

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 Monday, 19 November 2018
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:32:00] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:32:26] Good morning.
15 I immediately give the floor to Mr Knoops and to the Defence for Mr Blé Goudé, and
16 for that to Mr Knoops for the continuing of the submissions by the Defence for
17 Mr Blé Goudé.
18 Yours the floor.
19 MR KNOOPS: [9:32:53] Thank you very much, Mr President. Good morning, your
20 Honours.
21 Mr President, the Prosecution evidentiary theory on which they dealt the case against
22 Mr Charles Blé Goudé rests entirely on a combination of, first, the theory of inferences
23 being not the only reasonable ones we saw last week, and secondly, the theory of
24 corroboration.
25 The first we addressed at the last session, Wednesday, and the second we will address

1 now, Mr President.

2 The first question of course arises: Did the Prosecution apply this theory on
3 corroboration correctly?

4 Our answer: No, it did not, and we will show you in this first session why the
5 Prosecution, our submission, didn't apply this theory correctly on the case of Mr
6 Charles Blé Goudé.

7 The starting point, Mr President, your Honours, is paragraph 198 of the Prosecution
8 response, saying that corroboration would not require the evidence to be identical in
9 all aspects or to describe the same fact in the same way.

10 According to the Prosecution, one prima facie credible piece of information is
11 compatible with another prima facie credible piece of information regarding the same
12 fact or sequence of linked facts to establish corroboration.

13 Our answer to this submission, Mr President, is the following: The Prosecution did
14 not submit any persuasive argument why such a broad interpretation of
15 corroboration should apply in the instant case. It does refer indeed to five ICTR
16 judgments, but no ICC authority. It does refer to the opinions of Judge Van den
17 Wyngaert and Morrison, but does apply this wrongly into the case of Mr Charles Blé
18 Goudé.

19 The more logical and convincing approach how to apply corroboration you find,
20 that's our submission, in the opinions of Judges Van den Wyngaert and Morrison,
21 which introduces the theory of an illusion of corroboration which should be avoided.

22 In particular, I draw the attention to two observations made by these Judges. The
23 first you find in paragraph 65 of the Bemba appeals judgment of 8 June, citation:
24 "Where the Prosecution goes wrong, we think", these Judges, "is that she seems to
25 believe that it is permissible for a Trial Chamber to evaluate all the evidence together,

1 even if different items of evidence pertain to different instances of criminal conduct."

2 End quote.

3 And secondly, paragraph 67 of the judgment that the Prosecution's "proposed
4 'cumulative' approach creates the risk that the Chamber may consider evidence that is
5 not relevant or has no evidentiary weight to speak of and make findings under the
6 illusion of corroboration." End quote.

7 Mr President, we believe that Judges Van den Wyngaert and Morrison present a
8 convincing approach which should be followed in the context of also a no case to
9 answer. We have five reasons to support this approach. First, the Prosecution only
10 points to ICTY and ICTR cases that would define what the Chambers mean by a
11 sequence of linked facts in terms of corroboration. As mentioned, no convincing ICC
12 precedent is mentioned by the Prosecution.

13 Second, even if the jurisprudence cited by the Prosecution, even that jurisprudence
14 does not support the proper interpretation of the theory of corroboration the
15 Prosecution is advancing.

16 Let us briefly delve into the proper interpretation of this terminology. One has to
17 observe at the outset, Mr President, that the presumption of innocence militates
18 against a broad interpretation of this principle of sequence of linked facts. This was
19 already aptly enunciated by the Honourable Judge Henderson in his 23 June 2017
20 opinion to the 68 decision, filing number 950.

21 In this opinion, Mr President, the Honourable Judge Henderson rejected such a broad
22 interpretation of the term "corroboration" when he reasoned that just because two
23 statements deal roughly with the same topic, this does not establish that they
24 corroborate each other.

25 As an example, Honourable Judge Henderson referred to the Rule 68(2)(b) statements

1 of several 3 March incident witnesses and found that a statement giving details about
2 the death of one particular victim during the women's march does not corroborate a
3 statement by another witness concerning the death of a different person who died in
4 that incident, unless they were both killed by the same explosion.

5 Your Honours, this legal view clearly does not support the Prosecution interpretation
6 of this terminology when it suggests in its response to our no case to answer request
7 in paragraph 198 that "evidence related to an uncharged act A may corroborate
8 evidence relevant to charged or uncharged act B if the evidence relates to the same
9 pattern".

10 Thirdly, when citing ICTR precedent, your Honours, the Prosecution does not
11 provide the Chamber with the full quotation in which the words, quote, "at the time
12 of the events" clearly appear when citing the Appeals Chamber decision of
13 *Prosecution versus *Rukundo*, paragraph 76, which also cites the Appeals Chamber
14 judgment of Nahimana, paragraph 428 of the ICTR Appeals Chamber.

15 Your Honours will find in this full citation the words every witness presents what he
16 has seen from his point of view at the time of the events. So what matters is the
17 words "at the time of the events." From this citation, this full citation, which is not
18 fully quoted by the Prosecution, it appears that a sequence of linked facts would
19 mean sequence of facts that are observed in the same time within a certain geographic
20 scope. This interpretation is also consistent with the plain meaning of the word
21 "sequence" as set forth by the Cambridge English dictionary, which defines
22 "sequence" as "a series of related things or events, or the order in which they follow
23 each other".

24 Therefore, Mr President, it's our submission that the facts in order to establish such a
25 sequence must follow each other, either temporally or geographically or with respect

1 to some other concrete feature.

2 In the case of Mr Charles Blé Goudé, Mr President, the Prosecution is trying to apply
3 this concept of sequence of linked facts to events that have no connection to one
4 another. Indeed, the Prosecution must first prove how the linked facts make up such
5 a sequence before, even before stating that these facts would corroborate one another.
6 For example, there is no evidence that the so-called pro-Gbagbo forces were an
7 organisation led by the inner circle. The Prosecution maintains that these were an
8 organised group since they are in the Prosecution's submission the perpetrators of the
9 crimes.

10 Now, Mr President, given that this term "pro-Gbagbo forces" is not a term by which
11 the alleged members of these groups refer to themselves, there is no witness saying "I
12 was a pro-Gbagbo force, member of a pro-Gbagbo force", and bearing in mind there
13 were no insignia or distinctive markings of what might constitute a member of a
14 pro-Gbagbo force, it is therefore for the Prosecution to prove that the perpetrators of
15 alleged crimes belong to these groups. Rather than providing such evidence, the
16 Prosecution assumes the perpetrators belonged to this group on the mere allegation
17 that these certain perpetrators were labelled as "pro-Gbagbo" without even inquiring
18 on how such an assessment was made.

19 Since the perpetrators are assumed to be the same, the Prosecution is able and only
20 able to make the argument that an uncharged act A corroborates with an uncharged
21 act B. But it never did show the Chamber, Mr President, how these two acts
22 constitute a sequence of linked facts. Therefore, the meaning of the term "sequence
23 of linked facts" as set forth by the Prosecution is not to be accepted, particularly not
24 when one observes how the ICTR and ICTY did apply the proposition cited by the
25 Prosecution in this case.

1 Briefly, as a fourth argument, the reliance by the Prosecution on the ICTR Appeals
2 Chamber decision, Prosecutor versus Gatete, 9 October 2012, paragraph 126, is not
3 decisive. In that case the Appeals Chamber found that with respect to this particular
4 accused, it was not necessary that all witnesses describe the same visit by Mr Gatete
5 to a parish.

6 While the Appeals Chamber observed that the witnesses described different visits to a
7 parish and found that there was nonetheless corroboration, your Chamber might still
8 see in this judgment that the case of Mr Gatete concerned one event, namely, one visit
9 to a parish, albeit described by witnesses as different ones but still all referring to the
10 same discrete location, a parish, a visit to a parish on 11 April 1994.

11 Mr President, if one transposes this jurisprudence onto the case of Mr Charles Blé
12 Goudé, you may find the factual situation being totally different than the one
13 presented by the Prosecution in our case.

14 In our case, the case of Charles Blé Goudé, the Prosecution case rests on several
15 incidents, not just one visit to a parish, to use the analogy with Gatete, and the
16 Prosecution does not refer to different factual accounts of witnesses with respect to a
17 discrete specific locality or identified perpetrators and identified victims.

18 Now, we all know Abidjan is a sprawling city that has a greater surface area than the
19 city of London. The Prosecution therefore cannot say that events that took place
20 months apart in a city that is larger than London are sufficiently linked to each other
21 to constitute corroboration.

22 Further in our submission the Prosecution misrepresents the opinion of the Judges
23 Van den Wyngaert and Morrison's interpretation of the principle of corroboration.
24 Nowhere in their opinion you find that they say that they disagree with this principle.
25 Rather, they say and submit that they disagree with a broad interpretation as

1 suggested by the Prosecution in the Bemba case.

2 Mr President, finally, as a fifth observation, the Prosecution when applying the law on
3 corroboration overlooks a very essential point. This goes to the acts of the accused.
4 When it concerns the assessment of individual criminal guilt or responsibility and the
5 evidence goes to the acts of the accused himself, the evidence, the element of
6 corroboration should be approached with great care.

7 Therefore, the Prosecution's approach on corroboration cannot be applied when it
8 concerns the assessment of Mr Blé Goudé's individual criminal responsibility based
9 on uncorroborated statements, such as, Witness 435 or Witness 440 considering the
10 so-called proliferation of roadblocks.

11 It is under international criminal law, Mr President, a well-established principle that
12 for certain categories of uncorroborated evidence, such as evidence which directly
13 implicates the accused, Trial Chambers have scrutinised that type of uncorroborated
14 evidence with great care before accepting it as being sufficient to make a finding of
15 guilt.

16 One example is the judgment of 1 September 2004 in Prosecution versus Brdanin,
17 ICTY judgment, paragraph 27; and also you find in the Appeals Chamber's rulings of
18 the ICTY, interpreting rule 92bis statements equivalent to Rule 68(2)(b) statements
19 before the ICC, that chambers are not inclined to convict on the basis of such Rule
20 92bis statements, unless there is convincing evidence which corroborates such a
21 statement under Rule 92bis. I refer to Prosecutor versus Stanislav Galić, decision on
22 interlocutory appeal concerning Rule 92bis, 7 June 2002 where you find this reference.

23 In conclusion, Mr President, based on these five arguments, we submit that the
24 Prosecution's interpretation of corroboration should not be accepted.

25 Now my colleague, Mr Gbougnon, will delve into corroboration when it concerns

1 Witness 435, and I'm happy to give him the floor.

2 PRESIDING JUDGE TARFUSSER: [9:51:10] Thank you very much, Mr Knoops.

3 And I give the floor to Maître Gbougnon.

4 MR GBOUGNON: [9:51:17] (Interpretation) Good morning, your Honours.

5 Mr President, your Honours, the Defence team of Charles Blé Goudé in their no case
6 to answer motion of 23 July 2018, in particular in paragraph 240 of that filing, set out
7 in great detail exactly why our team is of the view that P-435 is in no way credible and
8 that his statements were not corroborated by other evidence; whereas, obviously that
9 should have been the case.

10 What is more, the Defence team has provided an entire chart of inconsistencies and
11 contradictions that are found in the various statements made by 435, and this is
12 mentioned in paragraph 239 of this same filing.

13 Thus, embarking upon a rather dangerous exercise, the Prosecution has attempted to
14 respond to a number of allegations, and the Prosecution wrote the following in
15 paragraph 130 of their reply, and I'll quote in English:

16 "Alternatively, for the reasons detailed below and where appropriate in the
17 Prosecution's response, the Chamber should regard Witness P-0435 as a highly
18 credible, insider witness, whose evidence is corroborated by other reliable witness
19 evidence, and by documentary evidence presented in the case."

20 (Interpretation) End of quote.

21 However, it's quite possible to note, in light of this presentation that the Prosecution,
22 as soon as they say that P-435 is a credible witness, well, that's all very well and good,
23 but they do not even trust him in actual fact. The Prosecution has said in its oral
24 pleadings of 2 October, and I will quote in English:

25 (Speaks English) "Mr Blé Goudé disappears at the end of March. Actually, he would

1 have fled the country."

2 (Interpretation) T-222, English version P-74, lines 20 to 21.

3 Your Honours, this may seem trivial to you, but this statement made by the
4 Prosecution is of the utmost importance when it comes to the credibility of P-435. In
5 fact, he is the only person who provides evidence from the Prosecution about the
6 apparent or alleged leaving of Côte d'Ivoire by Charles Blé Goudé in April 2011. He,
7 Witness P-435, said that Mr Blé Goudé left on 4 April 2011, after telling the
8 investigators that indeed, in actual fact, he left on 7 or 8 April 2011. T-94, page 40.

9 On that very same day, Mr Eric MacDonald pointed out that this statement was
10 particularly relevant. Transcript 94, French version, pages 42 and 43.

11 We really must wonder why the Prosecution has not chosen any of the dates
12 provided by its own witness and is speaking of late March, ignoring what was
13 actually said by its very own single witness on this particular point. Your Honours, I
14 think you'll easily understand why the Prosecution is evading the point.

15 If we look beyond the fact that the jurisprudence chosen and quoted by the
16 Prosecution does not apply to the instant case as Professor Knoops has shown so well,
17 there is one fact all the same that all parties agree on: P-435 is not credible.

18 The Prosecution may try to corroborate his testimony, but in vain. It changes
19 nothing.

20 Your Honours, we will demonstrate that this attempt to corroborate the testimony of
21 P-435 is completely unrealistic because it is based on poor proof, hearsay, various
22 police reports or because of the fact that the events that were described are totally
23 different to what the Prosecution is trying to corroborate.

24 First, a few words about corroboration of Witness P-435 and his status as a GPP
25 commander in 2010.

1 Mr President, your Honours, the Prosecution has attempted to show that the witness
2 was a GPP commander by way of video CIV-OTP-0082-0482.
3 And just a point for the interpreters, I will be skipping reference numbers in the
4 future. I'll be skipping over the "CIV-OTP".
5 Reference number 0082-0482 in which one can see P-435 wearing a T-shirt on which
6 we see "GPP". I think it's quite reasonable to point out other than the GPP T-shirt,
7 nothing on the video shows anything about P-435's status or his rank or the level that
8 he was at within this association.
9 Furthermore, in paragraph 133 of its response, the Prosecution says that this person
10 took part in this rally and was a senior GPP member and apparently this has been
11 corroborated by an email that was sent from the GPP email address on the very same
12 day of the rally. 0082-0482_R01 is the reference number.
13 However, when you read the email it's quite confusing. In actual fact this witness
14 says that he is head of mission. That's quite different from being a commander as
15 the Prosecution would have you believe.
16 In paragraph 134 of the same response, the Prosecution has provided a video,
17 0070-1065. And in this footage we see P-435 blocking a UNOCI tank, and there is an
18 online press article in which he is referred to as Commander Mike.
19 Your Honours, I think you'll agree with us that blocking a UNOCI tank in no way can
20 justify a particular title or rank and cannot be any kind of corroboration of these
21 allegations. This reference, Commander Mike from the GPP, is just how he
22 introduced himself to the journalists who merely repeated what he had said.
23 All in all, none of the evidence provided by the Prosecution corroborates the
24 allegations to the effect that this witness played a leading role as a commander within
25 the GPP.

1 Now allow me to make a few remarks about the corroboration of P-435 and the
2 formal creation of the GPP as a militia group.

3 Your Honours, the Prosecution basing itself on what was said by P-435 at paragraph
4 135 of its response, suggests that Mr Charles Blé Goudé took part in the establishment
5 of the GPP. This, they say, was corroborated by witness testimony and certain
6 documentary evidence.

7 If we base ourselves on the Prosecution's theory of the sequence of linked facts, we
8 might be tempted to believe that P-97's testimony corroborates that of P-435 regarding
9 the establishment of the GPP on 23 March 2003, and thus the participation of Mr
10 Charles Blé Goudé in the conclave would have led to the establishment of the GPP.
11 However, if you read what was actually said by the witness very carefully, you will
12 see that it was impossible for Mr Blé Goudé to have been part of the establishment of
13 this group.

14 First of all, in transcript T-48, page 42, Witness P-97 does not mention Charles Blé
15 Goudé when he discusses with him about who were the founding fathers of the GPP.
16 It emerges from the testimony and a statement taken from 97 that also spoke to Touré
17 Moussa Zéguen and Charles Groguehet and the paternity, so to speak, of the GPP was
18 discussed between these two people and there was no reference to Blé Goudé.

19 Page 40, the same witness, P-97, refused to enter the AJSN alliance in 2003 because Blé
20 Goudé apparently was junior to him. So how can we understand that Touré Zéguen
21 would have created the GPP with him on the same year? It seems unlikely. And
22 Witness P-97 never said such a thing.

23 *Even better, P-97 at transcript T-48, page 44 alleged that in 2005, armed movements
24 such as the GPP, the UTPLCI created something new, the CONARECI, so as to no
25 longer be in isolation, because they were not part of Charles Blé Goudé's alliance.

1 So it emerges from all these various statements that one cannot say that Charles Blé
2 Goudé took part in the creation of the GPP or collaborated with any of these other
3 groups in any way. Particularly you can't say this just because some people were
4 former members of the FESCI.

5 Regarding the recruitment in 2003, P-97 completely contradicts the testimony of P-435.
6 Indeed, he says at page 35 and 36 of his witness T-48 that the recruitment of 2003 was
7 spontaneous and young people from all walks of life, from all groups joined the army
8 at that time. There was absolutely no mention of the GPP or no mention whatsoever
9 of militia groups.

10 Furthermore, the Prosecution has adduced a book, the book of a witness. And I'll
11 give you the ERN number. As I was saying, the Prosecution has produced a book,
12 00081-0006 at page 0034 to page 0036, and then further on 0093.

13 Mr President, your Honours, I think it's relevant to note that the excerpts cited were
14 never put to the witness when he appeared, even though they completely contradict
15 what he said in the witness stand. So why would these excerpts be kept as evidence?
16 Because the Prosecution should have confronted the witness with them, because there
17 is an immense contradiction between his statements and what he said in court.

18 Furthermore, we do not know the identity of the COJEP member who was mentioned
19 as a source and we don't know what conditions in which he was interviewed in the
20 passage from the book mentioned earlier, so his witness testimony cannot be deemed
21 credible and cannot convince any reasonable Chamber.

22 Turning now to the GPP as the military wing of the Patriotic Galaxy.

23 Your Honours, the Prosecution has alleged in paragraph 137 of its response that the
24 GPP played a particular role within the *Galaxie Patriotique* and that there was an
25 overlap between armed groups and unarmed groups and the pre-eminent role played

1 by former leaders of the FESCI.

2 The Prosecution claims that this statement comes from what P-435 said, quoting
3 transcript T-87, page 8 and pages 27 to 29.

4 However, if you read over the Prosecution's excerpts, you will see that the witness
5 has not said exactly what the Prosecution has said. In actual fact, P-435 at transcript
6 T-87, page 8 first speaks of the creation of the GPP in 2003 with a number of people,
7 including Charles Blé Goudé. And then he quotes a number of commanders who
8 apparently were in charge of GPP units. One was the president of the GCLCI and
9 apparently he was part of the GPP. I think it's interesting to note that there is a
10 disconnect between the Prosecution's allegations and what the witness said, even
11 though the witness -- even though the Prosecution tries to have the witness
12 corroborate what was said earlier.

13 Furthermore, he says that P-435's remarks were corroborated by a number of
14 documents, including a letter from Djué Eugène, 0025-0233 at page 0238, dated 17
15 April 2005 along with a list of patriotic movements, including the GPP.

16 In relation to this particular document, one will note that there is no allusion made to
17 the Patriotic Galaxy, so how can the document corroborate the fact that this said
18 galaxy has an armed faction and an unarmed faction and that the two overlapped?
19 As for these movements belonging to the *Galaxie Patriotique* or not, I think it's good to
20 remind ourselves of what P-97 said. He said that there was a distinction between the
21 armed groups and the unarmed groups.

22 Furthermore, the Prosecution has adduced a video, 0059-0003 and if you look at the
23 footage, you can see a number of leaders, according to the Prosecution, leaders of the
24 *Galaxie Patriotique*, which would allegedly corroborate this idea, not a fact but an idea
25 that there was an overlap between the armed groups and the unarmed groups and

1 the prominent former leaders of the FESCI.

2 *Unfortunately for the OTP, the footage actually shows a disarmament process, and you do not
3 see Charles Blé Goudé. You do not see his organisation, the COJEP, or the AJSN. You do not see
4 them taking part. So this shows us once again that this idea that the association led by the accused
5 was not armed; otherwise they would have taken part in this meeting about disarmament.

6 The Prosecution has also adduced receipts of payments made to certain youth leaders,
7 even if these receipts are authentic, and this is very much at question, a receipt to
8 Eugène Djué cannot be relevant to corroborate the witness testimony of P-435
9 regarding the allegation that there was overlap between the armed and unarmed
10 groups within the *Galaxie Patriotique*.

11 Let us now look at the split within the GPP and the GPP's dealings with satellite
12 militia groups.

13 The Prosecution in its wish to make P-435 credible no matter what the cost said in
14 paragraph 139 of its response that the GPP split into two factions and this, and they
15 say that the witness was credible because of this split that was mentioned.

16 But the Prosecution provides some documents that apparently corroborate P-435,
17 Witness P-435's statement, transcript T-87 *, pages 11-12 and 15-17. One must stress
18 that the Defence team of Mr Charles Blé Goudé has never challenged that the witness
19 belonged to the GPP and thus he could have been completely aware of power
20 struggles within the group, but there is no link to his credibility. The Charles Blé
21 Goudé team wishes to speak to the probative value of receipts and reiterates that
22 power struggles within the GPP were common knowledge, and the fact that P-435
23 mentioned them adds nothing to his credibility.

24 Corroboration of Witness P-435 regarding training, recruitment and inclusion of
25 militia members within the Defence and Security Forces, the FDS.

1 Your Honours, at paragraph 144 of its response, the Prosecution alleges that
2 according to the testimony of 435, as of December 2010, young members of the GPP
3 and other patriotic movements who had already received military training from P-435
4 himself and from other instructors, that these people were brought in to military
5 camps to receive stepped-up military training and that they had their physicals at the
6 Abidjan military hospital and at the former Akouédo military camp before they
7 joined various army units, including the 1st BCP, the armoured battalion and the
8 BASA or the BASS.

9 According to the Prosecution, this so-called unofficial recruitment, apparently they
10 say that Witness *P-347 corroborates what P-435 said by saying that as of December
11 2010, there was this stepped-up training of young people within the Republican
12 Guard camp located in Akakro and that he had not been informed of that and that
13 they reported directly to General Dogbo Blé.

14 *This is P-347, T-77, pages 06 to 17, 32 to 37.

15 Furthermore, and once again according to the Prosecution, at paragraph 146 of its
16 response, the same witness, P-347, allegedly stated that these young recruits trained
17 openly at a gathering point in Treichville in front of the Republican Guard
18 headquarters and beside the Palais de la Culture and then from that point they went
19 to join the Akakro training camp and then after that they joined the Republican
20 Guard.

21 On this point the Prosecution has mentioned something that comes from P-347's
22 testimony, T-78, pages 39 and 40. Apparently this witness said that the recruitment
23 was contrary to the normal procedures.

24 Your Honours, I think it must be observed that the Prosecution has read P-347's
25 testimony selectively and that they have twisted his words around. The Prosecution

1 alleges that P-347 gave testimony saying that the young recruits were training openly
2 at a gathering place in Treichville. However, P-347 never mentioned training; rather,
3 he mentions this spot where the recruits would gather, T-77, page 34.

4 Furthermore, at paragraph 149 of its response, the Prosecution affirms that certain
5 documents apparently corroborate 435 about the medical visits in December at the
6 Abidjan military hospital. Thus, this corroboration would be on December, the
7 month of December, and that indeed is the date on which the first wave of recruits
8 had their physical examinations, as we can see from document 0048-1109, in Akakro
9 and not at the Abidjan military hospital or at camp Akouédo.

10 Indeed, the two other medical visits of January, 3 and 11 January, and then 25 to 31
11 January, this is when the other medical examinations occurred at the military hospital
12 and in Akouédo.

13 However, one must look beyond these documents adduced by the Prosecution before
14 one can say whether or not there was corroboration. When P-435 was questioned
15 about the physical, there were several things that came out of his testimony that were
16 quite incongruous and the Chamber cannot thus reasonably say that his testimony
17 was reliable or credible.

18 T-93, pages 63 to 67.

19 Indeed, in this passage, particularly at page 63, P-435 mentions an amount of money,
20 20,000 francs, that the national service apparently asked by way of a decision, asked
21 that the money be collected from the recruits. When he was asked what that
22 decision was all about, he was unable to answer the question. He said that both the
23 minister of defence and the chief of general staff were aware of that state of affairs.

24 T-193, pages 66, lines 19 to 23.

25 He continues with -- correction. He continues by adding that the chief of general

1 staff was so well informed that apparently he recommended 30 young fellows from
2 Adjamé be recommended for entry into the GPP. When questioned on this point,
3 P-9 did not recognize that as his remarks and thus casts great doubt upon the
4 credibility of 435, by providing vivid details about the recruitment. T-199, pages 34
5 to 40.

6 *Even better, regarding the amount of money collected, he provided explanations and
7 said that the young people were hit up for this money – T199, page 40, lines 8 to 20,
8 thus corroborating document 0018-0059, which had been shown to Witness 435,
9 which attests to this particular practice of basically extorting money from young
10 people who wanted to join the army.

11 Thus, no reasonable Chamber could say that there was corroboration just because
12 P-435 mentioned the month of December 2010 as being the month during which the
13 physical examinations occurred in Akouédo and/or at the Abidjan military hospital.
14 He could have certainly received that item of investigation from various different
15 sources.

16 Your Honours, the OTP continues at paragraph 151 of its response saying that video
17 footage dated 18 January 2011, 0062-1007, shows an assembly of the Young Patriots
18 who were undergoing training close to the *Palais de la Culture* and that this footage
19 corresponds to the description of P-437 about this gathering place, this place where
20 the recruits came together.

21 I beg your pardon, P-437 about the unofficial place where these young people came
22 together.

23 He added that the young people were being trained by Zagbayou while Charles Blé
24 Goudé was giving a speech within the *Palais de la Culture*. He also said that he was
25 with Zagbayou and Guy Gbetri, who were seen on other videos and that this was for

1 a recruitment of young people, Young Patriots, at a parliament in Yopougon.

2 These remarks seemed to be gratuitous affirmations. This video footage merely
3 shows some young people who are training, not young people who were training to
4 be recruited, because the footage does not make any mention of recruitment.

5 Furthermore, the Prosecution says it matches what P-347 said. But one must
6 remember that P-347 never said that these young fellows were training. He
7 mentions only a gathering place before they were sent off to Akakro, which is clearly
8 not shown in this video footage.

9 Lastly, and regarding the speech made by Mr Charles Blé Goudé at the palace centre,
10 in the video there is nothing to show that it was on the same day, except what the
11 journalist says. And no reasonable Chamber can take that into account. Nothing
12 says that there was a link between the two events.

13 The Prosecution mentions an RTI broadcast on 22 January 2011 during which a large
14 crowd is gathered around the house of Mr Charles Blé Goudé. They state that while
15 Mr Charles Blé Goudé is standing by Zagbayou and Guy Gbetri, Mr Blé Goudé says
16 the following and I quote: "You brought a message to me and I understood that
17 message." End of quote.

18 The Prosecution adds that at the end of that report, the crowd is shown chanting the
19 name of Mr Zagbayou and the latter is clearly giving military instructions to the
20 patriots.

21 The first important observation is that the Prosecution deliberately ignores the most
22 important part of the speech of Mr Blé Goudé. In fact, he said to his unexpected
23 visitors, and I quote, "You have brought a message to me. I have understood it.
24 But let me repeat: I do not want war in my country. I think that we can avoid such
25 a situation. I was appointed minister responsible for employment and youth. This

1 was not to have you engaged in war. It was to find jobs for you. That is my task."

2 End of quote.

3 Transcript 0086-1028, page 1031, lines 85 to 88.

4 This part of the answer of Mr Charles Blé Goudé is self-explanatory and all by itself
5 shows the state of mind of the accused person when he received his unexpected
6 visitors. He is not ready to lead the young people to any war whatsoever, but rather
7 to find work for them.

8 Furthermore, the Prosecutor mentions military instructions and never explains what
9 that means regarding Mr Zagbayou, even though he is seen in the video. He said
10 later in English, "This video evidence of Mr Zagbayou" -- this is evidence of "Mr
11 Zagbayou in training military recruits." End of quote.

12 Mr President, your Honours, the Prosecution wants us to believe that there was a
13 military training right in front of the accused person and in front of his residence and
14 this amounts to telling the Chamber that Mr Blé Goudé was quite aware of the
15 situation. However, no reasonable Chamber can believe this allegation because
16 neither the video nor the transcript supplied to support that video shows that.

17 The Prosecutor says in English:

18 (Speaks English) "The above video evidence of Mr Zagbayou, Guy Gbetri and
19 Mr Blé Goudé with large numbers of *jeunes patriotes* who are being 'mobilised' and
20 preparing for combat coincides with similar video evidence in the period of 18 to 23
21 January 2011". (Interpretation) End of quote.

22 You will note that this statement is totally contrary with what Mr Charles Blé Goudé
23 said on the video above. In fact, how can one say that the accused person was
24 mobilising Young Patriots and preparing them for combat when this person has said
25 on several occasions, "I do not want war", and he added, "I was appointed minister of

1 employment and the youth, not to start a war for you, but to find work for you."

2 In what way does such a sentence prepare and mobilise people for a war? Except it
3 is a struggle, it is encouraging these people to struggle to find jobs for themselves.

4 This preamble is false, and so all the reasoning that follows in videos presented on 20,
5 21 and 23 January 2011 coincide with the video mentioned above and so they are all
6 false.

7 Mr President, your Honours, the Prosecutor alleges in paragraph 155 of his response
8 that a correspondence of 21 February 2011, 0071-0850, gave details of 398 recruits that
9 were selected amongst the self-defence groups and listed under the title, "GAD
10 distribution for military training". The Prosecutor adds that this list indicates the
11 groups of the militias from which these recruits were taken out and says that they are
12 assigned to the 1st BCP.

13 The Defence of Mr Charles Blé Goudé refers the Chamber to the filings of its no case
14 to answer motion in paragraphs 255 to 257 regarding the content of the document of
15 21 February 2011.

16 However, I would like to point out that the Prosecution tries to mislead the Chamber,
17 and I quote in English:

18 (Speaks English) "The content of this FDS document was confirmed by Witness
19 P-0047, who testified that the document was signed by his second-in-command and
20 that youth from these groups, including the GPP, were recruited into the FDS during
21 the crisis with the knowledge of the *État-major*."

22 (Interpretation) End of quote.

23 It is totally incorrect to say that the content of the document, referring to documents
24 0070-0850, was confirmed by Witness P-47. From the relevant excerpt of the
25 testimony of P-47, what the witness admits is the signature of his second in command

1 during the period. And that is on page 0850 and not on the page where it is
2 indicated GAD.

3 One cannot therefore reasonably affirm that the witness confirmed the contents of the
4 document and then brandished lists; whereas, those lists do not bear any signature
5 and that is because in the instant case what the witness actually recognised is the
6 signature of his second in command.

7 When he was questioned by the Defence of Mr Blé Goudé, the witness stated and I
8 quote:

9 "It is because I saw the document, and I saw the distribution of the recruits to be
10 trained in the battalions. That is why I said I was aware."

11 T-206, page 12.

12 All the questions on recruitment show that the witness did not know anything else
13 because issues related to recruitments and assignments were exclusively the
14 responsibility of the chief of staff. T-206, pages 11 to 13.

15 On this issue of recruitment the Prosecutor produced a certain number of documents
16 that he claimed to have retrieved from the FDS and he wrote as follows, I will quote
17 in English (Speaks English):

18 "A number of other documents obtained from the FDS archives indicate that large
19 numbers of young recruits continued to be integrated into the FDS during February
20 and early March 2011, including from the west of Côte d'Ivoire, despite the lack of
21 any official public announcement of enrolment in the armed forces prior to
22 Mr Blé Goudé's call to *les jeunes* on 19 March 2011 to enlist at the
23 *État-Major* on 21 March 2011. The totality of the evidence corroborates Witness
24 P-0435's testimony that this public *mot d'ordre* by Mr Blé Goudé made official a
25 recruitment that had already been ongoing covertly for a number of months."

1 (Interpretation) End of quote.

2 It should be pointed out before any discussion that all the documents listed in the
3 footnotes 267 and 268 were obtained by the Prosecution from P-381, archivist at the
4 general staff of the FDS.

5 During his appearance before this Court, Witness P-381 admitted having picked up,
6 and he actually used the word *ramassé* in French, he picked up almost all the
7 documents shown by the Prosecution. And we are referring to T-208, pages 7 to 9.
8 Out of all the documents picked up, a single document was shown to the witness
9 P-381 and that was document CIV-OTP-0048-1117.

10 Mr President, your Honours, when the document mentioned above presented to him,
11 the reaction of the witness was to say that the document in question was neither
12 dated nor signed and that it was obviously never sent. T-208, pages 16 to 18.

13 You will note that all the documents referred to by the Prosecution in the footnotes
14 mentioned bear the same characteristics as the document presented during that
15 testimony. That is there are no signatures and no dates and there is no seal of any
16 service of the army. And so the comment on P-381 on document 0048-1117 is also
17 valid to the other documents picked up under the same circumstances because they
18 are bearing the same characteristics.

19 Lastly, when the Prosecutor writes, and I quote in English, (Speaks English) "...
20 despite the lack of any official public announcement of enrolment in the armed
21 forces ..." (Interpretation) he does not refer to the rule according to which a public
22 announcement is compulsory in the procedure of recruitments into the FDS.

23 Regarding the demobilisation of the so-called militia recruits by the FDS after the
24 post-election crisis, unfortunately, this evidence is neither corroborated by any
25 Prosecution witness nor by any documentary evidence.

1 Furthermore, coming from a witness as P-316, this affirmation has to be taken with a
2 pinch of salt, given the obvious bias of this witness who had no qualms fooling his
3 superiors by inventing an illness in order to escape from his duties while during the
4 same period he accompanied PDCI leaders to their campaign, election campaign
5 rallies. T-84, page 9 to page 10.

6 Lastly, the Prosecution is deliberately mistaken when they stated (Speaks English)
7 "covert recruitment of militia had been ongoing from December 2010."
8 (Interpretation) And that is because the said recruitment was indeed official and
9 regular, as has already been described.

10 Unfortunately and apart from those lists, to which no reasonable Chamber can give
11 any value, the Prosecution does not provide any evidence that there were militias
12 recruited in the Ivorian army and that there was any covert recruitment.

13 His notions of covert recruitment, unofficial recruitment or lack of any official public
14 announcement is not based on any legal bases, that is rules of procedure for
15 recruitments into the Ivorian army. So it means that all the reasoning that follows is
16 incorrect.

17 Your Honours, the Prosecution states that the testimony of P-9 should be taken with
18 caution. However, it should be recalled to the OTP, which seems to have forgotten it,
19 that we are dealing here by evidence provided by the OTP and we are dealing with
20 witnesses called by them. So they cannot use evidence or a witness to buttress its
21 allegations and two sentences later say that one has to consider the evidence of that
22 witness with caution.

23 Corroboration of Witness P-435 on the collaboration of certain militias and certain
24 FDS units in the commission of crimes and the impunity of their acts.

25 The Prosecutor states in paragraph 160 of his response that P-435 provided details on

1 the evidence of the collaboration of GPP with certain specific units of the FDS,
2 including the GR, CECOS and CRS1.

3 Regarding these statements, for which the Prosecution does not provide any
4 corroboration, apart from repeating them as mentioned in his trial brief, the Defence
5 of Charles Blé Goudé refers the Judges to paragraphs 242 to 244 in its no case to
6 answer motion.

7 The Prosecutor in a bid to corroborate the statement of P-435, according to which the
8 FDS were wearing white armbands on 16 December 2010, on the day of the march of
9 the RHDP, produces a video, 0002-0995.

10 However, and contrary to the statements of P-435, these white armbands worn by the
11 elements of the FDS were not worn on the day of the march, that is on 16 December
12 2010.

13 The crucial information provided on this point by P-435 is that the members of the
14 GPP on that day of the march had to wear the same white armbands as the FDS so as
15 not to be confused with the demonstrators. And so showing a video a long time
16 after the said demonstration cannot corroborate the statements of P-435.

17 Better still, and as we underscored in our NCTA motion, paragraph 240, no witness
18 called by the Prosecution within the same geographical area as P-435 mentions any
19 white armbands or the presence of the members of the GPP.

20 P-0435 states, according to the Prosecution, that on 16 December 2010, the members of
21 his group were armed but had received instructions not to use their weapons, even if
22 they intercepted armed demonstrators, but they rather had to contact CECOS BMO.

23 The Prosecutor continues by saying that P-435 referred to an incident in the night of
24 16 December 2010 during when his group had a violent clash with the police of 7th
25 arrondissement, which was against the fact that they were detaining demonstrators

1 and that the situation was finally resolved when they took over -- they handed the
2 marchers over to CECOS BMO.

3 According to the Prosecution, this incident, as recounted by P-0435, was corroborated
4 by a police report, 0045-0510.

5 The Defence of Mr Blé Goudé refers to the various developments, both oral and
6 written, on the nature of the said evidence.

7 The Prosecution claims that P-0435 during his testimony stated that FESCI
8 participated in the repression of the march of 16 December 2010 and that they were
9 based in Cité Rouge and Cité Mermoz, that they beat up the demonstrators, and that
10 they were armed with Kalashnikovs on that day.

11 Footnote number 285 of the response of the Prosecutor quotes the French transcript,
12 T-97, pages 74 to 76.

13 Mr President, I'm not going to read part of the testimony referred to by the
14 Prosecution. It was simply to show you the discrepancies between the allegations of
15 the Prosecutor and what he was claiming to corroborate. But since it is quite long,
16 I'm not going to read to you all that testimony.

17 As I was saying, Mr President, your Honours, there is a total disconnect between
18 Witness P-435 and the allegations of the Prosecutor. To corroborate this allegation,
19 this comes directly from the Prosecutor because given the various statements of the
20 witness, he has to produce -- he produced a multitude of police reports and we will
21 not comment on them for reasons given above, and this is 0045-0793, 0045-1157,
22 0045-0391, and 0045-0192.

23 Lastly the Prosecution claims that statements of Witnesses P-106 and P-107
24 corroborate those of P-435 regarding the participation of FESCI in the march of 16
25 December 2010, even though P-435 never clearly made that statement.

1 But we are going to analyse the statements of the two witnesses mentioned.

2 Your Honours, there is no evidence on record to show that the authors of the said
3 crimes are identified as belonging to FESCI. Contrary to his oral presentation on 1
4 October 2018, T-221, at page 34, Witness P-107 was never able to identify the alleged
5 shooters because he was not shot at from in front, and he further did not know any of
6 the members of FESCI. Witness statement 0220-064-R03.

7 Let me repeat the reference for the statements, CIV-OTP-0020-0064-R04.

8 I'm sorry, it's 0020-0064-R03, paragraph 24.

9 It clearly emerges from his testimony that the assertion whereby the shooter or
10 shooters would have been members of FESCI is absolute speculation emerging from
11 similar ideas that those who shot at him at the university residence also allegedly
12 belonged to FESCI. Reference 0020-0064-R04 at page 76 and 77, paragraphs 90
13 and 91.

14 Similarly, P-106's testimony is also a whole set of speculations. First of all, in relation
15 to sources when he claims that members of the FESCI who participated in the march
16 is indeed an excerpt of the news cast on France 24, he further goes on to assert that he
17 allegedly knew somebody during the march whom he had known as a member of
18 FESCI in 2000, that is some 10 years before the alleged event. Reference
19 0019-0211-R04, page 217, 218, *paragraph 34.

20 On the activities of Maguy Le Tocard, Mr President, your Honours, at paragraph 163
21 of his response, the Prosecutor asserts that P-435's testimony on the possible links
22 between BAE and militia in Yopougon is allegedly corroborated by witness evidence
23 and documentary evidence.

24 We can note upfront that contrary to P-435, who talks about specific collaboration
25 between Maguy Le Tocard's militia and the BAE and points to November 2010 as the

1 start point of that collaboration, the Prosecutor on the other hand talks about

2 collaboration between the militia in general and BAE.

3 Therefore, any mention by the Prosecutor of anything relating to militia and BAE

4 would amount to corroborating the testimony of P-435, regardless of the geographical

5 space and the time considerations referred to by P-435.

6 The Prosecutor refers to the testimony of P-443, who claims that the BAE elements

7 openly provided training for pro-Gbagbo youth. Would that be in any way referring

8 to Maguy Le Tocard's militia? And that this happened two to three months before

9 the elections, quite some months away from the month of November, which is

10 mentioned by P-435 in relation to collaboration between BAE and Maguy Le Tocard.

11 T-19, page 83 and 84.

12 P-442 never asserted that Maguy Le Tocard's group and the BAE ever trained

13 together. Furthermore, P-442 puts the date of these events at least around the month

14 of August 2010. However, based on this testimony, P-442 does not clearly establish

15 which of the youth or the policemen of the BAE was the group that regularly did

16 sports in the roads of the neighbourhood, given that he admits that the policemen and

17 the BAE together had sports activities in the same neighbourhood and wearing only

18 T-shirts. Reference T-20, page 82 to 86.

19 Furthermore, and still in this quest to establish corroboration, the Prosecutor relies on

20 another excerpt of P-442's testimony where he assessed that the BAE was present on

21 the day of the attack at the mosque, the Lem mosque on 25 February 2011. Referring

22 to this presence by Witness 440, and I want to make reference to document 0046-0029,

23 in fact, his testimony does not in any way mention that the BAE intervened, but rather

24 refers to intervention by policemen of the 16th *arrondissement* in Yopougon who used

25 conventional means. This report as well as the author are essential to the

1 Prosecution's case in relation to the events of 25 and 28 February 2011. Why then
2 does he not use this report here as opposed to the testimony of Witness P-0442? The
3 witness evidence and the documentary evidence of the Prosecutor on this incident is
4 so divergent and so contradictory that one cannot determine that the BAE or any
5 other militia whatsoever were in fact present.

6 Finally, and still on the issue of collaboration between Maguy Le Tocard and BAE, the
7 Prosecution quotes the testimony of P-547, who essentially states that BAE would
8 have killed the imam and a girl without any further details. T-19, page 14.

9 This excerpt is so meaningless that it cannot retain the attention of any reasonable
10 Chamber. In fact, we don't know whether the witness himself saw the murder or he
11 was told of it.

12 In this attempt to further corroborate the allegations of P-435 in relation to Maguy Le
13 Tocard's activities, the Prosecutor produces an extract of P-440's testimony whereby
14 he asserts that they, that is the policemen, were afraid of them and that "everybody
15 knew what was going on, but everybody let everything happen." End of quote.

16 For the Prosecutor, this points to complicity between the militia and the FDS and
17 therefore corroborates the allegations of P-435, which we must recall in any event
18 refer to the specific activities of Maguy Le Tocard.

19 It therefore is simply quite clear that the excerpt of P-440's testimony is only a
20 reflection of the witness's feelings, which is never substantiated by a concrete act.

21 He never testified that he did anything whatsoever which attracted any reprisals from
22 his hierarchy. He simply expresses his impressions and feelings and that cannot in
23 any way amount to evidence.

24 The last witness called by the Prosecutor in an attempt to corroborate the allegation of
25 a complicity with GPP and militia and the FDS is the testimony of Witness P-578 in

1 which he asserts that there were militiamen at the *cite policière* and also refers to the
2 GPP being at the 220 *logements* and which was in fact the base of Witness P-435.

3 This witness's testimony has elements that point to his lack of credibility. The most
4 blatant contradiction of this testimony is at paragraph 120 of that witness's statement
5 when he asserts that the GPP was resident at the *camp du genie*; whereas, P-435
6 himself testified here that they had left that camp in Adjamé well before the year 2010.
7 Reference T-87, page 18 to 19 and page 23.

8 The climax of all, your Honours --

9 PRESIDING JUDGE TARFUSSER: [10:59:11] Just think about it.

10 MR GBOUGNON: [10:59:27] Mr President, I think we can take the break now and
11 I'll continue after the break.

12 PRESIDING JUDGE TARFUSSER: [10:59:30] I just wanted to remind you to think
13 about it, then if you come to a conclusion. I'm not saying that you have to stop in
14 this moment. As you wish.

15 MR GBOUGNON: [10:59:47] (Interpretation) I think we can take the break now,
16 Mr President.

17 PRESIDING JUDGE TARFUSSER: [10:59:50] Thank you very much.

18 Now we take the break of half an hour and we come back at 11.30. The hearing is
19 adjourned.

20 THE COURT USHER: [10:59:58] All rise.

21 (Recess taken at 10.59 o'clock a.m.)

22 (Upon resuming in open session at 11.32 a.m.)

23 THE COURT USHER: [11:32:30] All rise.

24 Please be seated.

25 PRESIDING JUDGE TARFUSSER: [11:32:49] Maître Gbougnon, the floor is yours

1 again.

2 MR GBOUGNON: [11:32:56] (Interpretation) Thank you, Mr President.

3 To conclude on what the Prosecutor has referred to as the activities of Maguy Le

4 Tocard, the Prosecutor produces two video excerpts according to him which point to

5 a more open collaboration through RTI.

6 The first video, 0064-0092, lasts only two minutes and exclusively focuses on

7 commentaries by the journalist, who alone is responsible for what is said. The

8 statements allegedly made by Maguy Le Tocard are simply reported by the journalist

9 and Maguy Le Tocard himself is never seen on that video. Finally the Prosecutor

10 and the journalist come to the conclusion that Maguy Le Tocard allegedly went to

11 greet or visit BAE and CRS1 at Williamsville, but the images on the video only show

12 Maguy Le Tocard without ever showing him greeting the officials of that camp, and

13 that can lead us to the conclusion that those officials at the camp refused to receive

14 him. In any event, that clip as you would see does not establish any collaboration

15 between Maguy Le Tocard and the FDS.

16 Furthermore and contrary to what the Prosecutor announced in relation to open

17 collaboration with the RTI, the Prosecutor produces a video which is not produced by

18 RTI, but which was posted on YouTube and in that attempt tries again to provide

19 collaboration between Maguy Le Tocard and FDS.

20 Once again we see here that we are simply fed the statements of the journalist and

21 nothing else. The only time we hear Maguy Le Tocard is when he talks about

22 everything else except collaboration with the FDS.

23 However, the images of people in tache-tache and civilians can probably lead one to

24 think that there was a collaboration between FDS and Maguy Le Tocard. There is a

25 lot of evidence in the case file that points to the fact that at the time of the crisis, there

1 were many people who went around with tache-tache without ever belonging to the
2 FDS. And once again in this excerpt we see only -- or we only hear the commentary
3 of the journalists.

4 At the end of his analysis of the so-called collaboration between FDS and militia and
5 when it comes to the element on Maguy Le Tocard, the Prosecutor produces four
6 videos from different persons in relation to the post-election crisis. These are the
7 video excerpts on Zéguen Touré, Mian Augustin, Serge Koffi and Maho Glofiéhi. I
8 will provide the references, 0074-0065, 0064-0078, 0064-0118, and 0074-0082. I will
9 not provide the timestamps. They appear at the footnotes *of the OTP's document.
10 Contrary to the Prosecutor's allegation that they were militia, there is nothing on the
11 excerpts, as we can see from the timestamps that points to that conclusion. Better
12 still, there is no reference to Maguy Le Tocard or to any collaboration between him
13 and the FDS.

14 When it comes to collaboration between the FDS and militia including the GPP.

15 Mr President, your Honours, the Prosecutor alleges at paragraph 172 of his response
16 as follows, and I quote in English, (Speaks English) "On the increasing collaboration
17 between the FDS and militia, including the GPP, the testimony of Witness P-0435 is
18 also corroborated by official FDS documents from March 2011."

19 (Interpretation) First of all we point out here on this point that the Prosecutor does not
20 refer to the statements by P-435 which would allegedly corroborate, be corroborated
21 by the so-called official FDS documents. Is he referring to any statements whereby
22 Maguy le Tocard would have collaborated with BAE since 2010, or is he referring to
23 something else? We have no answer to that.

24 However, we will attempt to carefully attempt to analyse the documents submitted
25 by the Prosecutor.

1 The first document is 0045-0148 at page 0151 to 0152 and 0153. This document,
2 according to the Prosecutor, was obtained from the archives of the police directorate
3 for general intelligence and is dated 8 March 2011. In order to give weight or some
4 value to the document the Prosecutor uses the term in English "official FDS
5 documents," directorate of general intelligence, ministry of the interior, as if that
6 would provide assurance on the authenticity and probative value of the said
7 document.

8 However, Mr President, your Honours, one must wonder what is it that gives an
9 official character to a document. It is not the place from which the document was
10 found or the name that the Prosecutor ascribes to it. It is indeed the stamp on it that
11 gives its authority and the registration or the filing number. In fact, the document
12 mentioned here is not signed, the author is not mentioned and it is not stamped.

13 Therefore, one can logically come to the conclusion that this was a draft document
14 that was never sent to any authority for validation and can therefore not be
15 entertained by any reasonable Chamber as evidence.

16 In any event, let us look at the content of the document. The document allegedly
17 dated 8 March 2011 purports to be an analysis which describes the obtaining situation
18 and the position of rebels in Abobo and then goes on to propose various solutions for
19 dislodging the rebels. What is interesting here is that there is a proposal to use the
20 GPP in civilian attire as support elements. Now, according to the Prosecutor, this is
21 proof of collaboration between the FDS and the GPP.

22 Now, the Prosecutor cites a number of excerpts from this document, particularly
23 those dealing with the strategies for dislodging rebels from Abobo. And in his
24 response, he makes reference to a number of passages in that document, and I quote:
25 "This intervention staff will be made up on the one hand of additional elements of the

1 GPP (in civilian attire); on those sites the army will make all arrangements and work
2 with the gendarmerie and the GPP to penetrate and mop up the area; whereas the
3 police will provide a belt for providing GPP intervention means so that they can use
4 the available Kalashnikovs; and also they will be urged to engage in operations and
5 intervene in such a way that they can reach the various neighbourhoods in Abidjan
6 which might be exposed to the rebels."

7 Following this exercise, the Prosecutor goes on to comb through thousands of
8 documents that were filed during this trial and that would lead them to find what
9 may amount to strategies that enable them to dislodge the rebels from Abobo. And
10 in that connection they find something that they claim to be found from the police
11 archives. And in that connection, they also put together a summary of various
12 materials in a synthesis referred to in document CIV-OTP-0048-1348, page 1351, in
13 which the Prosecutor further argues that the document was found in the archives of
14 the ministry of the interior.

15 Once again, the document bears no date, it is not signed, and it is not registered and it
16 bears no stamp.

17 Mr President, your Honours, this document was produced -- or, rather, was shown to
18 Witness P-046, Mr Brendou, director general of the police. And I'm going to read an
19 excerpt to you to point to his answer when it came to dealing with this question.

20 Mr MacDonald was questioning on that day and this is the question he put, I quote:
21 "Because here obviously there is no number, there is no date, he's referring to a period,
22 and we can see that this is not signed as well. Was this exceptional?" End of
23 quote. T-126, page 44.

24 Now, Mr President, when the question is couched in those terms, the Prosecutor is
25 assuming that it was usual practice at the time for the administration to proceed in a

1 certain manner, namely that documents were being forwarded, whether they were
2 signed or stamped or not, but that this was an exceptional procedure.

3 Unfortunately for the Prosecutor, the answer from the witness goes exactly the
4 opposite way, and this is the answer:

5 "Maybe you can put that question to the person who gave you the document, because
6 that document, if it is not signed, it means therefore that it may have been drafted, but
7 that it had not been forwarded to the minister. I don't know. I don't know who
8 gave you that document." End of quote.

9 It clearly emerges from this discussion that the document -- or, rather, the discussion
10 with the Prosecutor points to the fact that this document was never sent to any
11 authority. Now, the Prosecutor shows interest only in certain excerpts that relate to
12 the eviction of the rebels and also passages which according to him point to
13 collaboration between the FDS and the GPP.

14 For example, "Modalities of intervention in sector 1, the army, the gendarmerie and
15 the GPP will ensure penetration, and mopping up would be conducted by the police.
16 Resources, provide Kalashnikovs to the GPP". End of quote.

17 And this is what the Prosecution says in this regard, and I quote in English:

18 (Speaks English) "These documents correspond with the increasingly overt
19 collaboration between the FDS and militia, which manifested itself in the commission
20 of crimes including the incident of 25-28 February 2011, the killing of civilians in the
21 Port-Bouët II district of Yopougon on 15 March, and the killing of civilians at the
22 Williamsville mosque on 19 March."

23 (Interpretation) In fact, as we have already pointed out, these documents cannot
24 serve evidentiary purposes. However, the Prosecutor tries to corroborate the
25 incidents of 28 and 25 February 2011, well ahead of what was drafted as a proposal.

1 Furthermore, P-440 only refers to the intervention of the 16th *arrondissement* police.
2 That was the only intervention using conventional means. The same applies to the
3 Williamsville and Port-Bouët incidents, which the Prosecutor has attempted to
4 corroborate with this very document.

5 Finally, your Honours, at the end of our analysis, we find ourselves in the situation
6 *quo ante*; namely, the same situation which we pointed out in our no case to answer
7 motion.

8 132 allegations, as you can see in the annex, and the only evidence is the testimony of
9 P-435. Contrary to what the Prosecutor announced in his attempt to answer, as you
10 have seen, there is no corroboration.

11 Furthermore, the Prosecutor has not provided any answer whatsoever to our
12 questions about lack of corroboration. When it comes to failure to answer, the
13 Prosecution suggests in his answer at paragraph 10 as follows, and I quote in English:
14 (Speaks English) "However, not all arguments by Mr Gbagbo and Mr Blé Goudé are
15 addressed in the Prosecution's response since their relevance is of lesser importance in
16 light of the requisite standard to be applied at this stage of the proceedings.

17 Consequently, any unchallenged Defence should not be viewed as a concession on the
18 part of the Prosecution."

19 (Interpretation) End of quote.

20 However, your Honours, if the absence of an answer by the Prosecution is not a
21 concession to the Defence, what is it? Unfortunately, we do not and certainly will
22 not have an answer to that question.

23 That is why we say to your Honours, along with St Augustine: Men judge by
24 appearance, but God sees the bottom of the heart.

25 Your Honours, you, therefore, must judge on the basis of the former answers that

1 have been provided to you and leave it to the Lord to take care of what the Prosecutor
2 has failed to answer. Thank you.

3 PRESIDING JUDGE TARFUSSER: [11:52:06] Thank you very much, Maître
4 Gbougnon.

5 Mr Knoops.

6 MR KNOOPS: [11:52:17] Thank you, Mr President, your Honours.

7 Our Defence team now arrives at the conclusions of the fourth section of our
8 submissions. By the way, you saw this morning the updated version of our road
9 map.

10 The first conclusion of this section is that no reasonable Chamber could accept the
11 theory of the Prosecution on the part of corroboration.

12 One final and most decisive example we wish to give you at the end of our
13 presentation, Mr President, and this requires us to go briefly, just one minute, in
14 private session, since it refers to two names mentioned by the witness.

15 PRESIDING JUDGE TARFUSSER: [11:53:35] Court officer, can we go into private
16 session, please? Thank you.

17 (Private session at 11.53 a.m.)

18 THE COURT OFFICER: [11:53:49] We are in private session, Mr President.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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14 (Redacted)
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16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Open session at 11.56 a.m.)
21 THE COURT OFFICER: [11:56:30] We are back in open session, Mr President.
22 PRESIDING JUDGE TARFUSSER: [11:56:37] Thank you court officer.
23 Mr Knoops, please.
24 MR KNOOPS: [11:56:39] Yes, thank you. The second and last conclusion of our
25 section 2 relates to an alternative conclusion. If the Chamber, if your Honours

1 would accept that some of Witness P-435's evidence statements were corroborated in
2 your minds, we submit, Mr President, still no reasonable Chamber could convict Mr
3 Charles Blé Goudé on that portional, partial evidence.

4 In this regard we refer to the paragraphs 168 till 169 of the judgment on the
5 Prosecution's appeal against the acquittal decision of the Trial Chamber in Prosecutor
6 versus Ngudjolo. The Appeals Chamber in that case found that, "the evidence of a
7 witness in relation to whose credibility the Trial Chamber has some reservations may
8 be relied upon to the extent that it is corroborated by other reliable evidence."
9 Paragraph 168 of the Appeals Chamber's ruling.

10 But moreover and more importantly for the case of Charles Blé Goudé was the
11 finding of the Appeals Chamber that it is not sufficient to show that some parts, some
12 parts of a certain witness testimony were corroborated for a Chamber to find that the
13 witness in fact, in its entirety, is credible and reliable. Paragraph 168, 169 of the
14 Appeals Chamber judgment.

15 Indeed, your Honours, the Appeals Chamber found that there are some witnesses
16 whose credibility might be challenged in such an extent that he or she cannot be
17 relied upon even, even if other evidence appears to corroborate parts of his or her
18 testimony. In other words, a partial corroboration is no corroboration.

19 Mr President, we submit that like in the Ngudjolo ruling of the Appeals Chamber, the
20 Court should therefore conclude that no reasonable Chamber could find Mr P-435 as
21 a credible witness, even if the Chamber would accept that some parts of his testimony
22 was to be found to be corroborated by other evidence.

23 This concludes the section 4.

24 I go directly now into the section number 5, which you find on our road map, which
25 deals with the fifth topic on this situation, a substantive topic on the absence of a

1 policy. And I can finish this before the break.

2 We start, Mr President, with this fifth section on the policy requirement with an
3 important principle of law, which is aptly summarised by the famous Professor
4 Timothy McCormack, holding a chair of international humanitarian law at the
5 University of Melbourne, a member of the Advisory Committee of the Australian Red
6 Cross Society.

7 In his landmark book of 1996, page 265, titled, "Self-Defence in International Law",
8 Professor McCormack points to one of the most fundamental principles in
9 international law, meaning, I quote from his book:

10 "An individual state should not have to wait until its citizens are killed before it's
11 entitled to respond with force to defend them." Unquote.

12 Now, Mr President, if your Chamber would accept the evidence such that this was
13 the reality during the post-electoral crisis, there is, as we submit, no case to answer
14 because simply it cannot be reconciled with an alleged common plan to kill civilians,
15 such a presumption, which plan, according to the jurisprudence, has to be proven to
16 be the primary purpose.

17 So if the Court is willing to accept or would accept this principle as applied by
18 Professor McCormack in the instant case, there can simply be no common plan to be
19 proven.

20 It is for this reason that the Honourable Judge Henderson did ask on 3 October a
21 relevant question to the Prosecution, and this question goes to the heart of the policy
22 requirement, the requirement in the instant case.

23 The Honourable Judge Henderson did ask the following question to the Prosecution:
24 "You also pleaded that motive is irrelevant as a matter of law for establishing the
25 contextual elements for Article 7. So the question is: If motive is indeed irrelevant,

1 how does one assess whether or not an act was committed pursuant to an alleged
2 policy? All right." End of the quotation.

3 Our answer to the question of Judge Henderson: It is the plain language of Article 7,
4 section 2, which requires that the attack be conducted pursuant to or in furtherance of
5 a state or organisational policy which already implies that motive is relevant both as a
6 matter of law and evidence. Therefore, it's our submission that the proper
7 contextualisation of the conflict that took hold of Abidjan during the post-electoral
8 crisis and the motive for the military action which was required to defend citizens is
9 of utmost importance in showing that the contextual elements for crimes against
10 humanity are not met in this case.

11 Let us now, Mr President, see what the Prosecution had to say on this very relevant
12 question of the Honourable Judge Henderson. You find in transcript of 3 October,
13 T-223, page 43, lines 1 till 17, the answer of the OTP.

14 It said amongst others "We say that motive is irrelevant as a matter of law to link the
15 attack to the policy. As a matter of evidence it may be relevant, but the existence of a
16 military motive of the attackers does not exclude that the attack was directed, in fact,
17 against a civilian population." End quote.

18 Our answer, Mr President, your Honours: We submit that the Prosecution has got it
19 wrong. And what is actually the best evidence of this? One of the founding fathers
20 of the Rome Statute should be mentioned here. In his landmark book Crimes
21 Against Humanity in International Law of 1999, the late professor Chérif Bassiouni
22 concludes on page 257 when discussing the characteristics of the contextual elements
23 of crimes against humanity, and I quote, "In conclusion, the characteristics" referring
24 to the legal characteristics "of the element of 'State policy or action' for State actors,
25 and 'policy' for non-State actors are: 1. the action or policy is based on

1 discrimination against and persecution of an identifiable group of persons within
2 society, usually reflecting a persecutorial motivation". End of the quotation.

3 Mr President, the Prosecution did present the Chamber in the second place when
4 dealing with this fourth, when dealing with the fourth incident during its oral
5 submissions did present already an answer which totally coincides with Professor
6 Bassiouni's observation.

7 In transcript T-221 of 1 October, English version, page 45, lines 11 till 12, the
8 Prosecution literally says, Mr President, I quote, "Overwhelming testimonial, video,
9 photographic and forensic evidence proves that the FDS targeted civilians mainly on
10 political grounds." Mainly on political grounds. End quote. These, Mr President,
11 were the words of the Prosecution itself on 1 October. Political grounds, needless to
12 say that this implies motive.

13 Second example that the Prosecution actually contradicts its own answer on the third
14 question of Judge Henderson can be found in the same transcript of 1 October, page
15 39 of the English version, lines 20 till 23. Prosecution did say the following, Mr
16 President: "On 3 March ... members of FDS convoy patrolling Abobo murdered
17 seven women and injured at least six other people at a peaceful anti-Gbagbo protest.
18 The overwhelming testimonial, video and forensic evidence proves that the FDS
19 targeted these civilians, mainly on political grounds." Again, the second time that
20 the Prosecution itself uses the phrase "political grounds."

21 Mr President, your Honours, the repeated reference by the Prosecution to the verb
22 "political grounds" already undermines its own answer to the Bench by means of the
23 Honourable Judge Henderson in his third question.

24 I also refer the Chamber to paragraph 222 of the Prosecution response in which the
25 Prosecution states, and I quote, "In determining whether the nexus exists, the

1 Chamber must make an objective assessment considering, in particular, the
2 characteristics, aims, nature and/or consequences of the act." I ask the attention of
3 the Chamber to the word "aims," the assessment of the aims. In this context, Mr
4 President, the word "aim" is no different from motive or motivation. Therefore by
5 the Prosecution's own submissions motive is something that can be demonstrated, a
6 nexus between the attack and the act, and therefore necessarily must be part of a
7 policy.

8 Mr President, these examples show that the Prosecution is wrong in its application of
9 the law when it answered the question of the Bench regarding policy.

10 At the same time, your Honours, we can observe that there is no evidence presented
11 to the Chamber whatsoever that such a prosecutorial motivation, i.e. on political
12 grounds, existed on the part of Mr Gbagbo or Charles Blé Goudé, not even by way of
13 reasonable inferences.

14 Having said this, Mr President, it is therefore important to go into the real context of
15 the conflict of the events, what was the real contextualisation and not for reasons of
16 convenience and self-serving arguments avoid the reality in those days. In this
17 regard our response to the same question which was put by the Bench to the
18 Prosecution regarding policy is that the Prosecution answer was simply self-serving.
19 On page 43 of the English transcript of the hearing of 3 October, lines 5 till 10,
20 Prosecution does admit that as a matter of evidence, motive might be relevant. Yet,
21 at the same time it asserts that the existence of a military motive of the attackers, the
22 word "attackers" is not the terminology we adopt, would not exclude that the attack
23 was directed against a civilian population.

24 Now, this reasoning with all due respect doesn't make any sense, and we will show it
25 in the next couple of minutes with several arguments.

1 First, if the Prosecution agrees that military motive might be relevant as a matter of
2 evidence, and it is clear from the record, its own evidence, that this motive was based
3 on the protection of population and triggered by self-defence, this of course in a court
4 of law militates against the assumption that such operations were directed against its
5 own civilian population.

6 Secondly, the Prosecution says: Your Honours, please look at the way those military
7 operations were actually conducted. If you look at them, there can be no other
8 conclusion than these had as a primary object to kill the civilian population.

9 This doesn't make sense, Mr President, because if one concedes, and the Prosecution
10 concedes to this, that the military forces acted to suppress the rebel group incursions,
11 in order also to protect the civilians, the underlying military methods to achieve that
12 goal as such will not alter the motive, it doesn't change the motive of the military
13 forces, that the primary object is protection and not to kill its own population.

14 In hindsight, of course, one might perhaps criticise those methods and might say, like
15 what happened in the Kosovo scenario where NATO bombed Belgrade, one might
16 say in hindsight it could have been conducted differently, these operations could have
17 done otherwise.

18 But this criticism about the military methodology, if one has reasons to criticise it,
19 does not distract, Mr President, from the civilian population not being the object of
20 the attack. There is no evidence that this was the primary object of the attack.

21 Third, your Honours can observe that the Prosecution has failed to provide evidence
22 to exclude the realistic possibility, referring to our analysis of the law on inferences,
23 all the realistic possibilities have to be excluded in order to arrive at the acceptance of
24 a reasonable inference.

25 It hasn't produced evidence to exclude the realistic possibility, Mr President, which is

1 by the way consistent with the accused's innocence, that the primary object in the
2 instant case was not to attack and kill the civilian population.

3 Fourth, moreover, the Prosecution did not submit compelling evidence, let alone
4 compelling inferences and only inferences to be drawn, would exclude the realistic
5 possibility that the conflict during the post-electoral crisis ultimately developed into
6 one with an unforeseeable character, at the least as of February 2011. Such an
7 unforeseeable nature and also military operations strongly militates against the
8 hypothesis of the Prosecution that there was a preconceived plan established before
9 2010. The most decisive evidence and convincing evidence in our submissions was
10 the Prosecution's own, one of the main insider witnesses, P-9.

11 Your Honours remember that P-9 when testifying before the Chamber explained that
12 the fighting with which the FDS was confronted in 2011 was very different in 2011
13 than in 2002. Our Defence team questioned Mr P-9 specifically on this topic and
14 there was a good reason for it, Mr President. You might remember that P-9 testified
15 that in the year 2002 the population had fled and the FDS was fighting in abandoned
16 zones without being confronted with an asymmetric opponent.

17 However, during the post-electoral crisis in 2011, the situation, the military contextual
18 situation was totally different. He explained to you, Mr President, your Honours,
19 that the enemy was amongst the civilian population, dressed as civilians in
20 contravention to international rules, had taken population hostage and even took to
21 comparison with a terrorist, like a terrorist in a hotel, he said, like a terrorist in a
22 building, for instance, in a hotel.

23 P-9 was a very important witness because he explained the unforeseeable asymmetric
24 nature of the conflict which ensued in February 2011.

25 Transcript T-199, the French transcript, pages 61 till 65, P-9, the CEMA, testified that it

1 was truly the first time that they, the FDS, was confronted with the situation of a
2 guerilla warfare, and such an asymmetric warfare. An important testimony for the
3 Chamber to refute any linkage to a policy.

4 Your Honours, the fifth argument to show there is no evidence whatsoever that the
5 civilians were the primary object of any military operation in those days is the
6 following:

7 As you might have noticed in our no case to answer request, the Prosecution, as
8 pointed in our request, has failed to prove that there was an inner circle that allegedly
9 came together to concoct a common plan to have Mr Gbagbo in power at all costs.

10 Prosecution submits in paragraph 346 of its response that the way the attacks were
11 carried out in their submission would show that civilians perceived as supporting Mr
12 Ouattara were the primary object of the attack.

13 So the Prosecution actually has heightened its own burden of proof by specifically
14 selecting out of the civilians one specific group, the pro-Ouattara supporters.

15 The reality though, Mr President, dictates, apart from the observation that there were
16 more than 60 different ethnicities in Côte d'Ivoire in those days, 60, six-zero, that
17 Abidjan was in 2010 in the grips of a terrible post-electoral crisis where civilians who
18 were supporters of Mr Gbagbo and Ouattara were both victims of crimes.

19 So it's important to note that from the nature of this conflict, no inference can be made
20 as to the primary object of the attack.

21 In the sixth place, Mr President, the Prosecution failed to present evidence of a
22 centralized organisation of violence. Its theory is that Laurent and Simone Gbagbo
23 with Charles Blé Goudé and certain former and current governmental officials, FDS
24 members, youth leaders, et cetera, had entered into an agreement to keep Mr Gbagbo
25 by all means in power.

1 Our answer: There is no evidence of such an agreement. Nothing in the evidence
2 show that such crimes resulted from any agreement, either explicit or implicit, or that
3 such violence happened at the behest of Mr Blé Goudé or an alleged inner circle.
4 The Prosecution's argument that there is evidence to show a policy are, in our
5 submission, not capable of belief by a reasonable Chamber for two reasons: First, the
6 Prosecution mischaracterizes our submissions with respect to the policy element in
7 our motion for acquittal and; second, has failed to refute that the underlying nature of
8 the conflict indeed negates the Prosecution's own case theory.

9 We'll briefly address these two points.

10 The first point, the mischaracterization of our submissions with respect to policy in
11 this case. In making such submissions, the Prosecution intimates that it is our
12 argument that the pro-Gbagbo forces were behind the alleged attacks, but that they
13 were motivated by self-defence. This is not the correct reflection of our
14 argumentations, Mr President, in the motion for acquittal. We submit first it is the
15 Prosecution's burden of proof to show that behind any operations or attacks,
16 pro-Gbagbo forces were behind them.

17 Secondly, the Prosecution fails to adduce evidence which links those who committed
18 the alleged crimes with an inner circle, which is of course essential in this case. It
19 goes at length in their response to explain why the perpetrators' motivation would be
20 irrelevant as a matter of law for the determination of policy. But again, Mr President,
21 we never made submissions with regard to the motives of the alleged attacks directed
22 against the population. Rather, we as Defence provided the Chamber with a far
23 more reasonable alternative explanation for the operations and actions in those days
24 of certain members of the alleged inner circle without suggesting that these members
25 were behind the crimes charged.

1 Thus, even if your Chamber would accept that there might be a coordinated military
2 activity on the ground, it has not been shown to the requisite threshold that such
3 activity had for its primary object the targeting of pro-Ouattara civilians.

4 Now we'll turn briefly to our second point, the progression of the conflict which in
5 our submission negates the existence of the policy requirement.

6 In an attempt to evade the reality of those days, your Honours, the Prosecution
7 asserts that indeed military motive would be irrelevant as a matter of law. We have
8 just shown to you that this is, in our submission, to be seen differently.

9 The evidence in this case shows that the progression of the conflict, in particular as of
10 February 2011, materialised in an unforeseeable way for the defence forces, which
11 already undermines the Prosecution's theory.

12 The Prosecution provides itself evidence to such extent and I will now briefly touch
13 upon the testimonies of the Prosecution insider witnesses to this extent.

14 There are seven insiders, Mr President, who testified in open session to the Chamber
15 and two insider witnesses related to the defence forces in closed session.

16 Almost every one of those Prosecution own witnesses have testified as to the
17 existence of the *Commando Invisible* and also the guerilla warfare tactics employed by
18 these groups. And we refer to P-156, P-321, 330, 340, 46, P-11, P-10, P-47 and P-9.

19 Now, let us briefly see what they have told the Chamber.

20 First, P-0321, when examined by the Defence, your Honours, this insider, the
21 Prosecution insider testified about the *Commando Invisible's* tactic of blending in with
22 the civilian population, for instance, also at roadblocks erected by that unit. Quite
23 important. He testified that this unit wore civilian clothes mixed with demonstrators,
24 used all types of guerilla warfare tactics, et cetera, and he explained also the origin of
25 the name *Commando Invisible*. That was the first Prosecution insider witness who

1 confirmed the nature of the conflict at that time.

2 The second one, P-330, testified in the same vein about those tactics, explaining that,
3 for instance, they were armed with all sorts of arms, threw bricks on law enforcement
4 and military forces, et cetera. The same was to be observed with Witness P-0520,
5 testifying that this unit attacked law enforcement patrols, Abidjan was infiltrated by
6 the rebels who mixed with the population.

7 Third, P-347, transcript T-79, page 12 of the French transcript, testified about police
8 officers being murdered by the *Commando Invisible* and the commissariats being
9 targeted.

10 The fourth Prosecution insider witness P-11 testified about the same type of warfare
11 and that the members of this unit, *Commando Invisible*, shot anything that moves and
12 had anti-tank capabilities, for instance. They destroyed a tank in Abobo, they
13 targeted law enforcement and gendarmerie. T-135 of the French transcript, page 65.

14 The fifth Prosecution witness who appeared before the Chamber also testified about
15 this asymmetric fighting and how the *Commando Invisible* did hide amongst the
16 population, using them as human shields. T-137 of the French transcript, page 81.

17 The sixth Prosecution witness P-9 testified in the same vein and importantly, as just
18 observed, he explained that it was truly the first time the FDS were facing such a
19 terrible situation in military operational sense. T-199, French transcript,
20 pages 62 till 65.

21 Seventh, P-0156 also testified about the lack of insignia used by this unit, *Commando*
22 *Invisible*, asymmetric warfare, and that the FDS had difficulties in applying the rules
23 of engagement which dictated for self-defence because it was difficult to distinguish
24 between combatants and noncombatants, but they were acting in good faith in
25 applying those rules. That was the testimony of P-156. So no criminal intent

1 whatsoever could be deduced from his statement. T-171 of the French transcript,
2 page 69.

3 In conclusion, your Honours, notably seven, seven Prosecution witnesses who
4 testified in open session before this Court and two in closed session provided to the
5 Chamber evidence that indeed the Defence forces in those days were confronted with
6 an unforeseeable type of asymmetric warfare in an unprecedented way, which
7 differed greatly from 2002, whereby even several police officers were killed by the
8 opposing forces.

9 Mr President, we submit when something is not foreseeable in the factual sense, it can
10 never corroborate the existence of a common plan. How could the common plan be
11 conceived if the military operational situation on the ground is not foreseeable? It
12 simply doesn't make sense.

13 Second, as your Honours know, international law doesn't exclude the possibility that
14 military operations are conducted outside a strict zone of military operations in the
15 traditional sense by resorting to force in urban areas and by resorting to force out of
16 self-defence in those areas. As such, there is no evidence of a deliberate attack on the
17 civilian population, otherwise all operations which are currently conducted in Iraq,
18 Syria against IS have to be condemned, have to be prosecuted.

19 Third, as to the facts, the simple facts of this case, Mr President, it's the evidence
20 presented by the Prosecution witnesses itself, their own key witnesses who did tell
21 you this, who told the Court in detail that the military operations which the
22 Prosecution qualifies as exponents of an alleged common plan to kill pro-Ouattara
23 supporters was in reality according to its own insider witnesses nothing more and
24 less than a result of the invocation of self-defence, which can never coincide with the
25 common plan. It's totally illogical to deduct from such scenario the common plan.

1 Fourth and in the last place, Mr President, the Prosecution theory moreover relies on
2 various wrong assumptions when it intends to artificially construe policy as required
3 by Article 7 of the Rome Statute.

4 We'll present to you some examples, four examples, which will conclude this section
5 on policy.

6 The first example of the wrong assumptions of the Prosecution to construe this policy
7 is what I told the Court on 2 October. The Prosecution, as you might remember,
8 addressed the issue of law enforcement in relation to military operations of the
9 Defence forces.

10 I'll quote from the transcript, the English transcript, T-222, page 28, lines 9 till 12.

11 "As argued by the Prosecution during the last two days, these acts of violence took
12 place at the occasional demonstrations or at political parties' premises against actual
13 or perceived Ouattara political activists and sympathisers, not with conventional and
14 law enforcement matters, but with indiscriminate fire or grenades," emphasis on the
15 last words, "not with conventional or law enforcement methods".

16 Directly after this submission, the Prosecution follows with the following remark on
17 the line 16-18 of the same transcript, T-222, I quote from the transcript, the
18 Prosecution:

19 "This shows the existence in our submission of a course of conduct conforming the
20 attack against a civilian population, and I believe it goes to some extent to question
21 number 3 of Judge Henderson," unquote.

22 This was the observation by the Prosecution.

23 Our answer, Mr President, your Honours: Can these observations serve as evidence
24 for a common plan? No, of course not. One cannot establish proof for a policy
25 simply on the argument that on the one hand military operations were allegedly not

1 executed with conventional law enforcement methods when, on the other hand, the
2 Prosecution concedes that guerilla warfare was going on. That's accepted, that's
3 admitted by the Prosecution, Mr President, your Honours; otherwise every military
4 intervention in response to such a type of warfare, we just mentioned the examples
5 currently going on in the world, would constitute a policy to attack the civilian
6 population. And we know the Prosecution concedes that as of February 2011 such a
7 situation was ongoing.

8 Second example, the Prosecution argument contains also a contradiction. You will
9 find in transcript 221, page 42, lines 2 till 12 of the English transcript the reference to, I
10 quote:

11 "The evidence on record shows that these various groups did not have total military
12 control of Abobo." End quote.

13 The Prosecution referred in this portion to the opposing armed groups of the Defence
14 forces, and it said, well, no need to intervene, there was no need to intervene, because
15 these groups did not have total military control.

16 Also here the words "military control" already dictates that this was not a type of
17 conventional law enforcement situation anymore, and you will see here, Mr President,
18 your Honours, that the Prosecution concedes that these groups had the power in their
19 own theory, Prosecution theory, to employ military control. The word "military
20 control" therefore refutes any theory on the basis of law enforcement, and we are
21 dealing therefore also in the submission of the Prosecution with a totally different
22 type of operations and, therefore, no conventional and law enforcement methods
23 were to be justified.

24 A third example how artificially the Prosecution tries to construe the policy element is
25 the way it did portray the issue of roadblocks.

1 Mr N'Dry will tomorrow deal with this topic in more detail, but for now in the
2 context of the policy requirement, we point the Chamber to an incomprehensible
3 argument of the Prosecution, which you find in T-222, page 3, lines 20 till 21. I quote
4 from the Prosecution's submission on 2 October:

5 "Whatever their purpose, the way roadblocks were operated shows that the civilian
6 population perceived as supporting Ouattara was the primary target," unquote.

7 We ask the Chamber, your Honours, did the Prosecution show your Honours any
8 evidence that the so-called roadblocks were run, were employed on the basis of a
9 certain operation or methodology?

10 We submit there is no evidence on record being produced to show that this was
11 actually the case. The evidence shows actually the contrary. The evidence shows
12 there were many different types of roadblocks manned by different groups from both
13 sides, spontaneously or erected for self-defence purposes in the various quarters
14 without any structure or coordination.

15 There is therefore no evidence for the assumption that the roadblocks were operating
16 based on a certain pattern, which is also an observation made by Judge Fremr in the
17 Ruto case in a similar vein. We will come to this element back tomorrow, Mr
18 President.

19 There is even no evidence that this would have happened in a centralized or
20 coordinated way in order to arrive at the policy requirement in regards to roadblocks.
21 The last and fourth conclusion of the policy section we address to the Chamber is the
22 following: If the Chamber would nonetheless perceive the military operations of the
23 Defence forces differently than from the Defence perspective as just laid out to the
24 Chamber, even assuming this scenario, we submit there is still no case to answer with
25 respect to Charles Blé Goudé. Why not? I will give you the answer.

1 Mr President, your Honours, the essence of military operations is that they are
2 prepared on the basis of a plan, a plan which is conceived during its strategic or
3 technical meeting with an army staff and its officers. That is the basic tenet of any
4 military operations, how it's run, how it has run and how it is run.

5 There is no military operation without a plan. Therefore, let us look at the essence of
6 those operations, i.e., whether Mr Blé Goudé was part of any meeting which one
7 might qualify hypothetically as a strategic or technical meeting. We hold there is no
8 evidence for such a meeting. But even if the Chamber would assume this, we hold
9 there is no evidence that Mr Blé Goudé was instrumental in this regard.

10 The evidence shows the contrary. He was far from instrumental in this regard. The
11 Chamber can draw a parallel with the so-called preparatory meetings which were at
12 the heart of the so-called network in the Ruto case which led Judge Fremr to say in
13 paragraph 35, I quote, "While there is agreement between the parties that some
14 meetings were held in Mr Ruto's house, there is strong disagreement about the
15 purposes of the meetings and what was actually said there," end quote.

16 And accordingly, Judge Fremr therefore did not deduce from that meeting, from
17 those meetings any at first inference to the detriment to the accused.

18 Mr President, we will show after the break, I suggest, because I will arrive to that new
19 topic, we will submit, we will show the Chamber there is no single witness presented
20 by the Prosecution who testified that there was a meeting at all during which an
21 alleged overall common plan was created or discussed, let alone that evidence was
22 provided that Mr Blé Goudé was present during these meetings.

23 I would now like to address these meetings, but that will take me about 30 minutes,
24 and I suggest that maybe I can start, but we can also take the break here and after the
25 break go into the meetings. I leave it in the hands of the Court.

1 PRESIDING JUDGE TARFUSSER: [12:44:44] Yes, I think we take the break now and
2 we come back at 2.30 for the third session.

3 The hearing is adjourned to 2.30. Thank you.

4 THE COURT USHER: [12:44:57] All rise.

5 (Recess taken at 12.44 p.m.)

6 (Upon resuming in open session at 2.33 p.m.)

7 THE COURT USHER: [14:33:03] All rise.

8 Please be seated.

9 PRESIDING JUDGE TARFUSSER: [14:33:23] Good afternoon. The floor goes
10 immediately back to Mr Knoops for the third and last session for today.

11 Mr Knoops, the floor is yours.

12 MR KNOOPS: [14:33:43] Thank you very much. Good afternoon.

13 Your Honours, still dealing with the policy requirement, it is the Prosecution's theory
14 that meetings between Mr Laurent Gbagbo and its alleged inner circle are at the heart
15 of the establishment of a common plan. Meetings therefore in the Prosecution's
16 theory are an evidentiary element to construe the alleged common plan.

17 The Prosecution relied on six meetings, your Honours, during its submissions of 2
18 October as well as in its response, meetings between Mr Gbagbo and its alleged inner
19 circle, including FDS generals. We will briefly go into the six meetings on which the
20 Prosecution relies, 15 December 2010, 4 January 2011, 12 January 2011, 24 February
21 2011, 14 March 2011, and 3 April 2011.

22 All of these meetings, your Honours, would constitute evidence in the Prosecution's
23 submissions for planning and implementation of a common plan.

24 In our motion for acquittal, we already indicated the failure that this could constitute
25 evidence to this extent as being the only reasonable inference.

1 Today we focus on the nexus between those meetings and Mr Charles Blé Goudé.

2 First, the meeting of 14, 15 December 2010, presidential residence, during which the
3 march was allegedly prohibited. Now, your Honours have observed that the
4 Prosecution does not even allege that Charles Blé Goudé attended this meeting, has
5 no evidence whatsoever, not even the logbook suggests his attendance on that very
6 day.

7 Second, the meeting of 4 January 2011, presidential palace, a meeting allegedly
8 between Mr Gbagbo and the FDS generals. Again, the Chamber might observe that
9 the Prosecution does not allege that Mr Charles Blé Goudé attended this meeting, has
10 no evidence whatsoever, not even the logbook suggests his attendance.

11 Third, the meeting of 12 January 2011, after the 8 p.m. news, Mr Gbagbo allegedly
12 presided over a meeting at the residence with Mr Charles Blé Goudé where the
13 so-called common plan was continued to be developed and where military questions
14 were presumably discussed. T-222 of the transcript, page 24, lines 15 till 25 of the
15 Prosecution submission.

16 What does the Chamber have before it for this third meeting? Only one citation of
17 P-10 saying that it could have been possible, it could have been possible that Charles
18 Blé Goudé was present, but no certainty.

19 Our answer, Mr President, your Honours: No witness, including all the major
20 military insiders, ever confirmed the attendance of Mr Charles Blé Goudé on 12
21 January meeting.

22 P-11 testified that he did not remember having had a meeting at the residence with
23 Charles Blé Goudé and the persons mentioned in the logbook for 12 January. I refer
24 to the transcript T-132, the French transcript, page 74, lines 1 till 8.

25 P-9, the second Prosecution witness, testified that he never attended any meeting

1 where Charles Blé Goudé was present at the presidential residence. Transcript T-193,
2 French version, page 38-39.

3 Third witness of the Prosecution, P-47, he confirmed to the Chamber that he was not
4 aware of any FDS meetings at the presidential residence where Mr Blé Goudé
5 attended. Transcript 204, French transcript, page 29-30.

6 Your Honours, P-10 indeed testified that his presence, Mr Charles Blé Goudé's
7 presence could have been a possibility, but didn't confirm it. Transcript T-142,
8 French version page 34, lines 13-18.

9 One piece of evidence was produced, Mr President, to the Chamber, that was the
10 logbook itself, which shows that Mr Charles Blé Goudé arrived at least half an hour
11 later, after the visit of the last high commander arrived. In light of P-501 and P-9's
12 testimony confirmed by P-10 and P-11, the Prosecution is well aware of the fact that
13 the logbook at the maximum, evidentiary maximum can only indicate that Charles
14 Blé Goudé physically entered the residence, presumably, but that's speculation, with
15 the intention to visit the president on 12 January.

16 It certainly, Mr President, does not indicate whether, I'm meaning this piece of
17 evidence, whether they actually met and if they met, whether it was at the meeting
18 between Mr Gbagbo and the FDS senior commanders.

19 The fact, Mr President, your Honours, that Charles Blé Goudé appears on a video,
20 OTP-0064-0110 at 4 minutes 52 does not necessarily mean that he was indeed
21 attending that specific meeting. Even when we assume he did, the Prosecution
22 evidence does not indicate if and when Charles Blé Goudé might have joined that
23 meeting.

24 In any event, the video never shows Charles Blé Goudé and the commanders and/or
25 Mr Gbagbo together on the same image. And I have to say here, Mr President, that

1 another reasonable explanation for this image could be that all the relevant
2 individuals depicted on this video gathered a few minutes at the request of the RTI
3 television journalists, that they then left or attended afterwards different meetings.
4 The evidence does not exclude such a reasonable inference.

5 In conclusion, Mr President, your Honours, the evidence provided to the Chamber by
6 the Prosecution is absolutely insufficient and moreover too contradictory to permit
7 any inference as to the attendance of Charles Blé Goudé as to the meeting of 12
8 January 2011 and/or his contribution to that meeting. We simply have no evidence
9 before the Chamber to make any inferences from this observation.

10 Moreover, the Prosecution cites P-47, who testified that Mr Gbagbo at that moment
11 allegedly urged the officers to resume fighting because the mandate "is", I quote from
12 the transcript T-222, page 22, "to make the situation safe for the population." End
13 quote.

14 Your Honours, how could this fit into a theory of attacking the civilian population if
15 it's the intention of the author of these words to make the situation safe for the
16 population? It is notably the Prosecution's own witness, P-47, who is telling this to
17 the Chamber and not any Defence witness.

18 Also here we recall Mr Mangou's testimony before the Chamber repeating on the RTI,
19 describing the events of 11 and 12 January 2011 as being, quote, "a threat of war," end
20 quote, and threats of attacks against the FDS. T-222, page 23, lines 15-19, where the
21 Prosecution cites its own witness.

22 Therefore, there is no inference to be drawn from the meeting of 12 January 2011.

23 We go to the fourth meeting, that of 24 February 2011 at the presidential palace,
24 where presumably, it's also speculation, military questions were discussed regarding
25 Abobo as is submitted by the Prosecution.

1 Our answer, your Honours: The Prosecution does not assert that Mr Charles Blé
2 Goudé was present at this meeting. See their response, paragraphs 1160 and 1598
3 where the Prosecution concede to this fact.
4 Fifth meeting, 14 March 2011 meeting between high commanders and
5 Laurent Gbagbo held at the presidential residence. Our answer when it concerns the
6 nexus to Mr Charles Blé Goudé: There is clearly no evidence to demonstrate the
7 presence of Charles Blé Goudé at this meeting.
8 You've heard, Mr President, your Honours, P-46 testifying that Mr Charles Blé Goudé
9 attended one single FDS meeting during which the generals asked Mr Gbagbo to step
10 down. However, even assuming this request to step down was made during such a
11 so-called collective meeting as described by P-46, which is, by the way, highly
12 unlikely considering that P-46 is the only witness to refer to such an event, while this
13 scenario is not corroborated by either P-9, P-10 or P-47, but even assuming that this
14 was discussed at the meeting as P-46 asserts, the Prosecution failed to demonstrate
15 that this alleged collective request to step down would have been made during that
16 specific meeting of 14 March 2011, because, Mr President, your Honours, P-46 cannot
17 remember the date of this meeting.
18 To the contrary, P-10 testified before the Chamber that at the meeting of 14 March
19 2011, only the security situation was discussed and, indeed, he does not mention the
20 presence of Mr Charles Blé Goudé at that meeting and clearly situates the request to
21 have Mr Gbagbo resign conveyed through P-9 at a different time, totally different
22 time as asserted by P-46.
23 I refer your Honours to the transcript 139 of the French version, page 100 to 102,
24 where you find this explanation of P-10.
25 Now, P-47 testified that what was requested at that meeting, 14 March, was merely to

1 obtain more military equipment and that Mr Gbagbo said it would be discussed with
2 the CEMA to give them more resources. T-204, French version, pages 25, 28.

3 Also here, Mr President, your Honours, you see P-47 makes no mention of a request
4 to step down on the very 14 March. No request to step down having been made at
5 that specific meeting.

6 The logbook though shows that Charles Blé Goudé visited the presidential residence
7 that day, but as explained by P-501, P-9, P-10 and P-11, so four Prosecution witnesses,
8 this does not imply that Mr Blé Goudé physically attended the FDS meeting as such.

9 The video footage on which the Prosecution relies does not indicate, does not
10 demonstrate the presence of Charles Blé Goudé at this meeting either. Therefore, as
11 a conclusion, also the fifth alleged meeting, that of 14 March 2011, cannot justify any
12 reasonable inference that Mr Blé Goudé had a nexus to any discussions during such a
13 meeting.

14 The sixth and last meeting is that of 3 April 2011 at the residence. Here we can
15 observe as our answer that the Prosecution concedes that Mr Charles Blé Goudé was
16 not present at this sixth meeting on which the Prosecution relies. Transcript T-222,
17 page 28, lines 7 to 8 of the English transcript.

18 In conclusion, your Honours, we have demonstrated to you that out of the six
19 meetings, the so-called strategic meetings between Mr Gbagbo and the FDS
20 commanders on which the Prosecution relies, the evidence adduced by the
21 Prosecution itself, it's the Prosecution case, not our case, it's their case, their evidence
22 shows to the Court that Mr Blé Goudé was not present at least five, five out of the six
23 of these so-called essential meetings on which their whole case theory relies when it
24 concerns meetings during which an alleged common plan was concocted or
25 continued to be established.

1 Now, Mr President, 15 December 2010, 4 January 2011, 24 February 2011, 14 March
2 2011, and 3 April 2011. The case of the Prosecution really collapses with this
3 observation as regards to Mr Charles Blé Goudé.

4 The meeting, that's the one remaining meeting is that of 12 January 2011. Let us look
5 into this meeting, Mr President, your Honours. It is used by the Prosecution as an
6 example of a meeting amongst others between Mr Gbagbo, the FDS commanders and
7 Charles Blé Goudé. When? In fact, if you look at it more closely, it's the only
8 meeting between Mr Gbagbo and the FDS commanders which the Prosecution
9 presents to the Chamber without concluding that this could be the only inference the
10 Prosecution intends to make, certainly not the only reasonable one, since that meeting,
11 the way it's presented by the Prosecution to your Chamber is without the proper
12 contextualization while not corroborated by any testimonial evidence when it
13 concerns the presence of Charles Blé Goudé.

14 Now, Mr President, at the hearing of 2 October, the Prosecution asserted the
15 following sweeping and unfounded statement to the Chamber, I quote from the
16 transcript page 12, T-222, page 12, lines 10 till 12. The Prosecution presents to you
17 the following assertion:

18 "Your Honours, Mr Gbagbo coordinated the implementation of the common plan by
19 holding frequent meetings and regular dialogue with his inner circle and other
20 members of his support network." Unquote.

21 Our answer: If this is the Prosecution case, and it is, it's being said to you repeatedly,
22 "frequent meetings, regular dialogue for the implementation of a common plan". If
23 this is the case of the Prosecution, Mr President, the Prosecution actually presents its
24 own argument, it falls into its own argument that Mr Blé Goudé could never have
25 been part of a common plan, because if those meetings in the Prosecution theory

1 would be so vital, and we have demonstrated out of the six, five he was objectively
2 not present there, he could have no decisive role whatsoever in any of those frequent
3 meetings and so-called regular dialogue.

4 Moreover, moreover, by accepting the dismissal of the charges against Mr Charles Blé
5 Goudé in relation to the third and fourth incident, in response to our arguments on
6 the nexus between Charles Blé Goudé and those incidents, and that's what the
7 Prosecution has done in its response, the Prosecution in fact concedes to those
8 arguments, namely, that indeed no evidence in conjunction with the presence of
9 Charles Blé Goudé is adduced as to the meetings of 12 January and 14 March 2011.
10 And they concede therefore to the lack of an established involvement of Charles Blé
11 Goudé in any of those so-called FDS meetings.

12 That's the consequence of conceding with the Defence that there is no evidence for the
13 incidents of 3 and 17 March.

14 Our conclusions, Mr President, are reinforced if one takes into account the written
15 response of the Prosecution. In its response, as you have noticed in paragraph 1558,
16 the Prosecution concedes that citation, while the logbook and indeed Witness P-501
17 are not able to confirm whether the listed visitors did indeed meet Mr Gbagbo, the
18 fact of the meeting is to be inferred from all the surrounding evidence the Prosecution
19 suggests. The same argument can be found in paragraph 1556.

20 On the other hand, eating the cake from two sides, the Prosecution clarifies that
21 citation "of course, it is not possible to infer from the logbook alone what matters were
22 discussed at a given meeting, and the Prosecution does not ask for such an inference
23 to be drawn." Unquote. These are the words of the Prosecution.

24 But in paragraph 1387 of its response, the Prosecution alleges that the logbook can be
25 used as evidence that meetings with Mr Gbagbo took place and with whom these

1 meetings took place and at what approximate times the meetings took place.

2 Our answer to the Chamber on these submissions by the Prosecution, if we would

3 follow the logic of the Prosecution argument, the logbook cannot be used as evidence

4 that meetings with Mr Gbagbo took place, with whom these meetings took place, the

5 approximate times, et cetera. No witness appeared before the Court to contextualise

6 the information contained in the logbook. Yet, and that's the contradiction, in its

7 response and also in its trial brief the Prosecution relies on numerous occasions

8 exclusively on the logbook to allege that such meetings occurred, et cetera.

9 Just a few illustrations we'll give to you to demonstrate that the Prosecution theory is

10 totally contradictory.

11 First, in paragraph 1293 of its response, and the Prosecution repeated this argument

12 on 2 October, T-222, page 31, lines 20-24 of the English version, the Prosecution

13 concludes that Charles Blé Goudé, citation, "met" with Mr Gbagbo on 24 February

14 2011 at the residence and that, citation, "the CEMA and other senior level FDS officers

15 were also present" at this meeting.

16 The Prosecution goes even further by saying in its response, paragraph 1790, to

17 speculate as to the context of this alleged meeting by inviting the Chamber, your

18 Honours, to appreciate Mr Charles Blé Goudé's visit to that residence on those dates,

19 23, 24 February within the ambit of the FDS offensives, alleged offensives on Abobo

20 and alleged attacks on civilians in Yopougon starting on 25 February.

21 Our answer to this submission of the Prosecution: As conceded by the Prosecution

22 itself, the logbook alone cannot be used as evidence that Charles Blé Goudé met with

23 Laurent Gbagbo that very evening, how long they spent together and the content of

24 any discussion. Yet, the Chamber cannot ignore that this is the only piece of

25 evidence adduced in relation to an alleged meeting between Mr Gbagbo and Charles

1 Blé Goudé. The Prosecution fails to adduce one single piece of evidence in support
2 of the nature, reason of such a discussion, assuming of course that such a meeting
3 indeed took place, but that's also here pure speculation.

4 The Defence notes that in the trial brief, the Prosecution suggested yet another reason
5 as to why Charles Blé Goudé, together with P-9 and Boniface Konan, could have met
6 with the president that night - could have met, speculation - namely, the FAFN's
7 offensive in the west. Trial brief paragraph 454. So, Mr President, there you have it,
8 the Prosecution is absolutely unsure, it's just speculating what this meeting could
9 have been about.

10 The fact that the Prosecution for the same potential visit, the same visit provides to
11 the Chamber numerous, very different and irreconcilable reasons for which
12 Mr Blé Goudé could have met with the president on 24 February 2011, assuming he
13 did, which is indeed not confirmed, that says a lot, Mr President, your Honours, that
14 says a lot about how speculative and unsustained and unsubstantiated the
15 propositions of the Prosecution are.

16 Second, the second argument and second example for the totally in contradictionary
17 reasoning of the Prosecution, the second example you can find on 2 October, T-222,
18 page 31, line 17 till 18 of the English transcript, as well as in paragraphs 1151 and 1726
19 of its response where the Prosecution literally tells the Chamber the following, quote:
20 "Between 16 and 19 December 2010, Charles Blé Goudé was received three times at
21 the presidential residence, when he met" as a fact, it's been suggested as a fact, "when
22 he met Mr Gbagbo and spent many hours." So please keep in mind the Prosecution
23 says, one, he met and, second, he spent many hours there. All right.

24 In particular, the Prosecution suggests to the Chamber therefore that on the evening
25 of 16 December 2010, Mr Gbagbo met with several ministers for several hours. And

1 it further alleges that these included the minister of defence, Mr Alain Dogou. That's
2 very important for our response in a few seconds. And it also alleges that Blé Goudé
3 was present.

4 So let us see what the evidence really tells us, Mr President, what it really tells us.

5 Also here, the Prosecution relies exclusively on this logbook for these bold assertions,
6 met several hours, ministers, et cetera, bold assertions to assume that Charles Blé
7 Goudé spent many hours with Mr Gbagbo and ministers.

8 You might have seen, Mr President, in our submissions, motion for acquittal and also
9 since 2 October, the Prosecution's own admission during the hearing that the logbook
10 indeed indicates that Charles Blé Goudé departed from the residence that evening at
11 20:42. That was the precise time of arrival of the minister of defence, Mr Alain
12 Dogou.

13 You might see in the logbook that Charles Blé Goudé arrived at 20:24. Mr Alain
14 Dogou, one of the ministers who allegedly met for, in the Prosecution's submission,
15 several hours with the president along with other key members of the so-called inner
16 circle, were in view of the Prosecution to discuss the repression of the march.

17 Now, if you look at the timing, Mr President, in the logbook, a simple calculation
18 dictates that Mr Blé Goudé was in total 18 minutes, one-eight, 18 minutes according to
19 this logbook, physically in the residence.

20 How could, Mr President, your Honours, how could Mr Charles Blé Goudé, who
21 apparently stayed at the residence for these 18 minutes, have attended a meeting,
22 assuming a meeting took place involving Mr Dogou, which meeting started after
23 Dogou's arrival, because the logbook indicates that Mr Dogou arrived at 20.42, indeed,
24 exactly the time when Mr Blé Goudé left the residence, and the Prosecution asserts
25 that at that time the meeting with the minister of defence took place.

1 Therefore, Mr President, it's impossible, it's not only not unlikely, but it's just

2 impossible, simply based on the data of the Prosecution's logbook itself, it's

3 impossible that Charles Blé Goudé was at this meeting of 16 December 2010.

4 When Mr Alain Dogou arrived, Charles Blé Goudé left the residence and we are not

5 able to construe with all flexibility as Defence team to construe any reasonable

6 inference from this fact to say that Charles Blé Goudé, when leaving the residence still

7 attended a meeting, it's impossible.

8 The Prosecution's allegation therefore that Charles Blé Goudé attended that meeting,

9 spent several hours, because we started with the observation that it is the Prosecution

10 case, as just cited, he met Mr Gbagbo and spent many hours, many hours is simply

11 unfounded. 18 minutes is not several hours.

12 The Prosecution presupposing that these meetings took place, although as mentioned,

13 the logbook is not corroborated by any testimonial evidence whatsoever or video

14 evidence, the Prosecution goes further and speculates as to the nature of these

15 discussions.

16 For instance, in paragraph 1732 of its response, it states, quote, "it is also not a

17 coincidence that Mr Blé Goudé met with Mr Gbagbo on the night of 16 December

18 2010, after the FDS and youth coordinated an attack on pro-Ouattara civilians." End

19 quote.

20 Your Honours, needless to say, this is pure speculation as it is based and relied upon

21 only on the logbook, apart from being highly unlikely that for such an important topic,

22 which was allegedly discussed that night on 16 December, Mr Blé Goudé would have

23 spent only 18 minutes as a whole in the residence, even if you would in the

24 alternative scenario assume that he was there, it was not for many hours, but 18

25 minutes.

1 Therefore, Mr President, your Honours, in light of the evidence, as presented by the
2 Prosecution and analysed by the Defence, the Prosecution cannot allege at paragraph
3 1560 of its response, I quote:
4 "Testimonial, documentary and video evidence of these meetings shows their
5 importance in the planning and implementation of the Common Plan to stay in power
6 at all costs, and to attack pro-Ouattara civilians in Abidjan."
7 Nor can such an assertion be sustained by only logbook as mentioned in paragraph
8 2013 of the Prosecution response, purporting that, "Mr Blé Goudé contributed to"
9 these crimes, "the commission of the crimes by meeting with Mr Gbagbo and other
10 members of his Inner Circle to discuss a strategy to implement this common
11 purpose." End quote.
12 You see, Mr President, your Honours, you see that the theory of the Prosecution relies
13 on the implementation of a common plan by way of these meetings. And if the
14 involvement of those meetings, the nature of which would allegedly be strategic and
15 criminal in the Prosecution's theory, if Charles Blé Goudé's involvement in those
16 meetings cannot be inferred from the evidence as reasonable, let alone the only
17 reasonable inference, there is no case to answer. That's quite obvious. There is no
18 case to answer whatsoever in the situation of Mr Blé Goudé. There is no testimonial,
19 documentary evidence whatsoever adduced by the Prosecution to sustain the
20 allegation that he had a contribution, substantive contribution during any of those
21 meetings.
22 The conclusion therefore is twofold, Mr President, and it's inavoidable in this case.
23 First, there is no case to answer for Charles Blé Goudé since it is unequivocally proven
24 that he was not part and parcel of any of the so-called strategic or tactical meetings
25 during which -- apparently, we all have to assume this, there is no evidence, which

1 apparently, during which apparently military operations and actions were discussed.
2 Second, the consequence, the legal consequence and also the factual consequence of
3 the Prosecution's new position in the case of Charles Blé Goudé to not oppose the
4 dismissal of the charges pertaining to the third and fourth incident is vital. It's clearly
5 that it confirms this first conclusion; and secondly, it makes the Prosecution theory
6 totally collapse in that Mr Blé Goudé would have been part of an alleged inner circle
7 or common plan, since one of the essential ingredients of this so-called circle and plan
8 in the Prosecution's own theory was the role of the FDS and its operations.

9 For Mr Blé Goudé, this essential pillar in the construction built by the Prosecution,
10 this pillar is fully undermined with its own evidence. Therefore, there is no case to
11 answer.

12 Still speaking, Mr President, your Honours, about the policy requirement, we arrive
13 at the last topic for this afternoon, the issue of recruitment, which element also
14 equally would have played an essential role in the Prosecution's evidentiary theory as
15 to the common plan.

16 We will show you in the last 45 minutes of this afternoon, Mr President, that this
17 theory also has totally collapsed simply based on the Prosecution's own witnesses.
18 Not ours, but theirs.

19 First, we will bring you into the pre-2010 recruitment. After that, I will go into the
20 2010 recruitment and I will show you on the basis of the Prosecution's own evidence
21 that indeed there is no case to answer for such an important issue as recruitment in
22 the Prosecution's theory.

23 Let us first delve into the pre-2010 recruitment. Actually, the Prosecution's theory is
24 quite simple, well, simple in its presentation, but not simple in its evidence.

25 The allegations in the trial brief of the Prosecution with respect to Charles Blé Goudé

1 is actually twofold. First, he was instrumental in recruiting 3,000 youth into the FDS
2 in 2003; and second, his alleged ties with militia, such as, the GPP and the FLGO,
3 which the Prosecution claims are demonstrative of his role in the early conception
4 and development of a common plan. It started apparently already in 2003 with this
5 recruitment, these are the two pillars of the pre-2010 recruitment theory of the
6 Prosecution.

7 Both elements in this theoretical framework of the Prosecution theory are fully
8 unsubstantiated and unsupported.

9 To the contrary, the evidence which has been presented to the Chamber during this
10 trial clearly demonstrates that Charles Blé Goudé played no role, I repeat, no role
11 whatsoever in any recruitment whether into the FDS or militia before or during 2010.
12 We'll now delve into the Prosecution evidence for their submission. Considering the
13 purported role of Charles Blé Goudé in the 2003 recruitment in the FDS, the
14 Prosecution again relies here exclusively on P-435's testimony, which has been totally
15 undermined by the analysis made by Maître Gbougnon this morning.

16 This gentleman, Mr President, your Honours, claims that from 2002 onwards, Charles
17 Blé Goudé played a key role in the recruitment into the FDS of thousands of young
18 people from ethnical backgrounds loyal to Gbagbo, many of whom belonged to
19 groups of self-defence.

20 Trial brief paragraph 30.

21 But where was the foundation? Where was the foundation for this allegation?

22 Our answer: The Prosecution has failed to establish even when taken into account
23 this testimony that Mr Blé Goudé played a role in any recruitment prior to the
24 post-electoral crisis.

25 The allegation that he played an important role in recruiting youth of ethnical

1 backgrounds loyal to Mr Gbagbo in 2003 do not correspond, your Honours, with the
2 factual context and reality in Côte d'Ivoire from the year 2000 onwards.

3 The Prosecution's narrative of these events of course conveniently fits its own case
4 theory and early developments of a so-called common plan. But it does not,
5 however, correspond to reality and the evidence presented by the Prosecution itself,
6 because several witnesses explained to the Chamber that the 2003 call for the national
7 recruitment into the FDS was due to a totally different reason, Mr President, your
8 Honours.

9 It was due to a significant shortage; an aging staff in the Ivorian army. I refer
10 amongst others to P-156. There has not been a formal recruitment since the 1990s.
11 And as a result, the absence of a formal recruitment in the FDS since the 1990s, one
12 started to feel this shortage when the FDS faced the rebel incursions during the 2002
13 rebellion, which we addressed in paragraph 344 of our motion for acquittal based on
14 P-9 and P-0316 and also P-0156.

15 It was therefore, Mr President, your Honours, this shortage in simply military
16 personnel that prompted a national recruitment which, as explained by the
17 Prosecution's own insider Witness P-9, which followed the normal procedure as any
18 army in the world would do when it faces a shortage. In my country right now,
19 some of the units feel the same shortage, and what you see is the normal procedure:
20 It is being advertised everywhere on the national television.

21 In this normal procedure for a national recruitment, Mr Blé Goudé of course could not
22 have played a role because simply he had no official role in such a procedure.

23 Third, Mr President, your Honours, the person with the most direct knowledge, what
24 we call most direct evidence, most direct witness we could imagine in this case,
25 knowledge about the 2003 recruitment, the person who was steering this national

1 procedure, P-9, the CEMA, explained to the Chamber at trial that the names, such as
2 "*génération Blé Goudé*" had been given by the local population to the new recruits. It
3 was not something from Mr Blé Goudé's.

4 P-9 emphasised that the reason this name had been attributed to the new recruits was
5 not because Charles Blé Goudé had played any role in the recruitment. Transcript
6 T-196, the French version, page 81, lines 14 till 20, testimony of P-9.

7 P-9, Mr President, your Honours, told your Chamber to the contrary. Rather, the
8 name "*génération Blé Goudé*" was attributed because these young recruits, which were
9 actually selected based on this national procedure, were young Ivorians, highly
10 educated, as P-9 told us, who held meetings. This account, speaking about
11 corroboration, by the way, this was corroborated by Witness P-0164, who told the
12 Chamber actually in conjunction with P-9 that such names as "*soldats Blé Goudé*" had
13 been informally given to the recruits by the local population. Mr Blé Goudé had
14 nothing to do, except that his name was used. He could have asked copyright for it,
15 for instance. But that was it.

16 P-0164 emphasised indeed, which the Prosecution doesn't mention, indeed, that it
17 was not an official name. "*Soldats Blé Goudé*" or "*génération Blé Goudé*" was not an
18 official name.

19 As you might remember, your Honours, P-164 explained to the Court under oath,
20 transcript 164, French version, lines 18-19, I cite from the French transcript:

21 (Interpretation) "That's what they were called, but it wasn't a military baptism. It
22 wasn't a military baptismal name" (Speaks English) end quotes.

23 Mr President, your Honours, this testimony before the Chamber of P-0164 perfectly
24 fits and corroborates what the CEMA told your Chamber.

25 Moreover, high ranking insider witnesses of the FDS called by the Prosecution, not

1 our case, P-9, P-11, but also P-47, all denied at trial, they all denied at trial having
2 worked with militias before and during the post-electoral crisis. And we have
3 demonstrated this in paragraph 358 of our motion for acquittal. We also find the
4 proper references to the various testimonies.

5 There is a fourth reason, Mr President, why Mr Blé Goudé could not have played any
6 substantive role in the 2003 recruitment of youth into the FDS. The evidence which
7 presented during this trial to your Honours clearly shows that following the 2002
8 rebellion, it was the youth themselves who were motivated, self-motivated to support
9 the lawfully elected government in those days, which government was under threat
10 by the rebellion and not as sort of a gesture to Mr Gbagbo personally. This was
11 clearly set out by the testimony of P-0048. P-0048, as you might remember, a
12 Prosecution witness, explained that it was no charismatic leader of these apparent
13 movements. There was no leader. It was the youth themselves who were
14 motivated to defend their army. There was nobody to ask them. It was not
15 necessary to ask them. You will find this also in our motion for acquittal,
16 paragraphs 356 till 357 with the references. One of the most important references of
17 P-0048 you'll find in T-54, French transcript, page 8, lines 5 till 6.

18 Your Honours, the fifth argument why there could not have been a role of Charles Blé
19 Goudé in this so-called pre-recruitment, pre-2010 recruitment is the following. The
20 Prosecution claimed that a number of the 2003 FDS recruits had formed part of the
21 so-called groups *auto-défense*, *groupes d'auto-défense*, and that was one of the reasons
22 why they could have been recruited.

23 Now, as you might recall, P-9 was confronted with this allegation, and we just
24 observed he was the one with direct knowledge of the 2003 recruitment, and he
25 directly contradicted this whole account of the Prosecution, emphatically stressing

1 and diplomatically saying that the FDS did not recruit *auto-défense* groups such as the
2 GPP, testifying that this was, quote, not serious for a chief of staff of his stature. It
3 was not serious for a chief of staff to be involved in the recruitment of this type of
4 groups such as the GPP.

5 He himself, P-9, said "I am responsible for the recruits, for the recruitment". Lately
6 he said in court, transcript T-199, French version, page 37, lines 13-24, I quote from the
7 French transcript: (Interpretation) "That's just not serious for a chief of staff who has
8 the possibility of having people recruited into the army." (Speaks English) End
9 quote.

10 And indeed, the Prosecution case cannot be taken seriously, with all due respect, by
11 submitting these type of arguments.

12 Sixth, your Honours, the Prosecution claim that these so-called new recruits of 2003
13 held a more favourable position within the FDS and that they were untouchables
14 because they had allegedly a shield in the form of Charles Blé Goudé is an assertion
15 which is equally entirely unsubstantiated.

16 We all know that this assertion was based on the testimony of P-0164, who was cited
17 by the Prosecution. But P-0164 could not provide one example, not one example to
18 the Chamber to support this claim. His testimony, Mr President, your Honours, was
19 totally based on his own impressions. It was fully opinion evidence and above all
20 hearsay evidence. See also paragraph 365 of our motion for acquittal where we
21 delved into this type of evidence.

22 Another witness, a second one on which the Prosecution relies to say, well, these 2003
23 recruits were the so-called untouchables because they were shielded by Charles Blé
24 Goudé, another witness to rely on was P-0316. But also this evidence is totally
25 unsubstantiated, because P-0316 merely told the Court that these new recruits which

1 he encountered in his own unit would boast about being untouchable and allegedly
2 being protected by Charles Blé Goudé.

3 But when questioned by the Defence, you might remember that P-0316 repeatedly
4 indicated that this was what the recruits were saying about themselves. They were
5 saying this about themselves, boasting, providing no concrete examples and also this,
6 Mr President, your Honours, constitute anonymous hearsay evidence because there
7 was no indication who these recruits were who were allegedly boasting about being
8 untouchable.

9 In conclusion, we have provided the Chamber with six examples of the Prosecution's
10 own evidence which shows that their own case theory as to the purported role of
11 Charles Blé Goudé in the pre-2010 recruitment is totally speculative and unfounded.
12 Now we arrive at the purported involvement in the creation of the GPP during an
13 alleged meeting on 23 March 2003 between Mr Blé Goudé, Mr Djué, Dibopieu and Mr
14 Groguhet. This can be dealt with briefly because Mr Gbougnon, his intervention has
15 this morning convincingly shown that this argumentation, this argument solely relies
16 on the testimony of P-435 and I refer to this morning's submissions.

17 But in addition to what was said this morning about the credibility of this gentleman,
18 Mr President, the allegation of Mr Blé Goudé's -- that Mr Blé Goudé was involved in
19 the creation of the GPP, his evidence was directly contradicted by an insider witness
20 of the Prosecution, again, P-9. P-435's account on the GPP's activities and alleged
21 ties with the FDS, as cited by the Prosecution, such as his relocation to Azito was
22 directly contradicted by the Prosecution's own evidence of P-9, who emphatically
23 refuted P-0435's account of this alleged recruitment of GPP elements into the FDS.
24 Another example, P-0435 also affirmed that P-9 had recommended 30 youth from
25 Adjamé Agban to be trained by the GPP. This assertion was also unequivocally

1 refuted by P-9 in his testimony before the Chamber. T-199, French version, pages 37
2 and further.

3 Your Honours, based on these observations, no reasonable Chamber could accept,
4 based on merely the allegations of P-0435, that any link between the GPP with a
5 lawful recruitment into the FDS in 2003 has taken place.

6 Also the claim that Charles Groguhet was the so-called connection between the GPP
7 and Charles Blé Goudé at that time is equally without any evidence except for P-0435.

8 With respect to the inner circle's including Mr Blé Goudé's alleged involvement in the
9 so-called sponsoring of Liberian mercenaries and the FLGO, the Prosecution fails to
10 demonstrate any linkage between Mr Charles Blé Goudé and these groups.

11 Moreover and importantly, P-0500 was quite clear when we questioned him in our
12 examination, the witness P-0500 said, Mr Charles Blé Goudé had no part in the
13 creation or financing of the FLGO. Transcript T-182, pages 46-47 of the French
14 version. He literally said, I quote from the French transcript, when asked about
15 relation between Maho Glofiéhi and Charles Blé Goudé of the FLGO, Mr Glofiéhi,
16 P-0500 said literally, I quote from the French transcript: (Interpretation)

17 "No, they never spoke."

18 "Did Maho Glofiéhi in his conversations mention that Mr Blé Goudé had a role in the
19 creation of the FLGO?"

20 (Speaks English) Answer of this witness: (Interpretation) "Never." (Speaks English)
21 End of quote.

22 Mr President, there was no doubt in this answer of the important witness, who was
23 notably himself at the foundation of the FLGO.

24 That brings us Mr President as the last topic before we break to the alleged role of
25 Charles Blé Goudé in the recruitment during the crisis, after having established that

1 there is no case to answer for the pre-2010 recruitment element in the Prosecution
2 theory.

3 We have in our submission already exhaustively explained that what happened at the
4 end of 2010 was an official recruitment sanctioned by the CEMA. The Prosecution
5 didn't produce any evidence to show that this own evidence of the Prosecution was
6 wrong.

7 Still it maintains its argument that Charles Blé Goudé played an essential role in the
8 recruitment of the youth into the FDS in 2011. But what the Prosecution presents to
9 the Chamber are simply various speculative hypothesis in its trial brief and response
10 to explain the potential rationale of between and behind Charles Blé Goudé's call, call
11 for enlistment.

12 Irrespective of the motive behind this call for enlistment, what is decisive for the
13 conclusion that no reasonable Chamber could accept that Charles Blé Goudé had a
14 role in this recruitment is that the evidence fails to demonstrate any relevant or
15 sufficient contribution on the part of Charles Blé Goudé with respect to the
16 recruitment into the FDS. We refer to paragraphs 537 till 545 of our motion for
17 acquittal.

18 Now, interestingly, the Prosecution theory is the following. It submits that Charles'
19 statement of support to the army on 20 January 2011 at the *État-Major*, quote,
20 "prepared the ground for his March call for enlistment..." end quote. That's
21 paragraph 1856 of the response of the Prosecution, and also they asserted this during
22 their oral submission T-222, page 35, lines 2 till 8.

23 Our answer: This allegation is in total contradiction with what transpires from
24 Charles Blé Goudé's statements over that period.

25 The evidence shows, your Honours, to 19 March 2011 that Charles Blé Goudé had

1 been consistent in refusing to invite the youth to enlist. Not only he never suggested
2 once that additional resources might be needed in the FDS, assuring the youth that
3 the army was in control of the situation, see, for instance, Charles Blé Goudé's
4 statement in response to Guy Gberti's speech in front of Charles Blé Goudé's
5 residence, but also Charles Blé Goudé made a clear distinction between the youth on
6 the one hand and the army on the other hand, and that I use his own words in French
7 (Interpretation) "To each person his domain;"
8 (Speaks English) or another phrase of Charles Blé Goudé, interviewed at the RTI, 22
9 January 2011, I quote from French transcript of this interview (Interpretation) "to each
10 person his niche;" (Speaks English) meaning that each party should stay in its own
11 area of competence.

12 So you will find nowhere any reference of Charles Blé Goudé to the youth to enlist in
13 the army, let alone a call for additional resources.

14 Second, the Prosecution's own testimonial and documentary evidence shows a totally
15 different explanation for this recruitment, namely, the desire of the youth themselves
16 to enlist. And this was due to external factors totally unrelated to the person of
17 Charles Blé Goudé.

18 We have two sources to sustain this observation and other reasonable possibilities as
19 opposed to the Prosecution theory. First, a police report of 17 January 2011, it's a
20 Prosecution document as the Court knows which clearly showed that the youth had
21 been asking for the enlistment in the army to help defend the country, a country
22 under attack as early as the end of 2010. So therefore before, long before Charles Blé
23 Goudé's so-called statement to support the FDS at the end of January 2011, there is
24 already evidence that the youth irrespective of any call was themselves motivated to
25 enlist in the army to defend the country.

1 Therefore, the desire from the youth to defend, to enlist was expressed long before
2 March 2011 and could not have been the result of Charles Blé Goudé's speeches as
3 of 20 January 2011.

4 The second source -- by the way, the police report is CIV-OTP-0045-1409 at 1410,
5 where you'll find this desire of the youth to enlist irrespective of Charles Blé Goudé's
6 call.

7 Second, P-449, Prosecution witness confirmed indeed that it was not Charles Blé
8 Goudé who had called the people to the flag, but it was the people themselves who
9 told him that they wanted to be called to the flag.

10 I refer to the British transcript T-159, page 47, lines 12 till 14 of the testimony before
11 the Court of P-0449. And he told us the following, your Honours, I quote:

12 "It was not President Blé Goudé who called people to the flag or *aux drapeaux*. We,
13 the people, are the ones who went out and told him that we wanted to be called to the
14 flag. It was the youth who did that," end quote.

15 I cannot understand how this testimony can be interpreted otherwise than
16 Mr Blé Goudé had nothing to do with such a call.

17 Also, Mr President, P-449 on page 49 of the same English transcript, T-159, lines 11 to
18 14, told your Honours the following:

19 "I told you that on March 19th, I do not know at what time, but I was present. We
20 are the ones who went out to ask President Blé Goudé to inform President
21 Laurent Gbagbo that we wanted to come to defend our nation under the flag,"
22 unquote.

23 So on two occasions this Prosecution witness was quite clear that the incentive to
24 enlist in the army in 2010 had nothing to do with Mr Charles Blé Goudé whatsoever.

25 Finally, and we ask you to go one minute into private session, because we deal now

1 with a portion of a testimony which was dealt with in private session.

2 PRESIDING JUDGE TARFUSSER: [15:49:30] Can we please go to private session.

3 Thank you.

4 (Private session at 3.49 p.m.)

5 THE COURT OFFICER: [15:49:45] We are in private session, Mr President.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Open session at 3.52 p.m.)

6 THE COURT OFFICER: [15:52:52] We are back in open session.

7 PRESIDING JUDGE TARFUSSER: [15:53:01] Thank you.

8 Mr Knoops.

9 MR KNOOPS: [15:53:03] Conclusion, Mr President: It's in our submission really
10 unbelievable in evidentiary terms if one still maintains the allegation after hearing
11 this evidence of the Prosecution's own witnesses, it's really unbelievable that the
12 so-called desire of the youth to come to the flag in March 2011 was, and I cite now
13 from the Prosecution response, paragraph 1852, that this desire was, citation, "the
14 culmination of months of Mr Blé Goudé's fear-mongering, mobilisation and
15 instructions to remain primed for the mot d'ordre," unquote.

16 I would say to the Prosecution: Reread the evidence and then make your own
17 evaluation.

18 Moreover, the Prosecution argues that it does not rely on the statement of support of
19 January alone to demonstrate this allegation, but it alleges that it's consistent with its
20 overall role in the recruitment in the FDS, the overall role consistent, and also here
21 you will see an attempt to construe a pattern which is not there.

22 Our answer: We never alleged that the Prosecution had relied on this fact alone.

23 However, since it is an important point in the Prosecution theory in the trial brief, for
24 instance, paragraph 819, we did address in our motion for acquittal this point to show
25 that this statement of support given by Charles Blé Goudé to the army was irrelevant,

1 totally irrelevant, had nothing to do with the evidence before you, it had nothing to
2 do with any role in a recruitment.

3 Secondly, what does it exactly mean, your Honours, to state that somebody supports
4 an army? Is that a criminal act? No, of course not. It happens around the world
5 at any moment. A statement of support can therefore not sustain a reasonable
6 inference that somebody is responsible for a recruitment.

7 The real question is in this case, Mr President, whether or not indeed Mr Blé Goudé
8 played a substantive role in the recruitment activities of the FDS. And the answer is
9 clearly no.

10 On 2 October of this year, the Prosecution corrected one of its previous allegations
11 and clarified that contrary to what was written in its response, the enlistment in 2010
12 did take place. Transcript 222, page 37, lines 5 till 9.

13 It further argued that the enrolment in the army began on 21 March 2011 and that it
14 was obviously, mind the word "obviously", that it was obviously a coordinated
15 process. The word "obviously" already implies that the Prosecution is far from
16 certain in its qualification of being an alleged coordinated process. And it would be
17 an ongoing one the Prosecution submitted.

18 Our answer: First, we point again that neither the support of Charles Blé Goudé to
19 the FDS at Champroux stadium a few days before, nor his call on 19 and 20 March led
20 to an effective recruitment of any of the youth.

21 P-9 confirmed that following the call to enlistment made by Charles on 19 March 2011
22 there had been no recruitment in the army. P-9 was quite clear and specific.

23 Transcript T-199, English version, page 57, lines 11 till 19. I quote from one sentence
24 which is self-explanatory, quote: "And in order to answer your question, Counsel,
25 there was no recruitment following that call." Unquote. These were the words of

1 the CEMA.

2 Secondly, Mr P-9 testified that on 21 March at the *État-Major*, he indeed congratulated
3 the youth for their commitment, but that he would have handed them weapons only
4 if the last FDS soldier would have fallen. P-9 explained that it was upon the
5 suggestion of the head of the human resources division who alerted him on a number
6 of young people at *État-Major* that he decided to speak to them for security reasons.
7 Transcript 196, page 68, lines 5 till 12.

8 Mr President, his testimony is very clear, and he found out that the call for enlistment
9 on that day never materialized. The totality of P-9's testimony shows the Chamber
10 that there was no real intention to recruit these young people and strongly suggests
11 this evidence that the way the *État-Major* was dealing with the crowds within his
12 premises was to keep up appearances, that was the only reason, a way to canalise the
13 youth while at the same time progressively encouraging them to move away from the
14 *État-Major*.

15 Thirdly and lastly, and this will conclude my submission for today, in any event, the
16 Prosecution allegation that young men might have been handing over their identities
17 and filling out forms does not change the fact that these persons did not integrate into
18 the army of Côte d'Ivoire, nor did they fight within the army, save for the video items
19 on 21 and 22 March, showing young men at the *État-Major* and then at the centralized
20 points, save from these videos, the Prosecution did not adduce any evidence,
21 testimonial evidence that enrolment continued beyond these two days and this
22 actually resulted in actual physically recruitment. Therefore the allegation that
23 enrolment was, to quote the Prosecution, an ongoing process is totally
24 unsubstantiated and the whole point the Prosecution is trying to make about the
25 enlistment having taken place is rather artificial and totally irrelevant to the case and

1 does not support its theory that Charles Blé Goudé even with this call played an
2 essential role in any recruitment simply because there was no recruitment in this
3 regard.

4 The CEMA was clear in this regard. In other words, had Charles Blé Goudé not
5 made that call, the course of events in terms of recruitment would not have been any
6 different, i.e., there would still have been none.

7 Conclusion: In light of these submissions, we say that the Prosecution theory of
8 Charles Blé Goudé's essential role in the recruitment of the youth into the FDS is not
9 capable of belief by any reasonable Chamber and therefore the Prosecution case, apart
10 from the absence of the meetings, collapses in light of the absence of any evidence to
11 sustain that Charles was instrumental in the recruitment.

12 Thank you very much for today, Mr President.

13 PRESIDING JUDGE TARFUSSER: [16:02:36] Thank you, Mr Knoops.

14 I have nothing else for me to do than to adjourn the hearing to tomorrow morning,
15 9.30 for the continuing of the submissions by the Defence.

16 Thank you very much. The hearing is adjourned.

17 THE COURT USHER: [16:02:49] All rise.

18 (The hearing ends in open session at 4.02 p.m.)