

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, 2 October 2018

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

11 THE COURT USHER: [9:31:39] All rise.

12 The International Criminal Court is now in session.

13 Please be seated.

14 PRESIDING JUDGE TARFUSSER: [9:32:01] Good morning. Good morning to
15 everybody.

16 New day. I give immediately the floor to Mr MacDonald for the whole day, I think, I
17 imagine.

18 MR MACDONALD: [9:32:31] It's a marathon, your Honour, unfortunately. We are
19 aiming hard, your Honour, at finishing today. If there are no issues, because
20 unfortunately yesterday we lost the equivalent of about a session. So we'll do our
21 best.

22 PRESIDING JUDGE TARFUSSER: [9:32:58] You have all the time you need,
23 Mr MacDonald.

24 MR MACDONALD: [9:33:04] Thank you, your Honour.

25 Let me now continue on the course of conduct that was carried out pursuant to or in
26

1 furtherance of a state or organisational policy to commit such attack. So basically the
2 second contextual element that is being contested or challenged by the Defence.

3 Mr Blé Goudé contests that there was a policy itself to commit an attack directed
4 against the civilian population.

5 At paragraph 15 of his motion, he challenges that the FDS operation and the
6 roadblocks were not -- or argues, sorry, that they were not intended to target
7 perceived pro-Ouattara civilians. Instead, he argues that they were intended to
8 protect the population from the rebel forces. Put another way, Mr Gbagbo or the
9 pro-Gbagbo forces were combating opposing armed groups, not targeting civilians.

10 The Prosecution submits that the manner in which the attack was carried out shows
11 that the civilian population perceived as supporting Mr Ouattara was the primary
12 object of the attack. It was not an incidental object. On this basis, a policy to attack
13 the civilian population can be found. We have set out these submissions in
14 paragraph 325 and following of our response.

15 The pattern that I referred to yesterday before closing show that the civilian
16 population perceived as supporting Mr Ouattara was the primary object of the attack.

17 So let me come back briefly on these patterns. The first pattern demonstrates that
18 civilians were targeted as it was aimed against actual or perceived Ouattara-political
19 activists and sympathisers. At demonstrations, activists and sympathisers were not
20 targeted with conventional law-enforcement methods, but with indiscriminate fire or
21 grenades. And this we can see, once again, from the 16 December incident and 3
22 March charged incidents. During the 16 December incident, demonstrators were
23 also targeted in large numbers and in different locations within Abidjan.

24 As mentioned yesterday, perceived political supporters were sometimes executed as
25 with the 6 December incident in Adjamé-Boribana. This evidentiary pattern shows

1 that those civilians were the primary target of the attack.

2 Your Honours, the second pattern demonstrates that neighbourhoods inhabited by
3 civilians perceived as Ouattara supporters were attacked. During the 12 April
4 charged incident, civilians were killed and/or raped around their place of residence as
5 the pro-Gbagbo forces went door to door.

6 During the 25 to 28 February charged incident, victims were found at a mosque.

7 Again, attacks at mosques particularly show civilian targeting; 15 March in
8 Port-Bouët II. The militia and BAE gendarmerie attacked and killed an imam and
9 others. On 19 March, CRS1 and GPP raided the imam's house in Williamsville.

10 Witness 440 testified that as a policeman, he was constantly asked to verify whether
11 there were weapons at mosques, but that he never found any. He sometimes met
12 militia members on these missions, despite the fact that only the judicial police were
13 authorised to carry out searches. This second evidentiary pattern also demonstrates,
14 your Honours, that the civilian population perceived as supporting Mr Ouattara was
15 the primary target of the attack.

16 The third pattern, targeting of civilians following identity checks, also shows that
17 these were aimed primarily at the civilian population perceived as supporting Mr
18 Ouattara. Mr Blé Goudé argues at paragraph 22 of his motion that the roadblocks'
19 primary objective was to identify individuals cooperating with rebel forces.

20 Whatever their purpose, the way roadblocks were operated shows that the civilian
21 population perceived as supporting Ouattara was the primary target. Witness 87
22 interviewed youths holding roadblocks who stated they were looking for northerners
23 with northern features and Muslim-sounding names and cars with northern number
24 plates. On camera, the youths also explained that other West Africans wanted to
25 attack Côte d'Ivoire.

1 As part of his police duties, Witness 440 testified that he received reports that Young
2 Patriots at roadblocks identified victims based on facial features and identity checks.
3 Young Patriots branded all individuals from the north and bordering countries as
4 potential rebels. They killed those who they took to be rebels.

5 Witness 435 explained that the majority of the victims of burning, following identity
6 checks at roadblocks, were northerners and Western Africans from Mali and Burkina
7 Faso. These factors show again that the civilian population perceived as Ouattara
8 supporters were the primary target of the attack.

9 Pro-Gbagbo youth and militia identified individuals based on suspicions founded on
10 political, national, ethnic or religious grounds. Their use in roadblocks demonstrates
11 that it was a specific population rather than particular individuals that was being
12 targeted. By the same token, it also shows that it was civilians rather than
13 combatants that were being targeted.

14 The fourth pattern, the shelling or indiscriminate fire in areas densely populated by
15 perceived Ouattara supporters was directed against the civilian population. And
16 this is shown once more by the 3 and 17 March charged incidents.

17 In particular as regard to the 17 March incident, the resulting number of victims was
18 high, and as I've indicated yesterday, no measures were taken to prevent or minimise
19 civilian casualties. Instead, instances of this type were repeated.

20 Now, Mr Blé Goudé submits at paragraph 29 of his motion that the activity of
21 opposing armed groups refutes the organisational policy. Mr Gbagbo appears to
22 argue the same since he submits in annex 3, paragraph 631 that the FDS were attacked
23 and that this shows there was no plan to attack the civilian population.

24 Opposing armed groups were present in Abobo and indeed they attacked the FDS
25 there. But their presence or activity in Abobo does not refute that pro-Gbagbo forces

1 directed an attack against the civilian population perceived as supporting Mr
2 Ouattara in Abidjan.

3 The civilian population, your Honours, must be the primary object of the attack, but it
4 does not need to be the exclusive target. Similarly, the pro-Gbagbo forces may carry
5 out an attack directed against a civilian population while simultaneously engage in a
6 response to the activities of an armed group. Even assuming that there was a
7 military purpose behind FDS operations in Abobo, this does not exclude that the
8 civilian population was the primary target.

9 As I've just detailed when going through the patterns, the way the attack was carried
10 out by the pro-Gbagbo forces in Abidjan actually demonstrates that it was directed
11 against the civilian population perceived as supporting Mr Ouattara. Consequently,
12 a policy to commit such an attack is found.

13 Regarding opposing armed groups, including the presence of the Commando
14 Invisible, we've explained in paragraphs 340, 353 to 358 of our written response
15 additional factors that also show that the attack was directed against a civilian
16 population. These are, one, the nature of the threat that these groups represented;
17 two, the means used to combat them; and three, the lack of preventive measures to
18 protect civilians. These factors actually show that the civilian population was the
19 primary object of the attack.

20 Your Honours, evidence of other non-Article 7(1) acts also demonstrate the targeting
21 of the civilian population. Speeches assimilating civilians perceived as Ouattara
22 supporters to combatants demonstrate this. These speeches made no distinction
23 between lawful and unlawful targets. This further demonstrates that the civilian
24 population was being targeted. Examples of these speeches can be found in words
25 of the RTI presenter on 8 p.m. broadcast of 25 February, and I'll quote him:

1 (Interpretation) "The rebels and other militants of the RHDP for some time now have
2 been carrying out urban guerilla activities in Abidjan district and in several towns of
3 the country."

4 (Speaks English) This example also demonstrates how the state- run RTI was used in
5 support of the policy, and there are many other such examples on the record of the
6 case. I don't know how many excerpts we have from the RTI.

7 Mr Blé Goudé in his speech on 26 March at the Place de la République stated, and I
8 quote:

9 (Interpretation) "In their activities, Alassane Ouattara and his militants slit the throats
10 of many of our compatriots."

11 (Speaks English) In addition to the way in which the attack was carried out, the policy
12 to commit an attack directed against the civilian population can be found on the basis
13 of additional factors, which I will now address.

14 The policy can be attributed to Mr Gbagbo and his inner circle, including
15 Mr Blé Goudé and/or the pro-Gbagbo forces; that there was a policy at the level of the
16 pro-Gbagbo forces is shown in particular by the following factors which are set out in
17 paragraphs 396 to 397 of our response: (a) beyond carrying out the attack following
18 the patterns I already mentioned, the pro-Gbagbo forces hierarchically organise and
19 followed orders. They coordinated, collaborated with or supported one another.
20 Their superior officers did not prevent, punish or repress the crimes of their
21 subordinates.

22 That there was a policy at the level of Mr Gbagbo and the inner circle, which included
23 Mr Blé Goudé, is shown by the factors set out in paragraphs 413 and 415 of our
24 written response. It is also more fully detailed under section 5 dealing with the
25 common plan. Although the common plan and the policy are distinct legal concepts

1 with different scope and means of proof, in this case the same evidence is relevant for
2 both, in particular, the following factors are relevant, we submit, your Honours:
3 Mr Gbagbo and the inner circle, including Mr Blé Goudé, shared the motivation to
4 keep Mr Gbagbo in power by all means. That's the number one element.
5 They recruited, trained, and armed pro-Gbagbo youth and militia. The use of the
6 GPP alone demonstrates that they were willing to use violence against civilians.
7 They requisitioned the army before the second round of the election, anticipating use
8 alongside the rest of the FDS to attack the civilian population during the post-election
9 violence.
10 They issued instructions and incitements to the pro-Gbagbo youth, militia and the
11 FDS that furthered the attack.
12 Their actions in the implementation of the attack were coordinated.
13 They used rhetoric which sent a clear message that Mr Gbagbo was there to stay.
14 They encouraged and endorsed the criminal actions of the pro-Gbagbo forces.
15 They failed to prevent, repress or report the crimes committed and denied
16 responsibility for them.
17 Your Honours, to conclude my presentation on the policy, the Prosecution submits
18 that the evidence demonstrates that between 27 November 2010 and/or around 12
19 April 2011 in Abidjan, pro-Gbagbo forces carried out a widespread *and systematic
20 attack directed against the civilian population perceived as pro-Ouattara supporters
21 and that this attack was carried out pursuant or furtherance of a State or
22 organisational policy to carry out such attack.
23 We submit that a reasonable Trial Chamber could find that the contextual elements
24 are proven to the standard for the case to move forward to the next stage.
25 Your Honours, I will now move on to the modes of liability, individual criminal

1 responsibility, to be more precise, under Article 25, and I will finish with a specific
2 mode of liability against or charge against Mr Gbagbo, which is Article 28.

3 Let me now start with mode of liability under Article 25(3)(a).

4 But a preliminary matter first. Throughout the process of responding to Mr Gbagbo
5 and Mr Blé Goudé's motion, the Prosecution has obviously reevaluated its evidence
6 with a critical eye with the goal of ensuring the fairness and efficiency of the
7 proceedings.

8 In response to Mr Blé Goudé's arguments on the nexus between Mr Blé Goudé and
9 the 3 and 17 March incidents, the Prosecution, as written in its response, does not
10 oppose the second ground of relief Mr Gbagbo requests, specifically, the dismissal of
11 the charges against him related to the third and fourth incidents -- sorry,
12 Mr Blé Goudé's request.

13 Now, your Honours, in the event that this relief is granted, let us clarify that it still
14 nevertheless does not create any substantive changes to the crimes or mode of liability
15 facing Mr Blé Goudé. He would still be charged for the crimes of murder, rape and
16 other inhumane acts or attempted murder and persecution committed in the context
17 of the incidents of 16 December, 25 to 28 February, and 12 April, but not for 3 and 17
18 March.

19 Coming back to Article 25(3)(a). The Prosecution submits that there is at minimum
20 evidence, if accepted, on which a reasonable Trial Chamber could convict both
21 Mr Gbagbo and Mr Blé Goudé of all the crimes charged based on this mode of
22 liability.

23 As I have just explained in my presentation yesterday and today, the evidence
24 presented shows that a common plan existed to maintain Mr Gbagbo in power by all
25 means, including by committing the crimes charged. And as I've just mentioned,

1 this common plan evolved to include a policy by 27 November 2010 to launch a
2 widespread and systematic attack against civilians perceived to support Mr Ouattara.
3 Now, this fact is also demonstrated by the evidence, including as to Mr Gbagbo and
4 Mr Blé Goudé's respective contribution to the common plan, as we explain at
5 paragraph 1107 of our response.

6 Now, let me today highlight the following factors as evidence of the criminality of the
7 common plan.

8 First, the violence. The use by the pro-Gbagbo forces of violence against the civilian
9 population is evidence of the criminality of the common plan.

10 Second, the reliance on youth and militia groups. The pre-election recruitment,
11 training and arming of pro-Gbagbo youth and militia, in particularly the GPP and the
12 issuance of instructions and incitements to them in the implementation of the
13 common plan is evidence of the criminality of the common plan.

14 Third, Mr Gbagbo requisitioned the FANCI on 14 November 2010. And we'll come
15 back on that in a moment.

16 Fourth, the instruction and incitements to the FDS that furthered the implementation
17 of the common plan.

18 Fifth, the rhetoric used. The rhetoric used by Mr Gbagbo and members of the inner
19 circle, including Mr Blé Goudé, sent a clear message that Mr Gbagbo was there to stay
20 and that no other scenario was plausible. This rhetoric evidenced the criminality of
21 the common plan.

22 Sixth, the failure to prevent, repress or report the crimes committed and the denial of
23 responsibility for these crimes evidenced the criminality of the common plan.

24 Seventh, the encouragement and endorsement of the criminal actions of the
25 pro-Gbagbo forces is evidence of the criminality of the common plan.

1 Finally, your Honours, the fact that the actions in the implementation of the common
2 plan were coordinated is evidence of the existence of the plan.

3 Mr Blé Goudé argues in a nutshell at paragraph 493 to 501 and to sections III.3 and VI
4 of his motion that the Prosecution has failed to present sufficient evidence of any of
5 the requisite elements under Article 25(3)(a). Mr Gbagbo argues in annex 5 at
6 paragraph 12 that the Prosecution has failed to prove the existence of a common plan
7 such that the Prosecution case under Article 25(3)(a) must fail.

8 Let us answer some of these more specific arguments.

9 Because I cannot possibly address each and every argument raised by the Defence,
10 instead I will focus on four factual aspects that cut across the different requisite
11 elements under Article 25(3)(a), together with some of the Defence arguments related
12 to these aspects. For our detailed submissions again, your Honour, complete
13 response, I refer your Honours to section V of the Prosecution's response and also the
14 trial brief for the narrative.

15 The four factual aspects upon which I will focus today are:

16 First, Mr Gbagbo's position and role at the centre of the common plan. I will address
17 some of his contributions: His incitement of the forces loyal to him to commit the
18 crimes and his coordination of the implementation of the common plan.

19 Second, I will address Mr Blé Goudé's role as a vital intermediary between
20 Mr Gbagbo and the pro-Gbagbo youth. Here I will also address Mr Blé Goudé's
21 essential role in the recruitment and enlistment of pro-Gbagbo youth.

22 Third, I will address the use of the GPP militia during and in preparation of the
23 post-election violence.

24 And last and fourth, I will address Mr Blé Goudé's instructions and incitement to the
25 pro-Gbagbo youth and militia.

1 Let me begin then with Mr Gbagbo's position and role at the centre of the common
2 plan.

3 Mr Gbagbo's contribution must be understood within the context of his position, his
4 role.

5 Like I've stated just at the very beginning, he was the primary beneficiary of the plan
6 to keep him in power by all means. That's the purpose.

7 He was president and commander-in-chief of the national armed forces.

8 And, as we'll detail, he had control over the pro-Gbagbo youth and militia groups.

9 As put by one of the Jeunes Patriotes attending Mr Blé Goudé's rally at place CP1 on
10 19 March 2011, and I quote: (Interpretation) "If President Gbagbo resigns, we shall
11 remain quiet."

12 (Speaks English) Mr Gbagbo was the cause that pro-Gbagbo forces were prepared to
13 fight for. Mr Gbagbo's contributions to the common plan were essential. If he had
14 stepped down, Mr Gbagbo would have radically changed the course of events. The
15 crimes would not have been committed or at least would have been committed in a
16 significantly different way.

17 As I've indicated already, I will address some of Mr Gbagbo's contribution in my
18 submission today. Otherwise, your Honours, I refer obviously to our response at
19 paragraph 1209 and following, but there is also Mr Gbagbo's confirmation decision at
20 section 4, paragraph 276.

21 Let me now turn to the fact that Mr Gbagbo incited loyal forces and coordinated the
22 implementation of the common plan.

23 Just to let you know, there may be a mistake to the transcripts. What I would
24 propose is we'll come back after the next break and make any, indicate any
25 corrections. I think it would be easier than --

1 PRESIDING JUDGE TARFUSSER: [10:02:51] Absolutely, yes.

2 MR MACDONALD: [10:02:54] Thank you.

3 Mr Gbagbo incited the forces loyal to him to commit crimes.

4 First, he ordered them on 27 August 2010 at Divo not to question the lawfulness of the

5 orders they received, and he made clear to them that they would not be punished for

6 their crimes. Second, he deliberately did not take the measures within his power to

7 prevent or halt the commission of the crimes committed during the post-election

8 violence. He deliberately did not report and punish the perpetrators. In so doing

9 he further amplified the message of official tolerance towards the crimes.

10 Your Honours, Mr Gbagbo coordinated the implementation of the common plan by

11 holding frequent meetings and regular dialogue with his inner circle and other

12 members of his support network. He either directly or through members of the

13 inner circle tasked his subordinates with implementing or incited them to implement

14 the common plan.

15 Mr Gbagbo argues at annex 5, part 5.1 that none of his speeches contains indicia of a

16 common plan or a call to violence. Now we addressed these at paragraphs 1610 and

17 following of our response.

18 I will limit my submissions today to Mr Gbagbo's speeches on 27 August 2010 at Divo.

19 Our submission is that this speech demonstrates Mr Gbagbo's contempt, his contempt

20 towards the role of the judicial system.

21 And I'll quote from the speech:

22 (Interpretation) "There is a demarcation line for the CRS, there is white and there is

23 the black ... the CRS is not at the centre. You are not judges, it is the judges who look

24 at things to determine whether there are mitigating circumstances or well ... if there

25 are ... well, it's the judges, that's the judges! You are not the judges, hein! You are

1 combatants of republican legality and that is it. When it is said that the republic is
2 under threat, you appear to re-establish the republican order. If there is damage, the
3 judges will re-establish matters subsequently."

4 (Speaks English) I read quite slowly and I'm following the translation for your benefit,
5 your Honours.

6 By telling members of the CRS that they were not to use their judgment, but to simply
7 obey orders, Mr Gbagbo set the stage for the next step of his logic. If there were
8 dégâts, damages or casualties, we submit, and I quote, (Interpretation) "the judges
9 will re-establish matters subsequently" (Speaks English) Mr Gbagbo was inviting the
10 members of this unit to act without consideration for legality. And in the same
11 speech, Mr Gbagbo referred to political opponents as bandits and enemies.

12 The occasion of the Divo speech, here the establishment of a compagnie républicaine
13 de sécurité, attracted dignitaries such as the minister of interior, the director general
14 of the police, Witness 46, the DGPN, as well as the mayor of Divo and the conseil
15 général and others. Contrary to Mr Gbagbo's argument, the meaning and effect of
16 his words is in no way diminished by the fact that Mr Soro and other former rebel
17 ministers were then members of the government. We recall that their inclusion was
18 the result of the Linas-Marcoussis agreement, and Mr Gbagbo had been delaying the
19 holding of elections since 2005.

20 Your Honours, impunity and denial were the norm under Mr Gbagbo's regime. This
21 atmosphere made it clear, made it clear in the mind of the pro-Gbagbo forces that
22 they could commit crimes against Mr Gbagbo's political opponents, against actual or
23 perceived supporters, and suffer no consequences.

24 Now of course I'll return to this aspect of my submission when dealing with Article
25 28.

1 Let me now discuss the 14 November requisition.

2 Mr Gbagbo requisitioned the army on 14 November 2010. And our point is he did
3 not need to requisition the armed forces to secure the elections. He did so to prepare
4 the means to clamp down on civilians who supported Mr Ouattara.

5 Mr Gbagbo argues in his motion at annex 5, paragraph 281 that the requisition
6 provided, and I quote (Interpretation) "a legal framework within which the army can
7 take operational decisions." (Speaks English) Indeed, your Honours, the requisition
8 did provide a legal framework for deploying the army, together with all its means
9 and battlefield resources. As Witness 9 explained, officers do not deploy an army in
10 a locality under the competence of the police or gendarmerie without a requisition,
11 and I quote (Interpretation) "As soon as the army is requisitioned, it comes with all its
12 resources."

13 (Speaks English) The requisition should be seen within the context of events before
14 2010 also, the background, because there is a huge background in this case, a huge
15 context. And I refer in particular to the previous requisition of 22 March 2004. And
16 you may remember the testimony of 184 that following which pro-Gbagbo forces
17 between 24 and 26 March 2004 violently repressed plan RHDP demonstrations in
18 Abobo and other areas of Abidjan. Witness 184 noted at least 56 deaths in Abobo.
19 You also heard Witness 48 on this. And that was the last previous time Mr Gbagbo
20 had requisitioned the army. The other time before that was in 2000. So during his
21 mandate of 10 years, between October 2000 to 11 April, he requisitioned the army
22 three times only, only three times. And each time violence ensued, followed. And
23 that is an undeniable fact.

24 The existence of a requisition of the FANCI on November 2010 demonstrates that
25 Mr Gbagbo intended to employ the armed forces after the elections, even before the

1 occurrence of any violent incident which may have justified their intervention. It
2 was not necessary. Security measures for the elections were already facilitated by
3 the CCI under the Ouagadougou Accords. The requisition, however, was a
4 unilateral measure taken by Mr Gbagbo without consulting the FAFN or UNOCI and
5 therefore taken outside the agreed joint framework securing the elections. And as
6 Witness P-10 testified, Mr Guiai Bi Poin, the 14 November decree remained in
7 application beyond the elections and was the legal basis for the continued
8 mobilisation of the armed forces, including on 16 December 2010.

9 Let me now turn to Mr Gbagbo's meetings.

10 Mr Blé Goudé argues that the evidence that Mr Gbagbo's meetings related to the
11 planning and implementation of the policy to attack civilians is insufficient. But as I
12 will discuss, the evidence shows that during these meetings, Mr Gbagbo received
13 information about the preparations for and conduct of the attack and issued plans,
14 instructions and incitements for its implementation. Now I refer to Mr Blé Goudé's
15 arguments at paragraphs 396 to 417. And these are addressed in our response, your
16 Honours, at paragraph 1560 and following.

17 Meanwhile, Mr Gbagbo observes in annex 5, paragraph 20, that it is striking that the
18 Prosecution has not shown a meeting at which the common plan was discussed or
19 conceived. This argument is predicated on a misunderstanding of the legal notion of
20 the common plan, we submit. As we argue in our response, there is no need to show
21 that the common plan was expressly formulated in a meeting of the members of the
22 common plan. A common plan need not be written and need not be explicit.
23 Actually, the contrary would be, we submit, very surprising. But it can be inferred
24 from circumstantial evidence, such as the subsequent concerted actions of the
25 co-perpetrators, the actions. Contrary to Mr Gbagbo's arguments, there is no need to

1 provide evidence of a meeting during which the common plan was discussed and
2 realised. And once again, rarely that's the case that it is in one single meeting.

3 Mr Gbagbo also argues at annex 5, paragraph 26, that the Prosecution has failed to
4 prove any order to attack the civilian population. We submit that he misses the
5 point. Under Article 25(3)(a), the Prosecution is required to prove that a common
6 plan existed, that Mr Gbagbo was part of it, and that he made an essential
7 contribution to the common plan. None of these elements is predicated as a matter
8 of law on the existence of any particular order expressly requiring Mr Gbagbo's
9 subordinates to attack the civilian population.

10 I'll just make a quick pause here and I refer to the amicus curiae brief that was filed in
11 Mr Gbagbo's confirmation proceedings, which deals with the matter of the policy and
12 how it is rarely proven by direct written orders and the arguments, legal arguments
13 that are developed therein, because I think they're quite relevant.

14 Your Honours, in any event, the Prosecution's case is that Mr Gbagbo did issue orders
15 that prompted the commission of crimes, prompted the commission of crimes, as I
16 will explain when I address the individual criminal responsibility under 25(3)(b).

17 But again, as examples, I've alluded to this, I will not detail it more, but on 15
18 December, and if you look at all the evidence in our response, Mr Gbagbo gave
19 instructions to prohibit the 16 December march. And we submit that by sending his
20 troops against political opponents marching in the streets of Abidjan, Mr Gbagbo was
21 at a minimum aware that in the ordinary course of events crimes were going to be
22 committed.

23 In addition, the use of pro-Gbagbo youth, FESCI members, for instance, and GPP, to
24 violently repress the march shows that the security operation for this march was not
25 only a matter of law enforcement, but that Mr Gbagbo and his inner circle, including

1 Mr Blé Goudé, intended to repress this march using any available means, including
2 violence against civilians to keep him in power.

3 Ask yourself the questions, why are youth erecting roadblocks and is that being
4 permitted? What are GPP militia doing? What is FESCI, what are FESCI members
5 doing with weapons?

6 On 24 February 2011, in a meeting at the presidential palace, Mr Gbagbo instructed
7 the FDS generals to do everything they could to liberate the MACA-Abengourou axis
8 in Abobo, the objective was to liberate N'Dotré and not to cede Abobo. We submit
9 that Mr Gbagbo was at a minimum aware that his instruction would lead to the
10 commission of crimes. We see this when he asked General Mangou, and you may
11 recall his testimony on that, whether the civilian population was still in the zone,
12 which Mr Mangou affirmed.

13 Now, Mr Mangou testified that Mr Gbagbo then stated, and I quote:

14 (Interpretation) "Make sure that there are not too many deaths."

15 (Speaks English) Now, Mr Gbagbo's 24 February and 15 December orders
16 demonstrate the element of criminality of the common plan and Mr Gbagbo's intent
17 and knowledge, as we explain in paragraph 1230 and following of our response.

18 Another example, on 3 April 2011, towards the end, in the presence of FDS officers
19 who then remained loyal to him, Mr Gbagbo told his troops to continue to fight.

20 Again, you have the testimony of Witness 9, and I quote, I quote Mr Gbagbo through
21 the words of Mr Mangou:

22 (Interpretation) "Okay. Resume fighting. Mangou is ... the general is there. Go on,
23 resume fighting."

24 (Speaks English) Six days later on 9 April 2011, a communiqué of the government
25 was issued asking all Ivoiriens to remain mobilised until the rebirth of Côte d'Ivoire.

1 Meanwhile, Mr Blé Goudé who himself had gone into hiding, instructed the
2 pro-Gbagbo forces on or about 5 April, because he's in hiding, it's hard to date it, to
3 continue to fight and to reinforce roadblocks. By issuing such instructions,
4 Mr Gbagbo was again, at minimum, aware that in the ordinary course of events,
5 crimes would be committed by his subordinates, in particular because of his
6 knowledge of the use of militia members, such as the GPP and Liberian fighters.
7 Mr Gbagbo took part in conceiving and implementing the common plan, and as this
8 evidence shows, did not intend to give up his plan until the very end.

9 Your Honours, Mr Gbagbo states in the subheading at section 4.4.4 of annex 5 of his
10 motion that, and I will quote:

11 (Interpretation) "It emerges from the case file that President Gbagbo never gave any
12 operational order whatsoever, even a vague order. He simply said during official
13 meetings with FDS officials, he simply encouraged them to maintain republican
14 responsibility and to ultimately dislodge armed gangs that were terrorising the
15 population."

16 (Speaks English) He argues that Witness 9 and other witnesses did not really receive
17 instructions from him during the crisis and that, I quote:

18 (Interpretation) "If Mangou had received instructions, they would have come from
19 the president through the minister of defence."

20 (Speaks English) And that's at paragraph 394 of their motion. Mr Gbagbo maintains
21 the fact of contact between himself and Witness 9 does not mean that instructions
22 were given.

23 Your Honours, I've just described three orders, operational orders given by
24 Mr Gbagbo. Let me also further quote from the evidence of Witness 9 in answer to a
25 question from the Prosecution, and I quote. My question was:

1 (Interpretation) "During the post-election crisis, between 28 November 2010, that is
2 and 11 April 2011, who gave you instructions, orders and missions, regardless of the
3 terminology used, who is the person or who are those persons who gave you
4 instructions?"

5 (Speaks English) The answer is, "Le Président Laurent Gbagbo."

6 (Interpretation) "President Laurent Gbagbo."

7 (Speaks English) I quote again the testimony of Witness 9 during an exchange this
8 time between the Presiding Judge and the witness, and the question read as follows:

9 (Interpretation) "Did the president ever give you any instructions or operational
10 orders, yes or no?"

11 "Yes, Mr President. When we report to him, we provide an operational report.

12 And when he gives us instructions, that instruction takes on an operational nature."

13 (Speaks English) Your Honours, I will now proceed to discuss Defence arguments
14 regarding some of the meetings during the course of which, as the evidence shows,
15 Mr Gbagbo gave orders.

16 I will now come back on the details of the 15 December. What I'll just, although
17 what I want to discuss on this point is what goes more to the assessment of the

18 evidence in light of the arguments of the Defence. Mr Blé Goudé argues that

19 Witness 10 did not say who recommended prohibiting the march and that Mr

20 Mangou testified that it was the generals who recommended the march be stopped
21 because they could foresee disturbances. That's at paragraph 404 of their motion.

22 Mr Gbagbo says that the Prosecution has not produced evidence to show that

23 Mr Gbagbo ordered FDS personnel to deploy to block all access to the RTI. You can
24 find that at paragraphs 433 and 435 of their motion in annex 5, and argues with

25 reference to Mr Mangou's testimony that, I quote:

1 (Interpretation) "P-9 says nothing whatsoever about any order or instruction from
2 President Gbagbo."

3 (Speaks English) Your Honours, there can be no doubt that Mr Gbagbo instructed his
4 government, including the FDS to prohibit the march.

5 I'll first quote Mr Mangou:

6 (Interpretation) "Question: During that meeting, what was -- did you receive any
7 instructions from the president?

8 Answer: Yes, we received instructions. Instructions as follows, the march should
9 not take place, it has been prohibited."

10 (Speaks English) Taken at its highest, it's clear.

11 Second, Mr Gbagbo's instructions to prohibit the march were repeated and
12 disseminated by subordinates. Mr Mangou testified, first, that the security
13 arrangements put in place following his meeting with Mr Gbagbo; second, that he
14 received a memo from the minister of interior prohibiting the march; third, that the
15 minister of defence also told him in a meeting that the march was prohibited by the
16 government; and fourth, Mr Mangou testified that he told Mr Soro that he could not
17 let his men through, and I quote:

18 (Interpretation) "The government has instructed us that the march has been
19 prohibited."

20 (Speaks English) Your Honours, the evidence shows clearly, and I refer to our
21 arguments again in our response that while the military authorities may have been
22 responsible for putting in place the security arrangement for 16 December march,
23 these measures were taken pursuant to Mr Gbagbo's order I just described.

24 After, in the evening of 16 December, there was a further meeting, your Honour, your
25 Honours, sorry. Witness 11 testified that there was a meeting at the état-major at the

1 end of the operations on 16 December. Mr Mangou and other FDS generals received
2 the report from Witness P-46, the DGPN. This report included a discussion of both
3 FDS and civilian casualties.

4 Now, Mr Mangou testified that he reported these casualties to Mr Gbagbo that same
5 night and in fact had been doing so all day. The reporting of civilian casualties to
6 Mr Gbagbo is further evidenced by his speech to the nation broadcast on the RTI on
7 21 *December 2010, when he acknowledged that there were civilian deaths during the
8 16 December 2010.

9 On the evening of 16 December 2010, Mr Gbagbo met with several ministers for
10 several hours, and these included his minister of defence, Mr Alain Dogou,
11 Mr Blé Goudé was also present, and I may add just for your Honours immediately
12 that the meeting, the departure meeting was at 1.04 in the morning and the transcript
13 of the logbook reads 20.42. So there is a mistake in our transcript of the logbook at
14 evidence number CIV-OTP-0088-0863, more specifically at page 1014. Again, the
15 departure hour is 1.04 in the morning, instead of 20.42.

16 Now, key members of Mr Gbagbo's inner circle, including FDS officers, were also
17 received at the presidential residence at the time of this meeting and they included,
18 your Honours, Mr Bertin Kadet and Mr Dogbo Blé.

19 Now, Mr Blé Goudé alleges that the Prosecution did not provide evidence of the
20 content of this meeting. However, we submit a reasonable inference can be
21 established from the evidence of the events of the day as well as the content of the
22 meeting of FDS officers a few hours earlier, and Mr Mangou's evidence that he
23 reported to Mr Gbagbo that day, and that Mr Gbagbo discussed with his ministers the
24 repression of the 16 December march.

25 Now, to this extent, the Prosecution corrects in its response at paragraph 1581

1 regarding Mr Gbagbo's meeting with the ministers and members of the inner circle on
2 16 December. Sorry, there is a mistake here. I'll come back to that.

3 Your Honours, on 12 January 2011, there was a meeting at the presidential residence,
4 and I'll now address that meeting.

5 Mr Gbagbo presided over a meeting where Mr Blé Goudé, Ministers Dogou,
6 Guiriéoulou and the high command of the FDS was present. Mr Blé Goudé argues
7 at paragraph 407 to 408 of his motion that no instructions were given by Mr Gbagbo
8 at this meeting and that it was just an ordinary meeting expected in such a crisis
9 period that involved a general security update and nothing specific to Abobo. We
10 submit that this argument fails for several reasons.

11 First, it ignores Witness 10's clear recollection that the meeting included a discussion
12 of security matters in Abobo. Witness 10 specified that the meeting was expanded to
13 include other members of government and testified that it was quite possible that
14 Mr Blé Goudé would have participated if Mr Gbagbo found it necessary.

15 Second, Witness 47 testified that Mr Gbagbo, and I quote (Interpretation) "urges us to
16 resume fighting because our mandate is to make the situation safe for the
17 population ... the populations of Anyama and of Abobo in particular ..."

18 (Speaks English) Witness 9 testified that Mr Gbagbo did not give any particular
19 instruction at this meeting, but he places this in a context by saying, and I quote,

20 (Interpretation) "If he knew that we were requisitioned, that we were doing our job"

21 (Speaks English) alluding to the requisition. In other words, given the requisition of
22 the army --

23 *MR MACDONALD: [10:35:50] -- it was not necessary for Mr Gbagbo to give any
24 particular instruction

25 Whilst Witness 9 makes this point in relation to a supposed January 2011 requisition

1 of the army, which the Prosecution submits and the evidence shows does not exist,
2 the point regarding the effect of Mr Gbagbo's requisitioning of the armed forces is
3 nevertheless well made because the requisition had of course been in effect since 14
4 November 2010, as I've described earlier this morning.

5 And we also, your Honours, and I pause here, detail in our response the motivation,
6 potential motivation why Witness 9 would provide or indicate that there is a
7 requisition at the beginning of January 2011 when no such evidence exists.

8 Third, Mr Blé Goudé's argument ignores the context of the 12 January meeting.

9 After the failure of 11 January 2011, police round-up operation in Abobo, evidence in
10 the form of FDS documents, for instance, the FRAGO 69 and the BQI of 12 January,
11 FDS public statements, and the testimony of FDS witnesses, shows that the FDS began
12 operating in Abobo as if, and this is important, as if there was a war zone, and the
13 inner circle began to treat it as such, despite no such formal declaration having ever
14 been made.

15 For example, on the evening of 12 January 2011, Mr Mangou repeated on the RTI
16 news broadcast of 8 p.m., and now he appeared to read a communiqué, he described
17 the events of 11, 12 January 2011 in Abobo and the deaths of FDS members. He
18 described, and I quote (Interpretation) "such an atmosphere of borderline insecurity
19 and threat of war in which the working members of this municipality were living"
20 (Speaks English) and also the threats of attacks against the FDS. Then he said a
21 curfew was adopted in the commune of Abobo-Gare and Anyama from 7 p.m. that
22 day. Mr Mangou called upon national and international human rights organisations
23 and the national and international community to witness, and I quote: (Interpretation)
24 "These armed attacks against them, assimilable to acts of war and causing major
25 losses of human life within their ranks, places them henceforth in a position of

1 legitimate defence. Consequently, they reserve the right to retaliate from now on,
2 with all the requisite resources, to retaliate in the face of any attack, whatever its
3 origin."

4 "Tous moyens réunis", your Honours, for us (Interpretation) all necessary resources
5 (Speaks English) translates into "all means".

6 The same RTI news broadcast also showed a meeting in which the minister of the
7 interior, Mr Guiriéoulou, addressed the prefects of Côte d'Ivoire. Mr Guiriéoulou
8 was clear, and I quote, that's the minister of the interior again:

9 (Interpretation) "We find ourselves in a set of circumstances which is not normal.

10 Therefore, I have reminded the prefects that we find ourselves in a situation of war
11 and that in such a situation of war specific and special dispositions must be taken,
12 and we mustn't content ourselves with the customary administrative measures, but
13 we must adopt behaviour, we must perform acts, we must react in such a way that
14 corresponds with the situation that we are in, a situation of war."

15 (Speaks English) After the 8 p.m. news broadcast on 12 January, Mr Gbagbo presided
16 over a meeting at the presidential residence with Mr Blé Goudé, Ministers Dogou and
17 Guiriéoulou, and the high command of the FDS. And like I've quoted, Mr Gbagbo
18 exhorted the FDS (Interpretation) "to resume fighting because our mandate is to
19 provide safety for populations ... those of Anyama and Abobo in particular ..."

20 (Speaks English) There is also a video of this meeting, your Honours. The RTI
21 broadcast which corroborates the focus of meeting was to strategize security
22 measures for these same parts of Abidjan. Let me quote the news anchor:

23 (Interpretation) "The president of the republic, Laurent Gbagbo, supreme commander
24 of the armed forces, was involved in this meeting with the generals, well before the
25 chief of staff. The commanders of the Navy, the air force and the land forces, of the

1 CECOS, the gendarmerie and the police, and the army commander general Philippe
2 Mangou provided measures to provide safety for the country, and to make it
3 impossible for any uncontrollable municipalities within Abidjan to become so."

4 (Speaks English) In the same RTI broadcast, the CEMA is shown questioning the
5 impartiality of the UN. He accuses them of colluding with the rebels since after the
6 attack of that morning the UN did not provide any assistance to the FDS.

7 Witness 9 went further, he reaffirmed Mr Gbagbo's position that the solution was for
8 the UN to leave the country. Your Honours, this was clearly not an ordinary
9 meeting. Rather, as the evidence described shows, it was a meeting where
10 Mr Gbagbo and Mr Blé Goudé and the inner circle continued to develop their
11 common plan to maintain power at all costs.

12 I'm going through these meetings, your Honour, and I don't think we'll have to go
13 through them again.

14 Mr Blé Goudé -- and now I refer to 24 February meeting of the Conseil de Ministres
15 and presidential palace meetings.

16 Mr Blé Goudé again argues that the Prosecution had not portrayed the proper context
17 for Mr Gbagbo's meeting on 24 February 2011 at the presidential palace, claiming its
18 objective was to actually protect the civilian population, paragraph 411. However,
19 as I will discuss, if Mr Gbagbo really wanted to protect the civilian population, he
20 would have followed the advice of his generals and he would have declared Abobo a
21 war zone.

22 On 24 February 2011, Ahoua Don Mello, the government's spokesperson, read a
23 communiqué on the RTI issued by the council of ministers following their meeting
24 presided or chaired by Mr Gbagbo that day. The deterioration of the security
25 situation in Abobo was discussed and Mr Gbagbo gave instructions, and I quote:

1 (Interpretation) "To reinforce the security apparatus so that as quickly as possible the
2 population of the municipality of Abobo recovers a situation of peace and tranquility
3 by preventing these rebels causing further damage."

4 (Speaks English) On the same day, after a first offensive in the PK18 neighbourhood
5 of Abobo that proved unsuccessful, Mr Gbagbo in a meeting at the presidential palace
6 with his generals instructed the generals to do everything to liberate the
7 MACA-Abengourou axis and not to cede Abobo. After inquiring again about the
8 presence of the population in that zone, I recall once more that he gave the order, he
9 gave the instructions to make sure that there are not too many dead.

10 Although Mr Blé Goudé correctly notes that Mr Mangou claims to have not discussed
11 the designation of Abobo as a war zone in this particular meeting, Mangou is
12 perfectly clear that around the same time of this meeting he proposed the idea to
13 Mr Gbagbo through the minister of defence and that Mr Gbagbo rejected it, proposed
14 the idea of declaring Abobo a war zone. In other words, Mangou corroborates the
15 evidence of the other witnesses in this respect. And Mr Blé Goudé actually in his
16 response -- his motion, sorry, notes this. Other generals like Witness 47 and 11,
17 testified how Mr Gbagbo rejected Witness 9's request to declare Abobo a war zone.
18 Again, paragraph 411 of his motion. Instead, your Honours, on 25 February 2011,
19 the FDS conducted a second military operation in order to liberate the
20 MACA-N'Dotré axis in Abobo during which mortars were used.

21 Your Honours, declaring Abobo a war zone would have forewarned the civilian
22 population and, more specifically, it would have allowed the civilian population to
23 evacuate. As Witness 9 testified, the situation in Abobo was such that the
24 population was in danger and needed to be taken out of that zone. The idea of
25 declaring a war zone, as Witness 9 explained, was to secure one or two

1 neighbourhoods so that the rest of the population could leave their area within 48
2 hours and come to the secure area. This would allow the army, he said, to determine
3 who was firing on them.

4 Mr Gbagbo argues, your Honours, at annex 5, paragraph 427-428, that the January
5 and February 2011 operations in Abobo were conceived by the generals on 7 January
6 2011, thereby excluding any of his own influence. He also makes the general
7 argument that it is clear from the evidence that he had no role in the execution of the
8 security strategy and that it was the generals who decided upon the conduct of
9 operations in the field.

10 Your Honour, the Prosecution is not required to show, and indeed has not argued,
11 that Mr Gbagbo was involved in operational planning. While the generals' meeting
12 of 7 January took place at the état-major and not in the presence of Mr Gbagbo, this
13 meeting occurred some two to three days after Witness 9 had met with Mr Gbagbo to
14 discuss the worsening situation in Abobo. It was according to Witness 9 at this
15 meeting that Mr Gbagbo requisitioned the FANCI, but I won't come back on that,
16 while the Prosecution -- sorry.

17 But again what is important here is that Witness 9 did testify that, and I quoted him
18 earlier, Mr Gbagbo would give instructions, and it is the military that then would turn
19 this into operational order. And if you look at the events of 7 to 12 January in detail,
20 it is quite clear that Mr Gbagbo is informed and gives instructions in that sense. And
21 that is evidenced by the meetings on 4 January 2011, and it is also against the
22 evidence that you find on 12 January and 24 February meetings at the residence. So
23 from the totality of the events in January and February, it is clear that Mr Gbagbo was
24 very well aware, it is also very clear from the evidence that he's giving the
25 instructions, and it is also very clear that the FDS believed that that zone in Abobo is a

1 war zone and they are simply not protecting the civilian population.

2 Let me now turn to the 3 April 2011 presidential residence meeting between

3 Mr Gbagbo and FDS senior commanders.

4 If you'll allow me just a second, your Honours.

5 (OTP counsel confer)

6 MR MACDONALD: [10:52:45] Sorry, your Honours.

7 The 3 April 2011 presidential residence meeting between Mr Gbagbo and the FDS

8 senior commanders.

9 On 3 April 2011, and I again alluded to this earlier, Mr Mangou and

10 Lieutenant-Colonel Gouanou visited Mr Gbagbo at the residence along with FDS

11 senior commanders Kassaraté, Dogbo Blé, Vagba Faussignaux and Konan Boniface.

12 Their visit was filmed and broadcast on the RTI. The RTI presenter introducing the

13 relevant footage in the broadcast stated, and I quote: (Interpretation) "The army

14 remains, continues to remain solid around the president of the republic, President

15 Laurent Gbagbo, who has a firm hand on command."

16 (Speaks English) Witness 9 testified that he went to this meeting from the South

17 African Embassy -- sorry. Witness 9 testified that he went to this meeting from the

18 South African Embassy, where he had sought refuge, in order to convince Mr Gbagbo

19 to resign, although he did not do this.

20 Your Honour, Mr Blé Goudé at paragraph 416 of his motion tries to minimise the

21 importance of this meeting by arguing inaccurately that, I quote, "The Prosecution

22 does not dispute that no decision was made during this meeting."

23 Your Honours, this is not the Prosecution's case. As I've just said earlier, Mr Gbagbo

24 gave instructions to the FDS officers present at this meeting, and I've quoted Witness

25 9's words, Gbagbo told him to, and I quote in French (Interpretation) "resume

1 fighting".

2 (Speaks English) Let me now turn to Mr Blé Goudé's role as a vital intermediary
3 between Mr Gbagbo and the pro-Gbagbo youth. I can either stop here and start or
4 come back, since it's a different topic, we're talking now of Mr Blé Goudé's role, and
5 we finish with Mr Gbagbo's role.

6 PRESIDING JUDGE TARFUSSER: [10:55:17] I think it's a good moment to take the
7 break and we come back at 11.30. The hearing is adjourned. Thank you.

8 THE COURT USHER: [10:55:27] All rise.

9 (Recess taken at 10.55 a.m.)

10 (Upon resuming in open session at 11.31 a.m.)

11 THE COURT USHER: [11:31:49] All rise.

12 Please be seated.

13 PRESIDING JUDGE TARFUSSER: [11:32:10] Good morning. Good morning once
14 again.

15 Mr MacDonald, the floor is back to you.

16 MR MACDONALD: [11:32:15] Thank you, Mr President.

17 Your Honours, like I was saying just before the break, I will now turn to

18 Mr Blé Goudé's role as a vital intermediary between Mr Gbagbo and the pro-Gbagbo
19 youth.

20 Now, I'll first address his role, and second, I'll also address his role in the enlistment
21 and recruitment of the youth.

22 Now, for Mr Blé Goudé's contributions to the common plan, the Prosecution refers
23 the Chamber to section 4 of Mr Blé Goudé's confirmation decision at paragraph 192
24 and to our response, paragraphs 1240 and following.

25 Now, the Defence argues broadly that the Prosecution has not shown that

1 Mr Blé Goudé was a member of the common plan. Mr Blé Goudé also argues that
2 the Prosecution has failed to prove that Mr Gbagbo controlled the pro-Gbagbo youth
3 via Mr Blé Goudé. Now, these arguments are addressed in our response at
4 paragraphs 1360 and following, 1724 and following, and 1779 and following. So I
5 will refer the Chamber to these written submissions, which I do not propose repeating
6 in full.

7 Mr Gbagbo also advances various arguments regarding his contributions to the
8 common plan. And you can find that at his motion, paragraphs 547 to 662. These
9 arguments are addressed in our response at paragraphs 1798 and following.

10 As we argue, your Honour, in our response, Mr Gbagbo controlled the pro-Gbagbo
11 youth via Mr Blé Goudé, who acted as an intermediary. Mr Blé Goudé minimises
12 his relationship with Mr Gbagbo. He minimises the meaning of his nickname,
13 Général de la rue (Interpretation) Street general (Speaks English) and the significance
14 of his documented visits to Mr Gbagbo's residence.

15 Mr Blé Goudé also downplays the most compelling evidence, the fact that in
16 December 2010 Mr Gbagbo nominated Mr Blé Goudé as is, and I quote in French,
17 (Interpretation) "minister in charge of the youth, vocational training and
18 employment". (Speaks English) It is precisely because of Mr Blé Goudé's ability to
19 control the youths or the Young Patriots as their general, that Mr Gbagbo chose
20 Mr Blé Goudé as his youth minister at this pivotal moment in setting up his new
21 government, after refusing to concede the election.

22 On 10 December 2010, as minister in Mr Gbagbo's new government, Mr Blé Goudé
23 declared during a meeting with the outgoing ministers that he remained 100 per cent
24 general and 100 per cent minister. He also added that he wished this to be very clear
25 as some believed that because he had been appointed minister, they could do

1 anything in the streets without him.

2 Mr Blé Goudé reiterated that he was 100 per cent general and 100 per cent minister on
3 14 December 2010. Mr Blé Goudé stated on that day that should he sense that Côte
4 d'Ivoire was threatened or destabilized, he would take off his suit and put on his
5 famous and symbolic black cap to orient things, although it's a bit brownish, not fully
6 black.

7 As I explained yesterday, on 14 December 2010, Mr Blé Goudé also called a meeting
8 of youth leaders at the Hotel de Ville in Cocody. And the aim of this meeting was to
9 mobilise the Young Patriots and to protect the RTI from demonstrators against the
10 planned march of 16 December. Again, I quote 625, Witness 625 testified, when
11 called to mobilise, the Young Patriots knew what to do: They set up roadblocks.
12 The evidence demonstrates that Young Patriots and members of the FESCI then
13 supported the FDS to violently repress the march on 16 December.

14 Mr Blé Goudé met with Mr Gbagbo that night at the residence. As we argued at
15 paragraph 1726 of our response, although Mr Blé Goudé downplays the significance
16 of his frequent meetings with Mr Gbagbo, they occurred at pivotal moments.

17 Between 16 and 19 December 2010, Mr Blé Goudé was received three times at the
18 presidential residence, where he met Mr Gbagbo and spent many hours.

19 Mr Blé Goudé also met Mr Gbagbo on the evening of 23 February 2011, the night
20 before his message to the youth of 24 February on the RTI. He met him again during
21 evening of 24 February, prior to his mot d'ordre on the morning of 25 February 2011
22 at bar Le Baron. This 24 February 2011 visit to Mr Gbagbo overlapped with a visit
23 with Mr Konan Boniface and the CEMA and was on the same night as the meeting
24 where Mr Gbagbo gave his instructions to FDS generals in relation to Abobo.

25 Mr Blé Goudé correctly notes in his motion at paragraph 525, the substance of the

1 smaller meetings between Mr Gbagbo and Mr Blé Goudé is not always a matter of
2 record, but we submit that a reasonable inference to be drawn from these late-night
3 meetings before and after key incidents is that Mr Blé Goudé and Mr Gbagbo
4 discussed and coordinated their shared aim to keep Mr Gbagbo in power, even if this
5 encompassed violence against actual or perceived Ouattara supporters.

6 Your Honours, particular evidence of Mr Gbagbo's trust in Mr Blé Goudé may be seen
7 when he used Mr Blé Goudé to test Mangou's loyalty around 11 March. This
8 episode, when *Mr Gbagbo trusted his minister of youth over the chef d'état-major,
9 says a lot about their relationship. Mr Gbagbo even said to Mangou, and I quote:

10 (Interpretation) "General, you are alongside Blé Goudé, my right-hand man."

11 (Speaks English) Mr Blé Goudé argues that the Prosecution has shown an insufficient
12 connection between Mr Blé Goudé and Mr Gbagbo to know their relationship. A
13 selection of Mr Blé Goudé's own words, however, demonstrates the privileged nature
14 of their relationship and Mr Blé Goudé's role as Mr Gbagbo's intermediary to the
15 youth.

16 I will quote Mr Blé Goudé's own words from his book published in 2006, *Ma Part de*
17 *Vérité*:

18 (Interpretation) "Let us come back to President Gbagbo. I subscribed to his political
19 platform out of pure conviction. Well before meeting with him, I had already
20 noticed how much he had positively influenced the young people of my generation
21 and how he had stood by our side at the risk of his life in the noble struggle for
22 freedom. Laurent Gbagbo was able to rally young people to his cause beginning
23 with myself, and yet, the privileged relationship that I have with him today did not
24 develop without difficulties."

25 (Speaks English) 0057-1245 at page 1279, the Chamber can find this passage.

1 Furthermore, three days after youth under his control were responsible for killing
2 civilians at roadblocks on 16 December 2010, Mr Blé Goudé spoke to a jubilant crowd
3 in Yopougon after invoking God on their side, and I quote:

4 (Interpretation) "We have the lord of hosts with us and he has an invisible army."

5 (Speaks English) Mr Blé Goudé described Mr Gbagbo as the youth's hope, and I quote
6 Mr Blé Goudé:

7 (Interpretation) "But Ivorians do not have any problem. It is Sarkozy who has a
8 problem. But they just have to make an error."

9 (Speaks English) And the crowd acclaims the message. Mr Blé Goudé continues:

10 (Interpretation) "Let them just make an error, let them just make that error of
11 attacking a single hair on the head of Laurent Gbagbo."

12 (Speaks English) And again, the crowd proclaims the message. Mr Blé Goudé then
13 says:

14 (Interpretation) "Because we are there, yes, you have nothing to do with Gbagbo.

15 You are not facing Gbagbo. You are facing the head of state of Côte d'Ivoire. He is
16 the one who represents the hope of the young people. So we are not going to allow
17 you to joke around with the president in that manner."

18 (Speaks English) Your Honours, Mr Blé Goudé exercised control over the pro-Gbagbo
19 youth through his position as their acknowledged leader, and as a result of his
20 speeches, including his mots d'ordre and the use of rhetoric, which galvanized the
21 youth and mobilised and encouraged them to commit violent acts. Mr Blé Goudé's
22 main strength was his ability to galvanise and rally the pro-Gbagbo youth
23 instantaneously and en masse. For instance, through his mot d'ordre on 25 February,
24 Mr Blé Goudé instigated pro-Gbagbo youth and militia to erect roadblocks and
25 commit violent actions. I will return to this aspect.

1 As described in our response at paragraphs 1282 and following, Mr Blé Goudé also
2 played an essential role in the recruitment and enlistment of pro-Gbagbo youth into
3 the FDS. Mr Blé Goudé argues at paragraphs 655 to 662 of his motion that the
4 Prosecution has failed to prove this.

5 I will address three aspects related to the period 2010-2011 only.

6 First, Witness 435 testified that in September 2010, following a GPP protest march
7 regarding compensation, Ahoua Stallone told GPP president, Bernard Bouazo, that
8 Mr Blé Goudé had asked them to calm down as the president had been informed of
9 their grievances and also requested, and this is the relevant part here, that the GPP
10 initiate training sessions before the elections for Young Patriots, members of the
11 COJEP and of the FPI youth before the elections. The GPP did indeed, your
12 Honours, provide military training to approximately 600-youth members of the
13 FESCI and COJEP, at which time the recruits were integrated into FDS units.

14 This is discussed at paragraph 1200 of our response and also paragraphs 1854 and
15 1855 and we address in full Mr Blé Goudé's arguments.

16 Second point I'll address, on 20 January 2011, during a meeting with the CEMA and
17 other senior FDS commanders, Mr Blé Goudé can be seen, because he's filmed
18 alongside Serges Kassy and Richard Dakouri praising the FDS and announcing a rally
19 at Champroux Stadium to pay tribute to the FDS. A day after, on 21 January, RTI
20 footage showed youths gathered at the état-major and the RTI -- sorry, at the
21 état-major. Now, the RTI journalist indicated and I quote:

22 (Interpretation) "Several hundreds of young people, approximately 2,000, flooded
23 into the état-major of the armed forces to enlist."

24 (Speaks English) Your Honours, the Prosecution further refers the Chamber to
25 paragraphs 434 to 547 of the trial brief, where we describe Mr Blé Goudé's public calls

1 upon the youth to support the army.

2 Mr Blé Goudé further argues at paragraph 659 that the Prosecution cannot rely on his
3 visit to the état-major to demonstrate his essential role in the recruitment of youth into
4 the FDS. The Prosecution does not of course rely on this evidence alone. Rather,
5 we submit that Mr Blé Goudé's statement of support for the FDS is consistent with his
6 role in the recruitment of pro-Gbagbo youth in the FDS. Contrary to Mr Blé Goudé's
7 argument, this statement of support prepared the ground for his 19 March call for
8 enlistment by mobilising the youth in support of the army, and I will quote:

9 (Interpretation) "Unfortunately, wherever there is fighting, wherever a person stands
10 up to fight, that person exposes himself or herself also. Unfortunately, therefore, we
11 have lost some of our brothers in arms, and that is because it is together that we are
12 defending our country, each person in their own domain."

13 (Speaks English) And this was broadcast on 20 January 2011 at 8 p.m. on the RTI news
14 broadcast.

15 On 19 March at the Place CP1 and on 20 March at Port-Bouët, Mr Blé Goudé called
16 upon the youth to enlist in the FDS.

17 On 21 March, the pro-Gbagbo youth responded in great numbers and presented
18 themselves at the army headquarters to enlist.

19 With respect to this recruitment, we refer the Chamber to our motion -- trial brief,
20 sorry, paragraphs 580 to 596. Now, Mr Blé Goudé argues that there was a lack of
21 coordination between him and the FDS with respect to his call for enlistment and
22 relies on Witness 9's testimony that he had not been forewarned of this recruitment,
23 that 9 had not been forewarned. However, following Mr Blé Goudé's call, the youth
24 were indeed received at the état-major on 21 March 2011 to enrol. And as we argue
25 at paragraph 1795 of our response, the army could not have allowed thousands of

1 Young Patriots to show up en masse on their premises without prior notice.

2 Witness 87 explains that in the large parade ground flooded with young men, he saw

3 three or four tables set out in the middle. At each table was a person wearing a

4 Young Patriots T-shirt, taking identification cards and filling out forms by hand.

5 Each paper was put to one side and then another Young Patriot would pick up the

6 piles of paper and hand them to a group of uniformed army soldiers.

7 Further, in his RTI interview of 20 March 2011, Mr Blé Goudé said that the CEMA was

8 waiting for the youth at the état-major.

9 And in the RTI 8 p.m. news report of 21 March, Mr Mangou is shown welcoming

10 around 20,000 young men and women, including Young Patriots, at the état-major.

11 Mangou told the youth, and I quote: (Interpretation) "My dear young friends, I am

12 here this morning to salute this great mobilisation. To salute your commitment. To

13 salute your determination to defend the sovereignty of Côte d'Ivoire."

14 (Speaks English) And then he asked them if he could count on them, and I quote:

15 (Interpretation) "I would therefore like to paraphrase President Gbagbo to you and to

16 ask you: Can I count on you for defence?"

17 (Speaks English) And indeed, as I've described and as Witness 87 testified, the

18 enrolment began on this day with young men handing over their identification, filling

19 out forms and handing them over to military officers.

20 Your Honours, as we argue in paragraph 1797 of our response, enrolment in the army

21 was an ongoing process.

22 On 21 March, again, the 8 p.m. news report on the RTI, Mr Blé Goudé is shown saying

23 that the enrolment at the état-major earlier that day was the beginning of the

24 campaign of enrolment, but acknowledged that it was difficult for people around the

25 country to travel to the état-major. A plan was therefore developed to decentralise

1 the enrolment in the neighbourhoods. Mr Blé Goudé listed a number of locations
2 such as the Jesse Jackson complex in Yopougon, the stadium of the BAE in Yopougon,
3 the Sylla field in Niangon, in Marcory at the Foyer de Jeunes de Marcory, and the
4 stadium Sogefiha and Place Laurent Gbagbo in Port-Bouët.

5 In relation to Mr Blé Goudé's arguments at paragraph 661 about the outcome of his
6 call for enlistment, we'd like to correct a point your Honour made at paragraph 1857
7 of our response. It is clear from the evidence presented, as discussed in our response
8 at paragraph 1795 to 1797, that pro-Gbagbo youths responded to Mr Blé Goudé's call
9 and that enlistment did take place.

10 On this aspect, the Prosecution also refers the Chamber to the fact that on 19 March
11 through Hilaire Babri, the spokesperson of the FDS, Witness 9 specifically thanked the
12 Jeunes Patriotes for responding to Mr Blé Goudé's call to defend the country and
13 enlist in the FDS.

14 I will now address the reliance of the GPP -- the reliance on the GPP, sorry, and
15 Mr Gbagbo's role in relation to the GPP.

16 The use of the GPP and the issuance of instructions and incitements to them both
17 during and prior to the post-election violence demonstrates the criminality of the
18 common plan, we submit.

19 Mr Gbagbo and Mr Blé Goudé's control over the GPP is evidenced by a number of
20 factors, including the following:

21 First, the GPP complied with instructions from Minister Désiré Tagro to support the
22 FDS in repressing the 16 December march.

23 Second, the GPP followed orders from senior officers of the FDS to execute
24 operations.

25 Third, the GPP, especially Mr Zagbayou, trained 300 youth in Gagnoa following

1 instructions from Mr Bertin Kadet.

2 Fourth, as I've described, the GPP complied with instructions from Mr Blé Goudé to
3 train Young Patriots.

4 Fifth, the GPP on occasion operated alongside the FDS and were effectively under
5 their orders during operations.

6 Sixth, GPP elements were integrated into the FDS.

7 Your Honours, we explain in our response at paragraph 1174 to 76, 1193 to 1201 how
8 the GPP was organised and how it was controlled by Mr Gbagbo. Today however I
9 will focus on Mr Blé Goudé's role. Mr Blé Goudé was fundamental for the exercise
10 of control of the GPP by the inner circle.

11 Let me recall some of the evidence on this aspect which we address in our response.

12 Mr Blé Goudé argues paragraph 547 to 555 of his motion that we have failed to prove
13 this aspect of our case. The Prosecution also refers the Chamber to our response in
14 this regard, paragraph 1798 to 1809.

15 First of all, as Witness 435 testified, Mr Blé Goudé had an important role in the
16 creation of the GPP. Now, Mr Blé Goudé challenges 435's evidence regarding the
17 creation of the GPP and his involvement in that and his relationship with Charles
18 Groguhet.

19 Mr Blé Goudé argues that there are serious doubts as to Witness 435's credibility and
20 that Witness 435's evidence is not corroborated. One of the -- now, sorry, on the
21 formal creation of the GPP by Mr Charles Groguhet and others in 2003 and their links
22 with prominent former FESCI members such as Eugène Djué and Mr Blé Goudé,
23 Witness 435's testimony is supported by the oral testimony and academic work also of
24 Witness 97. (Redacted)
25 (Redacted)

1 So I further refer the Chamber to paragraphs 1456 and 1798 of our response.

2 Second, Mr Blé Goudé maintained personal links with GPP members. These

3 included Witness 435, Zéguen Touré and Zagbayou. I refer to the trial brief for the

4 evidence related to Mr Zagbayou. Mr Blé Goudé claims that the evidence linking

5 him with Zéguen Touré is weak given that it is based on only one meeting of which

6 the exact purpose was not clear. The Prosecution submits that this meeting was

7 significant as it was called by Mr Blé Goudé on 14 December to mobilise the Young

8 Patriots to protect the RTI. Now we refer the Chamber to its further response to the

9 Defence arguments on Mr Blé Goudé's personal links with the GPP at paragraphs

10 1800 to 1883 of our response -- 1803, sorry, of our response.

11 Third, Mr Blé Goudé had the ability to send instructions and mobilise the GPP. In

12 addition, through his speeches and statements, he instructed and incited members of

13 the pro-Gbagbo youth and militia, including the GPP. And then I refer again to our

14 response, paragraphs 1193 to 1201 and also 1320 to 1340.

15 As I've already discussed, in September 2010, following a GPP demonstration,

16 Mr Blé Goudé sent one of his associates, Ahoua Stallone, to instruct the GPP to start

17 providing military training to members of the FESCI. He double-checked this had

18 taken place by meeting with Witness 435 in October 2010 and asking him whether his

19 emissary had conveyed his message. In October 2010, the GPP received young

20 people from various patriotic movements whom they trained, including in weapons

21 handling.

22 During the meeting with Witness 435, during his meeting with Witness 435,

23 Mr Blé Goudé also said that members of the GPP would be inserted into the army, but

24 that now the elections were the priority and that the GPP should make an inventory

25 of the locations where the RHDP were holding meetings and find out if there were, if

1 they were indeed hosting anyone in their homes.

2 Another leader of the Galaxie Patriotique, Mr Dibopieu, and former FESCI leader,
3 who replaced Mr Blé Goudé as head of the FESCI in the early years 2000, met with
4 Witness 435 before the first round of elections and gave similar instructions, that is, to
5 follow the movement of RHDP leaders. Witness 435 informed Mr Dibopieu of the
6 different locations where the RHDP would hold official and nonofficial meetings, and
7 Mr Dibopieu needed this information so that he could transmit it to Mr Blé Goudé. I
8 refer you to paragraph 93 of our trial brief.

9 Witness 435 testified that from the moment Guillaume Soro took the decision to
10 organise the march on 16 December, meetings were held between the former interior
11 minister, Mr Tagro, and GPP leaders and that the instruction given was to support the
12 FDS in intercepting demonstrators and handing them over to the authorities. GPP
13 President Bouazo as well as some of the GPP base commanders, including Maguy le
14 Tocard, attended these meetings.

15 Your Honours, in response to questions from the Defence of Mr Blé Goudé, Witness
16 435 further clarified that the meeting with Mr Tagro, along with FDS leaders at which
17 Mr Tagro had informed Mr Bouazo of the line of conduct to be adopted were the
18 march -- that that meeting, sorry, took place indeed on 14 December.

19 The evidence demonstrates that Witness 435 and other members of the GPP
20 participated in repressing the march on 16 December, your Honour. They
21 intercepted the marchers, beating them, and they handed them over to the CECOS
22 BMO. And again I re-emphasise that none of the demonstrators who were
23 intercepted by the GPP were armed.

24 Now, if you allow me to go into private session for two minutes and a half, with your
25 permission, your Honour.

- 1 PRESIDING JUDGE TARFUSSER: [12:06:49] Let's go into private session.
- 2 (Private session at 12.06 p.m.)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Open session at 12.09 p.m.)

4 THE COURT OFFICER: [12:09:56] We are back in open session, Mr President.

5 PRESIDING JUDGE TARFUSSER: [12:10:02] Yes. Mr MacDonald.

6 MR N'DRY: [12:10:08] Mr President. Mr President, now that we are in a public
7 hearing, except where there are exceptional circumstances, I would like to suggest
8 that whenever the Prosecutor wishes to go into private session, he should indicate to
9 us to the extent possible why he wants to move into private session. This is very
10 important, because if the discussion had taken place in private session, he should
11 provide the necessary references so that we can work on that basis. This is my
12 suggestion.

13 I say so because a short while ago, we were wondering why he asked for a private
14 session. It wasn't obvious. And like you indicated yesterday, Mr President, if he
15 can provide the reference in his document 2093 as before, he could do the same for
16 the transcripts in this connection. Thank you.

17 PRESIDING JUDGE TARFUSSER: [12:11:17] Yes. You are perfectly right. I was
18 going, before giving the floor back to Mr MacDonald, to ask him why we were in
19 private session.

20 And next time, please say before so that we can evaluate. Thank you.

21 MR MACDONALD: [12:11:34] Certainly, your Honour. Sorry, your Honours.
22 We were in closed session because we were referring to the testimony of Witness 435,
23 who testified on that very point in closed session. And this has been redacted and is
24 not available to the public, and that has been the situation since his testimony. So
25 that's the simple explanation now. I think it is very easy to track the transcript

1 references from our response, and I'm happy to provide those by email maybe over
2 lunch time, if necessary.

3 I don't think there is many private sessions, your Honour, but I will certainly
4 forewarn the reasons. But for sure it's because the information is not available to the
5 public, so that's why we're going into private session. Thank you.

6 PRESIDING JUDGE TARFUSSER: [12:12:43] It was only a question of say it before,
7 otherwise we don't know why.

8 You can proceed. Thank you.

9 MR MACDONALD: [12:12:53] Thank you, your Honour.

10 Now, Mr Gbagbo also argues in relation to the GPP, and I quote:

11 (Interpretation) "It is a few dozens, a few hundreds of marginals at most who
12 constituted these self-defence groups or militia groups."

13 (Speaks English) However, contrary to his assertion, the evidence on record actually
14 shows that as of September 2010, the GPP was a powerful, well-organised armed
15 militia group with over 8,000 members in Abidjan. And for that we refer your
16 Honours to our response at paragraph 562.

17 Your Honours, Mr Gbagbo and Mr Blé Goudé's arguments concerning the
18 Prosecution's case in relation to the GPP principally involved a challenge to 435's
19 credibility, like I've just mentioned. As we've already indicated in our response,
20 although the Prosecution believes that now is not the appropriate time to embark
21 upon an in-depth credibility assessment of the witnesses, we did make an exception
22 for Witness 435, given the lengths at which Mr Gbagbo and Mr Blé Goudé go to in an
23 effort to undermine his evidence.

24 Now, for the reasons we have detailed in our response at paragraphs 129 to 180, we
25 submit that the evidence demonstrates that Witness 435 is a credible insider witness

1 whose evidence is not only corroborated by other reliable testimonial evidence on the
2 record, but also by independent documentary evidence.

3 Now, other aspects, your Honour, regarding the GPP and challenges by the Defence
4 are addressed in our response, and you can find these easily at paragraphs 1456, 1480
5 to 1492, 1679 to 1711. Finally, and I think this is an undisputable document, and in
6 French the word is incontournable. (Interpretation) Unavoidable.

7 (Speaks English) In relation to the existence of the GPP and their integration into the
8 FDS, the Prosecution relies on a message from the commander of the Forces Terrestres,
9 dated 21 February 2011, which is signed by Colonel Major Koloubla, who was then
10 the second in command of the ground forces, and I refer your Honour to document
11 CIV-OTP, I refer to document CIV-OTP-0071-0850. This message shows that on the
12 22 February 2011, members of the GPP, the LIMA and the FLGO were amongst 398
13 recruits assigned to the 1st infantry battalion, the 1st Battalion of the Commandos
14 Parachutistes, also to the Bataillon Blindé and the BASA for military trainings.

15 Now, as we explain in our response at paragraph 1483, during his testimony, Witness
16 435 was able to recognise several names of GPP members amongst the recruits listed
17 in the annex to this message, which is entitled, and I quote:

18 (Interpretation) "GAD distribution for military training."

19 (Speaks English) Witness 435 also testified that in fact the recruits listed in the annex
20 were integrated into the army and some of the elements took part in the fighting in
21 Abobo after their training.

22 Your Honours, Witness 47, so the head of the ground forces, authenticated this
23 document. He testified that he must have seen it and that the annex entitled,
24 "Repartition GAD pour la formation militaire" (Interpretation) "GAD distribution for
25 military training" (Speaks English) must relate to recruits -- sorry, must relate to

1 recruits being allocated to the various battalions for training. The originating
2 message to train these recruits, as indicated by the reference number, came from the
3 chef d'état-major.

4 Witness 47 was also aware that the 1st battalion was supposed to train 100 men, the
5 Bataillon Blindé 100 men also, the BASA also 100 men, and the 1st BCP, the remaining
6 98 men. And I refer on this to the sources that you can find at paragraph 1458 of our
7 response.

8 The last topic to be discussed for this mode of liability are the instructions and
9 incitement of the pro-Gbagbo youth and militia.

10 Your Honours, given the time already spent on this mode of liability, I will focus on

11 Mr Blé Goudé's incitement of the pro-Gbagbo youth and militia in Yopougon and

12 Mr Blé Goudé's arguments in relation to that. I have already addressed

13 Mr Blé Goudé's role in instigating the commission of crimes for 25 February and 12

14 April. Now we will come back to Article 25(3)(b) of the Statute in respect to the

15 incidents of 16 December, 25 February and 12 April incidents, and I'll do that later.

16 But for now, on 24 February 2011, Mr Blé Goudé appeared with a message to the

17 youth on the 8 p.m. edition of the RTI news. He urged all youth of Côte d'Ivoire to

18 prevent the UN from driving and moving throughout Abidjan's communes. He also

19 called on pro-Gbagbo youth to take part in a general meeting convened, and, this is

20 the part of the message that is important, to issue the last instructions at the bar Le

21 Baron the next day on 25 February at 9 a.m.

22 So indeed, on 25 February at 9 a.m., Mr Blé Goudé is there and you can see the video,

23 and he orders the crowd present, and this call will be broadcast later that day on the

24 RTI in the news bulletin, and his call is to prevent the UNOCI from moving. But

25 obviously what is more important is, what we've described already when discussing

1 the incidents, is to check the comings and goings in their neighbourhoods and report
2 any strangers or foreigner entering the neighbourhoods.

3 Now, this was indeed the mot d'ordre that Mr Blé Goudé had primed the youth to
4 receive. It was a call to engage in violence and was understood as such because
5 immediately following Mr Blé Goudé's call, pro-Gbagbo youth erected roadblocks
6 throughout Abidjan. Also, pro-Gbagbo youth who had attended the meeting threw
7 stones at the Doukouré residence while other youth approaching the Lem mosque
8 sang, "À chacun son Dioula".

9 Now, further in the early afternoon of 25 February, pro-Gbagbo youth and militia
10 members headed by Maguy le Tocard, and while it's in red in my text, I don't think
11 there is a need for any redactions, reinforced the FDS, attacked the Lem mosque of
12 Yopougon.

13 Mr Blé Goudé argues that there is no nexus between his mots d'ordres and the crimes
14 committed on that day and the following day up until 28 February. Now, I'd like to
15 refer your Honours to our response in paragraph 1810 to 1841. But I'll summarise
16 very briefly. Sorry, it's summarised in our Prosecution's trial brief and also in our
17 response, but mainly in the trial brief at paragraphs 548 to 579.

18 Now, Mr Blé Goudé argues in his motion that the Prosecution has not established the
19 time frame of his speech at bar Le Baron in the morning of 25 February, that's the first
20 argument.

21 The second argument, whether or not Mr Maguy le Tocard's group was present at the
22 speech.

23 And the third argument is whether those present were part of the group that
24 committed the crimes.

25 Now, specifically Mr Blé Goudé asserts that several witnesses testified that the

1 violence in Yopougon Doukouré on 25 February started before Mr Blé Goudé's speech
2 at the bar Le Baron, was terminated or even started.

3 If I come back, so basically what the Defence of Mr Blé Goudé argues is that before
4 the speech even started, there was violence, the violence had already started. He
5 also challenges the Prosecution's reliance on Witness 442 in alleging that pro-Gbagbos
6 who had attended this meeting at bar Le Baron had come down the Boulevard
7 Principal and thrown stones at the Doukouré residents.

8 And as I've indicated when discussing the incidents, Mr Blé Goudé further argues
9 that Witness 442 did not attend the meeting himself, that he did not say that the
10 people who threw stones had attended the meeting or not and did not explain how he
11 identified the people who were throwing stones as pro-Gbagbo.

12 Your Honours, the Prosecution is not required to prove that the individual
13 perpetrators were present at the bar Le Baron during the speech. Instead we
14 emphasise that the immediacy of the violent response by the Yao Séhi youth and the
15 perpetrators, police and pro-Gbagbo youth and militia, following Mr Blé Goudé's
16 words delivered in geographic proximity at Yopougon's bar Le Baron and in the
17 temporal proximity of the morning of 25 February. That's what we are arguing.

18 It is the immediacy of the response that demonstrates the effect of the speech on the
19 perpetrators. Here the Prosecution also refers the Chamber to its prima facie case
20 against Mr Blé Goudé under the mode of liability of 25(3)(b) and as set out in our
21 response in paragraphs 1944 and following.

22 But let me quote 442 just to make the point once more:

23 (Interpretation) "I was at the kiosk on 25 February. Blé Goudé was holding a rally at
24 the Baron de Yopougon. After the rally, he went down -- or they went down. You
25 could see the crowd coming and people were saying: 'Close the kiosk, the kiosk

1 must be closed.' They came with stones and were stoning us and they were stoning
2 us."

3 (Speaks English) When asked who he meant by "ils", they, he said, and I quote:

4 (Interpretation) "The pro-Gbagbo I said. I said Blé Goudé was holding a rally at the
5 Baroan bar in Yopougon on that day. And it was after the rally that they came ...
6 that the crowd came."

7 (Speaks English) During questioning by the Defence when asked about his
8 knowledge of the meeting, Witness 442 explained that it was the same crowd who
9 had gone to the meeting and then came back. He testified, and I quote:

10 (Interpretation) "I said as follows, the two neighbourhoods are separated by a road ...
11 and then there was a crowd of people which came out. Where were they going?
12 They were going to Blé Goudé's rally, he was holding a rally at that place over there,
13 at the Baron. What can you say then? Is it after then that they were coming back
14 now."

15 (Speaks English) When it was further put to him in Defence questioning that he could
16 not say that the attackers were Gbagbo supporters, he first explained that it was
17 because, quote (Interpretation) "They are the ones who were throwing stones at us."

18 (Speaks English) Then further explained that it was because (Interpretation) "we
19 knew each other."

20 (Speaks English) Mr Blé Goudé also argues at paragraph 559 that the Prosecution has
21 failed to prove that the proliferation of roadblocks after 25 February could be
22 attributed to his speech at the Bar Le Baron. He argues that the erection of
23 roadblocks was spontaneous and uncoordinated, that it was aimed at securing the
24 neighbourhood and at self-defence and that there was no targeting of specific ethnic
25 groups. Mr Blé Goudé refers to Witness 97's testimony about a second version of the

1 events of 25 February 2011 in which young people rebelled against the transporters
2 and their gbakas. He refers to the erection of roadblocks by the youth in Doukouré
3 from, so the pro-Gbagbo youth, from 25 February 2011. He points to the existence of
4 Commando Invisible roadblocks in Abobo. Additionally, Mr Blé Goudé argues,
5 based on the language of his 4 March 2011 address on RTI, that he did not direct or
6 instruct people to erect roadblocks.

7 In this regard, I refer to the Prosecution's arguments in our response at paragraph
8 1835 to 1836.

9 Finally, Mr Blé Goudé argues first that the Prosecution has failed that Mr Blé Goudé
10 was informed of the violence at roadblocks or at least when he was so informed. We
11 refer the Chamber to paragraphs 610 to 612 of our response.

12 Second, Mr Blé Goudé argues that he made several attempts to stop the violence at
13 roadblocks. And then goes on to detail the apparent attempts he made to stop the
14 violence at the roadblocks, and he refers to the 4 March address on RTI and 18 March
15 address at roadblocks, the 19 March call to enrol, his 23 March statement, his 26
16 March statement, his 3 or 4 April 2011 statements and a 5 April address. And I refer
17 the Chamber to paragraph 613 to 624 of Mr Blé Goudé's motion.

18 Now, we describe I think in detail either in our response and trial brief, for instance,
19 at paragraph 567 and 568, but let me just say this for the moment, let's refer to Witness
20 440. Now, Witness 440 testified about his attempts, his attempts to remove
21 roadblocks and stop the commission of crimes.

22 What he did is on 28 February 2011, he wrote and sent a report to the police préfet of
23 Abidjan detailing the events of 25 to 28 February in Yopougon. And this report that
24 he wrote that he authenticated that he testified about is before you at ERN 0046-0029.
25 His report noted that several civilians had been burnt at the roadblocks erected by

1 pro-Gbagbo youth. He reported, and I quote in French:

2 (Interpretation) "During their search looking for weapons and rebels, as soon as
3 somebody looked suspicious, he was automatically lynched and burned. In this way,
4 the slightest suspicion was enough to end a life atrociously. If nothing was done, the
5 number of victims would grow day by day and the gulf between the various
6 communities would widen. The tension was palpable and there was a grave risk of
7 the situation imploding. We think we have to put an end to these self-defence
8 roadblocks that have become slaughter houses for some communities."

9 (Speaks English) He also reported further, and I quote:

10 (Interpretation) "We think that, we think that only an appeal made on national
11 television by the instigator of these roadblocks can genuinely bring things to a halt."

12 (Speaks English) Your Honours, Witness 440 confirmed that the reference to
13 instigator, that the identity of that person was Mr Blé Goudé. In writing this report,
14 440 had in mind that it was necessary for Mr Blé Goudé, as the person who had called
15 the youth onto the streets, to ask them to go home. He wrote the report in the hope
16 that his hierarchy, by which he meant the DGPN, Witness 46, would ask
17 Mr Blé Goudé to make another announcement on television to ask the youth to return
18 home and cease putting up roadblocks in the neighbourhoods.

19 But Mr Blé Goudé did not do that.

20 And so on or about 3 March, Witness 440 and his immediate supervisor or superior,
21 Yopougou district head Jean-Louis Tiagnéré, went to visit Mr Blé Goudé at the
22 headquarters of the COJEP in Toits Rouges in Yopougou to ask him to put a stop to
23 the roadblocks. You may recall his testimony when he said that, accompanied by his
24 superior, Mr Tiagnéré, he was not present, Mr Tiagnéré went inside the headquarters,
25 had a discussion for about 20, 30 minutes and that afterwards he came back. He

1 never discussed or had any report from Mr Tiagnéré. What he understood from
2 Tiagnéré's silence on the way back is that the conversation had been a failure.
3 Independently of the opinion of Witness 440 as to the content of the conversation,
4 what are the facts in the aftermath of that meeting? The roadblocks were not
5 dismantled, that's a fact, and the crimes did not stop. Mr Blé Goudé did not call for
6 the roadblocks to stop. And Mr Blé Goudé made no genuine attempt to end the
7 violence at roadblocks

8 Your Honours, apart from Witness 440's testimony, the best evidence that
9 Mr Blé Goudé was aware of the violence at these roadblocks are his own words as
10 evidenced in the following broadcast on the RTI in which he talks about the
11 roadblocks.

12 On 4 March 2011, what does he say when he addresses the youth at a roadblock,
13 which message is retransmitted on the RTI and which is before the Chamber, he said,
14 and I quote:

15 (Interpretation) "Racketeering people must be avoided, because we, we wish to
16 provide safety and security for people politely and to avoid falling into the
17 attack -- falling into the trap of attacking Senegalese and the Togolese here and there."

18 (Speaks English) Second, in his 14 March 2011 press conference, also broadcast on the
19 RTI, Mr Blé Goudé again asked those at the roadblocks, and I quote (Interpretation)
20 "Be polite and avoid racketeering".

21 (Speaks English) While he claimed not to believe reports of racketeering, he said, and
22 I quote (Interpretation) "I know that you are not racketeering, but to cast aspersions
23 on what you are doing, people say anything."

24 (Speaks English) Now this, more or less, what it does demonstrate is that such
25 information had reached him. The RTI footage of Mr Blé Goudé at the roadblock on

1 18 March 2011, again, he refers to the need for politesse and gentillesse.
2 Your Honours, in these and other addresses to the youth, Mr Blé Goudé made no
3 genuine attempt to end the violence at the roadblocks.
4 Mr Blé Goudé's reports of mediation and reconciliation and his request to stop
5 racketeering or attacking certain West African nationalities in his 4 March address, we
6 submit, ring hollow against his congratulating the youths on 14 March 2011 for
7 erecting roadblocks to protect their neighbourhoods, which he said had discouraged
8 the rebels against subsequent calls to reinforce the roadblocks, which I will describe.
9 Why would you use youth to protect Abidjan? I think the Chamber needs to ask
10 itself that question, why? The FDS, the police, the gendarmerie, and if so, it's
11 everywhere and it's obvious. In RTI footage, Mr Blé Goudé at a roadblock on 18
12 March 2011, what he characterizes in his motion at paragraph 619 as a call to act with
13 kindness is instead a call to maintain and even reinforce the roadblocks. He said,
14 and I quote:
15 (Interpretation) "Reinforce the corridors and check the vehicles with a lot of politeness,
16 with a lot of kindness, but also with great firmness."
17 (Speaks English) Mr Blé Goudé does not in this footage condemn acts of violence by
18 those manning roadblocks.
19 Mr Blé Goudé in his 19 March call for the youth to enrol in the army does not amount
20 to a denunciation or attempt to stop the violence committed at roadblocks, if that is
21 what is suggested by Mr Blé Goudé, at paragraph 620 of his motion. Indeed, it was
22 during this speech, and we recall that Mr Blé Goudé announced (Interpretation) "the
23 end of barehanded resistance".
24 (Speaks English) The Prosecution reminds the Chamber that Witness 87 filmed
25 Mr Blé Goudé's speech on this occasion. Mr Blé Goudé said to the crowd at Place

1 CP1 in Yopougon, and I quote:

2 (Interpretation) "Yopougon, I would like to bow before you. Yopougon, I would like
3 to pay tribute to your resistance. Yopougon, the untakable fortress. Yopougon,
4 who has its eyes watching. Yopougon, that never falls. Yopougon, who always
5 remains standing. Yopougon must be paid tribute to.

6 (Speaks English) Again, you have the footage. During his speech Mr Blé Goudé told
7 his audience that he had seen them being attacked in the neighbourhoods, and I
8 quote:

9 (Interpretation) "All those who say that they draw their authority from
10 Laurent Gbagbo, every day they're in danger, every day they're tortured."

11 (Speaks English) That, and I quote, that's what Mr Blé Goudé said, he's already saying
12 that to a crowd of youth that are already galvanized and all primed up:

13 (Interpretation) "When you slit people's throats, while they don't know in our culture
14 when you said that you're not here, you yourself through your acts, you prove that
15 you're not from here."

16 (Speaks English) So, basically, if you are slitting the throat of people, that means
17 you're not from here. And he's telling that the perceived pro-Ouattara supporters
18 are slitting the throats of people. That's the message that was primed.

19 Mr Blé Goudé said that the entire UN was making war on Côte d'Ivoire, that they
20 were forcing him to change his attitude and to do what he didn't want to do. Then
21 he asked the crowd, and I quote:

22 (Interpretation) "Young people of Côte d'Ivoire, are you ready to join the army to
23 serve our country?"

24 (Speaks English) And in the aftermath of this meeting, you can see Mr Blé Goudé
25 standing on the top of a four-by-four, if I'm not mistaken, certainly a vehicle anyway,

1 addressing the youth of Yopougon again telling them to be vigilant in their
2 neighbourhood.

3 On the following day, 20 March, two days after the RTI broadcast footage of
4 Mr Blé Goudé at the roadblock on 18 March, there is also a footage of Mr Maguy le
5 Tocard being praised, his action being praised by the RTI. And I refer your Honours
6 to our trial brief at paragraph 591 to 593.

7 And the presenter, what he says, and I will quote him because he's referring to the
8 comités de vigilants (Interpretation) the vigilants committees (speaks English)
9 established by youth volunteers, and I quote (Interpretation) "Young people had been
10 asked in their neighbourhoods to remain vigilant."

11 (Speaks English) We submit, your Honours, that the RTI in this instance is making a
12 reference to the messages of Mr Blé Goudé of 25 February 2011, which was again
13 repeated by Mr Blé Goudé on 19 March.

14 Now further, as the presenter/journalist elaborates, this vigilance has borne fruit,
15 when he says and I quote:

16 (Interpretation) "The vigilants committees set up by young volunteers in the Abidjan
17 municipalities is bearing fruit, searching boots in cars and surveillance, night and
18 during the day, in order to flag any suspicious movements have contributed to
19 bringing tranquility back into the neighbourhoods."

20 (Speaks English) Regarding Mr Blé Goudé's statement of 23 March 2011, 26 March
21 2011, and 3 or 4 of April 2011, these again do not amount to a denunciation of or
22 attempt to stop the violence committed at roadblocks, again, if this is what is argued
23 by Mr Blé Goudé at paragraph 621 to 623 of his motion.

24 Now, in relation to Mr Blé Goudé's address of 5 April 2011, your Honours, we rely on
25 the following portion to demonstrate that he congratulated and encouraged the youth

1 for their resistance and instructed them to reinforce the roadblocks. Once more,
2 Mr Blé Goudé has not shown how this address amounted to any denunciation of or
3 attempt to stop the violence committed at the roadblocks. Instead Mr Blé Goudé
4 said and I quote:

5 (Interpretation) "You deserve congratulations because, since you have remained
6 standing. So I congratulate you, I encourage you, I urge you in this troubled and
7 difficult moment to show solidarity to each other."

8 (Speaks English) And he further adds:

9 (Interpretation) "As regards you in your neighbourhoods, you have erected
10 roadblocks. You need to reinforce them."

11 (Speaks English) Your Honours, a reminder before I move to the next topic, that the
12 Prosecution has addressed the Defence motions on Article 25(3)(a) in its response in
13 section V in much more detail than I have just done, even though that topic was a
14 lengthy one.

15 I will now move for the next 10 minutes to modes, I have B, C, D and 28 to finish
16 today. I'm being told by the new editing being done that we should be in the time
17 frame or close to it to finish for 4, but it's going to be a full session.

18 Now, unfortunately, and maybe we can take the time now, because I think my
19 colleague Ms Massidda has a scheduling issue potentially and, therefore, because I
20 don't think we'll be able necessarily to start the Legal Representatives today,
21 unfortunately.

22 PRESIDING JUDGE TARFUSSER: [12:50:36] No. I would stop here. Come back
23 at 2.30 and then go ahead with --

24 MR ALTIT: [12:50:44] (Interpretation) Your Honour.

25 PRESIDING JUDGE TARFUSSER: [12:50:46] Just a minute.

1 Then maybe go ahead with you and tomorrow and then come to an end also with the
2 Legal Representative.

3 Maître Altit.

4 MR ALTIT: [12:50:53] (Interpretation) Thank you very much, your Honour. Your
5 Honour, just a swift comment.

6 I'd just like to raise a point before the break. We've understood that the purpose of
7 this hearing is to provide the Prosecution an opportunity to provide clarifications to
8 what it is laying before you and to enable the Defence to speak so that before it does
9 rise, to have exact and precise documents upon which the Defence can base itself to
10 provide any response.

11 What does that mean? It means that the purpose is that the Defence can respond to
12 the Prosecution knowing what it has to deal with and therefore basing itself on the
13 French transcripts.

14 Now, this is what I really want to refer to. The Prosecution on a number of occasions
15 has, particularly yesterday, has referred to II-B in its 1,000-page document without
16 ever providing any specific reference. Let me refer you to the transcript, 221, page 33,
17 line 17; page 46, line 21; page 52, line 17.

18 So we would like to establish, your Honours, the following:

19 If the Prosecution wishes to expand on this section II-B and if the Prosecution intends
20 to talk about this more extensively, because this section strikes us as important in its
21 submissions, I would like to have clarity on that, please.

22 PRESIDING JUDGE TARFUSSER: [12:52:35] Mr MacDonald.

23 MR MACDONALD: [12:52:37] Very briefly, your Honours. I understand very well
24 this exercise. But as the Chamber will have noted, these are purely legal issues, legal
25 concepts that go beyond laymen's terms. Therefore, the Defence team on this very

1 issue, which are not factual, cannot be helped by their client per se. They can have a
2 discussion, of course, with their clients about it, but it's mainly legal arguments for
3 lawyers.

4 So I think Mr Gbagbo has a defence team that is experienced, including in the English
5 language, including in the law that is being provided, including in the decisions that
6 are being referred to, which are sometimes even available in French and English and
7 can read them very easily.

8 So that would be our position. And we want to avoid also having to go down that
9 road when we feel that the test does not bring about such an assessment in the first
10 place.

11 But if the Chamber wants me to go into that, I'm happy to do so, but it will have to be
12 done tomorrow, because I have not prepared a presentation on legal topics which we
13 thought would be well-known by Mr Gbagbo and his team. Thank you.

14 PRESIDING JUDGE TARFUSSER: [12:54:03] By the way, the section II-B is not 1,000
15 pages but 52. Thank you very much. 52 pages. So I think one can, in 52 pages one
16 can find the appropriate reference.

17 Thank you very much. The hearing is adjourned to 2.30.

18 THE COURT USHER: [12:54:22] All rise.

19 (Recess taken at 12.54 p.m.)

20 (Upon resuming in open session at 2.30 p.m.)

21 THE COURT USHER: [14:31:03] All rise.

22 Please be seated.

23 PRESIDING JUDGE TARFUSSER: [14:31:25] Good afternoon. Before giving the
24 floor back to the Office of the Prosecutor and, in particular, to Mr MacDonald, whom
25 I invite not so much to refer to the submission, the written submission, but to

1 elaborate because this is the reason we are here for also, because of the translation, I
2 was asked by Maître Altit, he wants the floor for a few minutes.

3 And you have the floor.

4 MR ALTIT: [14:32:07] (Interpretation) Thank you, Mr President. Mr President,
5 your Honours, it is Professor Dov Jacobs who will take the floor on our behalf.

6 PRESIDING JUDGE TARFUSSER: [14:32:24] Yes, please.

7 MR JACOBS: [14:32:25] (Interpretation) Good afternoon, Mr President, your
8 Honours. We would like to very briefly submit a question, which is important and
9 which you anticipated partially with your last reservation, so I shall be very brief.

10 In your decision of 25 September 2018, the Chamber indicated that they had to find a
11 balance between the rights of the Defence to analyse in French the
12 1,000-page-and-more document, and the expeditiousness of the proceedings. In
13 order to satisfy that, the Chamber derived the following procedure. The Prosecutor
14 will present orally, and the Laurent Gbagbo Defence will have the transcript in French
15 to which it will respond.

16 We understand that balance found by the Chamber. However, and that is our
17 question, you would have realised that since yesterday, the Prosecutor has been
18 frequently and even systematically referring to his written response, not necessarily
19 for reference purposes but for inviting the people listening to go and look at the
20 details. So the manner in which the Prosecutor has constructed his presentation
21 means that in order to respond to that, we have to go and read the more than
22 1,000-page references referred to.

23 And under those circumstances so that this Chamber should, this hearing should be
24 useful and fulfil its objective, we are wondering whether the Prosecutor should not be
25 asked to take the time to present certain issues in a comprehensive manner. That

1 way his position and his documentation or, rather, his position will be clear in the
2 transcripts and will make it possible for the Defence to respond.

3 This solution may actually cause the Prosecutor to speak for longer, but it will end up
4 saving us, all of us, a great deal of time. Thank you, Mr President.

5 PRESIDING JUDGE TARFUSSER: [14:35:01] Yes. That's what I was referring to
6 before. I think that yesterday, the Prosecutor was more systematic, spelling out
7 what the submissions of the Defence was and then responding to them from the
8 Prosecutor's point of view. Today, it's a little bit less systematic. You make many
9 more referrals to what you already said in the written submission, in the written
10 response of the 1,000 pages, and this, obviously, defeats a little bit the purpose of this
11 hearing. So I just would ask you maybe, to extend a little bit and to be more
12 systematic as you were yesterday.

13 So this said, the floor is back to you.

14 MR MACDONALD: [14:36:02] Thank you, your Honours.

15 I take note obviously of the comments the Chamber just made and will try to do my
16 best.

17 I'd like to come back to a correction, it's to correct what I tried to correct. So I would
18 like to come back to the English transcript at page 27, lines 2 to 7. And it refers to the
19 logbook and the entries on the evening of 16 December 2010.

20 Now, the mistake in the transcript of the logbook is that the hours of Mr Blé Goudé's
21 departure reads 1.04 a.m. But the time that he actually left was 8.42 p.m., and not the
22 other way around as I have indicated.

23 Now, this is in the transcript, your Honour, that we provided, so the mistake is there.

24 The transcript or the logbook itself, the original is with the Chamber. So now I think
25 it is clear.

1 PRESIDING JUDGE TARFUSSER: [14:37:46] Yes.

2 MR MACDONALD: [14:37:47] Now, there are other smaller corrections.

3 PRESIDING JUDGE TARFUSSER: [14:37:50] It is clear and it was also noticed by the
4 Chamber.

5 MR MACDONALD: [14:37:53] Now, there is also other minor corrections, but we
6 can come back on that tomorrow or by email, maybe we'll send it to CMS somehow.
7 But as I'd like to at least finish today the alternative modes under Article 25(3)(b), (c)
8 and (d).

9 Now, as I've just said, both accused are charged with the alternative modes of liability
10 remaining under 25 or, sorry, under 25(3)(b), (c) and (d). (b) and (d) solely in the
11 case of Mr Gbagbo just to clarify, and (c) is added for Mr Blé Goudé.

12 And of course there is the mode of liability under Article 28, superior responsibility
13 which solely applies to the Prosecution's case against Mr Gbagbo.

14 Now, of course these alternative modes of liability assist the Chamber in capturing
15 the appropriate level of involvement -- of their involvement in the post-election crisis.

16 Therefore, it is open to the Chamber if it is not satisfied that the legal elements of
17 Article 25(3)(a) are met, the other modes of liability may prove helpful in capturing

18 Mr Gbagbo or Mr Blé Goudé's involvement in the commission of the charged crimes.

19 And it is important here to highlight, and I think Mr Stewart alluded to that, that the
20 Trial Chamber is not limited to using only one mode of liability per accused. Indeed,
21 the Trial Chamber may find that the accused are responsible through a combination
22 of modes of liability.

23 I also note that the same set of facts form the basis of different modes of liability. For
24 example, Mr Gbagbo's instruction on 24 February to hold Abobo and not to kill too
25 many civilians may be seen as an essential contribution under 25(3)(a), or as an order

1 or inducement under Article 25(3)(b), or as any contribution under Article 25(3)(d)
2 depending on the appreciation of the Chamber and its factual findings. Inevitably,
3 the impact of this is that we will have to repeat the same evidence going through the
4 elements of each mode of participation.

5 Let me start with Article 25(3)(b) for Mr Laurent Gbagbo.

6 This task, your Honours, may prove to be a little bit difficult since Mr Gbagbo in his
7 motion has not fully developed his arguments on each mode of liability. For
8 example, Mr Gbagbo's argument on Article 25(3)(b) take up one paragraph that can
9 be summarised as follows, and I refer to annex 5, paragraph 591 of their motion:

10 At no time did the Prosecution demonstrate that Mr Gbagbo ordered or incited the
11 commission of crimes, nor has the Prosecution given an example of such orders. All
12 of Mr Gbagbo's speeches were appeasement calls.

13 That's their position in their motion.

14 Our response: This is not the standard under Article 25(3)(b). Mr Gbagbo's motion
15 does not address at all the essential elements of ordering, soliciting or inducing.

16 And these elements include:

17 One, that the accused instructed, solicited or induced another person in any form to
18 either commit a crime or perform an act which results in a crime.

19 Two, the order or act of solicitation or inducement had a direct effect on the
20 commission of the crime.

21 Three, the accused acted with intent.

22 Fourth, the accused had the requisite knowledge.

23 And fifth, and this only applies to ordering, there is an additional requirement: the
24 accused needs to be in a position of authority.

25 Therefore, Mr Gbagbo's motion at paragraph 591 appears to partially deal only with

1 the second of these five elements, which I referred to was the order or act of
2 solicitation or inducement had a direct effect on the commission of the crime.

3 Let me start with the position of authority, the first element I just mentioned.

4 The evidence sufficiently demonstrates that Mr Gbagbo was in a position of authority
5 vis-à-vis the FDS, as developed in paragraphs 1881 to 1886 of our response, where we
6 detail how Mr Gbagbo was in a position of authority vis-à-vis the FDS, as well as the
7 pro-Gbagbo youth, militia and mercenary. Suffice to summarise, your Honour, that
8 Mr Gbagbo was the chef d'état and the chef suprême des armées. Therefore, I will
9 focus instead on the other elements of Article 25(3)(b).

10 The orders issued by Mr Gbagbo.

11 Since Mr Gbagbo argues that there is no example of illegal orders, it is worth recalling
12 paragraph 1872 of our response on the form and on the content that orders may take.

13 First, the influence can be exerted in any form.

14 Second, an order or act of solicitation or inducement may be performed directly on
15 the physical perpetrators or may be committed through an intermediary.

16 Third, the instruction itself does not need to be criminal in nature. What is required
17 is knowledge that the implementation of the order in the ordinary course of events
18 will bring about the commission of crimes.

19 And last, the accused does not have to be present when the instigated crime was
20 committed.

21 As president and supreme commander, the evidence shows that Mr Gbagbo routinely
22 met with his generals, who reported to him and received instructions from him.

23 Over the last day and a half, I've been summarising our evidence in relation to that.

24 First, the Prosecution refers the Trial Chamber to the logbook of visitors as well as
25 section II.B of its trial brief, where we have indicated the number of visits of key

1 members of Mr Gbagbo's inner circle. The logbook provides the Trial Chamber with
2 the frequency of meetings between FDS generals and Mr Gbagbo at the residence
3 alone.

4 But let me recall examples of such regular meetings.

5 15 December 2010 before the demonstration or march on the RTI of 16 December,
6 which I have extensively summarised.

7 The meeting of 4 January 2011 which took place at the presidential residence between
8 Mr Gbagbo and the FDS generals, Minister Guiriéoulou and Dogou as well as Mr
9 Tagro, during which General Mangou reported on the situation that was prevailing in
10 Abobo. Again, I've referred to that this morning.

11 On 12 January 2011, another meeting took place at the residence during the police led
12 operation in Abobo between Mr Gbagbo, the FDS generals and the co-accused,
13 Mr Blé Goudé. I also summarised this this morning.

14 The meeting of 24 February 2011 I've referred to already between Mr Gbagbo and the
15 FDS generals during which Mr Gbagbo instructed the FDS not to cede Abobo.

16 A meeting I have not discussed but I will mention and refer to now is the meeting of
17 the FDS generals and Mr Gbagbo discussing security problems in Abobo on 14 March
18 2011, three days before the 17 March incident.

19 And then there is a meeting again on 3 April at his residence, and I've referred to that
20 extensively again today, between his -- with his remaining loyal commanders
21 instructing them to continue the fight.

22 The Prosecution submits that its evidence demonstrates a pattern whereby
23 Mr Gbagbo met with his subordinates, issued orders or instructions and his
24 subordinates complied and implemented such orders. Mr Gbagbo's regular issuance
25 of orders will assist the Chamber in reaching inferences in the absence of explicit or

1 written orders to commit crimes.

2 Your Honours, we will have seen the analogy we made -- or you will have seen the
3 analogy we made at paragraph 1892 of our response with the case of General Galić
4 before the ICTY. Again in that case, General Galić's Defence argued there was no
5 evidence of a criminal order and the Trial Chamber in that case was able nevertheless
6 to make an inference by way of circumstantial evidence.

7 We provided the Chamber with 10 different examples, and this is at paragraph 1889,
8 of orders or instructions issued by Mr Gbagbo during the conflict, such as the decree
9 requisitioning the army on 14 November; the decrees declaring curfews, starting with
10 the one of 26 November 2010, and there are some in January, repeated in January -- in
11 December, sorry, January, February, March; the order to establish the blockade of the
12 Golf Hotel also is another order.

13 The order prohibiting the march of 16 December is obviously another order. The
14 order not to cede Abobo is also another order on 24th.

15 But there is one order he never did, he never gave, and I'll come back to that, to
16 declare, and I've mentioned it, declare Abobo a war zone.

17 I will now turn to the charged incident and respond to Defence argument that there
18 were no orders of a criminal nature.

19 Let me begin with the orders relating to the 16 December march on the RTI.

20 As previously mentioned in my presentation, prior to March a meeting was held on
21 15 December, during which Mr Gbagbo met with the FDS generals. These generals
22 receive instructions from Mr Gbagbo that the march was prohibited and should not
23 take place.

24 Now, your Honours, while this instruction itself is not criminal in nature, we argue
25 and this is our submission on the matter, Mr Gbagbo knew that its implementation in

1 the ordinary course of events would bring about the commission of crimes in light of
2 the following factors:

3 Mr Gbagbo requisitioned the army on 14 November, which meant that he knew of the
4 deployment on the ground of army units equipped with weaponry more appropriate
5 to warfare.

6 The implementation of similar past instructions prohibiting marches, coupled with
7 the use of the armed forces in December 2000 and March 2004, had resulted in a high
8 number of civilian casualties, namely militants supporting political opponents.

9 Mr Gbagbo had forewarned the armed forces during his speech on 27 August 2010 at
10 Divo not to worry about damages, dégâts, and that judges would repair afterwards.

11 Mr Gbagbo was further aware that there was a highly volatile climate since:

12 On 19 November 2011, RHDP militants were targeted during the second round of
13 elections. Witness P-9 himself testified that a group of FPI youth ransacked the
14 RHDP headquarters.

15 On 20 November Mr Gbagbo himself made a speech depicting Mr Ouattara as the
16 originator of all violence in Ivory Coast, warning the audience that the snake was not
17 dead and cautioned them not to leave their clubs down. I also referred to that
18 yesterday.

19 On 25 November, Mr Gbagbo announced during the televised debate with Mr
20 Ouattara that he was instigating or installing a curfew starting on the night of the
21 second round of the elections. This curfew, we submit, was uncalled for and caused
22 an outcry.

23 Mr Gbagbo was aware of the Wassakara massacre of 1 December during which at
24 least four pro-Ouattara supporters were killed at RHDP headquarters in Yopougon.

25 General Mangou testified that the president was informed of the events that took

1 place during that incident. These events were also publicised since they were
2 addressed by the FDS spokesperson, Hilaire Babri, on 2 and 11 December 2010 on the
3 RTI.

4 And on that point, your Honour, also, Mr Gbagbo was living in Abidjan. His
5 residence was there. The logbooks also indicate that he would be travelling outside
6 of his residence. You have that at the very end of each day, when he leaves, when he
7 comes back. He's travelling around the city and therefore he can see with his own
8 eyes what is going on around him. He's not completely removed in another country.
9 He's in situ.

10 Further, the situation was aggravated by the fact that the RDR leadership was under a
11 military blockade at the Golf Hotel by orders or on orders of Mr Gbagbo.

12 Finally, on 15 December, the FDS spokesperson, Mr Hilaire Babri, made a televised
13 statement denouncing the upcoming march in no uncertain terms either. This
14 served as a warning to Ouattara supporters to take part -- taking part, sorry, in such a
15 march amounted to destabilising the public order. Mr Babri threatened that the FDS
16 would not stand idly by, would not stand by and let it happen.

17 All these factors taken together meant that by sending armed troops to block
18 demonstrators, supporters of his political opponent, from marching in the streets of
19 Abidjan, Mr Gbagbo was aware that at a minimum, in the ordinary course of events a
20 crime was going to be committed as a result of his instructions. And we emphasise
21 here on the term "a crime." This is to say that Mr Gbagbo's awareness here needs not
22 be specific to the type of crime. It is an awareness that a crime will occur.

23 Let me now address the orders relating to the March 2011 incidents.

24 I've referred to the meeting on 24 February between Mr Gbagbo, several ministers
25 and the FDS leadership. Top, well, FDS generals that you heard confirmed that they

1 followed Mr Gbagbo's instructions that day to stand firm and not to cede Abobo. In
2 the aftermath of Mr Gbagbo's instructions, heavy weaponry, including 120 millimetre
3 mortars, which can only be used with the authorisation of Mr Gbagbo himself, were
4 installed at Camp Commando.

5 Mr Gbagbo also anticipated that his instruction to the FDS on Abobo could lead to the
6 commission of crimes. How is that? He asked General Mangou whether the
7 civilian population was still in the zone, and General Mangou confirmed that they
8 were still present. And Mr Mangou testified that Mr Gbagbo stated, and I quote:

9 (Interpretation) "Do it in such a way that there should not be too many deaths."

10 (Speaks English) Your Honours, we submit that this amounts to ordering with the
11 requisite knowledge and intent.

12 Orders relating to 12 April incident.

13 On 10 March, your Honour, Mr Gbagbo had received yet another indication from the
14 African Union that he should step down. The African Union was basically standing
15 behind Mr Ouattara as the winner of the presidential election. This message was
16 echoed by the FDS generals, that he should step down. Nevertheless, as the conflict
17 intensified, resulting in more civilian casualties, Mr Gbagbo did not step down and
18 instead instructed his troops to continue fighting. And I'll come back obviously
19 again, on 3 and 17 March incidents and about the denials and the awareness of
20 Mr Gbagbo.

21 On 31 March, your Honours, marked the beginning of what is called the battle of
22 Abidjan. The CEMA had sought refuge at the South African embassy; other
23 high-level commanders were also defecting. Mr Gbagbo remained surrounded by
24 his most loyal advisors and inner-circle members.

25 By early April 2011, Mr Gbagbo's residence was marked by the presence, and you've

1 heard the evidence, of GPP militia members and Liberian fighters. You heard it
2 from two of these witnesses, Witness 435, and another one whose status was
3 discussed in private session, but if you need his number, we can go into private
4 session, your Honour. But again, this is indicated obviously in our response.
5 These fighters were under the command of high-ranking officers of the Garde
6 Républicaine, the very unit in charge of Mr Gbagbo's security. As mentioned
7 already, in the presence of these loyal FDS officers, Mr Gbagbo told his troops to
8 continue to fight. I will not quote him again.

9 Six days later on 9 April 2011, a communiqué of the government was issued asking all
10 Ivoirians to remain mobilised until the rebirth of Côte d'Ivoire.

11 Now, this communiqué, I'll give the ERN reference for the record, it's 0018-0567.

12 Meanwhile, Mr Blé Goudé instructed the pro-Gbagbo forces to continue to fight and
13 to reinforce roadblocks. Mr Blé Goudé was aware of the African Union's decision of
14 10 March and also encouraged Mr Gbagbo to step down. Mr Blé Goudé was also
15 privy to General Mangou's attempt to convince Mr Gbagbo to step down. Despite
16 this, Mr Gbagbo decided to remain in power and carry on dragging the conflict.

17 Hence, Mr Blé Goudé's 5 April speech is also relevant to Mr Gbagbo's inducement
18 and soliciting. While ordering requires direct or circumstantial proof of positive
19 action by the accused, a person may solicit or induce the commission of a crime either
20 by implied or express conduct. Mr Gbagbo's resolve to stay in power implied to
21 Mr Blé Goudé and Mr Gbagbo's other subordinates that his orders and instructions to
22 continue the fight were still valid.

23 By issuing such instructions, Mr Gbagbo knew that in the ordinary course of events,
24 crimes would be committed by his subordinates, in particular, by his knowledge of
25 the use of militia members such as the GPP and Liberian fighters.

1 These orders and instructions had a direct impact on the commission of the crimes.

2 And these can be found in paragraphs 1899 to 1906 of our written submissions.

3 Let me now turn to inducement or solicitation.

4 Whether these utterances by Mr Gbagbo amount to ordering, to soliciting or inducing,

5 the four essential elements remain the same. There is the one additional element I

6 mentioned relating to ordering. We provide the Trial Chamber with the legal

7 distinction between ordering, soliciting and inducing at paragraph 1871 of our written

8 response, legal arguments, your Honour.

9 Our written response provide your Honours with the underlying facts to demonstrate

10 how Mr Gbagbo induced the commission of crimes, mainly through intermediaries,

11 but also through his statements prior to and during the crisis. These examples

12 created a climate which endorsed the use of violence by forces under Mr Gbagbo's

13 control. Again, referring to our response, paragraphs 1893 to 1898, but these are the

14 same, again, as ordering.

15 Mr Gbagbo's intent to order, solicit or induce the perpetrators, I will now address that

16 point. I refer the Trial Chamber to paragraphs 1907 to 1908 of our response with

17 respect to Mr Gbagbo's intent to order, solicit or induce.

18 In sum, these are the elements the Trial Chamber needs to be satisfied of, and

19 Mr Gbagbo's motion is lacking with respect to the essential elements of Article

20 25(3)(b)'s liability. Nothing is mentioned.

21 The Prosecution's case, your Honour, relating to Mr Blé Goudé under Article 25(3)(b).

22 Mr Blé Goudé is also liable under Article 25(3)(b). As the acknowledged leader of

23 the Jeunes Patriotes and the Galaxie Patriotique, Mr Blé Goudé engaged in a

24 sustained effort to mobilise the youth for violence and exerted an influence over the

25 militias. I will not come back on that, we've discussed it this morning. His

1 instructions to the youth before the incidents of 16 December 2010, 25 February 2011
2 and 12 April had a direct effect on the commission of the crimes.

3 The Prosecution notes that Mr Blé Goudé only submits three arguments relating to
4 Article 25(3)(b), which can be found at paragraphs 502 and 503 of his response.

5 However, we also note further arguments on the impact of his speeches at pages 245
6 to 276, which I will deal with as well.

7 Starting with his argument relating to Article 25(3)(b), Mr Gbagbo makes essentially
8 three claims in his motion:

9 First, that the evidence does not support that he was in a position of authority
10 vis-à-vis the direct perpetrators of crimes and thus one of the elements of ordering has
11 not been established. That's at paragraph 502 of their motion.

12 Second, that the evidence does not establish that his actions had a direct effect on the
13 commission of the crimes and that the links are tenuous between his utterances and
14 the incidents on the ground can be found at paragraph 503.

15 And that the evidence does not demonstrate that he would have been a
16 substantial -- that he would have been a substantial likelihood that crimes would have
17 been committed as a result of the realisation of his mots d'ordre or speeches.

18 Mr Blé Goudé -- let me start with the first point. Mr Blé Goudé was in a position of
19 authority over the perpetrators. Now, in respect to that first claim, Mr Blé Goudé
20 only states, without any analysis of the evidence, that he was not in a position of
21 authority. Indeed, paragraph 502 of his motion simply states the evidence does not
22 support. Its footnotes refer to paragraph 159 of the decision confirming the charges.
23 This paragraph of the confirmation decision discusses the difference between
24 ordering, inducing and soliciting and the additional requirement of a position of
25 authority under ordering.

1 Mr Blé Goudé had to, we submit at a minimum, provide good reasons for the Trial
2 Chamber to grant the claims or allegations that he's making. We submit that simply
3 stating "The evidence does not support" is insufficient.

4 As argued at paragraphs 256 to 258 of our response, Mr Blé Goudé was the leader of
5 the pro-Gbagbo youth or was at least regarded by the pro-Gbagbo youth as such.

6 The authority over the pro-Gbagbo youth was demonstrated by mobilising them to
7 commit violent acts, financing their activities, training and arming them and playing
8 an essential role in their recruitment and enlistment into the FDS.

9 Mr Blé Goudé's authority over pro-Gbagbo youth is further demonstrated by their
10 compliance with his instructions, with which they complied. The most compelling
11 example of the pro-Gbagbo youth compliance with Mr Blé Goudé's instructions was
12 their immediate mounting of roadblocks following his order at the bar Le Baron on 25
13 February 2011.

14 In addition, Witness 625 testified, and I quote:

15 (Interpretation) "The population, you know, when Blé Goudé issues a call, the
16 population follow it. They follow it, they obey him."

17 (Speaks English) Mr Blé Goudé's orders to the youth even took precedence over those
18 of the police. Witness 440 testified that on 28 February, the Young Patriots refused
19 categorically to remove their roadblocks because Mr Blé Goudé had told them to
20 monitor the neighbourhoods. And so they were doing their job, and I quote:

21 (Interpretation) "Only Mr Blé Goudé could ask them to go back."

22 (Speaks English) We also have a video on record when you can hear the youths
23 themselves saying that. That only Mr Blé Goudé can call them to bring down the
24 roadblocks.

25 Mr Blé Goudé was also in a position of authority over the GPP. This position of

1 authority is demonstrated through his role in the creation of the GPP, his personal
2 links to GPP members, his provision of financial support and food in the early stages
3 of the GPP's existence, and the GPP's compliance with Mr Blé Goudé's instructions to
4 train the youth of COJEP and the FESCI.

5 I will now describe how Mr Blé Goudé's order or act of solicitation or inducement had
6 a direct effect on the commission of the crimes.

7 With respect to Mr Blé Goudé's argument relating to the impact of his instructions,
8 the Prosecution's position is that his instruction had a direct effect on the commission
9 of crimes during the post-election violence. His speeches and rallies kept the youth
10 in a constant state of alert, at his disposal and waiting for his instructions. And you
11 remember, and the Chamber may remember, certainly the evidence reveals that in
12 December there are numerous calls, because he wants to send the youth to attack the
13 Golf Hotel with bare hands, and he's telling them that soon he's going to call upon
14 them in numerous rallies to attack the Golf Hotel. It never materialised, but he's
15 telling them to wait for his call.

16 His speeches and rallies kept the youth in a constant state of alert, at his disposal and
17 waiting for his instruction. This was the case especially in relation to the charged
18 incidents of December, February and April.

19 In relation to the 16 December incident, the violent actions of the youth at roadblocks
20 were performed in execution of Mr Blé Goudé's order of 14 December 2010. And I
21 have already discussed that. But I will simply add that as Witness 625 explained, at
22 the meeting, the Jeunes Patriotes were also asked by Mr Blé Goudé to form corridors,
23 which meant roadblocks. In anticipation of the march, Mr Blé Goudé was placing
24 Young Patriots in areas where they were going to be in physical contact with
25 demonstrators who supported Mr Ouattara. The evidence presented on 16

1 December shows the participation of the youth, in particular the FESCI and the GPP,
2 in the repression of the march.

3 In relation to the 25 to 28 February incident, the actions of youth and militia members
4 occurred in direct response to Mr Blé Goudé's mot d'ordre at the bar Le Baron.

5 Now, while Mr Blé Goudé did not use explicit language to call upon his audience to
6 commit violent acts, the context was such that explicit language was not necessary for
7 the message to be understood.

8 This context included the location of the speech, a traditional pro-Gbagbo stronghold.
9 Yopougon was home to at least three, if not to as many as 10, pro-Gbagbo parlements
10 and agoras.

11 Yopougon had since as early as October 2010 been the location of GPP training of
12 pro-Gbagbo youths, going up and down Rue Principale doing some footing.

13 Mr Blé Goudé lived in Yopougon, and the COJEP's headquarters were also based
14 there.

15 In these circumstances, an explicit message to take violent action was not necessary.

16 Indeed, the immediacy and force of the reaction of the pro-Gbagbo youth and militia
17 to Mr Gbagbo's call in itself demonstrate that the message was received by these
18 perpetrators with no lack of clarity.

19 And this is where, your Honours, and I pause here, the context is still important.

20 Events in January to July 2006, the events of 2004, in November 2004, and the calls of
21 Mr Blé Goudé, the rallies Mr Blé Goudé organised in 2002, the mass rallies. I can't
22 remember if it's the November 2002 one or the February or March 2003 one, there is
23 over a million people present, and you'll remember he even dressed as a general.

24 And we've shown you that video of those events.

25 Again, I referred to the documentary Shadow Work, which provides insight into his

1 mindset, which provides insight into the influence he knew he had over the youths.

2 And this influence did not disappear with time, because as we've stated, Mr Gbagbo
3 made him minister of the youth.

4 If I come back to 25 February and the speech and the audience present, we submit
5 that it is immaterial whether the individual perpetrators of crimes were in attendance
6 at Mr Blé Goudé's Bar Le Baron speech. It is the immediacy of the response, both in
7 geographic and temporal terms, to Mr Blé Goudé's words that demonstrates the effect
8 of the speech on the perpetrator group.

9 Finally, any possible doubt about the meaning of Mr Blé Goudé's calls of 25 February
10 2011 should be dispelled by his subsequent conduct in approving of the violence at
11 the roadblocks. And I've detailed all of these this morning. But let me recall that
12 Mr Blé Goudé argues that he made several attempts to end violence in Yopougon at
13 these roadblocks, and you can find this at paragraph 613 to 624 of his motion. What
14 we argue, your Honour, and what I argued this morning is what these alleged
15 attempts instead demonstrate is that Mr Blé Goudé knew and made no genuine
16 attempt to end the violence, never. Could have: Stop it, do not kill people.

17 Finally, the 12 April 2011 incident occurred as part of a continuum of violence
18 sparked by the same mot d'ordre of 25 February 2011 and culminating in

19 Mr Blé Goudé's instruction on 5 April 2011. And we have to place ourselves in the
20 context of that speech, your Honours. Mr Blé Goudé disappears at the end of March.

21 Actually, he would have fled the country. But nevertheless, while wherever he was,
22 it doesn't matter, he's in hiding and he is still, he is still inciting the youth to man
23 roadblocks and to reinforce them, to reinforce these roadblocks. So by failing to put
24 a stop to the violence of which he had knowledge and, once more, by his incitement,
25 Mr Blé Goudé prompted the continuation of violence in Yopougon.

1 Let me now turn briefly to his intent.

2 Mr Blé Goudé argues at paragraph 503 of his motion that the evidence does not

3 demonstrate that he would have been aware of a substantial likelihood that crimes

4 would be committed as a result of the realisation of his mots d'ordres or speeches.

5 First we point out that substantial likelihood is not the standard under Article 25(3)(b).

6 The law, as exposed in paragraph 1876 of our written submissions, makes it clear that

7 the evidence must show that he meant to contribute to the crime or that he was aware

8 that the crime would be committed in the ordinary course of events as a consequence

9 of the realisation of his act or omission.

10 We submit that Mr Blé Goudé intended to instruct or instigate the pro-Gbagbo forces,

11 in particular the pro-Gbagbo youth, to carry out actions in the execution of which the

12 crimes charged were committed. His intent in relation to the above instructions is

13 demonstrated by the same facts that are described in paragraph 1940 to 1943 of our

14 response. It is also demonstrated by the fact that his instructions to the youth were

15 performed as and were intended to be part of the common effort to keep Mr Gbagbo

16 in power at all cost, including by attacking civilians.

17 Additionally, Mr Blé Goudé was aware that crimes would be committed in the

18 ordinary course of events as a consequence of his acts and omissions, and this is

19 detailed at paragraph 1944 of our response. For example, his intent is also illustrated

20 by his statement that in a revolution, there are always collateral effects. And you

21 saw that from the video of Witness 87, while they're travelling in a vehicle passing a

22 bus full of supporters that basically go, I submit, wild when they see him.

23 Mr Blé Goudé's intent is in particular inferred from his involvement in the creation,

24 funding of and issuance of instructions to a violent militia group, the GPP. The

25 GPP's activities were nothing less than criminal. The Prosecution recalls that their

1 motto was (Interpretation) "treason begets blood." (Speaks English) The GPP would
2 kill its own elements should they disobey or question the leadership.

3 Mr Blé Goudé's contribution to the creation of such a group and his continued
4 relationship with the leadership of that group, including the issuance of instructions,
5 demonstrate his intent to engage in criminal conduct.

6 Mr Blé Goudé's interpretation relating to his speech and mots d'ordres, that is the
7 topic I will now address.

8 In section VI.4 of Mr Blé Goudé's response, he argues that there is no nexus between
9 his mots d'ordres and the crimes.

10 At paragraphs 601 to 609 Mr Blé Goudé broadly argues that the killings at roadblocks
11 were not a result of his speech, but the evidence he refers to has nothing to do with
12 impact as it rather deals with the specifics of the crimes committed in Yopougon.

13 First, Mr Blé Goudé argues that the victims of violence were from various ethnic
14 groups and not uniquely those perceived as pro-Ouattara. But Mr Blé Goudé cites
15 only to violence that occurred outside Yopougon, namely in Abobo and the western
16 village of Duékoué, if you look at his motion, footnote 1469. Duékoué is in the west
17 of the country.

18 The Prosecution's case on 25 to 28 February incident is confined to events in
19 Yopougon. Hence the evidence cited by Mr Blé Goudé, we submit, is not relevant.

20 He further argues that those manning the roadblocks were criminals or delinquents
21 taking advantage of the situation. As we've argued the first day when discussing
22 this incident, we submit that that too is irrelevant. What is significant is that the
23 crimes at roadblocks were occurring pursuant to Mr Blé Goudé's call, that he was
24 aware of these crimes and did not act to stop them.

25 Mr Blé Goudé argues that he did not have the means to compel the police or

1 administration to take measures. I don't know, when I think of this, I also remember
2 him giving money, minister of youth giving money to the police. You saw the
3 footage. You saw the answers of Witness 46. You saw the challenge of Mr
4 Gbougnon questioning 46 on this. It's an envelope with money.

5 As put by Witness 440, all Mr Blé Goudé had to do was to ask them to go home, but
6 he never did. That's all he had to do, your Honours. He never did.

7 Mr Blé Goudé argues that the testimony of Witness 97 indicates that roadblocks were
8 formed for monetary extortion. As I've said this morning, we believe that this is a
9 selective reading of Witness 97's testimony. Some three pages later, if you read the
10 transcript of the testimony of Witness 97, he testified about intimidation in the form of
11 burning people alive, the famous phenomenon known as "Article 125". And he
12 himself saw such incidents or their aftermath. He saw that.

13 Finally, Mr Blé Goudé refers to Witness 449's testimony to argue that the Prosecution
14 has failed to prove that certain groups were targeted at these roadblocks. However,
15 Mr Blé Goudé refers to a question his counsel put to the witness relating to the
16 ethnicity of those manning the roadblocks, not in relation to those who were targeted.
17 Hence the reference misses the point.

18 At paragraph 625 to 645, Mr Blé Goudé argues that there was no nexus between his
19 speeches and the crimes committed on the ground. In a nutshell, he argues that his
20 speeches are taken out of context, that in every speech cited in the trial brief, he asked
21 the youth to remain calm and states that the evidence does not show that he
22 mobilised the youth to commit violent acts. Our written response deals with this in
23 full detail in section V.F.4, your Honour.

24 And I recall here our position, that while Mr Blé Goudé did not use explicit language
25 to call upon his audience to commit violent acts, this was nevertheless the effect of his

1 repeated instructions, encouragement and in particular his approval of violence at
2 roadblocks. The strength of his message was such that apparent appeals to peace
3 and non-violence could not dilute its true meaning. And we respond to that and we
4 give the details at paragraph 1843. I'll provide two examples here of the interests, in
5 the interests of time.

6 With respect to his speech on 14 December, during which he claimed to be 100 per
7 cent general, 100 per cent minister, Mr Blé Goudé argues at paragraph 628 that he told
8 the youth to remain peaceful. However, Mr Blé Goudé was telling the youth to
9 remain calm as no action was required at that time, but to expect his call when the
10 country would be in danger.

11 So in essence the events of December and early January in relation to the Golf Hotel
12 delaying the attack on the Golf are still present, are still impregnated when he
13 does -- in the minds of the youth when he does give a call in the instructions on 25
14 February.

15 And I'll read what he said at that time:

16 (Interpretation) "This is why I ask young people, it's me who was galvanising them.

17 It's me who was galvanising them in the street. It's me. You must say remain calm.

18 The time has come for us to start work. For the time being, we're working. Let
19 people say what they will. When Côte d'Ivoire is in danger, I will call for you."

20 (Speaks English) And that call he made, your Honours, at a minimum, on 25
21 February.

22 With respect to a rally in Anono on 15 January 2011, Mr Blé Goudé argues that there
23 is no objective reason to infer that this mot d'ordre related to engaging in violent acts,
24 and I refer to paragraph 638 of their motion. This inference is open on the plain
25 words spoken about getting rid of these annoying neighbours. The pattern, your

1 Honour, the evidentiary pattern is mentioned.

2 Our response at paragraph 1843 includes nine more examples, and I will not take

3 more time reciting them one by one.

4 But we submit that it cannot be reasonably argued that Mr Blé Goudé always tried to

5 calm and reassure his audience, contrary to his position at paragraph 642. We

6 submit that Mr Blé Goudé's speeches were intended to mobilise the youth into violent

7 action and this in fact materialised.

8 Let me now turn briefly to Article 25(3)(c), which relates only to Mr Blé Goudé. And

9 of course Article 25(3)(c) refers to aiding and abetting.

10 Now, I just remind the concession we made, and I discussed that this morning, in

11 relation to this mode of liability and the incidents of 3 and 17 March. Also I refer

12 your Honours to paragraphs 1952 to 1971 of our response, which deals with the

13 elements of aiding and abetting the law.

14 Article 25(3)(c) provides for a lower level of participation. If the Trial Chamber is not

15 convinced that the evidence meets the requirements of Articles 25(3)(a) or (b), the

16 Chamber may find that his actions, that is Mr Blé Goudé's actions, nevertheless

17 assisted the direct perpetrators in the commission of the crimes charged.

18 I will address, sorry, the Defence arguments. Mr Blé Goudé makes two arguments

19 with respect to this mode of liability, which can be found at page 505 of his motion,

20 paragraph 505, sorry.

21 In his first argument he claims without any support that the Prosecution failed to

22 establish the objective elements of this mode of liability. Your Honours, simply

23 stating that the evidence does not meet the objective elements, we submit, is

24 insufficient for the Trial Chamber to grant the Defence's request to dismiss the case at

25 this stage. At a minimum, Mr Blé Goudé was expected to provide certain

1 justifications or arguments for his claims, which he does not.

2 Moving to the second argument, Mr Blé Goudé claims that the Prosecution has failed
3 to demonstrate that any purported assistance was made for the purpose of facilitating
4 a crime. He adds that this departs from the ICTY and ICTR Statutes in that mere
5 knowledge is insufficient to meet the requisite mens rea.

6 On this point, the Prosecution says the exact same thing at paragraph 1959 of its
7 response. The standard, we submit, requires that this assistance is made with the
8 purpose of facilitating. Just to draw a distinction here, this means that there is no
9 need to establish that the accused specifically intended the commission of the crime.
10 The aim of assistance is the facilitation itself.

11 The Prosecution submits that evidence of Mr Blé Goudé's purpose of facilitating the
12 crimes charged has been more than made out by the recitation of the facts for each of
13 the relevant incidents. Indeed, Mr Blé Goudé mobilising pro-Gbagbo youth to
14 commit violent acts served the purpose of facilitating the crimes charged during the
15 16 December incident, the 25-28 February 2011 incidents and on 12 April 2011
16 incident.

17 Now, this is our brief response to this very specific claim in Mr Blé Goudé's motion.
18 And obviously I refer the Trial Chamber to paragraph 1962 to 1971 of our response,
19 where we elaborate a little bit more on how the evidence meets all the essential
20 elements of Article 25(3)(c).

21 Let me now turn to Article 25(3)(d) in relation to Mr Laurent Gbagbo.

22 And I think, your Honours, I will recommend that I break at the end of this. I have
23 maybe 8 pages or 10 pages or so left, which means another 10, 15 minutes. And I
24 think Article 28 should be addressed tomorrow. Thank you.

25 Now, turning to this last mode of liability under Article 25(3), Mr Gbagbo and

1 Mr Blé Goudé can also be held liable under an accessorial mode of participation,
2 Article 25(3)(d), for contributing to the commission of the crimes charged.
3 Mr Gbagbo is charged under this mode for all incidents, whereas Mr Blé Goudé is
4 charged with simply three, and I recall the December, February and April incidents.
5 First, Mr Gbagbo claims at annex 5, paragraph 594, that the members of the group
6 forming the common purpose have not been specified. Mr Gbagbo cites to
7 paragraph 738 of our trial brief. We note here that Mr Gbagbo ignores that this
8 paragraph refers back to our earlier section describing the inner circle. Indeed, for
9 the purposes of this case, your Honours, the inner circle under Article 25(3)(a) and the
10 group of persons under Article 25(3)(d) are composed of the same individuals.
11 Second, Mr Gbagbo claims that in describing the inner circle, the Prosecution does not
12 demonstrate how each member intended to contribute to the common plan. That's
13 annex 5, paragraph 595. Your Honours, this is not an element to be proved under
14 common purpose. The acts and conducts of other members of the inner circle are
15 described as part of the narrative. What needs to be proved is the intent of the
16 accused to contribute to the charged crimes under Article 25(3)(d). Mr Gbagbo's
17 reading of the law, we submit on this issue, is incorrect.
18 This, we submit, your Honours, also responds to Mr Gbagbo's argument at
19 paragraphs 596 to 599 of his motion at annex 5 on the distinction between
20 contribution under Article 25(3)(a) and 25(3)(d). The case law has clarified that for
21 Article 25(3)(a), the contribution is to the common plan, whereas under Article
22 25(3)(d), it is to the individual crimes.
23 These were the main arguments of Mr Gbagbo's motion.
24 I will now turn to Mr Blé Goudé's contribution under Article 25(3)(d). And I will
25 respond, your Honours, to his sole argument developed at paragraphs 506 to 508.

1 Indeed, at paragraph 507, Mr Blé Goudé simply states that the Prosecution has failed
2 to establish that, first, Mr Blé Goudé made a significant contribution or that; second,
3 the co-participants in the common purpose had a shared intent; and, three, that
4 Mr Blé Goudé was aware of the intent of the group.

5 As we've stated earlier, your Honours, it is our position that simply listing these three
6 arguments do not relieve Mr Blé Goudé of his obligation to make a showing in his
7 motion.

8 Now, we explain in great detail in our written response how the evidence meets each
9 element under this mode. Therefore, right now I will focus on the one item that

10 Mr Blé Goudé develops on which you will find at paragraph 508. Here

11 Mr Blé Goudé argues that the Prosecution conflates the common plan under Article
12 25(3)(a) and common purpose under 25(3)(d).

13 First, our response, your Honour, first point, the Prosecution drew the distinction in
14 our trial brief at paragraphs 898, between Articles 25(3)(a) and 25(3)(d) as the first is a
15 principal mode of liability while the second is, like I've mentioned, accessory mode
16 of participation.

17 The Prosecution also specified at paragraph 1975 of its response that the two concepts
18 are not identical. What needs to be proved under Article 25(3)(d) is not the existence
19 of an agreement, but the collective or shared intent of a group of persons.

20 This is not to say that the common plan and the common purpose cannot share
21 similar features. The Prosecution has consistently alleged that Mr Gbagbo's resolve
22 to stay in power with the support of Mr Blé Goudé and other participants, together
23 coupled with their intent to use forces against political opponents, is what makes their
24 contributions criminal. This can apply to both modes of liability.

25 However, we defined the group of persons acting with a common purpose at

1 paragraph 1990 of our written response as the pro-Gbagbo forces and members of the
2 inner circle, including Mr Gbagbo and Mr Blé Goudé.

3 These persons shared a common purpose to attack civilians perceived to support Mr
4 Ouattara in Abidjan in between the same dates, November 27 to on or about 12 April
5 2011, and targeted them on ethnic, religious, political and national grounds.

6 Although Article 25(3)(d) does not require for the accused to be a member of the
7 group, in this case the overwhelming evidence shows that Mr Gbagbo and
8 Mr Blé Goudé were not only members of this group, they were its leaders and main
9 beneficiaries. Mr Gbagbo himself is indeed central to the common purpose, as we
10 detail in paragraph 1991.

11 As for the collective or shared intent of a group of persons, the group's intention can
12 be inferred from the intention of the leaders of the group, here Mr Gbagbo and
13 Mr Blé Goudé themselves, given that they played a major role in the group and were
14 significantly involved in creating the group, leading the group and organising its
15 criminal activities.

16 The group's shared or collective intent may be inferred inter alia from the group's
17 collective decisions and actions or its omissions and its concerted actions. The
18 factors demonstrating this intent, your Honours, are listed at paragraph 1995 of our
19 response.

20 For the purposes of Article 25(3)(a), we demonstrated that the inner circle's structure
21 and hierarchical nature was such that it met the criteria for liability under the
22 common plan. The threshold for group structure or membership under Article
23 25(3)(d) liability is far lower. It is not even necessary to show that the group was
24 organised in a military, political or administrative structure. For this reason, the
25 inner circle and the pro-Gbagbo forces, including the FDS, pro-Gbagbo youth groups

1 and militias, clearly meet the lower organisational threshold.

2 Now, your Honours, this concludes our response to Mr Blé Goudé's challenge on the
3 distinction between the common plan and the common purpose.

4 And again we refer the Chamber to paragraphs 2010 to 2014, which describe

5 Mr Blé Goudé's contribution under this mode of liability, as well as paragraph 2015 to
6 2019, which relate to his mental state and awareness under this mode of liability.

7 I would therefore conclude here for today, your Honour. Now, I should have -- I
8 will not go beyond one hour tomorrow.

9 PRESIDING JUDGE TARFUSSER: [15:51:35] Okay. Thank you very much. So
10 this concludes the hearing today. We will come back here at 9.30 tomorrow for the
11 first session, and then you will conclude, and then the floor goes to the Legal
12 Representative of Victims.

13 Thank you very much. The hearing is adjourned to tomorrow morning, 9.30.

14 THE COURT USHER: [15:52:00] All rise.

15 (The hearing ends in open session at 3.52 p.m.)