

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé –
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Status Conference - Courtroom 1
9 Tuesday, 20 November 2018
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:33:01] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:33:17] Good morning.
15 I immediately give the floor to Mr Knoops for this first session of today's hearing.
16 Mr Knoops, the floor is yours.
17 MR KNOOPS: [9:33:44] Good morning, Mr President, your Honours.
18 Your Honours, as to the evidence for policy, we demonstrated yesterday that no
19 reasonable Chamber could find a nexus between Charles Blé Goudé and the so-called
20 strategic meetings and the recruitment. This was established yesterday by our
21 Defence team.
22 Today we'll demonstrate, Mr President, your Honours, that the same argument
23 counts for the Prosecution theory on the alleged nexus between the speeches of
24 Charles Blé Goudé and this so-called policy requirement.
25 Now, Mr President, it might be strange that I'm saying this, but in fact it is the

1 Prosecution who concedes indeed that its theory on the nexus between the speeches
2 and the policy is indeed absent.

3 By conceding, namely, that the charges pertaining to the third and fourth incident
4 should be dismissed, and that's the new position of the Prosecution, it also concedes
5 as a consequence that Charles Blé Goudé's speeches did not have any impact on the
6 inner circle's alleged activities with regard to the third and fourth incident; and,
7 therefore, the Prosecution concedes by accepting now there is no evidence of any role
8 of Charles Blé Goudé in regard to these two incidents. It concedes that his role,
9 therefore, did not contribute to the execution of an alleged common plan to keep
10 Mr Gbagbo in power, for which the third and fourth incident apparently feature in
11 the Prosecution theory.

12 That being said, Mr President, it's clear that also based on this new position of the
13 Prosecution, no reasonable Chamber could therefore accept that the speeches of
14 Charles Blé Goudé could have a causal link to the inner circle's alleged activities or, in
15 specific, the operations of the FDS.

16 It's interesting to observe, Mr President, your Honours, that in the partly dissenting
17 opinion to the confirmation of charges decision of December 2014, the Honourable
18 Judge Van den Wyngaert did already come to the same conclusion. In paragraph 4
19 of her partly dissenting opinion to the confirmation of charges decision, she held, I
20 quote:

21 "The evidence does not provide any meaningful information as to Charles Blé
22 Goudé's role or involvement in relation to these two incidents." End quote.

23 Therefore, also, in her opinion, no contribution to a common plan to keep Mr Gbagbo
24 in power could be deduced from Mr Charles Blé Goudé's position. In other words, if
25 he has played no evidentiary role or involvement in these two incidents, the whole

1 Prosecution theory that Charles Blé Goudé contributed to a common plan in which
2 these two incidents feature as a prominent element does not hold water.

3 Your Honours, we now go to speaking about the lack of a nexus between the speeches
4 of Mr Charles Blé Goudé and the policy requirement, we're now going to the required
5 causal linkage which has to be established for such a conclusion.

6 We submit, Mr President, your Honours, on the basis of the evidence which has been
7 adduced before the Chamber that the alleged causal linkage between those speeches
8 of Charles Blé Goudé and the policy requirement is far too remote to accept that his
9 speeches may have had any impact on the activities of the alleged inner circle, let
10 alone the resources of the FDS. Nor that it could have had any impact on the
11 pro-Gbagbo youth, the so-called pro-Gbagbo youth to commit acts of violence in
12 order to ensure that Mr Gbagbo would remain in power.

13 We'll now demonstrate, Mr President, your Honours, that indeed the speeches of
14 Charles Blé Goudé were far from instrumental to establish this causal linkage.

15 At the outset, before going into the examples and the evidence, it should be stressed
16 that in our submission the Prosecution also *here turns around the evidentiary
17 principles.

18 First and foremost, of course, your Honours, there should be direct evidence and only
19 once this evidence is established by way of facts, one may draw inferences, reasonable
20 ones not being the only ones as we observed for any conclusion to be derived from
21 these speeches.

22 First, let us now see what the Prosecution theory actually says about these speeches.

23 In its oral submissions of 2 October 2018, page 69 of the English transcripts, lines 25
24 and further, the Prosecution theory is developed as follows, I quote:

25 "His instructions", that of Charles Blé Goudé, "to the youth before the incidents

1 of 16 December 2010, 25 February 2011 and 12 April" -- 2011 -- "had a direct effect on
2 the commission of crimes." End quote.

3 Our answer: There is no evidence adduced before the Chamber that this so-called
4 direct effect has been objectively established as being the only reasonable inference
5 instead of a mere inference out of many inferences one might draw from
6 interpretation of speeches.

7 The Prosecution acknowledges, Mr President, your Honours, repeatedly that
8 Mr Charles Blé Goudé never used explicit language. To the contrary, not the
9 witnesses, but instead only the Prosecution itself, speaking from the Bench,
10 extrapolates merely from the context of Charles Blé Goudé's words that no explicit
11 language would have been necessary. In the Prosecution theory, the audience was
12 capable to deduce from these words another meaning.

13 Two examples. Transcript 222 of 2 October, English version, page 73, lines 5 till 7,
14 the Prosecution says, I quote:

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

18 And further, page 77 of the 2 October oral submissions by the Prosecution, lines 24
19 and further:

20 "While Mr Blé Goudé did not use explicit language to call upon his audience to
21 commit violent acts, this was nevertheless the effect of his repeated instructions,
22 encouragement and in particular his approval of the violence at the roadblocks."

23 And then, Mr President, an interesting remark appears in the Prosecution's
24 submission. The Prosecution goes so far as saying:

25 "The strength of his message" -- the strength of his message -- "was such that apparent

1 appeals to peace and non-violence", which the Prosecution concedes to in this line, the
2 Prosecution concedes that the message appeals to peace and non-violence is conceded
3 in this line of the Prosecution, Mr President.

4 And still, the Prosecution says: Well, but the true meaning of those words were
5 really to be detected by the audience.

6 Now, Mr President, our answer: How in a court of law is a Chamber to detect by
7 means of objective evidence what the strength of a message is? How is the Chamber
8 to measure this in evidentiary terms? There is no evidentiary methodology to say,
9 well, this message has a certain strength such that, despite its clear wording, a careful
10 listener should interpret this message otherwise.

11 By accepting such a methodology, Mr President, we shift fact-finding into a purely
12 arbitrary operation and exercise. Now, I ask the Chamber four questions: Was
13 there any witness who came before this Court to say, "Your Honours, I understood
14 the context of Charles Blé Goudé's language such that he meant to ask me, a witness,
15 to commit violence?" Was there any witness? Was there any witness who came
16 before your Chamber to say: "Well, your Honour, the strength of the message of
17 Charles Blé Goudé's speech was such that its true meaning of these words, as an
18 eyewitness, I did understand it, was that I should commit violence?"

19 And was there, your Honours, any witness who did say that he committed a crime
20 during the post-electoral crisis because of Charles Blé Goudé's words? Was there
21 any witness here? And was there any witness, Mr President, your Honours, was
22 there any witness before this Court to say that he in any way was motivated by the
23 words of Charles Blé Goudé to commit violence in the streets or at a roadblock?

24 Now, Mr President, these are all of course rhetorical questions. No, there wasn't any
25 witness to say this. There weren't any. All these were assumptions by the

1 Prosecution, and it cannot be evidence in a court of law.

2 Mr President, more importantly, this whole theory, this whole hypothesis of the

3 Prosecution when it concerns the interpretation of the speeches of Charles Blé Goudé

4 presupposes an audience which was never presented to the Chamber, it presupposes

5 an audience which has to be capable of mind-reading, psychic. There was no

6 witness which ever testified during the Prosecution case that the non-explicit

7 language of Mr Blé Goudé, and the Prosecution again conceded that these words,

8 indeed, contain appeals to peace and non-violence, that these words led him, witness,

9 to kill other people.

10 We cannot presuppose a mind-reading capacity in a witness. Then again the whole

11 exercise of law finding will be distorted into a purely subjective operation.

12 The Prosecution theory is actually the following, Mr President. Indeed,

13 Mr Blé Goudé did not use explicit language and even his appeals might be seen as

14 appeals to peace and non-violence. But still we ask the Chamber, the Prosecution to

15 suppose -- to presuppose an audience which is able to distill from this clear language

16 a hidden message.

17 Mr President, these are not facts, all presuppositions, and it already justifies the

18 conclusion there is no case to answer when it concerns an alleged linkage between

19 speeches and the policy requirement.

20 That's my first observation when it concerns the evidence on this matter.

21 The second one, the second argument relates to a very peculiar argument of the

22 Prosecution. In its response in paragraph 1844, your Honours, the Prosecution

23 asserts that Mr Blé Goudé does not point to any example of a peaceful discourse

24 between 24 January and 24 March 2011 inclusive, and that from mid-March he

25 abandoned the rhetoric of the *mains nues*.

1 Now, our answer: It's not correct to actually blame the Defence for not pointing to
2 any examples of such peaceful speeches between that time frame. Why? It's the
3 Prosecution who of course has the burden to prove, but the Prosecution selected in its
4 trial brief a certain number of speeches. And the fact is, Mr President, that none of
5 those speeches, none took place between 24 January and 24 March, except those
6 relating to the second incident that we choose to address in a different section of our
7 motion for acquittal.

8 So the Prosecution says, "Well, the Defence was not able to show us any examples."

9 But the examples the Prosecution submits, having the burden of proof, have nothing
10 to do with this time frame. So isn't it then logic, Mr President, isn't it then logic that
11 the Defence in responding to this allegation of the Prosecution in its brief only refers
12 to those speeches which are selected by the Prosecution to challenge its interpretation?

13 In other words, it does not mean at all that we, Defence, implicitly conceded that no
14 speeches were to be detected during the time frame of 24 January till 24 March 2011
15 on the part of Charles Blé Goudé in which he calls for peace and non-violence.

16 To the contrary, we will show, and that will be done in the last section by Madam
17 Kadji and Maître Zokou, we will demonstrate that even, now we are challenged by
18 the Prosecution, of course, that even in that time frame of 24 January till 24 March,
19 there are speeches to this extent which are exculpatory from the perspective of the
20 Prosecution theory.

21 We'll also show, having said this, that the Prosecution assertion that Mr Blé Goudé
22 made no genuine attempt to end the violence at the roadblocks, which is a bold
23 assertion in the Prosecution submission of 2 October, English version page 51, line 6
24 and 7, that also this bold assertion is totally wrong. There are clear attempts, to use
25 the Prosecution words, clear attempts on the part of Blé Goudé to end any violence

1 wherever in Abidjan.

2 Speaking about the calls of Blé Goudé in regard to roadblocks, Mr President, just a
3 brief remark, because Maître N'Dry will, after my submission in the first session, go
4 into the roadblocks in more detail, but I wish to emphasise, your Honours, that the
5 erection of roadblocks for whatever reasons, security reasons, other reasons is not a
6 criminal offence. What can make it a criminal offence under criminal law, if one says
7 one should molest people at these roadblocks, then a roadblock becomes a criminal
8 tool, a *locus delicti*.

9 But roadblocks, we see it around the world in every crisis, as such is not a criminal
10 offence. And moreover, there is no causal linkage established by the Prosecution
11 between the speeches of Charles Blé Goudé and the erection of roadblocks. No
12 witness, Mr President, came before the Court to say that due to the Baron Bar speech
13 on 25 February, and Mr N'Dry will go into detail this afternoon in the Baron Bar
14 speech, no witness came before the Court telling your Chamber that because of the
15 Baron Bar speech more roadblocks were to be erected.

16 As you might recall, P-625, the first Prosecution insider witness which already
17 undermined the whole Prosecution theory, confirmed that roadblocks existed long
18 before 25 February simply because they were part of the crisis. That was his
19 testimony, they were part of the crisis.

20 Now, Mr President, we now would like to go into the issue of what we call reasonable
21 interpretations of the speeches of Charles Blé Goudé.

22 Let us now turn to some more reasonable interpretation of the speeches instead of
23 focusing on the Prosecution theory. It is the Prosecution theory indeed, as we just
24 observed, that through the speeches of Charles Blé Goudé and his *mots d'ordres*, while
25 not using explicit language, he apparently was able to mobilise the pro-Gbagbo youth

1 to commit acts of violence in order to ensure that Mr Gbagbo would remain in power.

2 That's their theory at the outset.

3 An example of this theory you find in paragraph 1843 of the Prosecution response

4 where they again reiterate that Mr Blé Goudé did not use explicit language to call

5 upon his audience to commit violence, but nevertheless the effect was such in their

6 view.

7 More importantly, it's their theory that through these speeches, Mr Blé Goudé, prior

8 to 25 February 2011, primed the youth, prepared the youth, so to speak, primed the

9 youth to be ready for the expected, the expected big *mot d'ordre* to be issued by

10 Mr Blé Goudé in any time.

11 Where was this so-called expected *mot d'ordre*, this *mot d'ordre* which was apparently

12 prepared by Mr Blé Goudé through his previous speeches? Answer: There is no

13 evidence for such a speech which ultimately was responsible for this overall violence.

14 An analysis of the entire content of all those different speeches, as opposed to just a

15 selection of certain excerpts which are, moreover, taken out of the context in the

16 Prosecution theory, dictates that the conclusion of the Prosecution in this regard is

17 unfounded.

18 If your Honours would analyse all these speeches which you find in the paragraphs

19 625-645 of our motion for acquittal, you find a more complete analysis of the speeches

20 chosen by the Prosecution to support the theory and you find in our analysis a more

21 and more fair, reasonable interpretation of those speeches.

22 We just for today, Mr President, give you two examples.

23 In his interview of 14 December 2010, Charles Blé Goudé insists that it's time to

24 reassure Ivorians and put them to work that Côte d'Ivoire has sufficiently suffered

25 enough. He wonders in this speech, your Honours, how much longer people are

1 going to threaten each other and asks the youth to remain peaceful and that the time
2 has come to start working and let people talk, that Côte d'Ivoire is no longer in danger,
3 and that the day it will be, he will let them know. That is in essence the speech of 14
4 December 2010.

5 He then calls in his speech, Mr President, calls upon the youth, not only the LMP,
6 very important, but all the young people of Côte d'Ivoire to meet with him, all groups,
7 all ethnicities to meet with him the next day to discuss the future of Côte d'Ivoire and
8 work together.

9 Therefore, your Honours, by simply stating that this speech of Charles Blé Goudé was
10 preparing the floor for a and priming the youth for a *mot d'ordre* to be issued in due
11 course which would culminate in violence is simply an unacceptable shortcut made
12 by the Prosecution, and in our submission, a total misconstruction of the genuine
13 intention of this speech by Mr Blé Goudé. His speech was clearly about work,
14 remaining calm, peace, future et cetera.

15 The second example, the one of 21 December 2010 at the rally in Koumassi, where
16 Charles Blé Goudé again explicitly praised non-violence. If you look at that speech,
17 Mr President, your Honours, you'll see Mr Blé Goudé asking why young Ivorians
18 would want to find a Kalashnikov or a stone if they had the sun, the moon and God
19 with them. Clear words. There is no hidden message to be detected, unless you're
20 a mind-reader in bad faith.

21 He simply states that he wants to demonstrate the force of non-violence and refers to
22 the images of young people with their hands up while the other side get tanks and
23 helicopters.

24 In the context of this speech, your Honours, the statement of Mr Blé Goudé that he
25 would soon invite the youth to liberate Côte d'Ivoire can only reasonably be

1 interpreted as a symbolic one, a symbolic liberation through peaceful means by talks,
2 by reconciliation. Not by violence.

3 At the least, Mr President, the Prosecution fails to establish that their interpretation is
4 the only reasonable inference to be drawn from this speech of 21 December. The one
5 we just gave you is even reasonable, not less, not more, but at the least equal. That is
6 a fair interpretation of his speech, not to say we have to find the hidden message
7 behind it without presenting the reasons why.

8 And you have to see it in light of the entire speech. The entire speech, and there is
9 no indication whatsoever, no audience, no reasonable audience, no reasonable
10 spectator could have interpreted this speech of Charles Blé Goudé as mobilising the
11 audience to commit violence.

12 Your Honours, the Prosecution refers to, they used the word "numerous" calls in
13 December in which Charles Blé Goudé would have called the youth to attack the
14 Golf Hotel with bare hands.

15 Our answer is fourfold.

16 First, the Prosecution refers in its trial brief only to one speech of this nature, that
17 of 29 December 2010, and not numerous ones, in which, by the way, Charles Blé
18 Goudé was specifically reacting, only reacting to an attack, a threat initiated by
19 Guillaume Soro and Commander Wattao.

20 So it was not a proactive speech, but it was reactive, responding to an attack which
21 was to be upcoming.

22 Second, as noted by the Prosecution themselves, Charles Blé Goudé in this speech
23 insisted that this invasion of the Golf Hotel, he never used the word "attack", by the
24 way, Charles Blé Goudé never used the word "attack". It would need to be done by
25 bare hands, without weapons.

1 Third, he was certainly not calling anyone to do anything at any particular moment.
2 Finally, the call to invade the Golf Hotel was never made. The speech needs to be
3 read in the context of his former December speeches just mentioned a few minutes
4 ago and can, therefore, not support the Prosecution theory that the alleged
5 instructions of Charles Blé Goudé had a direct effect on the commission of crime.
6 Not only does the Prosecution make inaccurate interpretation of the nature of those
7 words, but also in its theory goes as far as inferring from certain totally non-violent
8 announcements made by Charles Blé Goudé of unspecified upcoming *mots d'ordres*.
9 It deduces from those unspecified words the violent nature of those words "*mots*
10 *d'ordres*", by the way, which never materialised at any moment in time.
11 The same counts for the Prosecution's unfounded inferences as to which event would
12 have been "impregnated", words of the Prosecution, impregnated in the minds of the
13 youth. The theory of the Prosecution is that, and you find it in T-222, page 78, lines
14 11 till 21, that Charles Blé Goudé made several speeches which were meant to
15 impregnate in the minds of the youth when he does give a call in the instructions on
16 25 February how to respond, how to act.
17 The Prosecution says literally, citing Mr Blé Goudé:
18 "When Côte d'Ivoire is in danger, I will call for you."
19 The Prosecution deduces from these words, and he made that call, your Honours, at
20 the minimum on 20 February, 20 February.
21 So it's the Prosecution case that the ultimate call for violence was made on
22 25 February 2011. But this wasn't a call for violence, 25 February, and Mr N'Dry will
23 show this this afternoon. Also here, the Prosecution's argumentation is circular.
24 When it concerns the speech of 25 February, Mr President, in its response in
25 paragraph 1843, the Prosecution says, I quote:

1 "His speeches prior to 25 February 2011 -- while not overtly calling for
2 violence -- primed the youth ..."

3 So how on earth it's possible to say that the call was made on 25 February 2011, when
4 the Prosecution on the other hand admits that the previous calls prior to 25 February
5 2011 did not inhere any reference to violence? It's a theory which is totally in
6 contradiction to each other and by saying so, our conclusion is that the Prosecution
7 has failed to prove that the speeches of Mr Charles Blé Goudé mobilised the youth to
8 commit violence and no reasonable Chamber could accept this theory.

9 Finally, before the break at 11, I will delve into the last topic on the nexus, which
10 relates to the criminal liability in legal terms in conjunction with the nexus, the nexus
11 of Charles Blé Goudé's role vis-à-vis the policy requirement in the underlying alleged
12 crimes, the seventh section.

13 We'll show you in this section the absence of a criminal liability in terms of nexus on
14 the part of Charles Blé Goudé, and we will at the same time in this section also
15 respond to the LRV's submissions in regard to the incidents 3 and 4.

16 At the start of our presentation with the section 7, we referred the Chamber to the
17 presentation by the Prosecution on 2 October of this year where it asserted, and it's
18 quite illustrative for its case, that on the basis of certain inferences, the Prosecution
19 arrives at the modes of liability.

20 Transcript 222, page 11 of the English version, lines 13 till 16, the Prosecution
21 discusses the contributions to the common plan and submits the following: The
22 crimes would not have been committed or at least would have been committed in a
23 significantly different way and, therefore, it concludes that the contributions of
24 Mr Charles Blé Goudé to the common plan were apparently essential.

25 Our answer: We submit that this assertion is without factual foundation and

1 amounts to a mere speculation. There is no evidence before the Chamber that the
2 cause of events in view of the specific historical contextual and also military
3 operational perspective, which cannot be ignored in this case, would have been
4 significantly different if Mr Gbagbo would have stepped down as the Prosecution
5 suggests.

6 The evidence does not tell this. It's a mere assumption. And, Mr President, if the
7 Chamber takes note of this specific historical contextual and military operational
8 perspective, it is really the question whether the course of events would have been
9 differently.

10 The fact that no one in this courtroom can exclude that the course of events would
11 have been significantly different when Mr Gbagbo would have stepped down, the
12 mere fact that no one and no evidence tells us that this would have been the case, the
13 Prosecution's theory falls already apart.

14 A simple example from the Prosecution's own submission on 2 October simply
15 demonstrates this. Transcript 222, English version, page 26, lines 23 till 24. The
16 Prosecution, quote:

17 "As Witness" -- P- "9 testified, the situation in Abobo was such that the population
18 was in danger and needed to be taken out of that zone." End quote.

19 Our point is, Mr President, your Honours, that for the same token, one can say that if
20 the army would not have intervened as it did to protect the population, the number of
21 crimes and casualties would have been considerably higher. Indeed, you can say,
22 and you're totally right if you say this, that this is an assumption by the Defence.

23 True. But at the same time an assumption similar to an assumption of the
24 Prosecution that the course of events would have been different if Mr Gbagbo would
25 have stepped down in terms of crimes. One can simply not and reasonably exclude

1 from all the inferences everyone from their own position can make in this case, which
2 are available, that this inference or that inference is the only reasonable inference.

3 One can therefore not say, there is no evidence for the Chamber to say, even when
4 one takes into consideration that the Prosecution concedes that the population was in
5 danger, that by not having a military intervention, there would have been less
6 casualties than with a military intervention.

7 Second, the same counts for the role of Mr Charles Blé Goudé. One cannot simply
8 say on the basis of P-440, because that's the only witness the Prosecution presented,
9 one cannot simply say on the basis of his testimony that Mr Blé Goudé was able to
10 stop all the roadblocks in Côte d'Ivoire. This is quite a naive thought, because if you
11 look, Mr President, your Honours, at the testimony of P-440, what does he say? He
12 doesn't say anything. He just assumes, he assumes that it was Mr Blé Goudé who
13 through speeches could have stopped a whole war.

14 Now, how naive is this thought, with all due respect? Mr Blé Goudé, a simple
15 citizen in Côte d'Ivoire with speeches could have stopped the whole war? Now, Mr
16 President, he, this gentleman in this courtroom, could have changed the whole course
17 of events in the history of Côte d'Ivoire through simple speeches. No crimes would
18 have been committed if Mr Blé Goudé had said on the radio, the television: "People,
19 stop." Which he did, he did, several times. Or in the Prosecution's submission, in a
20 significantly different way.

21 Mr President, let us face the facts. What are the facts? Transcript 222, page 50, lines
22 10, 11, the Prosecution cites P-440 saying: "We think that, we think that", twice, "only
23 an appeal made on the national television by the instigator of these roadblocks can
24 generally bring things to a halt." End quote.

25 For this whole assertion, this bold assertion which could have changed the course of

1 events and all the crimes would have been significantly reduced, for this whole
2 assumption the Prosecution relies on the one report of Mr P-440, who never got this
3 information firsthand and merely assumes this by using the words "We think that, we
4 think that."

5 We have done a lot of thinking in this Court, everyone does, but thinking is not
6 evidence. And this shows already that the Prosecution has no case, had no case
7 against Charles Blé Goudé within which the phenomenon of roadblocks can
8 reasonably feature as an exponent of the contextual elements of Article 7,
9 Mr President. These are the facts.

10 Third and even more justifiable is this conclusion when one observes that the
11 Prosecution has failed, has simply failed to establish a factual link between Charles
12 Blé Goudé's acts in general and the commission of any crimes.

13 The evidence put forward demonstrates this with respect to Article 25(a) for the
14 incidents 2 and 5; 25(3)(b), incidents *1, 2, 5; and 25(3)(c) and (d) for incidents 1 till 5.

15 We will now delve a little more deeper in those liability modes. First we will
16 demonstrate before we also touch upon the assessment by the Prosecution of those
17 modes, we delve into the LRV's arguments first not to have the charges dismissed
18 with respect to the third and fourth incidents.

19 First of all, the LRV uses the Prosecution reference to the expeditiousness of the
20 proceedings to say that the need to expedite proceedings cannot trump the interests
21 of justice, suggesting thereby that the Prosecution would have chosen to expedite the
22 proceedings and therefore was able to concede the dismissal of the charges for
23 incidents 3 and 5 -- 3 and 4, sorry.

24 Our answer: This is not a correct reflection of the Prosecution's position. Now, I'm
25 not a Defence lawyer for the Prosecution, but in this situation, I have to say that the

1 Prosecution never used the expeditiousness of the proceedings as a decisive argument
2 to suggest the Chamber to dismiss the charges for the third and fourth incidents,
3 because it's clear, Mr President, your Honours, from the Prosecution the response to
4 paragraph 22, at paragraph 22, in its response that it was their own re-evaluation, the
5 re-evaluation of the evidence with a critical eye in light of the Defence's arguments
6 and in all logic that this conclusion was sustainable.

7 The improved efficiency of the proceedings was just peripheral and of course, one
8 benefits from that decision, but it was not for this reason alone. It was for
9 evidentiary reasons, lack of evidence and no other reasons that the Office of the
10 Prosecution submits to the Chamber to have the charges for incidents 3 and 4
11 pertaining to Charles Blé Goudé dismissed.

12 Second, the position of the LRV in this regard is not correct by saying that the
13 Prosecution was only focusing on the incidents for which Charles Blé Goudé was
14 charged with principal liability to the detriment of the liability modes under (c)
15 and (d).

16 Our answer is: First, as your Honours are well aware, Charles Blé Goudé is also
17 charged under these accessory modes of liability for the first, second and fifth
18 incidents. And the Prosecution didn't intimate its intention to accept the dismissal of
19 those charges.

20 Second, the argument of the LRV is based on the absence of insufficiency -- sorry, the
21 Prosecution argument is based on the absence of insufficiency of the evidence at hand
22 in light of the Defence arguments. It did not simply put them aside out of the blue
23 as seems to be the position of the LRV.

24 Finally, the allegation of dropping charges such as suggested by the Prosecution at
25 this stage would be premature, as suggested by the LRV, is in our submission not

1 founded.

2 A no case to answer proceeding has been authorised by the Chamber for the very
3 purpose of giving the Defence the possibility to convince the Chamber that all or part
4 of the evidence presented is insufficient to reasonably sustain a conviction.

5 Now, by saying, the LRV, that Mr Blé Goudé's accessorial liability for events on 3 and
6 17 March 2011 needs to be addressed and discussed before the Chamber because the
7 right of the victims to know the truth would dictate an evaluation of the whole trial is,
8 with all due respect, is missing the point of a no case to answer proceeding. It
9 misses the point of this whole event.

10 As Judge Eboe-Osuji observed in paragraph 65 of his reasons for acquittal in the Ruto
11 case, this type of procedure concerns the question whether the Prosecution has led
12 sufficient evidence upon which a reasonable Chamber could properly convict.

13 In other words, this is a no case to answer procedure. This is about evidence. It is
14 not about the right of victims to know the truth. The truth might also come out of a
15 no case to answer procedure, which, by the way, would not be affected should the
16 Chamber decide to dismiss the charges against Charles Blé Goudé in relation to the
17 third and fourth incident.

18 We'll now briefly at the close of this session go into in specific the liability modes of (c)
19 and (d) of Article 25(3), which underlies the argumentation of the LRV.

20 It argues, the LRV argues that this provision, 25(3)(c) also entails assistance given
21 after the offence, after the offence has been perpetrated, especially so if there was a
22 prior offer of assistance or an agreement between the principal perpetrator and the
23 accessory.

24 Now, the LRV seems to refer here to Mr Blé Goudé's call to the youth to enrol in the
25 armed forces on 19 and 20 March, and we all know this took place after the third and

1 fourth incident.

2 The third and fourth incidents were realised, materialised way before this call for
3 enrolment, which, by the way, was a perfectly legal call for enrolment.

4 Our answer: The interpretation of the law by the LRV, namely that contributions
5 after the fact could lead to a conviction is, in our submission, inaccurate, although the
6 jurisprudence of the Court and other tribunals support the view that assistance after
7 the events may fall within the ambit of assistance or aiding and abetting. What is
8 required is evidence of *a posteriori* contribution preceded by a prior agreement.

9 This is by the way also the view of the Prosecution itself in this case who observed
10 correctly that assistance after the commission of a crime is contingent on a prior offer
11 or agreement of assistance. Actually it's the jurisprudence led by the LRV itself
12 which supports this view, since it also refers to Appeals Chamber decision in Bemba,
13 paragraph 20, explaining the logic behind this legal approach where the judges of the
14 Appeals Chamber held that *a posteriori* conduct, which was preceded by an agreement
15 could amount to assistance in the commission of a crime because, and I quote,
16 because the principal perpetrator committed that crime knowing, knowing that he or
17 she would receive assistance after the fact.

18 Mr President, your Honours, this view is clear from a textual and plain reading and
19 interpretation of the provision and is supported by jurisprudence. In this case it
20 must therefore be shown that not only Mr Blé Goudé lent effectively assistance to the
21 commission of crimes, but also that there was a prior offer of assistance of an
22 agreement -- or agreement between any alleged principal perpetrators and
23 Mr Blé Goudé himself. And second, that those principal individuals knew that they
24 would receive from Mr Blé Goudé assistance in the aftermath. And there is no
25 evidence, your Honour, there is no evidence in this Court to sustain this allegation.

1 Secondly, still dealing with the modes under (c), the *mens rea* element which has been
2 put forward by the LRV lacks the observation that the alleged contribution, and this
3 must be shown by way of evidence, was made for the purpose of facilitating the
4 underlying crimes.

5 The Judges of this Court, Mr President, has termed this as in so-called enhanced or
6 elevated *mens rea* requirement, which is distinct from the general *mens rea*
7 requirement under Article 30 of the Statute. An enhanced or elevated *mens rea*
8 requirement is also explained by the Trial Chamber in the Bemba case, paragraph 97,
9 holding that Article 25(3)(c) requires a twofold intent, a twofold intent on the part of
10 the accessory, in this hypothesis, Mr Blé Goudé. Twofold intent, namely, one, the
11 principal offence, the *mens rea* to the principal offence and, secondly, *mens rea* to the
12 accessory's own conduct.

13 And as was stated by the Pre-Trial Chamber in Mbarushimana, the terminology in (c)
14 "for the purpose of" that terminology implies a specific subjective requirement which
15 is stricter than mere knowledge as set forth by the Chamber in that case. Therefore,
16 mere knowledge is not sufficient to sustain this liability mode. Also, this follows
17 from the clear and plain reading of that interpretation.

18 In its oral submissions, Mr President, your Honours, the Prosecution observed that
19 Article 25(3)(c) indeed requires special intent, namely, that the assistance must be
20 made for the purpose of facilitating a crime. Despite this correct reflection of the law
21 by the Prosecution, it did fail to demonstrate at trial in its case how the alleged acts of
22 Charles Blé Goudé, ie, the alleged securing the allegiance of the youth and their
23 compliance with his instructions by galvanising them and supporting the FDS, how
24 all these alleged acts of Charles Blé Goudé were made for the purpose of facilitating
25 the actual crimes with respect to the remaining incidents 1, 2, and 5.

1 In its response, in its lengthy response, the Prosecution again brushes over this
2 requirement by merely referring to general *mens rea* arguments made with respect to
3 25(3)(a) and (b), paragraphs 1967 till 1969 of the Prosecution response. A very brief,
4 just two paragraphs is dedicated by the Prosecution to this whole specific *mens rea*
5 requirement. And it states then it's a sweeping statement, citation, "Overall,
6 Mr Blé Goudé's activities had the effect of strengthening the capability of the
7 pro-Gbagbo forces to commit the crimes charged" unquote.
8 Apparently words from an individual are capable of strengthening a military force,
9 which is also a very naive theory I think in a court of law, unless there is evidence.
10 But there is no evidence to this extent.
11 Apart from this observation, the Prosecution did fail to address Mr Blé Goudé's
12 special intent as we just noticed is required for the modes under (c). Prosecution
13 argument is merely that the intent of Charles Blé Goudé could be inferred, also here
14 again inference only indirect evidence should be inferred from his involvement in the
15 creation funding and the issuance of instructions to a violent militia group, the GPP.
16 Well, apart from the observation that according to Witness P-500 and other witnesses,
17 Mr Blé Goudé had no role in the creation of any militia, the Prosecution does not
18 address with this sweeping statement leading to an inference how this purported act
19 of Mr Blé Goudé was made for the purpose of facilitating the alleged crimes.
20 Lastly, we turn to number (d) of Article 25(3), whereby the LRV seems to argue that
21 the alleged contribution of Charles Blé Goudé to the so-called common plan would
22 demonstrate his contribution to the crimes also on 3 and 17 March. In the same vein
23 the LRV submits that since a direct connection with the crime itself is not required
24 under (a), of course it cannot be required either for (d), which refers to liability as an
25 accessory.

1 Our answer: First, the LRV representative seems to conflate also during their oral
2 submissions the *actus reus* and *mens rea* requirement under (a) and (d). At the
3 hearing the LRV argued that all five incidents would result from the same common
4 plan that was conceived to keep Mr Gbagbo in power by all means. It submitted
5 that although the evidence shows that allegedly it was the FDS that repressed the
6 march and responsible for the shelling of the Abobo market in March, Mr Blé Goudé's
7 indirectly, Mr Blé Goudé indirectly contributed to the murder and inhumane
8 treatment of civilians during both incidents through his activity in support of the
9 common plan.

10 Mr President, the requirements under (a) and (d) might present some similar features,
11 but they differ significantly. One can merely -- one cannot merely subsume the one
12 in the other.

13 It was actually mentioned, Judge Van den Wyngaert in the Katanga case, the opinion
14 of Judge Van den Wyngaert, paragraph 193, which warned precisely against the
15 approach adopted by the LRV to conflate these different legal requirements,
16 particularly with respect to group composition.

17 In her opinion she noted that even if proven, an organisational policy to attack the
18 Hema population under Article 7 does not automatically prove the existence of a
19 group acting with the common purpose under (d). And she stressed the importance
20 of distinguishing those distinct legal concepts. You find in paragraph 92 of her
21 opinion that whereas (d) defines the group and function of its members shared
22 criminal purpose, Article 7 does not.

23 As a result, it is therefore not possible to equate an organisation that allegedly adopts
24 a criminal policy with a group with a common purpose under (d), unless of course
25 the evidence shows that the policy was unanimously adopted or endorsed by all

1 members of the organisation, which is not the evidence in this case, Mr President,
2 your Honours.

3 Judge Van den Wyngaert noted that this last point was quite important, because even
4 if there were evidence of an organisational policy to attack the Hema civilian
5 population in that case, this would, in her opinion, not automatically prove the
6 existence of such a group.

7 Moreover, apart from her opinion, the Chamber is aware that the Trial Chamber in
8 the Katanga case under (d) held that a group acting with a criminal purpose -- sorry,
9 with a common purpose requires that specific and distinct elements be established
10 such as, one, a common criminal purpose; two, the scope of that purpose; three, the
11 targeted victims origin and characteristics; and four, the identities of the members of
12 the group.

13 Now we can submit, Mr President, that specifically the items 1 and 2 of these
14 requirements are not met in this case and actually also the same counts for item
15 number 3 and 4, identities, we have seen significant lack in forensic evidence to
16 assume any identities of any group in this case.

17 Finally, the Chamber is aware that the LRV tried to convince the Chamber to continue
18 with the charges against Charles Blé Goudé for the incidents 3 and 17 March on the
19 basis of three arguments, which I will not repeat. But one of them, the last one being
20 the alleged control of Charles Blé Goudé of the youth which would allow him to
21 make the youths available to other members of the inner circle for the implementation
22 of the common plan, et cetera.

23 Your Honours, also here the, apart from the evidentiary deficiencies in this case to
24 support this argument, the representatives of the LRV did not correctly apply the
25 jurisprudence with respect to the object of contribution under (d). Even if it was to

1 be demonstrated that Charles Blé Goudé's contribution to the common plan or
2 purpose allegedly would have been accepted through the threshold of evidence, it
3 would not automatically demonstrate his intentional and substantive contribution
4 made either with the aim of furthering the alleged criminal activity or criminal
5 purpose of any group in the knowledge of the intention of that group to commit the
6 crimes, because this is the requirement, as your Honours know, requirement set forth
7 by the jurisprudence such as in the Katanga case, the trial judgment, paragraph 1642.
8 The evidence should show to arrive at this mode of liability under (d) knowledge on
9 part of the accused, ie, Mr Blé Goudé, of the intention of the group to commit each of
10 the specific crimes, each of the specific crimes forming part of the so-called common
11 purpose.

12 This is, Mr President, your Honours, what the Prosecution and the LRV should have
13 been demonstrated in this Court. Mere knowledge of a general criminal intention is
14 not sufficient as the Chambers before this Court have established to assume liability
15 under (d).

16 Now, we submit, your Honours, that Charles Blé Goudé's alleged role in the
17 recruitment of the youth into the FDS, assuming that he had any, which is not, did not
18 establish that Charles Blé Goudé knew of any alleged intention of the suggested inner
19 circle to commit the alleged specific crimes of 3 and 7 March.

20 Not only temporally this is impossible, because that call came after, as we saw, 3 and
21 7 March, but even when we accept that call being made before 3 and 7 March 2011,
22 even then in this hypothesis it cannot be reasonably accepted by a court of law that
23 the person making that call was aware of the alleged specific crimes which could
24 follow later in time out of his action, ie, the call for enrolment.

25 Charles Blé Goudé's call for enlistment after the event is even less of a convincing

1 argument and actually totally undermines the theory of any knowledge on his part of
2 the intention of any group to commit any specific crimes in question.

3 The threshold, the contribution threshold finally for (d), the LRV submits that it
4 should be not a minimum threshold or level of contribution in their submissions
5 T-223, page 35 of the English version. The words "in any other way", as submitted
6 by the LRV, would indicate that there should not be a minimum threshold or level of
7 contribution.

8 Our answer: The ICC jurisprudence does not support this argument. A substantial
9 contribution is required, not just any contribution. There is a minimum threshold in
10 the jurisprudence of this Court, despite the LRV's assertion that part of the doctrine
11 suggests otherwise, this Court has found that a contribution must, I quote from the
12 Mbarushimana and Katanga cases. I quote:

13 This contribution must "...reach a certain threshold of significance in order to be
14 within the Court's ambit." Unquote. And this must be assessed on a case-by-case
15 basis.

16 You find this in the trial judgment of Prosecution versus Katanga, paragraphs 1632 till
17 1635; and Prosecution versus Mbarushimana, decision of the confirmation of charges,
18 16 December 2011, paragraphs 276 to 284.

19 And in the Katanga case you find the criteria to assess how a contribution might be
20 found significant et cetera.

21 In her opinion in the Mbarushimana decision, Mr President, your Honours, the
22 Honourable Judge Madam Judge Gurmendi, also cited by the LRV, does not entirely
23 support the arguments of the LRV.

24 Upon disagreeing in part with the majority's view, the Honourable Judge Madam
25 Gurmendi stressed the importance of assessing what she called the normative and

1 causal link between contribution; for instance, a neutral contribution and the crimes,
2 rather than requiring a minimum level of contribution.

3 These were her own words in paragraph 12 of her separate opinion: "rather than
4 requiring a minimum level of contribution."

5 As noted by Honourable Judge Madam Gurmendi, such a normative and causal
6 assessment would therefore exclude situations whereby insignificant contributions
7 were made, and these should all fall outside the ambit of Article 25(3)(d) in her
8 submission.

9 Mr President, this concludes my submission on section 7, 6 and 7, the nexus, the
10 alleged nexus between Charles Blé Goudé's acts and specifically his speeches and the
11 policy requirement in the underlying alleged crimes, and I've demonstrated this also
12 in the context of the liability modes as suggested by the Prosecution, in particular
13 with respect to the LRV's submissions regarding the third and fourth incident.

14 And the conclusions of these two sections, number 6 and 7, is that no reasonable
15 Chamber could accept any of those liability modes and therefore the motion for
16 acquittal should be granted.

17 After the break, Mr President, if the Court would agree to break here, Mr N'Dry in the
18 next two sessions will go into the specifics with the second incident in connection to
19 also the phenomenon of the roadblocks.

20 Thank you very much for your attention.

21 PRESIDING JUDGE TARFUSSER: [10:53:24] Thank you, Mr Knoops.

22 I adjourn the hearing for the break to 11.30. Thank you.

23 The hearing is adjourned.

24 THE COURT USHER: [10:53:32] All rise.

25 (Recess taken at 10.53 a.m.)

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

2 THE COURT USHER: [11:32:21] All rise.

3 Please be seated.

4 PRESIDING JUDGE TARFUSSER: [11:32:45] Good morning. As you, Mr Knoops,
5 said, I think the floor is for Maître N'Dry.

6 Maître N'Dry (Interpretation) You have the floor.

7 MR N'DRY: [11:33:21] (Interpretation) Mr President, your Honours, on Tuesday,

8 2 February 2016, I said during the opening of this trial that the facts outlined in the

9 Prosecutor's narrative will not change from those presented in the document

10 containing the charges.

11 More than two years into the trial, you have heard 82 witnesses who were called to

12 shed light on the events that happened in Côte d'Ivoire. Elements of evidence have

13 been produced to substantiate the case file, but what can we say today in relation to

14 the numerous incidents that occurred in Yopougon commune from 25 to 28 February

15 2011? Has the Prosecutor been able to establish that these incidents are part of the

16 implementation of an alleged common plan?

17 We will try to analyse this by presenting to you the evidence on which the

18 Prosecution has relied to integrate the said incidents into the charges contained in

19 the DCC.

20 Mr Charles Blé Goudé's Defence seeks to demonstrate to you that their no case to

21 answer motion is in order given that the Prosecutor's evidence is either absent,

22 incoherent or unreliable.

23 I will be addressing nine points relating to the incidents of Yopougon from 25 to 28

24 February 2011.

25 My first point will deal with the issue of a nexus between the Baron Bar meeting and

1 an alleged preparatory meeting, which was said to have been held at the presidential
2 residence on 24 February 2011.

3 To start off, let us point out that the Prosecutor links the Baron Bar meeting to the
4 implementation of the alleged common plan. In order to establish that link, the
5 Prosecutor argues that there was a preparatory meeting that took place allegedly at
6 the residence of the president. I quote the Prosecutor:

7 "Mr Blé Goudé also met with Mr Gbagbo in the evening of 23 February 2011, in fact at
8 night, before his message to the youth delivered on 24 February 2011 on RTI. He
9 met them again in the evening of 24 February before issuing the *mot d'ordre* in the
10 morning of 25 February 2011 at the Bar Le Baron. The visit of 24 February 2011 to
11 Mr Gbagbo coincided with the visit of Mr Konan Boniface and of the chief of general
12 staff and took place the same evening -- on the same evening at which Mr Gbagbo
13 gave instructions, general instructions or rather gave instructions during that meeting
14 to the generals of the FDS concerning Abobo."

15 Reference transcript 222, French version, page 32, lines 6 to 12.

16 During the opening statements and at the hearing of 29 January 2016, the Prosecutor
17 went on to add, after setting the stage in relation to that meeting, he went on to say as
18 follows and I quote:

19 "The scene or the stage was now set for the incident of 25 February." End of quote.

20 Transcript T-10, page 20, line 9, French version.

21 May I point out that I will be referring mostly to the French version of the transcripts
22 whenever I reference a transcript.

23 What does the Prosecutor's evidence rely on when he argues that there was a
24 preparatory meeting at the residence of the president and that that meeting laid the
25 groundwork for the meeting at the Baron Bar? What is the Prosecutor relying on to

1 come to such an assertion?

2 Based on the case file before you, we have a logbook, as the word in English is
3 "logbook", but in French it's a "register", a register which contains the names or on
4 which the names of visitors are recorded, including the times at which they came in
5 and the times at which they left as well as the person's day who visited. That is all
6 the Prosecutor has to show. Nothing else. Nothing about whether the so-called
7 audience actually took place, because entering a name in a register does not provide
8 information as to whether a meeting actually took place.

9 The Prosecutor has nothing to show as to the duration of the so-called meetings, if
10 such a meeting had actually taken place, because the register or the logbook does not
11 contain any information on the duration of any such audiences.

12 The Prosecutor has nothing to show about the visitors who may have been received
13 together, but more so, nothing about the content of the meetings.

14 The logical inference for us therefore, when it comes to producing this register into
15 evidence is that the register or logbook itself does not provide any further information
16 to the case apart from the information that it contains.

17 Given this obvious shortcoming of this exhibit and its failure to inform the Court,
18 how is it then that on the 28th, the Prosecutor came to the determination that the stage
19 had thus been set for the incident of 25 February?

20 What information or who has provided the Prosecutor with the content of the said
21 meeting?

22 I would now, Mr President, apply for us to go briefly into private session to deal with
23 something that was dealt with in private session.

24 PRESIDING JUDGE TARFUSSER: [11:43:43] Can we go into private session.

25 Thank you.

1 (Private session at 11.43 a.m.)

2 THE COURT OFFICER: [11:43:54] We are in private session, Mr President.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 11.46 a.m.)

22 THE COURT OFFICER: [11:46:33] We are back in open session, Mr President.

23 PRESIDING JUDGE TARFUSSER: [11:46:36] Thank you very much.

24 Maître N'Dry.

25 MR N'DRY: [11:46:39] (Interpretation) So who does the Prosecutor get his

1 information from to come to the position that there was a preparatory meeting at the
2 presidential residence whose purpose was related to the meeting at Baron Bar?
3 During those opening statements, when a statement is made, it must mean that one is
4 able to establish or to demonstrate that the thing actually happened. When the
5 Prosecutor claims that the stage was set for the meeting of 25 February, what is he
6 relying on to come to that position?

7 Another point in evidence is as follows. A short while ago I mentioned Witness P-9,
8 Mr Philippe Mangou. Now, Mr President, from Monday, 25 September 2017, to
9 Thursday, 5 October 2017, Mr Philippe Mangou was here. He was sitting here in
10 front of us all. His French transcript is 737-pages long. But the Prosecutor did not
11 put a single question to him.

12 Given this shortcoming, one would have thought that the Prosecutor would come to
13 the logical conclusion, but once again he fails to do so; instead, calling us to be quite
14 original in our thinking. And I'm referring here to transcript 222, page 32,
15 lines 13 to 19.

16 Faced with this inability to get information from the logbook and with the limitations
17 of Witness 501, and given the failure of Prosecutor to put the question to Mr Mangou,
18 Mr Philippe Mangou, this is what the Prosecutor invites the Chamber to do, and I'm
19 going to quote him:

20 "Our position is that it can be reasonably inferred that those meetings which held late
21 at night, before and after those incidents, it can be inferred that Mr Blé Goudé and
22 Mr Gbagbo were discussing and coordinating their joint plan to keep Mr Gbagbo in
23 power, even if that required violence against those who were perceived to be or who
24 were actually Ouattara supporters."

25 Mr President, quite honestly, if we were in another setting, I would have asked

1 whether this is a serious question.

2 Now, you see, you have no information about a meeting, but you know that at that
3 meeting Mr Gbagbo and Mr Blé Goudé were talking about and coordinating some
4 kind of plan.

5 Now, what the Prosecutor is asking you to do is to conjure up some legal conjecture.

6 It is important to remind the Prosecutor that we are here at the International Criminal
7 Court and not in a different setting. We are dealing with Judges who have to assess
8 facts and, therefore, any arguments that are speculative in nature and based on
9 personal opinions and unsubstantiated material is not acceptable.

10 And yet, all the Prosecutor had to do was to open his eyes in order to understand this
11 socio-political context in which the call at the Baron Bar meeting was made. It was
12 something that could be done very easily simply by opening one's eyes, or to accept
13 to want to open one's eyes to see what the context of the meeting at the Baron Bar was
14 all about.

15 In fact, what Mr Charles Blé Goudé's Defence is going to demonstrate to you is the
16 context in which the Baron Bar meeting held, which is completely disconnected from
17 any *meeting preparing a common plan, that may have been alleged.

18 I'm now going to show a video, CIV-OTP-0026-0020, timestamp 01.06.38 to 01.09.14.

19 The corresponding transcript is CIV-OTP-0044-2534, page 2556, lines 838 to 878.

20 THE COURT OFFICER: [11:54:08] You have the floor.

21 And for the parties and participants the video will be played on the evidence 2
22 channel.

23 (Viewing of the video excerpt)

24 THE INTERPRETER: [11:54:21] (Interpretation of the video excerpt)

25 "The leader of *Jeunes Patriotes* leader Charles Blé Goudé and the chief of Akouédo

1 village have called on the population today to stop ONUCI soldiers from driving
2 around the entire city of Abidjan. Whereas the AU is working to peacefully resolve
3 the crisis, ONUCI is undertaking diabolic activities to destabilize President
4 Laurent Gbagbo. Let's listen to Charles Blé Goudé and chief.
5 Now, it has been brought to my attention while I was at home some anonymous
6 information. So I quickly took my younger brother's car and asked him to
7 accompany me to the sight. They were behind the dump. Then I got there and was
8 told that they were near in front of the new camp. And so we went to the camp.
9 And when I was there, I got further information that they were at the new camp. So
10 with the population of Akouédo, we went to that location, to the site. They said that
11 there was a tank, one of their tanks which had broken down. Is this where tanks are
12 repaired? We wanted to intervene, but the soldiers came and calmed us down and
13 we wanted to intervene. The soldiers came and said that this was happening in front
14 of the camp and that it was not nice to do this. That has been done a short while ago.
15 Is this something that should happen just because of an election, for a simple election
16 that Ivorians are going to be treated like animals. That's not possible. I have never
17 seen this happen anywhere, but why is it happening in Côte d'Ivoire? In Libya, in
18 Tunisia, in Egypt people are talking, but why is this -- why are the people -- why is
19 this not possible for the people of Côte d'Ivoire? Why? This is a tragic situation.
20 Now, why must the Ivorian people suffer like this? There is some who are not
21 involved in politics so why all this? Why? But I call on the Ivorians to defend their
22 sovereignty, the sovereignty of their country. It's not about President Gbagbo, but
23 it's Côte d'Ivoire, it's about the sovereignty of Côte d'Ivoire. You see, there are many
24 who are not LMP. But why is Côte d'Ivoire in this situation of being trampled upon?
25 The rights of the people have been trampled upon. The constitutional council has

1 been also sidelined, and this is really the reason for my resolve. I am 60 years old
2 and I cannot come out on the road. Now, as the chief of the village of Akouédo, I
3 cannot even get onto the street. Now, they said that they were going to attack
4 simultaneously the various villages, the *Ébrié* and the Atchan villages, that is why I
5 came out myself, let them kill me. Let them kill me. And if I die today, my village
6 will not die. My son, my grandson will come up and continue this true fight that
7 Gbagbo is leading.

8 CBG: Allow me to take this opportunity to congratulate the Atchan chiefs, because
9 this afternoon, some 4 UNO tanks that were headed toward camp Akouédo, the Ivory
10 Coast military camp, were blocked by the chief. I want to commend him and to ask
11 everybody to follow his example and do what they has done. Do you have a vehicle?
12 As soon as you see a UN contingent, you must block the road until they understand
13 that they are in a State, which until further notice, has its leaders in place. They are
14 not in a conquered State."

15 End of transcript.

16 MR N'DRY: [11:58:04] (Interpretation) Mr President, your Honours, we wanted to
17 show you this video, which is a Prosecution exhibit. And you heard Mr Charles Blé
18 Goudé putting things in context in relation to the call he made at the Baron Bar.

19 (Counsel confer)

20 MR N'DRY: [11:58:44] (Interpretation) Mr President, I've just been told that the part
21 of the transcript relating to Mr Charles Blé Goudé was not interpreted.

22 THE COURT OFFICER: [11:59:00] The French version of the transcript of the video
23 will be inserted in the transcript during the edition process.

24 MR N'DRY: [11:59:13] (Interpretation) Very well. No problem. I'll just go ahead
25 with my point.

1 Mr Charles Blé Goudé was saying in that excerpt that "I want to avail myself of this
2 opportunity to congratulate the Atchan chief because this afternoon some four tanks
3 of the UN were headed towards the Akouédo camp. The military camp of Côte
4 d'Ivoire was blocked off by this Atchan chief." That's the context in which this
5 happened.

6 The Prosecutor has presented to you the call that was made at the Baron Bar meeting,
7 but that call was made in a context.

8 Now, the Prosecutor will then try to imagine a meeting that allegedly took place in
9 order to at all costs demonstrate that Mr Charles Blé Goudé was involved somehow
10 in some kind of common plan. That is the first thing. That is what we want to
11 point out.

12 The Baron Bar meeting had absolutely no connection to any common plan
13 whatsoever.

14 Now, two, you listened to the Atchan chief, and he said something in the video. He
15 said the following and I quote him:

16 "But I call on Ivorians to defend the sovereignty of their country. It is not President
17 Gbagbo, but it is Côte d'Ivoire. It is about the sovereignty of Côte d'Ivoire. You see,
18 there are many who do not belong to the LMP." End of quote.

19 Now, Côte d'Ivoire has been described to you as a country divided into two blocks.
20 When one is pro-Ouattara, one necessarily bears a name from the north, but if you
21 have a name from the west, you are pro-Gbagbo.

22 Now, the Atchan chief here says that this is not a matter about President Gbagbo. It
23 is a matter relating to the sovereignty of Côte d'Ivoire.

24 Why then does the Prosecutor not call these people and hear them? Why does he
25 not listen to what is being said even in the exhibits that are in his case file? And yet

1 he insists on writing a different history of the Ivorian crisis, different from what the
2 Ivorians themselves experienced.

3 Now, the context of the meeting is quite objective and can be verified. The fact, as
4 we have seen, is that it was a real meeting. Therefore, how can the Prosecutor
5 proceed to inject into his narrative at all cost the thought that the Baron Bar meeting
6 came on the heels of a preparatory meeting allegedly held at the presidential
7 residence, but which he has failed to prove?

8 The Defence says this to you, Dear Judges, it is for this reason, this is the reason for
9 which Mr Charles Blé Goudé convened a meeting for the next day, 25 February 2011
10 at 9 a.m. in theory.

11 Now, let me address the second point, my second point. Now, this is D Day, 25
12 February. The Prosecutor, and again, I'm talking about the time at which the
13 meeting started, because there is lack of clarity on that point, after the Prosecutor
14 called his witnesses, he has continued to insist that the Baron Bar meeting started at 9
15 a.m. French transcript 222, page 46, line 12, where the Prosecutor states as follows,
16 and I quote:

17 "In fact, on 25 February 2011 at 9 o'clock, effectively Mr Blé Goudé was present."
18 End of quote.

19 Let me repeat what the Prosecutor said here, that "effectively, on 25 February 2011 at
20 9 a.m. Mr Blé Goudé was present." End of quote.

21 Mr President, let me be frank with you. As I read the statements or the arguments of
22 the Prosecutor, I have the feeling that calling Prosecution witnesses here was rather
23 an exercise in futility. That's my feeling, and I will tell you why I have this feeling.
24 Because, you see, his witness, P-449, his own witness was questioned by a member of
25 the Prosecution team. They put a question to P-449, and I'm referring to Mr Garcia,

1 and the transcript is French transcript 159, page 37 at lines 18 to 22. This was his
2 question: "Do you remember approximately at what time the meeting started?"

3 Answer by P-449, and I want to recall that he was the only eyewitness of the Baron
4 Bar meeting called by the Prosecutor, his answer was: "10 a.m., 11 a.m., I believe
5 thereabouts." End of quote.

6 And then the Prosecutor put another question to him: "And how long did that
7 meeting last, up until what time?"

8 Answer from P-449: "1 p.m., 1 p.m. or thereabouts." End of quote.

9 Mr President, your Honours, this time frame is important. In the Prosecutor's
10 argument Mr Blé Goudé's speech at the Baron Bar amounted to the *mot d'ordre* that
11 triggered the skirmishes and the violence. This means therefore that from a factual
12 point of view and from a chronological point of view, this speech should have come
13 before the incidents if it is to be considered to be the cause of the incidents, a matter of
14 simple logic, cause before effect.

15 But the Prosecution knows that if evidence is provided that incidents had occurred
16 before the meeting started, then everything changes. So this is not a minor point.

17 When the Prosecutor argues that Mr Charles Blé Goudé was there at 9 a.m. in spite of
18 what the witness told him, so the Prosecutor is aware of what is at stake when this
19 truth emerges, and that is why he disregards the time provided by his own witness
20 from his narrative.

21 Unfortunately for the Prosecutor, the testimony is on record. You see, the
22 Prosecution itself has not given any reasons why P-449's testimony should be
23 questioned.

24 Now, I'm going to turn to the issue of the beginning of the violence in relation to the
25 Baron Bar meeting in order to see whether we can continue to establish this cause and

1 effect relation between the Baron Bar meeting and the skirmishes and the violence
2 that happened.

3 I would now like to turn to my third point, the time at which the violence and the
4 clashes began in Yopougon.

5 Mr President, your Honours, the Defence team of Mr Charles Blé Goudé does not
6 wish to distort or misinterpret the testimony that was heard here on this specific point.

7 We will delve into the details. We will also quote a few witnesses that have told us
8 about the incidents and how they began, and we shall quote from their testimony.

9 Witness P-109, French transcript 154, page 32, lines 27 and 28, moving on to page 33,
10 lines 1 to 18. I'm not going to quote everything. I'll just give you the part about the
11 time of day. I quote, Prosecution question, a question put to P-109: "And so what
12 happened that Friday?"

13 The witness gives this reply: "Well, that Friday at around 9 in the morning, 10 in the
14 morning, there was a group of young people from the neighbourhood and they were
15 opposite our neighbourhood. We don't know where they came from. They started
16 to throw stones at us, at the spot where we would usually sit down and drink our
17 coffee alongside the road." End of quote.

18 9 a.m. according to Witness P-109.

19 Now let us turn to Witness P-436. When asked about the sequence of events that
20 occurred on that day, 25 February 2011, he mentioned two gatherings of people in
21 Doukouré and Yao Séhi, transcript 148, page 16, lines 10 to 14.

22 *P-436 response, and I quote: "The morning, it was a Friday. It was a Friday. I
23 did not leave the neighbourhood. When I -- because every morning we would go to
24 our *grin*. At around 9 a.m. or so we saw people gathering. We saw these people
25 gathering on the main road by the police station and alongside Saguidiba." End of

1 quote.

2 This witness added at page 47, lines 9 to 13 of transcript 149 that it was around 9 a.m.,
3 10 a.m. that he saw the smoke from the *gbakas* that had been torched. 9 a.m. or
4 10 a.m., that is what Witness P-436 has told us.

5 Witness P-433 mentioned 9 a.m. He said that's when people started to throw the
6 stones. French transcript 147, page 18, lines 14 to 16. This is what he said in
7 response to the question, and I quote: "Before the call to prayer, I went home, I went
8 to my house. Then it was around 9 a.m., a bit after 9, that's when I left, that's when
9 they started to throw the stones." End of quote.

10 P-443 also told the Court about the beginning of the attack upon the Doukouré
11 mosque. At transcript 147, page 23, lines 1 to 11, let me repeat, lines 1 to 11, this
12 witness said that it was at 11 a.m., that is when he received the call informing him that
13 the mosque and that the office were on fire.

14 Witness P-438, transcript 150, page 8, lines 12 to 14. The Prosecution put this
15 question to the witness: "I was asking you when you saw these clashes for the first
16 time that morning in Doukouré."

17 The witness responded as follows, and I quote: "I said that it was not yet 11 in the
18 morning, a few minutes before 11 a.m., but I wasn't wearing a watch, so I didn't know
19 exactly what time it was." End of quote.

20 In the mind of this witness, he is clear, he was sure that it was not yet 11 a.m. when he
21 saw these clashes take place.

22 Witness P-459 was asked about how the incidents began at the Doukouré mosque.
23 Transcript 152, page 70, lines 8 to 13.

24 The Prosecution asked this: "Well, I'm going to go back to a number of details about
25 the points that you have just described to us. When you heard the shots, do you

1 know when it was, what time it was more or less?"

2 The witness answered saying: "The shooting started noon, if I remember correctly,
3 around noon, if I remember correctly, around noon." End of quote.

4 Mr President, your Honours, we made a point of reading out the testimony from
5 these transcripts so that the focus can be placed on the actual testimony given, not on
6 some kind of preconceived account that the Prosecution would have you believe.

7 As we can see, the clashes and the violence began between 9 a.m. and noon, if we take
8 a particular time frame or lapse of time, and if we listen properly to the testimony that
9 we have just quoted.

10 After these clarifications based on the testimony that was actually heard here in this
11 Court, the Defence team of Mr Charles Blé Goudé wishes to return to the issue at
12 hand, the actual time that the rally began at the Baron Bar. If you take note of what
13 P-449 said, the rally began at 10 or 11 and ended at 1 in the afternoon. So it makes no
14 sense to continue to argue that this event was the cause for the clashes and the
15 violence that began well before this rally was held. It's just a matter of simple logic.
16 In our opinion, we should just leave it at that.

17 Paragraph 551 of the mid-trial brief represents a baseless allegation. The Prosecution
18 says that it was after the *mot d'ordre*, the instruction given by Charles Blé Goudé at the
19 Baron Bar, it was then that many pro-Gbagbo youth attacked the Doukouré
20 neighbourhood and the Lem area, throwing stones at young people from the
21 Doukouré neighbourhood. From a chronological point of view, the clashes did not
22 follow the rally. The clashes occurred before.

23 But the Prosecution doesn't give up. In an attempt to establish a link between the
24 Baron Bar rally and the incidents, the Prosecution alleges that it was the people who
25 were at the rally at the Baron Bar who committed the various acts, the incidents that

1 occurred in Doukouré. So the Prosecution is trying to create a nexus between the
2 participants and the incidents.

3 The speech at the Baron Bar did not begin before 11 a.m., and it started several hours
4 after the violence broke out in Yopougon. The only witness that the Prosecution
5 called who actually was present when the speech was given at the Baron Bar is P-449.
6 And this witness was very clear on the point. He said the speech did not start before
7 11 a.m. Thus, the Prosecution is not able to establish a temporal link between the
8 speech at the Baron Bar and the events of 25 February 2011.

9 In particular, the arguments concerning the immediacy of the alleged attacks on the
10 *gbakas*, which apparently followed the speech from the Baron Bar, these arguments
11 make no sense when you consider the time the speech began, once that time has been
12 established. This time is not an estimate. It is something that has been adduced by
13 way of testimony here at the court, testimony from P-449.

14 The Prosecution has provided no reason to question the credibility of P-449 on this
15 particular point. For these reasons, Mr Charles Blé Goudé's Defence team argues
16 that the Baron Bar speech began at around 11 a.m., that is to say, several hours after
17 the violence broke out in Yopougon.

18 Finally, the Defence notes that the Prosecution in their response concedes that the
19 violence in Yopougon began at 8.40 in the morning on 25 February 2011, and that is to
20 be found in the Prosecution's written response, paragraph 1815.

21 The Prosecution said the following, and I translate freely. I'm quoting from the
22 Prosecution's filing:

23 "Finally, the testimony from P-449 taken as a whole would indicate that the students
24 began to attack the *gbakas* once he left the meeting. But the Prosecution
25 acknowledges that the evidence is not clear in this regard. An account prepared

1 by P-440 on the morning of 25 February 2011 shows that the *gbakas* were torched
2 before 8.40 in the morning, as is shown by the timestamp, with two of the *gbakas* being
3 burnt at that time." End of quote.

4 So the Prosecution itself acknowledges that in relation to what P-440 said, that what
5 happened that morning already *gbakas* had been torched before 8.40 in the morning.
6 The Prosecution has acknowledged that point.

7 As we have demonstrated, the evidence is clear on this point. The skirmishes, the
8 clashes in Yopougon began even before the speech began at the Baron Bar.

9 This concludes part 3 of my presentation. I will now move on to part 4.

10 Just one moment with your leave, Mr President.

11 (Counsel confer)

12 MR N'DRY: [12:27:08] (Interpretation) Mr President, we shall continue with another
13 point, namely, the people who were at the Baron Bar, did these people take part in the
14 Doukouré incidents?

15 The Prosecution goes on to link the participants at the rally at the Baron Bar to
16 incidents that occurred in Doukouré by saying, and I quote, lines 22 to 24, page 38,
17 transcript 221, and I'm quoting the Prosecution:

18 "The attackers had attended the meeting of Mr Blé Goudé at Le Baron Bar and they
19 came to the main road to throw stones at the people living in Doukouré." End of
20 quote.

21 This allegation made by the Prosecution is supported by the testimony of P-442.

22 I would now like to give our Defence team's response to this point.

23 First of all, the timeline for these two events, namely, the rally and the beginning of
24 the clashes. As we have just set out on the basis of testimony given by Prosecution
25 witnesses is such that this allegation makes no sense. Indeed, as the evidence shows,

1 people began to throw stones at about 9 in the morning and the violence at the
2 mosque began at about 11 in the morning. The rally began at about 11 in the
3 morning and ended at about 1 in the afternoon according to P-449.

4 I know that in Italy, I know that in Italy there is a saint, Padre Pio. Apparently he
5 could be seen at two places at the same time. This is something really special to be in
6 two places at the same time, unless the Prosecution can show that the people who
7 were at the Baron Bar had this particular gift and could be in two places at once. But
8 generally speaking, this is not an attribute that men usually enjoy.

9 PRESIDING JUDGE TARFUSSER: [12:30:14] I can't help you with this.

10 MR N'DRY: [12:30:21] (Interpretation) Mr President, thus you will dismiss the
11 allegations made by this particular witness, P-442. He is not credible. And the
12 allegation in question is found at transcript 19, page 86.

13 Furthermore, the Defence notes that the Prosecution is not in a position to prove that
14 P-442 identified, actually identified the people that he saw throwing stones. He did
15 not identify them as the people who had been present when the speech was given at
16 the Baron Bar. In reference to his statement, the Prosecution picked out a few
17 excerpts in which the witness says he had the feeling that they were the same people,
18 but he was unable to provide factual or objective evidence in this regard. The
19 witness just supposed that the people that he had seen at the first place had gone to a
20 meeting held by Charles Blé Goudé and he was also convinced that the people that he
21 saw afterwards were the same.

22 I will not read out the entire exchange, but it can be found at T-20, page 65,
23 lines 14 to 23.

24 What is even more important, as the Defence team has pointed out, this witness
25 himself was not at the meeting. He was not in a position to know that the meeting at

1 the Baron Bar hadn't begun or hadn't finished when the incident occurred. I would
2 above all wish to point out to this Chamber that we have reservations about the
3 credibility of this witness in this regard and we will explain exactly why.

4 I think you shall recall that this same witness said he had been injured in the morning
5 during the demonstrations and that after incurring his injuries, he had been taken to
6 inside the Doukouré neighbourhood and then later taken to the hospital.

7 If this is the case, he would not have been able to provide information about the
8 itinerary that the participants took, these people who attended a rally that ended at 1
9 in the afternoon, because he said he had been injured in the morning.

10 Furthermore, the Prosecution goes on to say that after the rally held at the Baron Bar,
11 there was another rally held immediately right after that at Place CP1 on that same
12 day, 25 February 2011. The Prosecution says that this is the place that the
13 demonstrators came *from.

14 The Defence team of Mr Charles Blé Goudé wishes to note that in this regard the
15 Prosecution relies upon Witness 436 and Witness 459. Our Defence team also wishes
16 to observe that all these witnesses, 436, 459, did not attend, they were not personally
17 present at the rally in the Baron Bar nor the rally that is alleged to have been held at
18 Place CP1.

19 In their response, they relate information, they relate hearsay. For example, P-459
20 said that he had friends who had been at the rally at the Baron Bar, and apparently
21 they told him that there had been another rally the same day at Place CP1, and from
22 that spot, that location, that is where the participants went heading towards Terminus
23 40. He did not mention their involvement in the Doukouré incidents.

24 The Chamber can find this summary of the events and you can assess the faithfulness
25 of my summary at transcript 153, page 12, lines 14 to 23.

1 Regarding P-436, his statement on this point is to be found at transcript 149, page 50,
2 lines 2 to 6. This witness says that he did not attend the rally himself. He said that
3 he got this information from three young people from his neighbourhood.

4 The Defence team of Mr Charles Blé Goudé is of the opinion that on this basis, the
5 witness cannot say for sure where these people came from, these people who threw
6 stones.

7 Mr President, I would now like to move on to another issue, but I'll come back to this
8 particular point in a few moments.

9 Witness 436, I do know that you will not forget this witness. At page 2, lines 18 to 20,
10 and at lines 15 to 19 of page 12, if you look at the responses provided by this witness, I
11 think you will be able to assess this witness's credibility.

12 This is the witness who said he saw Charles Blé Goudé at the police station in the 16th
13 *arrondissement*. That is why I said you would not have forgotten him. He
14 mentioned someone who allegedly was set on fire in front of the 16th.

15 Now, just to ensure that this allegation is clear, I will quote the specific questions put
16 by the Presiding Judge, Judge Cuno Tarfusser. I hope I have pronounced your name
17 properly.

18 Here are the questions, the specific questions that the Judge put to P-440 when he was
19 here, just to ensure that everything is crystal clear. The exchange and the answers
20 provided are to be found in T-158, page 86 to 87. And I shall quote from the
21 transcript so that everything will be properly recorded on the transcript, and I think
22 that this will be of use to the Chamber when you hand down the expected ruling:

23 "Question: Mr Witness" -- yes, you said "Mr Witness" of course in English. You
24 said, "Mr Witness, I have a few questions, two or three for you. The first question is
25 about what happened on 25 February 2011, because a witness has told us here in this

1 very courtroom that the convoy of four-by-fours had arrived at the 16th
2 *arrondissement* police station on 25 February and that people were calling out 'General,
3 General,' and on the basis of that information people understood, this is what the
4 witnesses said, people understood that Mr Blé Goudé was part of the convoy. Do
5 you remember? Do you have any memories about this? This was Witness 436 and
6 his allegations."

7 And this is the answer that P-40 gave:

8 "I shall respond, your Honour. No. At the time, Mr Charles Blé Goudé was a
9 celebrity, a high level person. I would have thought that if he had come to my unit
10 or in front of my office, I would have known about that. I would have even gone out
11 to greet him." End of quote.

12 And in this regard at that time Mr Charles Blé Goudé was Minister of Youth, so that
13 might explain why he was referred to as a celebrity or a high level person.

14 Now on the second point, another question from the Presiding Judge, and I quote.

15 This is a question to P-440, the same witness, I can also read out this part. Well, I
16 gave the reference.

17 "So the same witness told the Chamber that on that same day, 25 February, a young
18 man was attacked by the crowd with sticks and stones. And after, after being
19 torched and pushed outside, outside of the police station, do you have any
20 information about this episode, this person who was set on fire - I'm trying to find the
21 name - Lassina Bakayoko?"

22 The witness's response, *P-0440, in response to these allegations made by *P-0436, he
23 said, "Mr President, no one was set on fire, not in the police station, not in front of the
24 police station. We cannot allow such a thing*. That is not true." End of quote.

25 Your Honours, we will not say much more about the treatment that a reasonable

1 court provides for a witness who makes such statements while under oath. "I swear
2 I shall tell the truth, the whole truth, and nothing but the truth."

3 To serve us such an account despite all these contradictions between the testimony,
4 the Prosecution continues to stick to its narrative. They're very clear on this point.

5 The Prosecution still talks about a convoy on 25 February 2011 despite the
6 contradictions amongst its own witnesses.

7 You have P-440, who came here. You have *P-0436, and you put questions to him
8 about the same incident, and the answers are contradictory.

9 The Prosecution is taking a position, the position of an eagle rising upwards higher
10 and higher to look down in an objective way. He must realise, he must wonder, he
11 must -- can't he see there's a problem?

12 He must realise that there is a problem here, a serious problem that has to be solved if
13 his narrative is going to hold water before a court. He has to deal with this problem.

14 How can it be that 440, the police commissioner of the 16th *arrondissement*, told us that
15 he did not see Mr Blé Goudé? *P-0436, same Prosecution witness said, "Oh, yes, he
16 was there." There's a problem. It has to be dealt with. The Prosecution skips over
17 this.

18 The testimony of 440, he is quite sure that Charles Blé Goudé was in the 16th
19 *arrondissement*.

20 Your Honours, Mr President, when the Defence says that the Prosecution evidence is
21 poor, this is a mere observation of fact. It is an observation of fact. When it is said
22 that the Prosecution's evidence is poor, it is a simple observation of fact. In such a
23 case, when you go into the field to the actual places where the incidents allegedly
24 occurred, if you go there and you are told that there were clashes between people
25 from two neighbourhoods side by side, Doukouré on the one hand, Yao Séhi on the

1 other, and you only ask questions of witnesses who come from one part of Doukouré
2 who say that the others are bandits and thugs. They say these people steal mobile
3 phones.

4 If I were in the Prosecution's shoes, to be balanced, to conduct a balanced
5 investigation to come to the truth, investigating both incriminating elements and
6 exonerating elements, I would have also gone to Yao Séhi neighbourhood to
7 determine exactly what happened.

8 When we come back after the break, I will say a few more things about Witness
9 *P-0436. I put questions to him. I asked him: In Yao Séhi, are you aware of an
10 association of victims?

11 And the witness said: Yes. In Yao Séhi there is an association of victims.

12 And I will give the specific references after the break.

13 This witness said, he said: Yes, there is even an association of widows in Yao Séhi.

14 Now, this account is based on information from only one side. But here when it
15 comes to Witness 440, he said he didn't see Charles Blé Goudé. And despite all these
16 contradictions between the testimony provided, the Prosecution sticks to their
17 narrative. So we shall endeavour to explain to the Chamber exactly what happened,
18 because we need to determine what happened. It was so simple, because the
19 information is there, the facts are there, and as I said, the facts will stand solid when it
20 comes to 25 February 2011.

21 They will resist the narrative. What about this persistent narrative? What about
22 this persistent allegation about this convoy from Place CP1 to Terminus 40 on 25
23 February 2011? We will explain what happened to the Chamber in an objective
24 fashion and, thus, that will be my next point, part 5 of my presentation.

25 Mr President, I think we can take the break.

1 PRESIDING JUDGE TARFUSSER: [12:50:27] Is it better for you, is it better for you if
2 we pause now?

3 MR N'DRY: [12:50:33] (Interpretation) Yes, your Honour.

4 PRESIDING JUDGE TARFUSSER: [12:50:38] So let's pause now and we come back
5 at 2.15 for the third and last session for today. So the hearing is adjourned to 2.15.

6 THE COURT USHER: [12:50:55] All rise.

7 (Recess taken at 12.50 p.m.)

8 (Upon resuming in open session at 2.17 p.m.)

9 THE COURT USHER: [14:17:26] All rise.

10 Please be seated.

11 PRESIDING JUDGE TARFUSSER: [14:17:48] Good afternoon.

12 Maître N'Dry, I think it's still you. (Interpretation) You have the floor.

13 MR N'DRY: [14:18:30] (Interpretation) Good afternoon, Mr President. Good
14 afternoon, your Honours.

15 I had announced that I would move to the fifth point of my presentation, and this
16 relates to the allegation of the presence of Mr Charles Blé Goudé at the 16th
17 *arrondissement* and the itinerary followed by the accused person at the end of the rally
18 at the Baron Bar.

19 The Defence of Charles Blé Goudé before the break, we did say that we are going to
20 assist your Chamber relating to these allegations about the presence of Mr Charles Blé
21 Goudé in the 16th *arrondissement* and then we will also talk about the convoy.

22 Yes, Mr President, your Honours, one should not be afraid of the facts. There was
23 indeed a convoy, there was indeed a convoy from the Place CP1 right up to
24 Terminus 40. And this convoy passed in front of the police station of the 16th
25 *arrondissement* and then in front of the Doukouré and Yao Séhi neighbourhoods.

1 The Defence of Mr Blé Goudé actually concedes that the convoy took place. It
2 passed in front of the 16th *arrondissement* and in front of the Doukouré and Yao Séhi
3 neighbourhoods ending up at Terminus 40, where Mr Charles Blé Goudé made a
4 speech.

5 And then there is a Prosecution witness who gives an excellent description of that
6 convoy, and that is Witness P-459. The witness admits that he did not take part in
7 the rally at the Place CP1. But considering the fact that this convoy was coming into
8 his area of residence and his area of control, given that he was the delegate of the
9 *Rassemblement des républicains*, that is RDR, at Terminus 40 in Yopougon, he told
10 himself that he had to follow what was going on in the assembly.

11 Mr President, your Honours, I have said that we should not be afraid of the facts.

12 This Witness, that is P-459, in transcript 153, page 13, lines 5 to 7, tells us about that
13 convoy and then he mentioned a pharmacy, the Pharmacie Kouté, lines 5 to 7.

14 When the Prosecutor asked him what he had learned, what he had heard, then he
15 described the following, and I quote:

16 "And so when he arrived the Kouté pharmacy, it is a pharmacy in the
17 neighbourhood" I would like us to pay attention to that description, because we are
18 going to talk about it in a short while.

19 P-459 also describes Mr Blé Goudé on that day, and this is transcript 153, page 14,
20 lines 20 to 24. I am not going to read out everything, but I would simply want to
21 draw your attention to a description that he gave. He talks about a four-by-four
22 vehicle with tinted glasses. "It was not possible to see inside the vehicle." End of
23 quote.

24 When 459 continues to describe that scene, that is transcript 153, lines 6 to 10, he
25 described Mr Charles Blé Goudé by saying "He climbed out through the roof of the

1 vehicle. He climbed out through the roof of the vehicle in order to galvanise his
2 supporters who had come out in great numbers." End of quote.

3 I would like to draw your attention also, your Honours, to another description made
4 by 459 on that day. He said that Mr Charles Blé Goudé was wearing a cap. Page 21,
5 lines 22 to 25. And this is precisely what he stated regarding his exact dressing:

6 "One could see that he was wearing a cap. I should think so. I think he was
7 wearing a cap, yes. Yes, he was wearing a cap." End of quote.

8 To conclude with the last reference, he talked about the message of Mr Charles Blé
9 Goudé and this message is on page 14, lines 1 to 7, transcript 153. He says that
10 after -- or, rather, after saying that he could not remember the exact words of Mr
11 Charles Blé Goudé, he said that on that day Mr Charles Blé Goudé said, "we should
12 not allow the republic to fall into the hands of adventurers, things like that, and ask
13 them whether they were ready to defend the country and to liberate Côte d'Ivoire.
14 That's it. It was that type of message." End of quote.

15 Now I'm going to call up a video, which will be followed by a screenshot, and we are
16 going to look at those together. It is video CIV-OTP-0015-0480, minute 01.17 to 01.50.
17 We are going to view the footage together and then I'm going to give the reference for
18 the screenshot.

19 (Viewing of the video excerpt)

20 MR N'DRY: [14:29:43] (Interpretation) I would like to give the reference for the
21 screenshot, CIV-OTP-0015-00480. It is a screenshot which is taken out of this video
22 footage at minute 1.58.

23 Can we put it on the screen so that the Judges can see it?

24 Mr President, your Honours, we can see that screenshot and I would like to draw
25 your attention to that symbol that we have put in a circle and it is a symbol that

1 represents a pharmacy. And that corresponds to the description given by the
2 witness in question.

3 Now, to continue, Mr President, your Honours, you will remember when I was
4 questioning P-87, the journalist, we played -- or, rather, we showed that image, and
5 that was the British journalist.

6 Now, when we look at the first video, you can see that Mr Charles Blé Goudé is
7 actually wearing a cap. We can see that he is on a four-by-four vehicle. We can see
8 that he climbed out of that vehicle in order to galvanise the crowd. And so,

9 Mr President, your Honours, this is video dated 19 March 2011. The description of
10 this witness corresponds exactly to the convoy from Place CP1 to Terminus 40, but
11 that convoy drove through there on 19 March 2011 and not on 25 February 2011.

12 The videos are there. P-88, who is the cameraman of P-87, who filmed that video,
13 arrived in Côte d'Ivoire on 10 of March. Mr Charles Blé Goudé was never close to
14 the incidents as the Prosecutor tried to have you believe, because he said in this room
15 that with regard to Charles Blé Goudé, when it came to his alleged presence in the
16 16th *arrondissement* and that convoy, he said in this courtroom that he was never far
17 from the incidents. But we have just demonstrated to you that he was in fact very
18 far away from the incidents.

19 I believe that witness testified in good faith, but he experienced precisely what we are
20 taught in witness-questioning techniques. We talk about gaps in memory; that can
21 happen. It is human. I do not want to believe that he deliberately decided to be
22 confused about the dates. I believe he was simply mistaken.

23 When I assess this witness, there is a difference between him and P-436 once it was
24 established that Mr Charles Blé Goudé never led any convoy on 25 February. There
25 was never a convoy on 25 February. The convoy took place on 19 March.

1 Now, what happened to the description which was given by P-436? And this is a
2 witness who gave us a description worthy of a Hollywood movie on that day, and on
3 lines 15 to 19 of page 12 of transcript T-149, he says and I quote:

4 "It was at that time that we saw the four-by-four which left the CP1 and went into the
5 police station. After the departure of the four-by-fours, that is when the policemen
6 came out and started shooting. After the four-by-fours left the police station, the
7 police officers came out with their weapons and started firing; otherwise, before that
8 the policemen did not fire." End of quote.

9 If we assume that the witness is describing to us clearly and correctly what we saw,
10 then there is simply confusion when it comes to the date. The witness should at least
11 have been faithful with the facts, and that is why I asked the question to Witness P-87:

12 "On the day of the convoy, when you went from Place CP1 to Terminus 40, did you
13 observe even a single incident on the way?"

14 And Witness P-87 said that he did not observe any incident.

15 So where does this description from P-436 come from? We pray your Chamber, in
16 light of this documentary evidence, that during your deliberations you should assess
17 carefully what the Defence of Charles Blé Goudé tells you. There was never a
18 convoy on 25 February 2011, but on 19 March 2011, and precisely after the call to
19 enlistment made at the Place CP1. And the same thing was said at Terminus 40.

20 And when you look at the content of the message given by P-459, he said that Charles
21 Blé Goudé asked his supporters whether they were ready to defend the republic, and
22 we think that what he said was close to that.

23 Just a moment, your Honours.

24 (Counsel confer)

25 MR N'DRY: [14:39:20] (Interpretation) Thank you very much, Mr President.

1 Now I'm going to go on to point 6 of my presentation, which relates to the objective
2 causes, the objective causes of the skirmishes or clashes and acts of violence.

3 I'm going to speak to two points. The first point relates to the setting on fire of a
4 SOTRA bus; and the second one shall deal with the existence of tensions or, rather,
5 the pre-existence of tensions between the Doukouré and Yao Séhi neighbourhoods.

6 Now the first point. The incident began with the torching of SOTRA, a SOTRA bus,
7 a public transport company. There is an important fact that marks the beginning of
8 the day on 25 February 2011 in Yopougon, and that is the setting on fire of a bus
9 belonging to a public transport company known as SOTRA.

10 Several Prosecution witnesses mentioned this fact. They also talked about the *gbakas*
11 that were burned and, "*gbaka*", in Côte d'Ivoire, is the name used to refer to a public
12 transport vehicle.

13 The Prosecutor has in his possession a report from Witness P-440, who is the
14 commissioner of the 16th *arrondissement* or at least who was the commissioner at the
15 time of the events.

16 From Friday, 25 February 2011, which marked the beginning of the demonstrations in
17 Yopougon, to Monday, 28 February 2011, and it is in that report:

18 "In our area of control, there were 14 cases of death linked to the said disturbances.

19 And I would like to draw your attention to this point, that is, the demonstrations
20 which started with the torching of a SOTRA bus."

21 And this is the commissioner of the 16th *arrondissement*, and he talks of the
22 25 February. So he says that:

23 "The disturbances started after a SOTRA bus had been set on fire by four individuals.
24 One of those individuals was armed with a Kalashnikov and this person, after having
25 fired on Friday, 25 February 2011 at about 7 o'clock at Yopougon Bel Air, the driver of

1 the bus became afraid. He parked the vehicle and fled and so did the passengers
2 who had been on board the vehicle. This is how come these fellows used a Molotov
3 cocktail to set that bus on fire and that the bus was partially burned by the fire." End
4 of quote.

5 As we have just read, it is clear from the evidence submitted by the Prosecution itself
6 that the day of 25 February 2011 in Yopougon started with a fact which the Prosecutor
7 cannot conceal. He equally cannot minimise the effects of that fact on the course of
8 events, given that many Prosecution witnesses talked about it as the fact that
9 triggered a series of actions that led to the disturbances in the said commune.

10 When P-440 appeared before this Court, a question was put to him on this matter and
11 the answer is in transcript 157, page 8, lines 4 to 10, and I quote:

12 "Yes. On the 25th," and this is understood to be the 25 February, "I left the office at
13 about 7 o'clock, because we had received information to the effect that a SOTRA bus
14 had been set on fire. And so we went to the location to see why this bus had been set
15 on fire, who had torched the bus. And we were also trying to find out whether we
16 would be able to arrest those responsible.

17 Question: Now, talking about the time, you have said that it was at 7 o'clock. Let
18 us be clear. Was it really at that time?"

19 Answer from P-440:

20 "Yes, it was indeed at 7 o'clock." End of quote.

21 This is what the Prosecutor said in response. After having said that, he says the
22 following:

23 "Mr Blé Goudé did not demonstrate how cases of apparent reprisals consisting in
24 setting on fire of *gbakas* by pro-Gbagbo youth, even before the speech made by
25 Mr Blé Goudé at the Baron Bar, how could that have the slightest relevance with the

1 subsequent perpetration of crimes and inhuman acts committed by the police and the
2 same youths or other pro-Gbagbo youth and militia against the inhabitants of
3 Doukouré?"

4 This excerpt appears in paragraph 1813 of the response of the Prosecution.

5 What I have just read is a translation that was made by our Defence team. The
6 original was in English.

7 Now, regarding the response of the Defence on this point, since the Prosecutor wishes
8 to reverse the burden of proof by saying that Mr Blé Goudé did not establish, well, the
9 burden of proof is on the Prosecution, but they want to put it on the Defence.

10 It is the Prosecution that has to prove that the constituent elements of a crime were
11 present in a specific case. But what the Defence is saying precisely is that he cannot
12 pick and choose specific facts simply because his witness, P-440, had already given a
13 report indicating the beginning of the incidents. That is what we are talking about.

14 So when his witness appeared here, he should have asked him the question as follows:

15 Mr commissioner of the 16th *arrondissement*, why are you saying that the incidents
16 began with the torching of the SOTRA bus?

17 We are talking about facts. In relation to the report of the commissioner, this is how
18 the incidents can be explained. It is his witness who prepared that report. It is a
19 Prosecution witness who said that that day of 25 February started with that fire, the
20 violence began as a result of that fire. He should not transfer the burden of proof to
21 the Defence. That is not our task.

22 You produced a report and you have to draw the logical consequences of that report.
23 You want to buttress your case, but what the report states is that the violence started
24 with the torching of a bus. That is what we are talking about here.

25 And you also listened to the testimony of Witness 441 and Witness 456. The

1 witness -- or, rather, the Prosecutor asked him: When did you hear the gunshots?
2 And when we talk about shots, we are not talking of a football game. We are talking
3 of weapons. When the Prosecutor, the Prosecutor said that these were apparent
4 reprisals with shots, are those apparent reprisals?
5 The Prosecutor continued and the Prosecutor doesn't give up. He said that the
6 people fired at the bus and then set fire on it. But he says that those people were not
7 identified. And the Prosecutor says that we should draw the consequences from that
8 because it was not possible to identify the individuals. But when they allege that
9 there was a meeting and they cannot prove it, they still don't give up.
10 They state further on that the setting of fire, setting on fire of the bus was used as a
11 pretext by the young pro-Gbagbo to burn the *gbakas*. The Defence points out that no
12 witness was called to support that allegation. So the entire allegation according to
13 which the burning of the bus was used as an excuse for young pro-Gbagbo
14 individuals to burn the *gbakas* on 25 February 2011. And this is in paragraph 1814 of
15 the answer of the Prosecution. We say that this is unfounded and is pure
16 speculation.
17 They say it was an excuse, a pretext, it was necessary for a witness to come and state
18 that. In the DCC, they talk about a Blé Goudé intermediary, but they didn't tell us
19 what his mandate was because you have to tell that person what to go and do, and
20 you have many such words in the DCC which are purely speculation.
21 The Prosecutor continues to deny the effects of the shooting and the burning of the
22 SOTRA bus and the course of events on 25 February 2011. He tries to link the speech
23 of the Baron Bar to the violence by all means, and this is for that reason that the
24 Prosecutor alleged that it was the students who took part in the rally that attacked the
25 *gbakas* at the end of the rally. And for that purpose he refers to P-449 and requests us

1 to make an overall assessment of P-449 and not to go directly to the facts so as to
2 better understand.

3 So when precise answers do not suit the Prosecutor, he is asking us to make an overall
4 assessment.

5 *Exceptions are given priority over general issues. I will tell you what happened.

6 When he gave precise answers, they were not taken as such. We are being asked to
7 go to the overall assessment. *But we don't need to do that, we have an answer, and
8 the answer is clear.

9 It was Maître Gbougnon who was questioning that witness on that day, transcript 160,
10 page 8, lines 13 to 18. Maître Gbougnon put the following question to him:

11 "Mr Witness, my last question was as follows: Were you able -- well, those who
12 attacked the *gbakas*, you answered no; is that correct?"

13 Witness P-449 answered: "That is correct."

14 Follow-up question by Maître Gbougnon: "You did not see, because you were still at
15 the rally; is that correct?"

16 Witness's answer: "Yes, Counsel."

17 What overall assessment does one need to do to understand this and continue to say
18 that it was the students who did it? The witness was asked a question and he said
19 he could not answer because he was still at the rally. We can see that all the attempts
20 of the Prosecutor to minimise the effects of the gunshots and the setting on fire of the
21 bus on the course of the events that took place in the Yopougon commune from 25 to
22 28 February are not based on any sound arguments.

23 And as I said before, the Defence notes another event which could objectively justify
24 the tensions that took place in Yopougon commune, and that is point B of my
25 presentation. According to the testimonies, the clashes between Yao Séhi and

1 Doukouré could have been caused by pre-existing tensions.

2 And when the Defence said "could have been caused", we are using terms with
3 caution. At the same time we cannot rule out what the witness said. That is why
4 we say "could explain". That is objective. We do not want to establish points by all
5 means. We want to be objective.

6 The Defence of Mr Charles Blé Goudé notes that after reading the testimonies, one of
7 the possible causes of the incidents between Doukouré and Yao Séhi could be
8 pre-existing tensions between those two neighbouring two neighbourhoods next to
9 each other as a result of delinquency. That is what came out of the testimonies, and
10 we can draw our conclusions from that.

11 Such an explanation is even more feasible because these skirmishes and the violence
12 could not chronologically have been triggered off by the speech in the Baron Bar and
13 by its participants as we have already shown.

14 The Prosecution on this point answered as follows: They told us that the evidence
15 on the existence of delinquency in the neighbourhood is not clear. That is why the
16 Prosecution tells us that after the testimony of all their witnesses, they stand by their
17 statement that evidence on the existence of delinquencies in the neighbourhood is not
18 clear, and they say that Witness P-554 denied the existence of such criminal acts in
19 Doukouré during the post-election crisis.

20 According to the Defence, the Prosecution cannot pick and choose from amongst his
21 own witnesses based on the need to establish a particular aspect of his case by all
22 means. So this means that the Prosecution cannot set aside the testimony of P-440,
23 who was the commissioner of the 16th *arrondissement*. When the Prosecutor
24 examines the positions of his witnesses, including P-440, he denies that there were
25 criminal acts being perpetrated, but this was a police commissioner who came and

1 stated the contrary. And if the Prosecution continues in that way, we cannot make
2 any progress.

3 There is also Witness P-109, French transcript, 154, page 96, lines 20 to 22. There is
4 also Witness P-436, and we have to mention that one, 149, page 4, lines 15 to 17.

5 This is what we have observed: Contrary to what the Prosecutor has submitted, the
6 evidence shows that there were pre-existing tensions between those two

7 neighbourhoods which were next to each other. The inhabitants of Doukouré talked
8 about the existence of a smoking room in the Yao Séhi neighbourhood. I hope that is

9 correctly translated in English. In other words, this is a place where people smoke

10 drugs. They also described acts of aggression and thefts of cell phones by the young

11 people of Yao Séhi. All this comes out of the testimonies of P-440 and others who

12 talked about Yao Séhi as a crime infested area. And this can be found in transcript

13 157, page 84, lines 1 to 5, and page 86, lines 15 to 25. In pages 93 to 94, P-440 even

14 talked about previous clashes between those two neighbouring locations. And this

15 is the commissioner of police. He's the one who receives complaints.

16 You cannot, after hearing all these witnesses, come before the Chamber and tell us

17 that, no, the tension that exists, the acts of thefts that have been mentioned are not

18 founded.

19 Now, we will even go further. When you look at the transcript, you have Witness

20 P-436. He described the scene of a billboard with the effigy of Mr Ouattara that the

21 young people brought down before the stone throwing began. Can this be linked to

22 planning the implementation of a common plan?

23 Better still, you have P-459, in T-156, page 67, line 28 and page 68, he talked about

24 clashes between those two neighbourhoods before 25 February, and that confirms the

25 statements of Witness 440.

1 When you look at all these testimonies objectively, you cannot discard pre-existing
2 tensions between Doukouré and Yao Séhi as a possible cause of the incidents
3 of 25 February 2011.

4 When you take into consideration the time at which these incidents began, the
5 Defence of Mr Charles Blé Goudé reiterates its position here, the position that we
6 have always stood by, and that is that the speech at the Baron Bar was not the cause of
7 the violence.

8 And now we are going to go into the actual substance of this speech by Mr Charles
9 Blé Goudé, that is my next point.

10 Part 7, the Baron Bar speech.

11 Our first observation regarding the Prosecutor's evidence is that the Prosecutor does
12 not deal with the entire speech delivered by Mr Charles Blé Goudé, but focuses on a
13 few excerpts. He does not address the entire speech. He only focuses on a few
14 excerpts, and this is important. The Charles Blé Goudé Defence team has provided
15 an excerpt or, rather, an excerpt of this speech which is on the record.

16 We then for this reason challenge the Prosecutor's allegation that the verification of
17 the entries and exits is the main message in Mr Charles Blé Goudé's speech. Why
18 does the Prosecutor rely on this part of the speech as being the main message at the
19 meeting? He says that Charles Blé Goudé called on people to check entry and exit,
20 and that this is the substance of the message.

21 But we don't have the full speech. You don't have the full speech, your Honours.

22 On that day, on that day, Mr Blé Goudé said to those in attendance to avoid the trap
23 of civil war. That is also in itself a main message.

24 The Prosecutor claims that this speech was inflammatory and it sparked the incident.

25 Transcript 221, page 37, lines 2 to 4, and I quote the Prosecutor: "And by the way,

1 that does not absolve Mr Blé Goudé of responsibility when it comes to the events that
2 occurred shortly after the inflammatory speech he delivered at the Baron Bar." End
3 of quote.

4 In answer to this point Mr Charles Blé Goudé's Defence team would like to read out a
5 few excerpts from the speech by our client delivered at the Baron Bar 25 February
6 2011 and thereafter we shall assess it.

7 Reference CIV-D15-0001-0586. There is even a video of the speech, but allow me to
8 read this excerpt so that we can fully grasp the meaning of this speech and determine
9 whether or not it is an inflammatory speech. By merely saying it was inflammatory
10 doesn't prove that point.

11 This is what Mr Blé Goudé said: "There is a trap into which we must not fall." This
12 is on 25 of February at the Baron Bar and this is Charles Blé Goudé speaking to those
13 in attendance. Let me repeat. I'll start all over.

14 "There is a trap into which we must not fall. What is this trap? It is civil war. I am
15 a responsible person, an official, and you are with us, we are together, we have an
16 ideal. We do not want our country to sink into civil war. Yet, where the UN has
17 failed to install a personality of its choice, it has gone onto set up a State of no law.
18 In Liberia, no one has control over anybody. When you get to the airport, they are
19 the ones controlling everything. Because they could not get their man to be at the
20 head of the country, they have installed a State where there is no law, where the
21 people are fighting each other. That is what they want."

22 Then Mr Blé Goudé goes on to say, and I'm still quoting:

23 "And gradually we are falling into the same trap. Listen to me attentively, because
24 they, they have nothing to lose, but we, we have our country to lose. I am convinced
25 that tomorrow you would be terribly hurt to see that all of Yopougon has been

1 destroyed. You see, I can tell you right away, 'Let us go into this neighbourhood and
2 attack people' and you are going to applaud me. I don't need your applause. What
3 I need to do is provide you with guidance. That is my duty, that is my
4 responsibility." End of quote.

5 Where is the call to violence here? How does this speech incite hate? How? How
6 does this speech call people to engage in acts of violence? "I can ask you to go and
7 attack a neighbourhood and you would applaud me, but I don't need your applause."
8 Now, how was that speech delivered? The Prosecutor presents another excerpt of
9 the speech in which Mr Charles Blé Goudé asks for the entrances and exits of the
10 neighbourhood to be checked and the Prosecutor interprets this as being a call to
11 violence.

12 Mr Blé Goudé's Defence team points out in this regard that the Prosecutor himself is
13 convinced that this excerpt of the speech is not an incitement to commit acts of
14 violence, and we will explain to you why we make this assertion. We will explain to
15 you why we believe that the Prosecutor himself is convinced that this is not a call to
16 violence. We will do that.

17 In his oral submissions on 2 February 2018, French transcript 222, page 73, lines 10 to
18 12, the Prosecutor, referring to the Baron Bar speech, makes the following concession
19 and I quote the Prosecutor. I'm going to quote him:

20 "So", says the Prosecutor, "Mr Blé Goudé in fact did not use explicit words to call on
21 his public to engage in acts of violence, that the context was such that it was not
22 necessary to use explicit words for the message to be understood." End of quote.

23 This confession should have simply put an end to the Prosecutor's case when it comes
24 to our client. For years, over the years, it has been proclaimed from all rooftops.
25 Opening statements were made here and we were told that the proof would be given

1 that Mr Blé Goudé delivered hate speeches.

2 And then four years later, four years after Mr Charles Blé Goudé was brought here,

3 we are told that no explicit words were used to commit acts of violence.

4 I think we must come to the rightful conclusions. This is not acceptable. Not

5 acceptable.

6 Mr President, your Honours, this is unacceptable. The robes that I have on me have

7 a meaning, a meaning for me, and I cannot, I cannot accept this. I have been this

8 gentleman's lawyer since 2005, and there are things that one cannot accept. He

9 didn't use any explicit formula to call for violence. Four years after, with a huge and

10 voluminous DCC in which reference was made to *mots d'ordres* and yet today, we are

11 told that there is no explicit formula, no explicit words calling for violence?

12 And he has been deprived of his freedom and liberty. I cannot accept that. I'm

13 sorry, I am sorry, I cannot accept that. It's unacceptable.

14 So if there is no explicit formula to engage in acts of violence that was used -- and I'm

15 sorry, please give me one second -- if no explicit words or formula have been used

16 calling for acts of violence to be committed, if no such formula has been used by Mr

17 Charles Blé Goudé, why then are acts of violence being ascribed to him since he did

18 not explicitly incite anyone to engage in such acts?

19 How then can his audience understand that in the absence of words of violence, there

20 was a call to violence? I can explain to you what the Prosecutor said. This is what

21 the Prosecution has to say. The Prosecution argues that explicit formulas calling for

22 violence was not necessary, particularly since we were in Yopougon in a pro-Gbagbo

23 stronghold.

24 The Prosecution argues that there were three to four *parlements* and *agoras* and that

25 Mr Blé Goudé used to live there and that the headquarters of COJEP was in

1 Yopougon, and that therefore it was not necessary for explicit formulae calling for
2 violence to be used in order for him to be understood.

3 Now you can find this in transcript 222, page 73, lines 8 to 22. First of all, the
4 Defence notes that the Prosecutor did not prove that those in attendance at the event
5 were people exclusively from Yopougon or were members of *parlement* and *agoras* or
6 members of COJEP.

7 The Defence also points out that the message delivered on 24 February 2011 calling
8 for a rally at the Baron Bar was not selective.

9 Secondly, the Prosecutor has failed to produce into evidence any document or call a
10 witness here to explain to the Court that there was a particular language that was
11 used for the inhabitants of Yopougon, and that there was a specific language that was
12 being used for members of the COJEP, and that there was a specific language being
13 used for members of the *parlement* and *agoras*.

14 Now, let me tell you what our suggestion is as to how you can analyse or assess this
15 allegation by the Prosecutor and I'm going to use his own very words in doing so.

16 At page 45, lines 22, 26 in the French transcript of 1 October 2018, this is what the
17 Prosecutor said, and he was blaming the Defence for something, and this is what he
18 said, I quote:

19 "Again, this must also be based on evidence that has been produced before the Court
20 or before the Chamber."

21 And then he goes on to say:

22 "This kind of analysis cannot be based on speculative, entirely speculative arguments
23 that have not been presented and that are not in the case file." End of quote.

24 This is how to deal with the Prosecutor's allegation. There is no explicit formula
25 calling to violence and so anything else that follows will simply be an opinion.

1 These are in the Prosecutor's own words: We cannot base this analysis on absolutely
2 speculative considerations. Those are his words. If there is no explicit formula,
3 then what formula is being used?

4 The Prosecutor goes on to argue that Mr Blé Goudé's Defence team does not provide
5 proof of the context of violence in that speech.

6 Dear Judges, we are looking at 25 February, and we have to prove to the Prosecutor
7 again that the speech was delivered in the context of violence? Well, this is normal.
8 Well, if you have denied the existence of an armed rebellion, then maybe there is a
9 need for the Prosecutor to be informed further, maybe.

10 And that's why I have the duty to remind him of the following. The *Commando*
11 *Invisible* was in Abobo. The people proceeded to an exodus from the area, and that's
12 on the record. Do I have to remind the Prosecutor of this?

13 The video that we showed, on the same day of the speech, showing a UN contingent
14 spontaneously blocked by the people, even before Mr Charles Blé Goudé issued the
15 call, you see, they're claiming that Mr Charles Blé Goudé was the author of everything.
16 But this happened before he issued the call. The people blocked a UN contingent
17 because the people, the population felt that this movement was a suspicious
18 movement. The Ivorian people at the time did not trust the United Nations' mission.

19 We have shown videos here, and I have nothing more to add. The chief of general
20 staff, Philippe Mangou, appeared before you and explained everything to you.

21 And the video that I showed you, the Atchan chief who spoke said he was 60-years
22 old, but he blocked the UN contingent. You see, there is a lot of talk here about
23 "*Jeunes Patriotes, Jeunes Patriotes*". What does "*Jeunes Patriotes*" really mean? Now,
24 he blocked the UN contingent. 60 years old. Is that a *Jeunes Patriotes*, at 60?

25 He told you that there were people who were not involved in politics and that they

1 would not accept that the sovereignty of their country be trampled upon.

2 You see, four years into this trial, I have been here since 2014, four years into this trial,
3 I really do not know what this concept of pro-Gbagbo actually represents. It's such a
4 broad concept that can contain anything and, actually, a call to the arbitrary; whereas,
5 whereas, we are in a criminal law context. It's a catch-all term which the Prosecutor
6 has never explained to us. What does it mean?

7 The context of the Baron Bar meeting is also the call to civil disobedience, and I want
8 to underscore this. This call was made from the hôtel du Golf by Mr Soro Guillaume,
9 who at the time was prime minister, prime minister under Mr Alassane Dramane
10 Ouattara, the call to civil disobedience. Witness P-459 and P-97 testified to this.
11 And you can find for Witness P-459 the relevant expert at T-153, page 82 and 83,
12 lines 25 and subsequent lines.

13 As for Witness P-97 the relevant transcript is T-49, page 12, lines 18 to 26. And
14 please allow me to read what Witness P-97 said in answer to a question.

15 He said: "I had a second version, namely, that some youth had revolted against
16 transporters who at the time always ensured that Mr Alassane Ouattara's *mots*
17 *d'ordres* were respected. They were talking about these call to *ville morte*. Now *ville*
18 *morte*, when we talk about *ville morte*, everything must come to a standstill,
19 transportation and so on and so forth. Now, in the logic of Ivorians, transporters are
20 mostly, mostly, they are mostly labelled as being Mr Ouattara's supporters. And so
21 the *Jeunes Patriotes* always blamed them for respecting those calls."

22 Now, this was a statement made by the Prosecutor's own witness. Therefore, what
23 we can say is that the context establishes that Charles Blé Goudé did not trigger the
24 tension but, rather, intervened in a context of pre-existing tension, and he intervened,
25 calling on the population to avoid the trap of civil war and nothing more.

1 Absolutely nothing in his speeches points to any kind of violence whatsoever as, by
2 the way, has been acknowledged by the Prosecutor when he says there was no
3 explicit formula.

4 Let me now turn to point number 8 in my presentation, roadblocks.

5 Roadblocks, self-defence roadblocks, on that point this is what the Defence has
6 indicated. The Prosecutor is mixing up things. He is mixing up things between the
7 setting up of roadblocks and any acts of violence that may have been committed at
8 the said roadblocks.

9 In doing so, he thinks that this absolves him of his duty to prove that Mr Charles Blé
10 Goudé is responsible for the violence caused at the roadblocks. So he's mixing up
11 things. But these two things need to be differentiated the one from the other.

12 As we previously pointed out, the Prosecutor did not provide your Chamber with the
13 *mot d'ordre* that Mr Charles Blé Goudé issued at Baron Bar which would therefore
14 make him responsible for the alleged acts of violence that took place at the
15 roadblocks.

16 We have already pointed out that the Prosecutor acknowledged that the Baron Bar
17 speech did not contain any explicit call to acts of violence. Why then would the
18 alleged criminal acts be imputed to Mr Charles Blé Goudé?

19 When we look at what the Prosecutor's argument is in relation to explicit formula
20 calling for acts of violence at the roadblocks that this was not necessary, Mr Charles
21 Blé Goudé's Defence responds by arguing that the onus is on the Prosecutor in this
22 case to prove that those who committed the alleged acts of violence at the said
23 roadblocks were members of the inner circle who, while dealing with an explicitly
24 non-violent speech delivered by Mr Charles Blé Goudé went on to understand the
25 said speech differently. He didn't call for violence explicitly, and you say he is

1 responsible. Therefore, you must prove that the perpetrators of those acts of
2 violence were part of that circle, that inner circle and who, *when listening to an
3 explicitly non-violent speech by Blé Goudé understood it differently. It's crucial.
4 The Prosecutor, having failed to provide such evidence, the Chamber, we pray the
5 Chamber therefore to come to the determination that Mr Charles Blé Goudé did not
6 make any call to commit acts of violence and that his speech must be understood in
7 that way.

8 The Prosecutor alleges that the proliferation of roadblocks is or was a consequence of
9 a call by Mr Charles Blé Goudé. The Defence points out that the proliferation of
10 roadblocks in Yopougon was rather more a consequence of the upsurge in violence in
11 that commune on 25 February 2011 and not a result of any call by Mr Charles Blé
12 Goudé.

13 Some witnesses from Doukouré neighbourhood have confirmed that they set up the
14 roadblocks on that day for reasons of security. P-0436, transcript 159, page 5 to 7,
15 P-433, transcript 147, page 51 to 52.

16 The inhabitants of Doukouré who were questioned said that they set up the
17 roadblocks in order to meet their security and safety needs. That need for security
18 was not specific to Doukouré neighbourhood. In fact, evidence on the record, the
19 shooting and the torching of a bus, the burnt *gbakas*, and skirmishes between
20 neighbourhoods, between the Doukouré and Yao Séhi neighbourhoods clearly
21 demonstrate that on 25 February 2011 and in the days following, there was an
22 upsurge of violence throughout the entire Yopougon commune and not only in
23 Doukouré.

24 We can therefore logically say that the inhabitants of the other neighbourhoods in the
25 same manner as those of Doukouré set up their own roadblocks for their own similar

1 security needs.

2 When it comes to the alternative version offered by P-0097 in relation to the
3 proliferation of roadblocks, beginning in February 2011, the Prosecutor fails to take
4 into account the arguments of the Defence. P-0097 provided an alternative
5 explanation as to why roadblocks were set up in Yopougon and as to why the *gbakas*
6 were burnt, a version which is totally incompatible with the Prosecution narrative.

7 And this is what I read out to you a short while ago, where reference is made to calls
8 to civil disobedience and where there were calls to the so-called orange revolution,
9 orange revolution. And those calls came from the Golf Hotel, calling for the
10 overthrow of the institutions that had been recognised by the constitutional council.
11 Now, the Prosecutor cannot tell me that he did not hear mention of those calls which
12 were being made at the same time.

13 Now, the Prosecutor has not proven that the proliferation of roadblocks in Yopougon
14 came about as a result of Mr Charles Blé Goudé's speech. In an attempt to prove that
15 on 25 February the proliferation of roadblocks would have come about because of
16 Mr Charles Blé Goudé's speech, the Prosecutor goes on to produce into evidence an
17 exhibit dated 5 April 2011 in an attempt to justify the argument that the proliferation
18 of roadblocks in Yopougon on 25 February was the result of Mr Charles Blé Goudé's
19 actions.

20 In order to do that, the Prosecutor produces a video of 5 April, video reference
21 CIV-OTP-0047-0604. The corresponding transcript is timestamps 00.00-05.40 of the
22 video, and the corresponding transcript is CIV-OTP-0051-1681 at page 1682,
23 lines 1 to 48.

24 By producing this element or this exhibit, the Prosecutor seeks to ascribe to
25 Mr Blé Goudé the proliferation of these roadblocks. But the Defence points out as

1 follows, that in order to establish Mr Charles Blé Goudé's responsibility in the events
2 which occurred on 25 February 2011, there is no need to refer to acts that fall outside
3 of the temporal framework.

4 The video was produced on 5 April 2011, whereas Mr Charles Blé Goudé at the time
5 was on exile, and this cannot act retroactively in connection to the events of 25
6 February 2011. We therefore pray the Chamber to come to the view that this exhibit
7 does not help the Prosecutor in proving the allegation that Charles Blé Goudé was at
8 the origin of the proliferation of roadblocks.

9 However, were the Chamber to consider this video, let me provide you with an
10 excerpt from the transcript which I referred to a while ago, an excerpt of Mr Charles
11 Blé Goudé's speech, and I quote:

12 "In your neighbourhoods" --

13 PRESIDING JUDGE TARFUSSER: [15:51:22] I just don't know how long you want to
14 go, because we have also tomorrow. We started at 2.15, so we are over the two
15 hours, the hour and a half.

16 MR N'DRY: [15:51:42] (Interpretation) Mr President, we can continue tomorrow.
17 Thank you.

18 PRESIDING JUDGE TARFUSSER: [15:51:52] I don't want to interrupt you. Are
19 you fine with stopping here?

20 MR N'DRY: [15:51:56] It's okay.

21 PRESIDING JUDGE TARFUSSER: [15:51:57] Okay. Thank you very much. So we
22 go today. Tomorrow we have one longer session, but only in the morning. So
23 tomorrow, the hearing is adjourned until tomorrow morning at 9.30. Thank you.

24 THE COURT USHER: [15:52:17] All rise.

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