, we should at least be certain that
4 there are no contradictions in his evidence.

5 The Prosecutor has also argued that he has video footage. Yet, the four videos that
6 have been submitted are of no assistance. None of them has been authenticated,
7 none.

8 Now, the context of war cannot be an obstacle to authentication, particularly since
9 we know that the Prosecutor was in contact with members of the VJA during his
10 investigations and it is the members of the VJA who provided the Prosecutor with
11 video CIV-OTP-0042-0593. A video alleged to have been filmed by one of the VJA
12 members. Therefore, nothing stopped the Prosecution from attempting to
13 authenticate the video, but he did not do so. Some of the videos contain images of
14 videos that have been broadcast on YouTube, which are by definition images that can
15 be manipulated. At least three of the four videos are montage and not in a position
16 to determine when the videos were shot or filmed.

17 Now, when it comes to time, the time at which the videos were filmed, let us say, let
18 us note that the Prosecutor has asked us to proceed by some kind of guesswork.

19 And I'm referring to paragraph 951 of his filing.

20 Let's take video CIV-OTP-0043-0268: That video is not dated, it has no date. But
21 for the Prosecutor, the deduction can be made that the video is in relation to the
22 incident of 17 March 2011 since there is a YouTube video of 19 March 2011 whose
23 content is partially similar to the one at hand. That is the Prosecutor's argument.

24 The Prosecutor says that there is a montage which contains footage that is similar to a
25 video on YouTube, a video that was posted not on 17 March 2011, but two days after.

1 That is on the 19 March 2011, that this montage may contain images that were filmed
2 on 17 March. But the images could also have been filmed on the 16th, the 18th or
3 19th of March 2011, 2010 or at any other time. Furthermore those images could have
4 been doctored or manipulated. We cannot establish this fact and we therefore
5 cannot proceed by speculation.

6 PRESIDING JUDGE TARFUSSER: [10:38:34] Everything is fine. You can continue.
7 It's fixed.

8 MS NAOURI: [10:38:40] (Interpretation) Furthermore, these images -- or should I
9 say none of the images on the video show any shelling, none shows any crater. And
10 that has to be highlighted.

11 Now, turning to the forensic evidence mentioned by the Prosecutor, now let's look at
12 the calibre of the mortars. In this connection, the Prosecutor's evidence simply
13 increases the uncertainties. According to the Prosecutor, for example, and I quote,
14 "The testimony of an eyewitness whereby BASA launched a 120 millimetre mortar
15 from Camp Commando was corroborated by P-414, an ONUCI witness, as well as a
16 team which went to the location of the impacts on 17 March 2011, after receiving a
17 phone call from the ONUCI centre, the ONUCI call centre". Reference T-211, page 47,
18 lines 3 to 7.

19 However, Witness P-414, Aurélie Virginie Fuchs, ONUCI human rights officer, never
20 corroborated the use of any 120 millimetre mortar. Actually she testified to the
21 contrary. She made reference to an 81 millimetre shell or mortar. ONUCI
22 investigated in that area on 17 March 2011 and came to the observation that an 81
23 millimetre mortar had been used.

24 Therefore, this is not a corroboration. It is actually a contradiction to the
25 Prosecution's evidence, but which the Prosecutor has presented to the Court as

1 corroboration.

2 The ballistics expert also holds a different view. In his submissions, the Prosecution
3 argues as follows: "There is a military engineering expert who two years later also
4 went to the location and was able to observe that it was very probable that 120
5 millimetre mortars had led to some destruction." End of quote. Transcript 221,
6 page 47, lines 16 to 19.

7 This is not a faithful representation of Witness P-411's testimony. What emerges
8 from P-411's testimony is that the expert was unable to, following his site visit, to
9 determine whether 120 millimetre mortars had been used. He does not know.

10 In fact, P-411, when questioned on the vague nature of the conclusions of his report in
11 relation to the type of weapons used, confirmed during the hearings that as a matter
12 of fact, he was unable for each site to determine whether a 120 millimetre mortar had
13 actually been used or had actually impacted.

14 And I quote what he said, "As I indicated in my report, and I also repeated this
15 several times orally, in all those locations, there is not a single site where one could
16 confirm that a 120 millimetre mortar had been used. It is putting all the observations
17 together that we were able to come to this conclusion, even after a very extended
18 period. There is no specific site where I could have come categorically to the
19 conclusion that a 120 millimetre mortar had been used." End of quote. Transcript
20 169, page 60, lines 5 to 11.

21 What does this mean, what does this signify? It means that the expert simply makes
22 some supputations in order to confirm the Prosecutor's thesis.

23 When asked about the evidence he found that confirmed the Prosecutor's arguments,
24 the witness said that such elements were found in his report. Now, if we were to
25 only deal with material that confirms the Prosecutor's case, then the witness was

1 working with methodologies that in fact led him to the conclusion that it was not
2 possible to conclude that a 120 millimetre mortars had been used.

3 Now, let me say a thing or two on ballistics in general. The ballistic report by
4 Witness P-411 is the only report on the case file, but the Prosecutor simply does not
5 take into account Defence concerns pertaining to the expertise as follows:

6 The Prosecutor does not deal with the fact that the expert mission was organised
7 precipitously simply one month after the adjournment decision.

8 He does not say anything about the fact that this witness was contacted through a
9 friend and not through official channels.

10 He says nothing about the witness's incapacity to specifically mention the reference
11 texts used in ballistic sciences.

12 He says nothing about the fact that the witness did not conduct any calculations,
13 hiding behind the concept that ballistics is not an exact science.

14 The Prosecution says nothing about the reasons for which the expert visited only four
15 locations, whereas at the time of his mission the Prosecutor had alleged that seven
16 sites or locations had been affected.

17 Above all, not a single word about the fact that the expert did not locate any crater at
18 any of the sites visited. Is that not strange when it comes to shelling?

19 No word on the fact that the witness does not provide any dates on the impacts and
20 his inability to make any such determination as observed.

21 Not a single word on the fact that the witness did not consider the fact that shells may
22 have been fired from rebel camps, where there were heavy weapons and mortars.

23 Now, what then is the technical element or technical evidence that we have in this
24 case file? Just presumptions, presumptions.

25 P-411 presumed that 120 millimetre mortars were used;

1 P-411 presumed or assumed that the incidents occurred at various sites on the same
2 day; P-411 assumed that the firing came from Camp Commando, but none of these
3 assumptions was scientifically proven. So we don't have any scientific evidence on
4 the case file.

5 Finally, the only thing that Witness P-411 is certain about is that when the Defence
6 showed him a map, CIV-D15-0004-2464 -- I don't know if the Court officer can please
7 display that map? Would kindly do so.

8 When the Defence showed this map to the expert witness, he told us that in the
9 hypothesis where a 120 millimetre mortar were to fall or drop on Siaka Koné market,
10 it may have been fired from any direction within a radius of six kilometres around the
11 market as you can see shortly on the screen.

12 When we look at the circle, it doesn't help us to further understand what happened
13 on 17 March 2011, because the shell could have come from any direction on this map,
14 any direction.

15 We must recall that the entire north of the circle was occupied by the rebels on 17
16 March 2011. For that purpose we refer you to our filings, annex 3, paragraph 239 to
17 243 and also to our annex 7.

18 Let me now talk about the alleged crimes committed in Yopougon on 12 April or
19 thereabouts. The Prosecutor seems to consider that it is obvious that the acts
20 committed on 12 April 2011 made it possible to establish the fact that there was a
21 coordinated attack. Transcript 221, page 60, lines 26 to 28 and paragraph 1066 of the
22 Prosecutor's response.

23 However, nothing. Absolutely nothing from the evidence presented by the
24 Prosecutor points to the existence of any act whatsoever carried out by a group of
25 persons in a coordinated manner. To the contrary, what emerges from the

1 Prosecutor's evidence is that from early April 2011, after Laurent Gbagbo was
2 arrested on 11 April 2011, and running over an extended period, chaos and terror was
3 the order of the day in Yopougon.

4 On 11 April 2011, the chaos spiralled across the town since the Ivorian army was
5 destroyed and President Gbagbo was arrested by French commandos. Consequently,
6 gangs of hoodlums took advantage of that situation.

7 In that context, therefore, how can you distinguish between pillages, rapes and
8 murders committed by perpetrators who were responding to a desire to terrorise the
9 population in a bid to self-enrich?

10 There is nothing in the Prosecution's narrative which points to an organised planned
11 and systematic action on the part of a group of determined persons. What clearly
12 emerges from the testimony is that spontaneous incidents, unprepared, not
13 premeditated, took place in various neighbourhoods involving the inhabitants of
14 those neighbourhoods.

15 People knew themselves. For example, Witness 567 says that he recognised the
16 voice or that she recognised one of the voices of one of the attackers because he was a
17 friend to her brother. That is why the people knew themselves, such as P-567 and
18 one of the attackers. This points to the fact that these, therefore, were confrontations
19 between inhabitants of the same neighbourhoods who were settling scores.

20 Similarly, P-185 believes that a young Guéré, whom he knew was with some armed
21 persons on that day, and pointed out her house, once again, we are dealing with
22 people from the same neighbourhood who knew themselves. But the Prosecutor
23 does not want to talk about this local infighting, because if he did so, it would shatter
24 his own narrative, and that is why he builds up this caricature whereby any incident
25 that took place in Abidjan, a town of some 3.9 million inhabitants, a town where there

1 was chaos, that any incident in such a context would have involved pro-Gbagbo
2 fighters.

3 This is not acceptable. We need to listen to the witnesses, take note of the reality on
4 the ground on the day after the arrest of President Gbagbo. For example, when it
5 comes to the perpetrators, this is what the Prosecutor says, and I quote: "The
6 witnesses to the crimes have themselves identified the perpetrators as belonging to
7 the pro-Gbagbo forces through the words they used, their actions and through some
8 descriptions." End of quote. T-221, page 60, lines 22 to 24.

9 The Prosecution further argues that, "The description of the attackers by the witnesses
10 points to the fact that they were pro-Gbagbo forces." End of quote. T-221, page 63,
11 lines 10 to 11.

12 However, what does the concept of the pro-Gbagbo forces mean? Who are these
13 witnesses talking about exactly? Is it the police? Is it the army? The Prosecutor
14 doesn't make that case. The Prosecutor never tells us which unit of the army or
15 which unit of the police he's referring to. He simply says "pro-Gbagbo forces".

16 The Prosecution has talked about pro-Gbagbo forces in order to maintain confusion in
17 our minds. According to the context, the expression seems to refer either to
18 policemen, to gendarmes, to soldiers or, again, to an undefined group of persons.

19 An undefined group of persons. In that context, therefore, any group of delinquents
20 could have been in the Prosecutor's mind.

21 When it comes to the army, let us note that the French army destroyed all the
22 positions of the Ivorian army in Abidjan in April 2011, and therefore the army
23 virtually had ceased to exist. It therefore emerges that the Prosecution is using the
24 concept of pro-Gbagbo forces when he does not have any elements that enable him to
25 pinpoint possible perpetrators.

1 That is the case, for example, in Yopougon. Let us look at the words, the actions and
2 the descriptions of witnesses of the alleged witness -- of the alleged victims in order to
3 understand what an example of the pro-Gbagbo forces would be.

4 A witness explained how he came about accusing the pro-Gbagbos. According to
5 him, the pro-Gbagbo people are, and he quotes, "He was the one in power.

6 Therefore, those people belong to him. They were the ones who came to fight us.

7 They came from Yao Séhi and many people came from that area." Transcript 210,
8 page 8, lines 14 to 22.

9 That witness, therefore, clearly explains that pro-Gbagbo members were simply a
10 supputation. In fact, from that testimony, it appears to be referring to people from

11 Yao Séhi neighbourhood, a neighbouring neighbourhood. And according to this

12 witness, the persons who came to his house immediately asked for money and mobile
13 cell phones. Transcript 2010, page 30. They also proceeded to search his house.

14 Transcript 2010, page 31, lines 4 to 20.

15 This witness also goes on to say that looting was taking place at the time of the

16 incident and he said that the looting continued in the neighbourhood the next day.

17 The witness uses the word "*brigandage*" several times during his testimony in

18 reference to the events of 12 April 2011 when people fled. People came, and this

19 happened at that time, so rather than pro-Gbagbo forces, these were rogues. And so

20 P-404 also says that the attackers allegedly stole their property. T-212, page 17, lines
21 12 to 14.

22 We can also note that one of the witnesses says that one of the attackers was under the
23 influence of drugs. T-210. It therefore is very clear that we are dealing here with

24 rogues, delinquents, people who are drugged and who were acting under the

25 influence of these circumstances in a situation of chaos and who can, therefore, not be

1 referred to as pro-Gbagbo forces.

2 Another witness, P-567 and P-568 also referred to pillaging and theft as being the
3 prevailing circumstances and we refer you to our written filings.

4 The facts, therefore, is that for almost all the testimonies on the incidents in Yopougon
5 on 12 of April 2011, almost all of those testimonies are based on assumptions by the
6 witnesses or by the Prosecutor who invite us to a guessing match.

7 Let us take paragraph 17 and 18 of the Prosecution's response, and that will be our
8 last example. In those paragraphs, the Prosecutor argues as follows: Given that on
9 the 17th and 18th, bodies were found in the morning of the 12th -- rather on 12 April
10 near the house of P-568, one can come to the deduction that the victims were killed
11 that night by a group of men based on the number of persons killed and that the
12 group was made up of masked men who had long firearms, and who had been seen
13 by P-568 and by another person who had heard them.

14 Now, this is what the Prosecutor is telling us. There is a number of people who were
15 killed, and from that number we must come to the conclusion that they had been
16 killed by a group of men. How do you identify the group of men? It can only be by
17 an assumption that in that group of people, there were two men, two men whom we
18 know nothing about, one of whom was masked, one not masked, but the one whom
19 was seen by P-568 is mentioned.

20 Now, where does this leave us? P-568 says that he heard but did not see. And
21 therefore from his testimony he might be referring to one and the same person, and
22 that's why I would like to refer to transcript T-269.

23 The Prosecutor even goes further in asking us to continue in this guessing game when
24 he says that it can also be deduced from this group that some of its members attacked
25 Witnesses P-109 and P-567 on 12 April: One, all the killings took place over a

1 relatively short period on the same day in the neighbouring neighbourhood. So we
2 are therefore supposed to guess and assume that there was a group, which we know
3 nothing about, had also acted in a neighbouring neighbourhood.

4 Why would there not be different groups acting in different neighbourhoods? Why
5 wouldn't it be a group of thugs who may have availed themselves of that opportunity?
6 We know nothing about that. So we are simply supposed to presuppose that all of
7 this was being done by a group.

8 What criteria do you use to come to that determination?

9 The Prosecutor tells us in the same paragraph that the men who attacked Witnesses
10 P-567 and P-0109 were wearing masks, exactly the same masks as those seen by P-568
11 in the night of the 11 April 2011. Now, the Prosecutor is telling us that because one
12 wears a mask, one belongs to a group? That's not serious.

13 Many thugs, many thieves, many criminals across the world in times of conflict and
14 chaos wear masks, and they take advantage of the circumstances to wear those masks.
15 Therefore, you cannot use the concept of masking to identify a group, let alone to
16 assume that they belong to a group.

17 Finally, the Prosecutor attempts to identify the group when he argues in relation to
18 Witness P-109 that the attackers spoke English in much the same way as one of the
19 persons whom P-568 had heard.

20 The Prosecution says the following: Two people were heard speaking English and
21 therefore for that reason they belong to the same group.

22 Is that his argument? That is not serious.

23 When we invite people to this type of supputations, this can only be dangerous and
24 can be an act of stigmatising. Therefore in paragraph 4 the Prosecution says that in
25 any event, it was --

1 THE INTERPRETER: [11:06:33] Mr President, counsel is going too fast for the
2 interpreters.

3 PRESIDING JUDGE TARFUSSER: [11:06:36] Counsel is going too fast, it's over time,
4 and I stop it here and we see each other at just after 11.30. The hearing is adjourned.

5 THE COURT USHER: [11:06:45] All rise.

6 (Recess taken at 11.06 a.m.)

7 (Upon resuming in open session at 11.41 a.m.)

8 THE COURT USHER: [11:41:31] All rise.

9 Please be seated.

10 PRESIDING JUDGE TARFUSSER: [11:41:48] Good morning once again.

11 The floor is yours, Madam Naouri.

12 MS NAOURI: [11:42:06] (Interpretation) Thank you, Mr President.

13 In conclusion, on the Yopougon incident, the reality is that the facts alleged by the
14 Prosecutor may have existed, but they appear to have been -- thank you, thank you,
15 Mr President, thank you.

16 PRESIDING JUDGE TARFUSSER: [11:42:40] It's not fundamental, but still, you look
17 different.

18 MS NAOURI: [11:42:48] (Interpretation) Therefore, in conclusion in relation to the
19 Yopougon incident, the reality is that the facts alleged by the Prosecutor may have
20 existed, but they appear to have been committed by various groups guided by one
21 main purpose, namely, pillaging and self-enrichment.

22 Some incidents may have been the result of clashes between unknown groups, while
23 others may have been the results of criminal activities by gangs.

24 A last word, your Honour, on the army. We already said that in April 2011, the
25 French army had destroyed all the positions of the Ivorian army in Abidjan and that

1 the Ivorian army virtually was non-existent.

2 In the context of that reality, the Prosecutor only had to fall back on the concept of a
3 parallel structure, a nebulous structure which the Prosecutor never defined, as we
4 have stated in our written submissions. Reference, annex 5, paragraph 449 to 503.

5 The reality is that in April 2011, there was chaos in Abidjan. All military officials
6 had deserted and those who were left to fight had no structure and no hierarchy.

7 The Prosecutor's case, therefore, is that those who were still fighting in 2011 were part
8 of that parallel structure. That, in itself, does not demonstrate a case.

9 Thank you, Mr President.

10 PRESIDING JUDGE TARFUSSER: [11:44:58] Thank you, Madam Naouri.

11 Maître Altit.

12 MR ALTIT: [11:45:03] (Interpretation) Thank you, Mr President. It will be
13 Professor Jacobs to continue.

14 PRESIDING JUDGE TARFUSSER: [11:45:11] Maître Jacobs, please, yours the floor.

15 MR JACOBS: [11:45:19] (Interpretation) Good morning, your Honours, Mr
16 President.

17 We have just seen that the Prosecutor has failed because they had to bring evidence of
18 quality and value.

19 This witness of his case clearly explains his position during his oral presentation a few
20 weeks ago and in his written response in early September. What did the Prosecutor
21 tell us for almost three days? That his evidence should not be assessed, that it
22 should be taken at the highest. And that is paragraph 34 of his answers, that his
23 word should be taken for the truth and that his interpretation of the facts are the only
24 ones that are reasonable. His assumptions are the only one to be taken into account
25 and the only ones acceptable, and that that is enough to continue the trial.

1 Why does he not want his evidence to be assessed? Simply because he does not
2 want it to become clear that his file or his case is empty.

3 And yet, this procedure, as instructed by the Chamber, is very clear. It makes it
4 possible for the Defence to propose or to explain why the Prosecution evidence is
5 insufficient to support its factual allegations. So this procedure deals with the
6 insufficiency of the evidence, and it is at the very core of the issue.

7 And there are two consequences to that. First of all, to explain why the Prosecution
8 case is insufficient, the Defence must be able to discuss the quality of the evidence and
9 the manner in which it has to be assessed. So in the contrary, the proceedings or the
10 procedure will be pointless.

11 Secondly, the procedure necessarily implies that the Chamber, when they hand down
12 a decision on a no case to answer filed by the Defence, they should themselves carry
13 out an assessment of the Prosecution evidence which involves the evaluation of its
14 authenticity, relevance and credibility.

15 In order to skirt around this necessary evaluation of his evidence, the Prosecutor
16 states that it has to be taken at its highest, but the Prosecutor proposes a position that
17 is purely theoretical and that cannot exist when you look at the logic of a trial.

18 In fact, what does this mean, that is, evidence at its highest? So according to the
19 Prosecutor, the documents or testimony should be presumed to be correct and worthy
20 of belief. And that is in paragraph 34 of his answer.

21 And yet we have to be interested in the evidence itself in order to know its highest
22 value. It cannot be theoretical or abstract. For example, a handwritten document of
23 which we know nothing, the chain of custody, the author, the origin and so on, we
24 cannot use it in the same way as an official document. Similarly, the substance of
25 testimony can only be assessed in light of who the witness is, what the context is and

1 where he got the information.

2 The information itself does not have any value and does not have a high value by
3 itself. It depends on the solidity of its source.

4 Agreeing with the Prosecutor on this point is tantamount to putting at the same level
5 the testimony of a NASA expert who claims to have evidence of an extraterrestrial
6 being and that of a Texas farmer, who states that they saw small green men in his
7 farm.

8 This is precisely what the Prosecutor is doing in his approach.

9 Similarly, another way for the Prosecutor to avoid his evidence being subjected to a
10 critical assessment is to state that at this stage of the proceedings, the Chamber should
11 only carry out what he refers to as an objective analysis. And I will quote transcript
12 T-221, page 10, lines 14 to 19:

13 "Consequently, that criterion is a very objective criterion on the basis of what has been
14 provided, because each Trial Chamber reasonably acting will convict the accused
15 persons, and by deciding whether each Trial Chamber acting reasonably will convict
16 the accused persons, that Chamber would abstain from assessing the credibility and
17 liability of the evidence presented during testimonies or in documentary evidence."
18 End of quote.

19 The reality of the fact is that the Prosecutor once again tells us the same thing:

20 According to him, objective means to take the evidence as gospel truth. But here
21 there is a clear linguistic distortion. What the Prosecutor is proposing to you is not
22 an objective analysis but a biased and subjective analysis, which means to take only
23 into consideration the point of view of the Prosecutor in order to understand the
24 evidence. A real objective analysis would be to interest oneself in the document or
25 testimonies submitted by the Prosecutor independently of what the Prosecutor

1 himself has done.

2 A real objective analysis is the total contrary of what the Prosecutor is asking you to

3 do.

4 The Prosecutor seems to also think that by objective analysis, you should ask the

5 question, you should wonder whether another Judge, and we don't know which

6 Judge or any other Chamber, would convict on the basis of the evidence. In other

7 words, the Prosecutor is asking you that even if you found his file to be empty and

8 that consequently he did not prove the charges beyond a reasonable doubt, you

9 should ask the abstract question to yourselves whether another hypothetical Judge

10 could be in agreement with you or not.

11 Beyond the fact that this is a rather strange intellectual exercise being proposed to you

12 by the Prosecutor, we have to fully understand the consequence of that proposal.

13 Even if you believe that this process to be brought to an end, you should resist the

14 temptation to say so and prolong the proceedings pointlessly. That would be absurd.

15 And as Judge Fremr said in the Ruto case, continuing the trial under such

16 circumstances would be contrary to the rights of the accused. And the reference is

17 decision 2027, the separate opinion of Judge Fremr, paragraph 19.

18 Another way in which the Prosecutor tried to limit the capacity of the Defence to

19 demonstrate the emptiness of the Prosecution case is that he explains that we are at

20 the middle, at the very middle of the trial, midway through the trial. And I refer you

21 to transcript T-221, page 14, line 21. But what does that mean precisely? Does the

22 Prosecutor intend to present new evidence to the Chamber that would save his case?

23 Unless the Defence has missed a part of the proceedings, it seems to me that the

24 Prosecution case has come to a close. So he has presented his entire evidence.

25 There is no obstacle for us to realise that it is insufficient.

1 Lastly, another way for the Prosecutor to evade the assessment of his evidence is that
2 he refers -- or, rather, he ignores the jurisprudence of this Court in the Ruto case. To
3 begin with, Mr President, your Honours, you will note the evolution of the position of
4 the Prosecutor on this issue. A few months ago he presented to you the Ruto case as
5 the model to be followed. And as time went on, because the Defence showed that
6 the Prosecutor tried to interpret this decision wrongly, the Prosecutor filed so many
7 submissions and tried to drown that precedent.

8 Last week that decision was mentioned only in a few lines, and he stated, "Well, there
9 were other pieces of evidence," and this is in transcript T-221, page 14, line 24 to page
10 15, line 4.

11 This backtracking is understandable, because the majority of the Chamber in the Ruto
12 case said the exact opposite of what the Prosecutor would like the Chamber to do
13 here. In fact, both Judges Fremr and Osuji explained that it would be contrary to the
14 rights of the Defence for the Judges not to be interested in the quality of the evidence
15 and specifically the credibility of the witnesses at this current stage of the
16 proceedings.

17 In his separate opinion, in the decision in the Ruto case, the no case to answer motion,
18 Judge Osuji explained, and that is paragraph 115 of his separate opinion:

19 "Within a context of a motion for no case to answer in the ICC, the Trial Chamber
20 should take into consideration the file as a whole. During that process, a Chamber in
21 my opinion should be free to carry out a provisional assessment of the strengths and
22 weaknesses of the case, taking into account the following elements: Corroborations,
23 contradictions (both internal and those highlighted by the cross-examinations) as well
24 as other elements which have a positive or negative impact on credibility or
25 reliability." End of quote.

1 In the same vain Judge Fremr pointed out, and I quote, paragraph 144 of decision
2 2027:

3 "Nothing prevents a Trial Chamber from assessing the credibility of testimonies at the
4 point of evaluation of insufficiency of evidence, Prosecution evidence, unless it can be
5 considered that the Prosecution theory is about to collapse."

6 He points out that it would be contrary to the interests of justice that a Trial Chamber
7 should not carry out such an assessment.

8 The Prosecutor is trying to minimise the usefulness of this settled law by invoking the
9 alleged exceptional circumstances of the Ruto case. And that is in paragraph 41 of
10 his response. And yet, even though it is true that the Judges in the Ruto case noted
11 the total collapse of the Prosecution case, they laid down general principles that
12 would apply irrespective of the circumstances, and that was done for a simple reason:

13 These are common sense principles which if not followed would undermine the
14 rights of the Defence and limit the capacity of Judges to exercise their functions of
15 administering justice.

16 Mr President, your Honours, the Prosecutor asked you to suspend your critical
17 judgment and not to really take any concrete interest in his case. And yet, we are
18 here before you because the Prosecutor must not escape his evidence and the manner
19 in which he has built his case before you. He should not be able to prevent the huge
20 methodological gaps in his entire case. And in order for you to be able to exercise
21 your functions, it is necessary not to accept the Prosecutor's proposal regarding the
22 methodology of assessment of evidence as he proposed in the hearing. This can only
23 lead to a deadlock, because he is appealing to you to not really read the documents
24 that have been submitted to you and that you should not listen to what his own
25 witnesses have said, because you would understand something that may not confirm

1 his narrative.

2 Once you get out of this methodological deadlock, the Chamber would easily
3 understand the huge discrepancy existing between the scope of the allegations and
4 the meagre nature of the evidence to support it. This will be the first point to be
5 analysed.

6 Lastly, at the last and third stage, we will highlight the fact that the theme case of the
7 Prosecutor can be explained by the legal construction that the Prosecutor built as a
8 scaffolding in his answer with the aim of demonstrating what is not possible.

9 The first point here is assessment of the evidence. I would like to begin with the
10 issue of the credibility of witnesses.

11 The Prosecutor explained to us on several occasions in his written response and
12 during the hearings that in order to read his evidence, it is enough to take his word
13 for it, that is when it comes to what, according to him, is incriminating and reject
14 whatever appears to be exonerating.

15 For example, the Prosecutor states that you should not believe these military or police
16 witnesses relating to certain aspects of their testimonies, because they have interests
17 and interest in concealing incriminating aspects relating to themselves or to President
18 Gbagbo. And I refer you to paragraphs 65 onwards of the response of the
19 Prosecutor.

20 The Prosecutor takes the example that is paragraph 66 of his response. The fact that
21 some high-ranking military officials do not remember certain meetings, one can
22 already note that whether a meeting is incriminating or not, at this point is the
23 subjective assessment of the Prosecutor alone.

24 One can wonder what is the value of this argument when we know that for the
25 Prosecutor, having played the slightest role in the structure of the State during that

1 period necessarily involves belonging to an inner circle that set up the common plan.
2 And so for the Prosecutor, absolutely any meeting between political and military
3 authorities during the crisis was necessarily a conspiracy meeting initiated to
4 implement this alleged common plan.

5 In the parallel reality of the Prosecutor, opening one's mouth already is tantamount to
6 self-incrimination. Consequently, if you look at the summary psychological
7 evaluation of the Prosecutor, these military witnesses should have denied any
8 meetings that could have taken place during that period, which obviously was not the
9 case.

10 The Prosecutor also states that the fact that he used the prior statements of these
11 witnesses, the military witnesses during their testimonies showed their reluctance to
12 speak to certain matters. I have two observations to make about that.

13 First of all, the Chamber can easily see, after an analysis, that when the Prosecutor
14 confronted those military witnesses with their prior statements, it was frequently to
15 ask them to confirm cases of hearsay or speculation. And most of the time these
16 were obtained from the witnesses after the insistence and sometimes the anger of the
17 investigators of the OTP who were unable to be given what they wanted. So is it
18 really surprising that years afterwards these witnesses do not remember these
19 speculations or do not wish to repeat them under oath?

20 The second observation is this: We should note that if for the Prosecutor using the
21 prior statement of a witness during his testimony before the Court calls into question
22 his credibility, this principle should logically be applicable to all the witnesses of the
23 Prosecutor, not only the military witnesses.

24 We should remember that it was 35 out of 57 witnesses, viva voce witnesses of the
25 Prosecutor for whom the Prosecutor chose to quote their prior statements. Amongst

1 those 35 witnesses, there was a large number of factual witnesses who frequently
2 presented or gave an account in court, different versions or sometimes contradictory
3 versions of what they had said in their prior statements.

4 And in spite of that, the Prosecutor does not call into question their credibility, in
5 spite of those contradictions. And this is solely because it suits them. This is not a
6 methodology that is acceptable.

7 Lastly, according to the Prosecutor, a reason why these witnesses might not be
8 credible is the fact that they were under the authority of Laurent Gbagbo in 2011, and
9 I will quote to you paragraph 71 of the response of the Prosecutor:

10 "Lastly, but without being exhaustive, we cannot ignore the fact that Laurent Gbagbo
11 appointed and gave promotions to the generals to the positions and their ranks that
12 they occupied during the crisis. Consequently, the Chamber has to take into
13 consideration the loyalty with which the generals gave their testimony. As
14 commander in chief, Laurent Gbagbo had played an important role in their
15 professional careers." End of quote.

16 There is an obvious logical problem there. All military officers at that period were
17 promoted under Alassane Ouattara and fall under his authority today. If you follow
18 the reasoning of the Prosecutor, these witnesses, on the contrary, would have had an
19 interest in incriminating Laurent Gbagbo so as to please the current Ivorian
20 authorities under whose authority they fall since 2011.

21 Here, as elsewhere, the Prosecutor wants to avoid accepting a simple hypothesis:

22 That these witnesses, high-ranking officials, simply told the truth. And the
23 Prosecutor cannot accept that hypothesis because if he does so, he will be compelled
24 to accept the fact that these witnesses testified exactly the contrary of what the
25 Prosecutor wanted them to say or what the Prosecutor affirmed.

1 Still regarding the assessment of the credibility of witnesses, you will see that the
2 Prosecutor, who has been prompt to call into question the sincerity of some of his
3 witnesses when they do not agree with him, did not give any value -- gave value to
4 witnesses when they said what he wanted to hear.

5 And it comes out of the case file, and I'm saying this in public, in public now, that
6 many Prosecution witnesses testified while in prison in Côte d'Ivoire, so that
7 presupposes that they were under pressure from the Ivorian authorities at that time.
8 And with your leave, Mr President, I would like to go into private session to give a
9 few more details.

10 PRESIDING JUDGE TARFUSSER: [12:16:42] Let's go into private session, please.

11 (Private session at 12.16 p.m.)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Open session at 12.21 p.m.)
19 THE COURT OFFICER: [12:21:47] We are back in open session, Mr President.
20 PRESIDING JUDGE TARFUSSER: [12:21:52] Thank you.
21 Mr Jacobs.
22 MR JACOBS: [12:21:58] (Interpretation) We must note, your Honours, that the
23 Prosecution has been rather selective when they guessed at the possible motivations
24 of their witnesses. They conducted a somewhat summary psychological evaluation
25 of their military witnesses, but they did not do so for their crime-based witnesses.

1 They took them at face value. They believed whatever they said. But yesterday, we
2 saw that a number of witnesses were in the hands of a number of associations that
3 were acting on behalf of the officials at *l'hôtel du golf* during the crisis.

4 If we follow the Prosecution's line of reasoning, these don't -- these witnesses have
5 every reason to say nothing. Anything that could reveal the role of the rebels during
6 the crisis, particularly the sequence of events that occurred during the
7 events -- during the incidents, rather, of 16 December 2010 and 3 March 2011.

8 Let's be clear here, what witness who is close to the RDR is going to say that there
9 were armed men during the march of 16 December 2010 or that rebels were present in
10 and around the women's march on 3 March 2011?

11 Let's take this line of reasoning a bit farther. What Prosecution witness is going to
12 say that he was a combatant and that the injuries that he sustained on 16 March 2010
13 were sustained during fighting between rebels and the forces of order?

14 So this is the Prosecution's approach. They merely guess at the motivations of
15 witnesses. Sometimes they say that you must consider the motivations of witnesses;
16 in other cases, you must disregard it. This simplistic approach taken by the
17 Prosecution, which consists of believing what suits them and not believing
18 information that does not validate their narrative, brings the Prosecution to a
19 completely counter-intuitive vision of credibility. The Prosecution prefers to ignore
20 what witnesses have said, the witnesses who were in the best situation to tell us what
21 truly happened.

22 Rather, the Prosecution prefers the accounts of witnesses who could not objectively
23 know what was going on in the highest spheres where the decisions were being
24 made.

25 Let us take the example of Dadi and his alleged role during the crisis. Regarding this

1 witness, Dadi, the Prosecution said, and I quote, paragraph 486 -- just a moment, if
2 you don't mind.

3 I beg your pardon. Paragraph 486 of the translation of the mid-trial brief:

4 "At the time the commander of the BASA was Colonel Rigobert Dadi, a member of
5 the parallel structure who took his orders directly from Laurent Gbagbo and who
6 advised Mr Gbagbo on military issues, including firing, and Laurent Gbagbo had
7 entrusted him with the task of ensuring the safety of Abidjan." End of quote.

8 One would imagine that the Prosecution would provide several serious sources,
9 official sources to support such an affirmation. For example, information from
10 high-level military officials. But that is not the case. The Prosecution's main source
11 was P-239, someone who reported to Dadi. This person gave the following account,
12 T-167, page 48, line 2 and I quote:

13 "Yes." He said that he took his orders directly from President Gbagbo. That he was
14 in charge of the situation; he was the strong man. President Gbagbo trusted him and
15 had even entrusted him with the task of ensuring the safety of Abidjan. That
16 President Gbagbo trusted him, and that everything he said was the truth. That is
17 what the president had said that he was to do. And he had said that he was
18 President Gbagbo's military advisor. Thus, they were the ones making the
19 decisions." End of quote.

20 Thus it was solely on the basis of what seems to be a unit leader's boasting and
21 pounding of chest. That is the only thing that he seems to be they base themselves
22 on to affirm that there was a direct link between President Gbagbo and Colonel Dadi.
23 By proceeding in this fashion, the Prosecution says nothing about the fact that none of
24 their military witnesses who were high ranking mentioned Dadi as being in charge of
25 security in Abidjan. The Prosecution prefers testimony given from a low ranking

1 officer, indeed, a mere foot soldier rather than the testimony of military officials of the
2 day, only because the first testimony supports their own account, their own narrative.

3 We must note as well that in their response, the Prosecution provides absolutely no
4 new information to make up for the lack of evidence regarding Dadi's role during the
5 crisis. On the contrary, the Prosecution just sticks to the same story, the same
6 version. The Prosecution said last month, and I quote Transcript 223, page 11, lines
7 24 to 28:

8 "The witness, Witness 239 said, said that Colonel Dadi's speeches during which he,
9 during which he talked about being so close to Mr Gbagbo and the fact that he
10 received instructions directly from Mr Gbagbo. Nothing in his testimony calls into
11 question his ability to make the observations that he did before the Chamber.
12 Witness 239 gave firsthand information about what he saw and what he heard." End
13 of quote.

14 But the Prosecution skirts around the important issue. It's not whether P-239 did or
15 did not hear Colonel Dadi saying these things. The issue is whether that this is
16 sufficient to support the reality of Dadi's role during the crisis.

17 It's as if during my law courses at university I were to boast that I was the best known
18 professor at the university, that I knew the dean personally, that I organised all the
19 courses at the university because the dean had asked me to. And on the basis solely
20 of testimony from one of my students, who relates what I have said, it is as if you take
21 this for the gospel truth.

22 We can clearly see that this approach taken by the Prosecution leaves a lot to be
23 desired.

24 Once again on this same point, the Prosecution has stated, and I quote paragraph 1629
25 from the written response, "Laurent Gbagbo argues that these remarks are only

1 boasting on the part of Dadi and that they cannot be taken seriously or believed. In
2 this regard he has provided no evidence to the effect that this was mere boasting."
3 End of quote.

4 Mr President, your Honours, I think there is some confusion here. The Prosecution
5 seemed to be a bit confused as to their role in this trial. It is not the Defence's job to
6 provide evidence showing that this was boasting; so how could the Defence make
7 that argument? It is the Prosecution's job. They have the burden of truth. They
8 are the ones who must show that it was not boasting, that there is other information
9 to corroborate, to establish the reality of the allegations made.

10 The Prosecution's approach has another consequence. The Prosecution is reduced to
11 building an account on the basis of witnesses who are not particularly credible, to say
12 the very least, only because what they have told the Prosecution matches their
13 narrative.

14 For example, how can one base nearly one's entire narrative on the series of events
15 that occurred between 2002 and 2010 on a single witness, P-48, an RDR leader who
16 necessarily will provide a personal and a political view of the events?

17 And now today in their response at paragraph 1424, the Prosecution would have us
18 believe that there are many testimonial sources that support their narrative.

19 Not only is this untrue, because one need only read the Prosecution's mid-trial brief to
20 realise that the entire political narrative from 2002 to 2010 is based solely on the
21 statements of P-48, but what is more, one must realise that the Prosecution is
22 changing its approach once again, because the representative of the OTP was very
23 clear when P-48 was questioned, it was specifically to validate the Prosecution's
24 narrative about the period 2002 to 2010. That is why this witness was called to give
25 testimony, excluding any expert witness or historian.

1 Thus, the OTP representative said regarding the need to question P-48 about the
2 period spanning 2002 to 2010, and I'll quote from the transcript, T-53, page 67, lines 1
3 to 3, "This is the only opportunity that we have to hear such testimony, because we do
4 not intend to call any historians to give testimony before the Chamber. This is the
5 only witness who is in a position to speak to these issues." End of quote.

6 Let us consider very carefully, let us try to understand what the Prosecution is telling
7 us. So to their mind, calling a historian -- rather, calling an RDR political person in
8 the middle of an international criminal trial is the way to go.

9 Another example that we really have to look at, P-435. If we go by what the
10 Prosecution has said, this gentleman is a very credible witness, the most credible
11 witness that the Prosecution has, the most credible one, a former drug addict living
12 on the margins of society, extorting people on behalf of the truckers' union, someone
13 who spent 10 years hiding from the police, the group he belonged to was prohibited
14 and the members of this group were being chased down.

15 So this man is the most credible witness that the Prosecution has. This witness is the
16 one that the Prosecution relies upon for so many allegations. But this witness
17 provides pretty much wall to wall second-hand or third-hand hearsay, and we have
18 no idea how this person could have acquired such information.

19 With your leave, Mr President, if we could go briefly into private session.

20 PRESIDING JUDGE TARFUSSER: [12:39:16] Let's go into private session, please.

21 (Private session at 12.39 p.m.)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Status Hearing

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3 (Open session at 12.43 p.m.)

4 THE COURT OFFICER: [12:43:37] We are back in open session, Mr President.

5 PRESIDING JUDGE TARFUSSER: [12:43:45] Thank you.

6 Mr Jacobs.

7 MR JACOBS: [12:43:47] (Interpretation) Thank you, Mr President.

8 To sum up, this Witness 435, if this gentleman is the most credible witness, I think we
9 can see what this case has been built on. In actual fact, the Prosecution is vainly
10 attempting to save P-435 from one simple observation, by far he is the least credible
11 witness. Can we take this seriously, that a case would be based on this kind of
12 testimony on such a witness regarding the responsibility of a president of the
13 republic?

14 What is the Prosecution asking you to do? They are asking you to believe P-435 after
15 he did. The Prosecution are asking you to go along with this idea that a case against
16 a former president of the republic be built on remarks made by Witness P-435 and
17 others of his ilk.

18 I'd now like to say a few things about assessment of the documents, the documentary
19 evidence.

20 The Prosecution has asked you and is asking us to take the same approach for some of
21 their witnesses. If the document is incriminating, one can trust it automatically. If
22 a document is exonerating, of course one must be suspicious.

23 The example that the Prosecution has given us during a hearing is the example of
24 police reports. What has the Prosecution told us? And I quote transcript 221, page
25 30, lines 11 to 17:

1 "In this regard, in the opinion of the Prosecution, contrary to routine reports,
2 exonerating information concerning actions taken by the police should be examined
3 with a great deal of care and circumspection by the Chamber because, indeed, we
4 have done nothing wrong and it's very easy to write something in a report to
5 exonerate oneself for ... and allegations contained in the police reports according to
6 which demonstrators went to the RTI on 16 December 2010 and who were dispersed
7 using conventional law enforcement methods." End of quote.

8 According to the Prosecution, police reports can be believed and as we pointed out in
9 our written submissions, the Prosecution relies heavily on police reports, when it talks
10 about the alleged deaths of people who are described as civilians, that's one thing, but
11 not at all for other things.

12 The reports mentioning the exclusive use of conventional methods, namely tear gas,
13 excluding any lethal means. According to the Prosecution, you should ignore that
14 part.

15 These reports make mention of judicial proceedings beginning for certain incidents.

16 According to the Prosecution, you should ignore that. These reports speak to
17 violence and murder by rebels. According to the Prosecution, you should ignore
18 such reports. The reports speak to the police efforts to bring calm. Well, the
19 Prosecution says you must ignore that.

20 These reports saying that the police took action to protect the people, no matter what
21 their political affiliation, according to the Prosecution you should ignore such reports.

22 These reports of armed attacks against law enforcement staff on 16 December 2010,
23 according to the Prosecution you must ignore such reports.

24 And why should all these reports be ignored? Because once again they do not bear
25 out the Prosecution's narrative.

1 But perhaps these reports were actually drawn up properly in good faith and are
2 nothing more than an account of what really happened on the ground. Still blinded
3 by their methodological bias, the Prosecution glosses over the inconsistencies of
4 certain witnesses, once again solely because these witnesses serve to support their
5 narrative. What better example than the example of the witnesses whose previous
6 statements were admitted.

7 Let me set the stage. One person was questioned by OTP investigators at a
8 particular point in time after the crisis in 2012, 2013, 2014. The investigators draw up
9 a summary of the discussion, and the summary shows nothing about the questions of
10 the investigators or the specific answers given. And the witness signs the summary
11 saying that it is true.

12 One fine day, the trial begins and this person is called to the bar to give testimony.

13 At the beginning, the person under oath says that everything that is said in the
14 statement is true, and the statement is placed on the case file. Yet, when some of
15 these witnesses were questioned during the hearings, sometimes they contradicted
16 what they had stated earlier.

17 For example, in his previous statement, one witness testified that they had seen with
18 their own eyes on the spot at Carrefour Banco the dead bodies of women on 3 March
19 2011, but subsequently, during the hearing in court testified that he had returned
20 directly to his home and only saw the women on TV.

21 I refer you to the previous statement, CIV-OTP-0020-0033, paragraph 164 to 170.

22 And for the transcript it's T-111, page 44, line 28 to 45, line 7.

23 Another witness in his prior statement said that they had seen with their own eyes,
24 with their own eyes the bodies of his sons on 12 April 2011. Yet, in court, he
25 unequivocally testified that he had not seen the dead bodies of his sons. This is not

1 the kind of detail that anyone can be mistaken about.

2 I refer you to the prior statement CIV-OTP-0069-0069, paragraph 40 to 42. And
3 transcript T-209, page 67, lines 4 to 28.

4 Therefore, the situation is quite simple, either the witness is lying when he says that
5 the prior statement is the truth or the witness is lying in court.

6 Furthermore, we don't have any material that can help us to determine what is true or
7 false and, therefore, put us in the position where we can determine which version to
8 believe.

9 In these circumstances, such testimony cannot serve as the basis to support any
10 allegation whatsoever.

11 The Prosecutor in his response attempts to salvage the witness's testimonies from
12 their contradictions and he shifts the responsibility, he attempts to shift the
13 responsibility to the Defence.

14 At paragraph 504 of their response, the Prosecution states that it would have been
15 proper for the Defence to raise these contradictions in cross-examination. No, it is
16 not up to the Defence to revisit these questions through such an exercise, because the
17 witness under oath testified that his statement, his prior statement was the truth.

18 Revisiting the issue in any way in any event does not change anything because even if
19 the witness changes his narrative, the contradiction will still remain. So the matter is
20 not one of being fair to the witness, but rather being fair to President Gbagbo. These
21 contradictions raise a doubt which are of great benefit to him.

22 Now, Mr President, I don't know whether we will stop at 1, but I am just about to
23 start a new topic.

24 PRESIDING JUDGE TARFUSSER: [12:56:01] Good. So we stop now and we come
25 back at 2.30 for the third session.

1 The hearing is adjourned.

2 THE COURT USHER: [12:56:11] All rise.

3 (Recess taken at 12.56 p.m.)

4 (Upon resuming in open session at 2.34 p.m.)

5 THE COURT USHER: [14:34:43] All rise.

6 Please be seated.

7 PRESIDING JUDGE TARFUSSER: [14:35:06] Good afternoon. I give back the floor
8 immediately to Mr Jacobs for this third session. The floor is yours.

9 MR JACOBS: [14:35:25] (Interpretation) Thank you, Mr President.

10 I would now like to deal with the absence of corroboration. The Prosecutor at
11 paragraph 120 of his response asserts that there is no need for these allegations to be
12 corroborated because the statute does not impose such an obligation on him.

13 But in the same manner as for hearsay, he relies on a technical argument to mask the
14 fact that without corroboration, his evidence is simply poor and weak.

15 Wherever the Prosecutor says that there may or there is corroboration, he uses a very
16 flexible concept. For example, at paragraph 122 of his response, the Prosecution says
17 the following, and I quote:

18 "The evidence are deemed to be corroborative when a credible witness is compatible
19 with another credible witness, and they deal with a number of facts that are
20 interrelated. The thematic coherence between elements of evidence is enough to
21 meet the standard of corroboration, and it is therefore not necessary or realistic to
22 require of them that they reflect what each other has said." End of quote.

23 In other words, the Prosecutor develops two scenarios when dealing with
24 corroboration, but each of them is as problematic as the other.

25 First of all, according to the Prosecution, two weak elements of evidence, because that

1 is how one must understand the expression "credible on sight" to mean, that each can
2 therefore reinforce the other without us being aware to know -- aware of what
3 grounds warrant such a connection.

4 Let us point out that Judge Van den Wyngaert and Judge Morrison pointed out in the
5 Bemba case in their separate opinions that they severely criticised such an approach.

6 Decision 3636, annex 2. That will be the reference, paragraph 64, and I quote:

7 "We dismiss the finding that without -- the finding the Chamber seems to have come
8 to, whereby evidence seems to have been corroborated by weaker evidence,
9 particularly when one out of two possible evidentiary pieces of evidence are based on
10 hearsay, particularly anonymous hearsay." End of quote.

11 This is what has happened quite frequently in our case, because throughout the
12 Prosecutor's MTB and in his response, the Prosecutor has attempted to corroborate
13 anonymous hearsay by other anonymous hearsay.

14 For example, when the Prosecution asserted that an NGO report would corroborate
15 another NGO report or a UN report, whereas it is simply impossible to determine
16 whether there were truly two different sources, which would be the conditions for
17 corroboration, and particularly in this case where the sources are anonymous.

18 Secondly, the Prosecution seems to assert that two elements of evidence not bearing
19 on the same issue can corroborate each other. The Prosecution affirms at paragraphs
20 122 of his response that it is neither necessary nor realistic to require of the evidence
21 that they -- or the pieces of evidence that they each reflect the other.

22 What can be expected is not for two pieces of evidence to be a reflection of each other,
23 but at least they should speak to the same thing and to the same incident. Otherwise
24 how can you establish corroboration logically?

25 Once again, this approach was rejected by Judges Van den Wyngaert and Morrison in

1 the Bemba case. And I refer you to decision 3636, annex 2, paragraph 65:

2 "However, the Prosecutor is mistaken, in our view, when he believes that the Trial
3 Chamber can jointly assess all pieces of evidence even if the different pieces of
4 evidence relate to different criminal conduct."

5 I'm sorry, what I have read out is just a quotation. Paragraph 65 in the separate
6 opinion in the Bemba case.

7 Finally, let us point out that in addition to these two problematic approaches to
8 corroboration used by the Prosecutor in his response, the Prosecutor appears to say
9 there is corroboration in cases where there actually appears to be a contradiction in
10 the evidence before you.

11 A perfect example is what we looked at today. The Prosecutor asserts that the UN
12 allegedly confirmed that there were 120 millimetre mortar shots on 17 March 2011,
13 whereas the evidence on record clearly shows that according to the UN, if there had
14 been any mortars fired, it would be 81 millimetre mortars.

15 So here this cannot be said to be corroboration in any manner whatsoever.

16 Now let me tackle a last crucial point when it comes to the assessment of the evidence
17 of the Prosecutor, and I'm referring to indirect or circumstantial evidence.

18 In his response at paragraph 123, the Prosecutor states that he is entirely free to rely
19 on indirect evidence to prove his allegations because there is no legal prohibition to
20 that.

21 Once again, the Prosecutor hides behind procedural rules which in fact does not
22 change anything if we look at matters in a simple and common sense approach. A
23 direct piece of evidence necessarily has more evidence than an indirect piece of
24 evidence.

25 You see, the use of indirect evidence does not only apply to peripheral or minor

1 issues, because going by the Prosecutor's own confession, the substance of the
2 allegation pertaining to a common plan is only based on the assumption of a common
3 plan based on circumstantial evidence.

4 The Prosecutor told us very clearly in paragraph 641 -- 642, rather, of the MTB and
5 repeated the point even more clearly in his response, at paragraph 1109, and I quote:
6 "None of the statements or documents clearly express Laurent Gbagbo's intent or that
7 of his inner circle to remain in power, even if violence had to be used against
8 civilians." End of quote.

9 It is important to fully understand what this means. According to the Prosecutor,
10 there is no direct evidence of a common plan which would have been implemented
11 over a 10-year period by the highest authority of the State across several successive
12 governments, governments which were put in place since 2003 and including
13 members of political parties as well as rebels, a common plan which would have been
14 implemented by tens and hundreds of persons at all levels of the bureaucratic system
15 as civilian or military structures of the State covering a very important or significant
16 area of the territory of Côte d'Ivoire. All of this, your Honours, is simply
17 unbelievable. It is unbelievable that such a plan could have been implemented
18 involving so many people, so much action, so many protagonists over such a long
19 period could not have been substantiated by a single concrete piece of evidence.

20 Mr President, your Honours, at this juncture, it is not a matter of legal deductions that
21 the Prosecutor is inviting you to engage in, but, rather, an act of faith.

22 Now, to conclude on the assessment of the Prosecutor's evidence, one must note that
23 all the arguments only seem to make up for the weakness of the evidence and of the
24 case in its entirety.

25 What does this mean concretely? It means that there is an incredible disconnection,

1 literally incredible disconnection between the scope of the Prosecutor's case and the
2 weakness of the evidence.

3 We have just referred to the common plan, and now let me address a few more
4 blatant examples that can be gleaned from the Prosecutor's response.

5 First example, the so-called orders. The Prosecutor asserts on several occasions in
6 the MTB and in his response that there is evidence that the security forces were acting
7 on the basis of orders issued by President Gbagbo. One must say that after
8 analysing this, the Prosecutor is not able to demonstrate that operational orders were
9 issued by President Gbagbo as we pointed out in our written filings.

10 We simply need to take a few examples to make the point, examples that were
11 brought up in last month's hearing. The Prosecutor claims that it is President
12 Gbagbo who ordered the blockade of the Golf Hotel, transcript T-221, page 23, line 28,
13 page 24, line 3.

14 First of all, it was not a blockade like we pointed out yesterday.

15 Secondly, we must note that today the Prosecutor has not demonstrated that
16 President Gbagbo issued any orders for a blockade to be set up. Reference
17 paragraph 433 and 434, annex 5 of our filings, where Defence established that not a
18 single out of the eight references or footnotes that the Prosecutor uses in this
19 connection refers to any order whatsoever issued by President Gbagbo.

20 Third, the Prosecutor wilfully omits to describe to you the circumstances that were
21 prevailing at the time, which however emerged clearly from P-9's testimony.

22 Following the second round of presidential elections, rebel troops had come down
23 from the north to supervise the elections within the context of the CCI, instead of
24 returning to the north as initially provided for, those troops took up base at l'hôtel du
25 Golf and thereafter P-9 goes on to testify at transcript 193, page 69, line 2 as follows,

1 and I quote:

2 "He set up a system for firing in order to work with our brothers in arms." End of
3 quote.

4 Then P-9 goes on to say in transcript T-193, page 69, line 4 onward as follows:

5 "This weapon that was there in the morning, we saw it in the morning. They had
6 come. They took away the weapon and left and took it to the Golf. So I called
7 General Guéï, whom I knew very well, and after talking with him, the weapon was
8 returned. Following my report to President Laurent Gbagbo in which I told him that
9 our brothers in arms, rather than return to the north, some of them had gone to the
10 Golf, then the president gave instructions to ensure that they did not leave, to ensure
11 that the soldiers in there would not leave." End of quote.

12 After that incident, P-9, working with the UN and the Licorne forces, whom he
13 informed, he set up two checkpoints around the Golf Hotel. P-9 in his testimony
14 even says that it was General Niang of ONUCI who pointed out to him where the
15 checkpoints should be located, transcript T-193 page 69, lines 15 and 16.

16 P-9 finally testified that the checkpoints were to serve the following function,
17 transcript 193, page 70, lines 1 to 7:

18 "One, ask our men to not allow the soldiers who were there to go to town with their
19 weapons to do anything whatsoever and shift responsibility on us, but secondly, to
20 ensure that people bearing weapons do not enter the Golf in order to be involved in
21 any acts that responsibility for could ultimately be shifted to us." End of quote.

22 What conclusion can we draw from this narrative? First of all, the starting point for
23 the discussions is the violation by the military rebel soldiers of their obligation to
24 return to the north after the second round of the elections when they decided to
25 remain at *l'hôtel du Golf*. They, therefore, were a hostile military force in the heart of

1 the city.

2 Secondly, President Gbagbo was only informed of the situation after a military
3 incursion by those very rebels outside the Golf Hotel. It is therefore only normal for
4 the president of the republic to ask his chief of staff to ensure that an armed-rebel
5 force does not have access to the civilian population of Abidjan. There is no
6 connection here to any common plan whatsoever.

7 Third point, the arrangements made were extremely light; namely, two checkpoints,
8 and that cannot be called a blockade.

9 Fourth, the security arrangements were put in place in agreement with ONUCI and
10 the Licorne forces were informed accordingly. I refer you here to
11 CIV-OTP-0071-0152, where we can see clearly that ONUCI and Licorne were copied
12 on the CEMA's message relating to the security arrangements. Nothing is hidden
13 here.

14 So to allege that this security arrangement would have been criminal amounts to
15 saying that ONUCI and Licorne were accomplices to such an arrangement.

16 Finally, fifth conclusion, the arrangements had as purposed to stop any further
17 military incursions by the rebels into the city but, furthermore, also to provide
18 protection for the Golf Hotel against any attacks that may come from town. So
19 where is the blockade and where is the common plan in this scenario?

20 So there is a similar disconnection between the Prosecutor's allegation that President
21 Gbagbo ordered a repression of the march and the weakness of the evidence in
22 support thereof.

23 From the hearings, it emerges from the Prosecutor's witnesses themselves that
24 although security officials had received information that the march had been
25 prohibited administratively to the extent that it was not authorised, how could that

1 have been, because there was no prior application for such an authorisation to be
2 granted?

3 So it was the security officials themselves, particularly the CEMA who, mindful of the
4 potential risks to public order arising from the march, it is they who requested that
5 the demonstration be prohibited.

6 And in that connection, this is what P-9 says, and I'm quoting from transcript T-195,
7 page 16, lines 11 to 17:

8 "We therefore took advantage of it to look into the situation prevailing at the time and
9 expressed the wish that the march should not take place, because we had the
10 premonition that there would be disturbances. So we pointed this out to the
11 president and if whether we could ask Mr Choi to use his influence to talk to the two
12 people to ensure that the march did not take place, because we had a premonition
13 that there would indeed be disturbances." End of quote.

14 Now, when it comes to operational decisions, these were taken at a meeting at the
15 general staff. It is at these meetings that the DGPN made a presentation to the other
16 generals about his needs and resources required for security for the people of Abidjan
17 on the day of the march. I refer you to transcript T-139, page 11, lines 15 to 25.

18 The Prosecutor therefore cannot prove that operational decisions were taken by
19 President Gbagbo, and particularly cannot prove that setting up arrangements to stop
20 a march that was going to be violent would have been an illegal action and that it
21 would have led to a violent attack on disarmed members of the population.

22 Is it illegal for the police and the army to do their work by stopping unauthorised
23 gatherings, particularly gatherings of armed persons who are likely to attack the
24 institutions of the republic?

25 Now, we are dealing with the march, the insurrection of 16 December 2010. There is

1 a point about the communiqué from the spokesperson of the FDS of 15 December
2 2010, and which was referred to by the Prosecutor last month in the hearings,
3 transcript T-221, page 25, lines 7 to 24. In fact, let me provide the number of the
4 video, CIV-OTP-0074-0055, timestamp 15.28 to 18.16 and the attendant transcript
5 number CIV-OTP-0087-0394.

6 The Prosecutor interprets this release as a threat and a need to -- rather, and a desire
7 to attack civilians. But if you read it carefully, it is actually the reverse that is
8 intended. In that press release, the FDS spokesperson, mindful of the military
9 character of the announced march which was programmed by the military officials at
10 the Golf Hotel, called on civilians not to participate in it in order to avoid
11 any -- exposing themselves, rather, to any clashes that may occur between the rebels
12 and the republican forces.

13 The Prosecutor elliptically affirmed during the hearings, without any further
14 explanation, as follows: "What interestingly can be read from this communiqué is
15 that it also sheds light on the state of mind of the authorities." End of quote.

16 Transcript T-221, page 25, lines 23 and 24.

17 In fact, what this release shows is that the military officials acted responsibly by
18 trying to protect the civilians from an announced military attack; whereas, the
19 officials of the Golf Hotel had expected to use these civilians as human shields during
20 their military actions.

21 Another striking example from the response of the Prosecutor, the alleged order to
22 fire mortars on 17 March 2011. We explained in detail in our submissions why the
23 Prosecutor did not at any time give the slightest indication of an order from military
24 officers, let alone a decision from President Gbagbo to use mortars on 17 March 2011,
25 and I refer you to paragraphs 444 to 459 of our annex 3.

1 The Prosecutor was trying in his MTB to create confusion by trying to make believe
2 that there was a general requisition which, by definition, does not relate to any
3 particular weapons, or any particular operational acts would have amounted to a
4 decision to use 120 millimetre mortars on 17 March 2011.

5 The weakness underscored by the Defence of the arguments of the Prosecutor is
6 probably what prompted the Prosecutor for the first time admitted in court that he
7 had no evidence for such an order, but that it had to be deduced based on the
8 circumstances. And this is transcript 221, page 55, line 24, and paragraph 809 of the
9 written response, in which the Prosecutor says, and I quote:

10 "Even though there is no direct evidence of these orders, no other reasonable
11 conclusion can be drawn from the circumstances under review." End of quote.

12 Once again, the Prosecutor admits for the first time that he has no evidence for such
13 an order. The Prosecutor is dragging us into a hypothetical scenario and not within
14 the domain of judicial evidence.

15 And given that there is nothing in the case file that makes it reasonably possible to
16 conclude that there was the slightest order from President Gbagbo on 17 March 2011,
17 we ourselves can conclude that when the Prosecutor tells you that there is no other
18 reasonable conclusion, you have to understand that what he really means is: I need
19 an order, otherwise I have no case.

20 It is interesting to note that maybe because he cannot succeed to prove any link
21 between President Gbagbo and the alleged incidents, the Prosecutor in his response
22 amended his narrative. In fact, he stated in paragraph 809, and I quote: "BASA
23 commander and Gbagbo loyalist Dadi ordered his men to fire the 120 millimetre
24 mortars on 17 March 2011."

25 This is an absolutely new allegation, because it does not appear neither in the pre-trial

1 brief nor in the mid-trial brief. The problem is that the Prosecutor does not produce
2 any element at all to support this new material, this new allegation.

3 There is no footnote, no reference when the Prosecutor made the allegation in his
4 response in paragraphs 809 and 924. And he does not come back to that allegation at
5 no point in his description of the events of 17 March 2011.

6 And today the Prosecutor no longer attempts, like he used to do in the past, to fit his
7 evidence no matter how awkwardly into his narrative or to convince us that we have
8 to deduce a conclusion from vague circumstances and indirect evidence. He simply
9 resorts to fabricating an allegation based on nothing. And at this point there is no
10 iota of demonstration at all.

11 I will come back shortly to the famous meeting of 24 February 2011 and the alleged
12 order to recapture Abobo. But let me give you one last example.

13 In his oral submissions, the Prosecutor mentioned the order given to General Mangou
14 to not send his forces in the direction of the Golf Hotel on 16 December 2010. And
15 that is transcript T-223, page 12, lines 5 to 7.

16 And this example is interesting. What was the precise context? P-9 explained that
17 on 16 December 2010, the army had to fight against an armed attack from rebel
18 soldiers from the Golf Hotel and that they had the upper hand over the attackers.

19 We can understand that in order to save them General Palasset, the commander of the
20 French troops, prohibited the Ivorians from pursuing them. It is based on that
21 conversation between P-9 and General Palasset that P-9 gave an account to President
22 Gbagbo and it was in reaction to that that the president told him not to move his
23 soldiers. Transcript T-196, page 21, lines 3 to 10. And I'll read it out to you so we
24 can fully understand the situation:

25 "After the clash at the Golf, I received a phone call from General Palasset asking me

1 not to move my men and to stay put, because generally speaking, after a
2 confrontation, if you realise that you are having the upper hand, you make your
3 troops to advance. And so he told me 'Hold your position'. So I called the
4 president to report to him. And General Palasset was very clear. He stated 'If ever
5 you lay a hand on the Golf, you have to consider that you are triggering a war against
6 France.' So when I reported the situation to the president, he told me 'Do not move.
7 Stay put.'" End of quote.

8 This is the only example in the MTB which sounds, which might sound like an
9 instruction from President Gbagbo. And even then it is an instruction of a general
10 nature. And you will note that this instruction had as its objective to maintain peace.
11 You can also note that for such a decision, given the threats of the chief of a foreign
12 army, General Palasset, it was normal that the CEMA should report this back to the
13 president of the republic.

14 Let us also note what this excerpt reveals, that the French military authorities
15 obviously overstepped their role, because they were not supposed -- or, rather, they
16 were supposed to intervene only within the framework defined by the UN
17 resolutions. So one can see there the crucial role that the French authorities played
18 in the unfolding of the crisis.

19 Using the cover of the UN intervention, it was France who dictated to the
20 protagonists what they had to do.

21 Given that the Prosecutor is hard pressed to prove the existence of orders from
22 President Gbagbo, he is reduced to interpreting the adoption of decrees for
23 requisition and curfews as orders.

24 We are not going to come back here to what we explained in detail in our written
25 submissions, but I will make a few observations.

1 First of all, a requisition cannot be equated to an order, let alone an order to act in a
2 particular order or manner or to attack the civilian population. It is merely a neutral
3 legal document that makes it possible to manage or control the intervention of the
4 forces of law and order.

5 Secondly, the Prosecutor seems to deduce without any evidence that there was an
6 alleged malicious intention in the use of requisitions based on the fact that, according
7 to him, each time a requisition was adopted, civilians died. And I refer you to
8 transcript T-222, page 65, lines 6 to 12.

9 Here, just as always, the Prosecutor overlooks the reality. In 2000, 2004, Côte
10 d'Ivoire was subject to attempts for military destabilisation, and it was in the face of
11 those attempts that the republican institutions had to react. Here, as always, the
12 Prosecutor reverses the logic. You have the republican forces simply defending
13 themselves against rebel attacks. But the Prosecutor would have us believe that it
14 was the republican forces which decided to attack the civilian population. Believing
15 the Prosecutor would be validating the rejection of reality that perverts his entire case.
16 Thirdly, with regard to the requisition of 14 November 2010, the Prosecutor continues
17 to try to ignore that this was carried out within the framework of the CCI, in
18 agreement with the rebel military leaders and in consultation both with ONUCI and
19 the French Licorne forces. In light of that, how can this be considered as part of a
20 common plan? The Prosecutor also told us in the courtroom that this requisition
21 was not necessary, that there was no legitimate operational justification for it. And
22 that is a quote. Transcript T-221, page 66, lines 27 to 28.

23 But on what basis does the Prosecutor make this statement that there is no legitimate
24 operation? When did the Prosecutor become an expert in law and order
25 maintenance? He's simply giving an opinion here which has no probative value at

1 all because it is not supported by anything. He cannot give a personal opinion to
2 make up for the decision that he made not to call up even a single expert to testify on
3 this matter.

4 Fourthly, regarding the curfew or the curfews, several witnesses explained that they
5 made it possible to keep the peace and to protect the civilian population. P-9 during
6 his testimony stated that the adoption of the curfew had made it possible to diffuse
7 possible tensions and for the election to be carried on smoothly. And that is
8 transcript T-197, page 99, line 28, to page 100, line 4.

9 P-47 stated during his testimony that the adoption of a curfew made it possible to
10 protect the population from the fighting between the FDS and the *Commando Invisible*,
11 which could have been taking place at night. And that is transcript T-203, page 35,
12 lines 5 to 12.

13 P-10 also stated during his testimony that the curfew instituted before the second
14 round of the elections made it possible to diffuse the tension. Transcript T-140, page
15 13, line 8 to page 14, line 3.

16 Once again, that is a far cry from constituting an attack against a civilian population.
17 Now I will move on to the issue of the meetings.

18 The Prosecutor tries to give the impression that the so-called members of the inner
19 circle met all the time in order to implement the alleged common plan. Once again,
20 the reality of the evidence produced by the Prosecutor is extremely weak.

21 He was able to demonstrate through a handful of his witnesses that there was only a
22 few meetings which were always official and transparent and attended by all the
23 senior leaders of the police, the gendarmerie and the army and whose sole purpose
24 was to inform the president of the security situation.

25 The Prosecutor, despite the absence of evidence to support him, is trying to transform

1 these meetings into conspiracy meetings during which a common plan was discussed,
2 and this common plan has never been demonstrated.

3 If we put things in perspective in relation to what the Prosecutor has said, there is a
4 simple conclusion: Today, just like at no time during this case, the Prosecutor cannot
5 explain how he claims that these meetings would have been abnormal in a time of
6 crisis. He does not show that any common plan was ever discussed, that there was
7 any attack against the civilian population that was discussed.

8 The Prosecution does not show that President Gbagbo issued the slightest order that
9 was operational during those meetings.

10 And since the Prosecutor has frequently raised this issue, specifically in his response,
11 I will mention the example of the meeting of 24 February 2011, during which the
12 military commanders presented to President Gbagbo the security situation in Abobo.
13 The Prosecutor tried in vain to rely on that meeting to allege that President Gbagbo
14 supposedly gave an order to recapture Abobo. And that is transcript T-221, page 46,
15 lines 1 to 5.

16 It is necessary to understand the context within which this meeting took place, and
17 this context is clearly described by the various witnesses and when you do that, you
18 understand that what the Prosecutor states is very far from reality.

19 P-9 explained during his testimony, and that is transcript T-194, page 51, lines 13 to 16,
20 he said that after the end of the presidential election, there was a quasi-insurrectional
21 situation in Abidjan and that the security officers with P-9 as their leader tried to
22 control, as required by their duties, the situation, without any intervention from the
23 political hierarchy.

24 It was only on 5 January 2011 when there was a danger of the situation degenerating
25 even further that a briefing in meeting with President Gbagbo with the entire

1 government was organised with nothing hidden, nothing secret. Subsequent to that
2 meeting, a requisition of the army was signed most probably at the request of P-9.
3 Following that requisition, it was the commanders of the military, the police and the
4 gendarmerie who decided on the conduct of the operations in Abobo. These
5 operations initially carried out under the authority of the director general of the
6 national police, the DGPN, were failures because of the repeated attacks of the rebels
7 against the security forces using heavy weapons as testified to by the witnesses.
8 For more details, I will refer you to paragraphs 401 to 426 of annex 5 of our
9 submission.

10 Given the weapons in the possession of the armed groups, the policemen were
11 compelled to retreat.

12 On 12 January 2011, a briefing meeting was held in the residence in the presence of all
13 the generals and all the members of government. It was reported in the RTI news
14 broadcast the following day that during that informal information meeting, and I
15 quote, and the transcription of video CIV-OTP-0086-1013, and it is video
16 CIV-OTP-0064-0110. The president of the republic, and I'm quoting here:

17 "The president of the republic, Laurent Gbagbo, commander in chief of the armies,
18 was briefed on the meeting that the generals had had well before at the general staff
19 headquarters. The commanders of the national Marine, the ground forces, the air
20 force, the CECOS, the gendarmerie and the police and Lieutenant General Philippe
21 Mangou adopted measures to provide security throughout the territory and to derail
22 the attempts to make certain communes of Abidjan ungovernable." End of quote.

23 Now, talking about the *raison d'être* of this meeting, to which the entire government
24 was invited, was very clear. It was an information meeting organised after the
25 meeting that had been held by all the generals.

1 During his testimony, P-9 confirmed that he did not receive and had no reason to
2 receive the slightest instruction from the president in the course of that meeting.

3 And it is transcript T-195, page 51, line 10 onwards. And I will quote a sentence
4 from there. "No, the president did not give an instruction. He knew that we had
5 been requisitioned and that we were doing our work." End of quote.

6 Under these circumstances, it is unbelievable that the Prosecutor should tell us in
7 court, transcript T-222, page 25, lines 6 and 7, that the purpose of that meeting was to
8 draw up a strategy for security measures in certain parts -- or, rather, in that part of
9 Abidjan. And yet the excerpt of the television news, which the Prosecutor himself
10 showed in the courtroom states the exact opposite. The generals prepared a strategy
11 prior to the meeting with the president and the government and simply informed him
12 about it during that meeting.

13 The Prosecutor read the news of the RTI in this courtroom and then he drew the exact
14 contrary conclusion.

15 It is equally unbelievable that a Prosecutor should state that this was not a normal
16 meeting. Transcript T-222, page 25, lines 21 to 22.

17 In fact, what could be more normal during a time of war when the security forces are
18 suffering serious losses in the hands of the rebels for the president of the republic to
19 be informed or briefed about the situation?

20 After that meeting, that is in early January, the army took back control of the
21 operations which had been under the DGSN and on 23 February 2011, initiated an
22 operation to control two roads, that is the road from MACA-kilomètre 18 and the
23 road from the Abobo roundabout to N'Dotre. It is transcript T-194, page 135, lines 18
24 to 20.

25 As soon as they started advancing, the reconnaissance soldiers were viciously

1 attacked by armed groups. The witness explained that it was difficult for the FDS to
2 retaliate because the *Invisible Commando* was hiding amongst the population. And I
3 will quote what P-9 said in transcript T-194, page 38, lines 1 to 4:

4 "It was impossible for our people to retaliate because the Commando Invisible, which
5 was there, had practically taken the population hostage. They were being shot at
6 and these people would disappear into the population." End of quote.

7 So once again, the operation on the 23rd was a failure.

8 That reminder is important, because it leads us to the famous meeting of 24 February
9 2011, since we have laid the foundation and the context, it is clear that President
10 Gbagbo was simply validating and in a generic manner a line of conduct which had
11 not only already been adopted but was already being implemented by the army.

12 Let us note one point that shows the Prosecution's volition to make a mishmash of
13 everything. Everything shows that the operations that were conducted in February
14 2011 were intended to allow the army to defend themselves against the rebels who
15 were conducting military operations in Abobo. Yet the Prosecution would have you
16 believe that these operations were proof of implementation of a common plan to
17 attack unarmed civilians.

18 But it's obvious that there is no link between these two statements.

19 Similarly, the Prosecution has suggested that this meeting, that this meeting would
20 allow for an explanation of the alleged incidents of 3 March and 17 March 2011. The
21 Prosecution has never proven any direct orders and, thus, the Prosecution has to fall
22 back on this meeting.

23 But once again, the Prosecution has got it all wrong. The operations intended to
24 regain control over the parts of Abobo held by the rebels, these operations in January
25 and February 2011 were failures. On 3 March and then thus 17 March, these

1 operations obviously came to an end. And as was pointed out this morning, at that
2 point in time the police officers and the gendarmes had left Abobo, and the only place
3 where they were to be found was at Camp Commando, under siege by the rebels.

4 So the ambition was clear, at the time the rebels had control over the entire
5 neighbourhood, and the only ambition was not to lose control of Camp Commando
6 and nothing other than that.

7 One last point that I'd like to hark back to, the issue of the declaration stating that
8 Abobo had become a war zone. A few quick points.

9 First of all, it should be noted that the Prosecution in the courtroom presided some
10 remarks made by P-9, but in a rather misleading way. I quote from T-222. The
11 Prosecution said this, page 26, lines 26 to 28, I quote:

12 "Mangou has been quite clear, and he said that at the time of that same meeting, the
13 meeting of the 24th of February I mean, at the time of that same meeting, he floated
14 the idea to Mr Gbagbo through the ministry -- rather, the minister of defence and
15 Monsieur Gbagbo dismissed the idea, namely, the idea of declaring Abobo to be a
16 war zone." End of quote.

17 Yet, P-9's testimony shows that he certainly did not make that proposal during that
18 same meeting, but, rather, after the meeting.

19 Secondly, he did not float the idea to Mr Gbagbo, but, rather, to the minister. So the
20 Prosecution has said that the idea was put to Mr Gbagbo through the minister of
21 defence.

22 That's a lovely notion, but that is not what happened.

23 P-9 was very clear about this in his testimony. President Gbagbo was not present at
24 that time. P-9 did not see the minister put the proposal to President Gbagbo, so we
25 don't even know if the minister spoke of that possibility to Mr Gbagbo or what his

1 reaction might have been.

2 Secondly, the Prosecution has said in the courtroom that the military witnesses
3 corroborated one another when it came to this point. Transcript 222, page 26, lines
4 26 and 27.

5 This is an extremely odd statement, because the military officials didn't even agree on
6 how and when the proposal was allegedly made to President Gbagbo, during which
7 meeting, at which particular point in time. Just because the witness has said that
8 President Gbagbo dismissed the idea, this is not corroboration. The rest of the
9 account is different. Once again, another example of the lighthearted approach, shall
10 we say, taken by the Prosecution.

11 My third point, the Prosecution have never established from a legal point of view or
12 in practical terms where they got this idea that a war zone could be declared under
13 the law of Côte d'Ivoire. The Prosecution seems to hint that such a statement or
14 declaration would have consequences in terms of protecting civilians. And yet and
15 the Prosecutor of the International Criminal Court should be the first one to know this,
16 declaring a place is a war zone under domestic law is irrelevant in relation to the
17 applicability of international humanitarian law. Such applicability would flow from
18 the determination of the existence or nonexistence of an armed conflict under
19 international law.

20 And now my fourth point, all the military officials stressed this: Military operations
21 were conducted by the army, and the top objective or priority was to respect
22 international humanitarian law and to protect civilians. I refer you to paragraphs
23 377 to 380 of annex 5 to our response. Whether Abobo had been declared a war zone,
24 hypothetically speaking, in February 2011 or not, we can see from the file that
25 throughout the entire crisis and throughout all of Abidjan, the army conducted its

1 operations complying fully with international humanitarian law.
2 With the exception of the handful of meetings that witnesses have told us about, the
3 Prosecution base themselves for all the other alleged meetings on a logbook. And it
4 was shown in our written submissions that this logbook is more than doubtful. I
5 refer you to paragraphs 85, 110, 332, and paragraphs 440 to 445 of annex 5 to our brief.
6 I will not rehearse the point any further here.
7 After all these years, the Prosecution has been so lost in the clouds claiming that
8 certain people apparently were at a particular place at the residency or at the
9 presidency, but they have lost sight of the essential point. They have not
10 demonstrated that President Gbagbo himself was at these meetings, these alleged
11 meetings at the time.
12 Furthermore, it's quite clear that the Prosecution have provided no elements that
13 could shed light or establish what apparently was said at these alleged meetings.
14 It has been said that some kind of common plan was discussed. This is pure
15 speculation. Once again, we must note that the demonstration goes about circles,
16 goes in circles, or, rather, the absence of any demonstration by the Prosecution.
17 In actual fact, the Prosecution themselves acknowledge that there is no proof of a
18 common plan; thus, the Prosecution deduced that there was an inner circle, and this
19 inner circle existed only to implement a common plan that has not been demonstrated,
20 discussed at meetings whose content is unknown to us. This construction allows the
21 Prosecution to demonstrate nothing.

22 If you put it to him that --

23 THE INTERPRETER: [3:55:11] Correction.

24 MR JACOBS: [3:55:12] (Interpretation) If you put it to them that they have not
25 demonstrated the existence of a common plan, they will respond by saying that there

1 has to be one, because there was an inner circle. If you point out to him that they
2 have not demonstrated the existence of an inner circle, they will say that: "Oh, yes,
3 there had to be one. Those people were meeting."
4 If you remind the Prosecution that nothing is known about the content of the alleged
5 meetings, the Prosecution will say: "Well, they must have been talking about the
6 common plan."
7 And there, Mr President, your Honours, once again, back at the starting point,
8 because the common plan has never been demonstrated. If one goes along with the
9 Prosecution's arguments, it's like you end up like a hamster on a wheel, a hamster on
10 his little wheel, one undemonstrated supposition after another.
11 One last point about the meetings and then I will conclude for today.
12 The Prosecution is so hard pressed to demonstrate the content of the great majority of
13 the meetings that he alleges occurred that the few times that he finds something, well,
14 he really has to make out that there is some dark plot behind all of this.
15 Let us take the example of the alleged meeting of 3 December 2010. The Prosecution
16 speak to this meeting from paragraphs 131 to 133 of their mid-trial brief and in their
17 response.
18 This passage is a perfect illustration of the Prosecution's ability to dream up fantasies
19 about a common plan, a common plan that does not exist.
20 Concerning this meeting, the Prosecution has provided us with documents
21 CIV-OTP-0018-0220. Now, I would very much like the court officer to display the
22 document, but it is classified confidential. But we did consult with the Prosecution
23 and, unless there is some sort of opposition from my learned friends opposite?
24 PRESIDING JUDGE TARFUSSER: [15:58:24] I think that the Prosecution is
25 requested to --

1 MR MACDONALD: [15:58:30] Sorry, your Honours, I'm lost. I was not following.

2 PRESIDING JUDGE TARFUSSER: [15:58:35] There is a document which seems to be
3 classified as confidential. But after consultation, the Defence had with the
4 Prosecution, it seemed that it can be public.

5 MR MACDONALD: [15:58:50] If you allow me just a second, I'll look at the
6 document. It shouldn't be a problem.

7 PRESIDING JUDGE TARFUSSER: [15:58:55] 0018-0220.

8 MR JACOBS: [15:58:59] (Interpretation) It's the minutes of the meeting.

9 MR MACDONALD: [15:59:03] It's fine, your Honours, it can be publicly shown.

10 PRESIDING JUDGE TARFUSSER: [15:59:05] Okay. Thank you very much.

11 Mr Jacobs, yours the floor. It can be publicly shown.

12 MR JACOBS: [15:59:14] (Interpretation) Thank you, Mr President. I'll just wait
13 for the document to come up on the screen.

14 Thank you, madam court officer.

15 According to the Prosecution, this document is the minutes of the meeting of this
16 inner circle, a meeting that was held at the residence of the president. And you will
17 see here, you can see that the document it not an official document. This is
18 handwritten. And we don't know who took these minutes. There is no signature,
19 no stamp. The Prosecution never had it authenticated and never seemed to have
20 conducted any investigations to determine whether any such meeting was ever held.
21 Secondly, even if we suppose that such a meeting was held and that this document is
22 a faithful reflection of what was allegedly said, you must see here that the actual
23 document is quite harmless. Nothing really. Contacting the heads of state to invite
24 them to the swearing in of President Gbagbo; organise a hearing with the Special
25 Representative of the United Nations in Côte d'Ivoire; setting up a new government;

1 preparing for the legislative election; obtaining support from other political parties
2 and from civil society; organising media communications and providing support to
3 all people in difficulty.

4 There is nothing criminal about any of this. No common plan was discussed.

5 Absolutely no criminal intent here to engage in acts of violence or abuse against the
6 civilian population. On the contrary, this document shows that people at this
7 alleged meeting were going to call for calm.

8 So it's only in the Prosecution's mind that such a harmless document containing a call
9 to remain calm all of a sudden becomes a common plan intended to kill civilians.

10 I'll now move onto another topic, so I think this might be the right moment.

11 PRESIDING JUDGE TARFUSSER: [16:02:28] Okay, thank you. I just would like to
12 know if possible how you want to continue tomorrow, I mean.

13 MR ALTIT: [16:02:42] (Interpretation) Yes, your Honours. If everything goes well,
14 we expect, well, not more than one session tomorrow I would think. Perhaps a few
15 unexpected minor points, technical things, but one session.

16 PRESIDING JUDGE TARFUSSER: [16:03:05] Okay. Then I ask the Defence for
17 Mr Blé Goudé if they are ready to start tomorrow, and then we go to Monday, right?
18 Is that okay?

19 MR KNOOPS: [16:03:16] Yes, Mr President, that's fine. Thank you very much.

20 PRESIDING JUDGE TARFUSSER: [16:03:19] Okay. So we have tomorrow three
21 regular sessions in any case and then we go to Monday.

22 Thank you very much. The hearing is adjourned to tomorrow at 9.30.

23 THE COURT USHER: [16:03:27] All rise.

24 (The hearing ends in open session at 4.03 p.m.)