

1 International Criminal Court  
2 Pre-Trial Chamber I - Courtroom 2  
3 Situation: Republic of Côte d'Ivoire  
4 In the case of The Prosecutor v. Charles Blé Goudé - ICC-02/11-02/11  
5 Presiding Judge Silvia Fernández de Gurmendi, Judge Ekaterina Trendafilova, Judge  
6 Christine Van den Wyngaert  
7 Confirmation of Charges Hearing  
8 Wednesday, 1 October 2014  
9 (The hearing starts in open session at 9.31 a.m.)  
10 THE COURT USHER: All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Good morning.  
14 Court officer, please read the case.  
15 THE COURT OFFICER: (Interpretation) Thank you, Madam President. Situation in the  
16 Republic of Côte D'Ivoire in the case of The Prosecutor versus Charles Blé Goudé,  
17 ICC-02/11-02/11. We are in open session.  
18 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. I will  
19 now give the floor to Mr Kaufman. Please proceed.  
20 MR KAUFMAN: Yes, Madam President, before we start, we have a slight change in the  
21 lineup today. We're joined today by advocate Nina, Antonina Dyk. She's a lawyer in her  
22 own right of the Texas Bar and she's a member of the Blé Goudé Defence team.  
23 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. And in  
24 the Prosecution, any change?  
25 MR MACDONALD: (Interpretation) No change, Madam President.

1 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) And OPCV?

2 MS MASSIDDA: (Interpretation) No change.

3 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Please proceed.

4 MR KAUFMAN: Thank you, Madam Judge. So now we come to the second incident, the  
5 events of 25 to 28 February 2011, the so-called attack on Yopougon which took place  
6 according to the Prosecutor between, as I said, 25-28 February. This attack was allegedly  
7 prompted by two speeches which I will presently analyse. The first was broadcast on state  
8 television on 21 February 2011 where Charles Blé Goudé intervened and called for the youth  
9 to assemble at the Baron Bar the following day where, as he said, he would give his final  
10 instructions.

11 The transcript of this particular press conference, which is to be found at  
12 CIV-OTP-0044-2534, makes it clear that Mr Blé Goudé is accusing the United Nations  
13 forces present in Côte d'Ivoire of a degree of complicity with the rebels, for example,  
14 by helping to transport them here and there.

15 Essentially Mr Blé Goudé was calling for the youth to disrupt these transportation  
16 activities of the United Nations and I stress, not by the use of violence, but by passive  
17 obstruction. More particularly his intervention was motivated by the report of a  
18 certain venerable resident of the village of Akouédo who, believe it or not, had  
19 blocked the passage of no less than four UN vehicles.

20 Let me cite exactly what Mr Blé Goudé said, and here I turn into French. (Interpretation) "I  
21 would like to seize the opportunity to congratulate the Atchan leaders, and Atchan is an  
22 ethnic group, because this afternoon, almost four UN tanks were going in the direction of the  
23 Akouédo camp and that is the Côte d'Ivoire military camp, and it was blocked by the Atchan  
24 chief. I want to congratulate them and I would want everyone to do the same. If you have  
25 a vehicle, as soon as you see a UN contingent block the road until they understand that they

1 are in a country which is led until proven otherwise."

2 Yes, it was indeed a provocative speech but no less provocative than those issued by Mr  
3 Guillaume Soro, who we will examine presently. But as I have already said, just because it is  
4 provocative does not mean that it is incitement to violence. Does not modern history abound  
5 with examples of brave individuals who put their bodies in front of tanks and the like? Do  
6 we all not remember the iconic picture of the brave citizen of Beijing, shopping baskets in  
7 hand, blocking the path of T-52 tank in Tiananmen Square? In any event a full, a full  
8 examination of the speech that Mr Blé Goudé made the following day, 25 February 2011 at the  
9 Baron Bar proves this.

10 Now, Mr Blé Goudé does not deny that he called on the people of Abidjan to verify  
11 the comings and goings from their neighbourhoods and to report all intruders.

12 I'll come back to the words that he actually used. The words he actually used were  
13 "personnes étrangère" and I will return to that later.

14 But what the transcript of this speech taken out of a news broadcast, as it's presented  
15 in the Prosecution's evidential archive, discloses in addition what the Prosecution  
16 does not want you to know, namely, the comments which Mr Blé Goudé made in the  
17 same news broadcast a few lines later. And the citation of the evidential document  
18 is CIV-OTP-0047-0611 at 613 and I will quote for you.

19 Immediately after this person personnes étrangère speech he says as follows: (Interpretation)  
20 "That is why I am immediately calling for the cessation of violence in the neighbourhoods.  
21 Ethnic group against ethnic group, RDLP against LMP. All this does not honour the Côte  
22 d'Ivoire. Today when one talks of Côte d'Ivoire, the picture that emerges is wars."

23 Madam President, your Honours, in my submission the lack of criminal intent does  
24 not get more explicit than that, not one whisper of encouragement to set up  
25 barricades or to burn rubber tyres, not one mention of the famous Article 125, not one

1 mention of searching cars, searching people or lynching innocent civilians from the  
2 north of the country. Quite the opposite.

3 Indeed Witness 118, the Prosecution's own insider witness and a youth leader himself,  
4 mentions that when the assembled crowd started to clamour for the Dioulas to be  
5 killed, Charles Blé Goudé was visibly embarrassed.

6 Pointing at Witness 118, he said, and I quote: (Interpretation) "There you are. He is from  
7 the north. Do you want him to be killed also?"

8 Speaking to the crowd, referring to Witness 118, CIV-OTP-0058-0425, line 101.

9 So specifically on the issue of the barricades, however, I think it is important to stress  
10 that the details of the second core incident only cite crimes committed at these  
11 roadblocks on one occasion, and this is at paragraph 160 of the document containing  
12 the charges.

13 Here the Prosecution cites a police report (Redacted) which concluded that  
14 between 25 and 28 February 2011, in Yopougon, and I quote, (Interpretation) "Several civilians  
15 were burned at the roadblocks erected by the pro-Gbagbo youth." This report which is to be  
16 found at CIV-OTP-0046-0029.

17 However, it hardly meets the standard of proof required at confirmation. It summarises the  
18 events of several days and is not only hearsay, but the conclusions that it draws are  
19 speculative.

20 Witness 440 was interviewed by the Office of the Prosecutor and expressed his belief  
21 that Mr Blé Goudé was the initiator of the roadblocks, imputing to Mr Blé Goudé the  
22 following command: (Interpretation) "Set up self-defense roadblocks."

23 Well, you have the relevant transcripts of Mr Blé Goudé's speeches on 24 and 25  
24 February, or snippets of them, the snippets that the Prosecution wanted to show you.

25 And where did he actually call for roadblocks to be set up? As I will presently argue,

1 roadblocks were a well-established preexisting phenomenon.

2 When Witness 440 was specifically questioned as to whether he and Mr Blé Goudé

3 had demanded that civilians be killed -- sorry, when Witness 440 was asked whether

4 Mr Blé Goudé had demanded that civilians be killed at roadblocks, his answer was

5 quite revealing. What he said was as follows: (Interpretation) "And so all it needed

6 was for him to call the people and tell them, even if he did not ask for the self-defense

7 roadblocks to be lifted. He should say 'Don't kill' and people will not kill.

8 If he simply said 'Stop people and place them at the disposal of the police,' they

9 would have done this. But he did not do it."

10 Well, in my submission, this is quite simply not true. As the transcripts quite clearly

11 reveal, Mr Blé Goudé both called on the general public not to adopt violent means

12 against the perceived rebels but, rather, as the Prosecution states, to denounce them to

13 the local authorities, dénonces.

14 He might not always have used the explicit words "denounce them" to the police, and

15 I stress to the police, but given that the Prosecution argues that the police and the

16 pro-Gbagbo forces were one and the same thing, I hardly see the difference.

17 Indeed, let me refer you to the evidence of an individual interviewed by the

18 Prosecution who claims to have given practical effect to this exhortation to denounce

19 strangers, Witness 449, a supposed COJEP insider, and I stress that COJEP is not a

20 militia, it always has been and always will be a political organisation.

21 And what does Witness 449 say? Well, first of all, he was asked a question, and this

22 is the question of the Office of the Prosecutor's investigator, (Interpretation) "In

23 practical terms, if you saw someone who was a stranger in a neighbourhood, I would

24 like to know in practical detail what would the people do."

25 And the response was as follows: (Interpretation) "If it was not in conformity with

1 the thoughts of the young people, he would be taken directly to the closest police  
2 station so that he should explain himself."

3 Citation CIV-OTP-0063-1300, at line 331.

4 Let me just return to the exact words that Mr Blé Goudé used during the speech at the  
5 Baron Bar. And note, if you will, that the Prosecution, as I have said, has just given  
6 you a few sentences out of a speech which lasted a considerable time.

7 Apparently Mr Blé Goudé, according to Prosecution, was quite a Superman on that  
8 day; he managed to give a speech which, we argue, lasted several hours at the Baron  
9 Bar, then managed to go to place CP1 and also do a tour of the town in a four-by-four  
10 vehicle. It just simply didn't happen, Madam President. It wasn't possible to do all  
11 those things in the space of a few hours.

12 Now, I do ask you why has the Prosecution presented the most important speech, the  
13 most important part of its case in such a selective snippet, short format? After all  
14 they can provide you with a complete film called Shadow Work from 2006.

15 Completely irrelevant in my submission. But for the most important speech, for the  
16 whole of this trial, according to the Prosecution case theory, they have nothing more  
17 than a newsflash.

18 In the law of criminal evidence, there is an obligation on the party producing an  
19 exhibit to comply with what we call in the Anglo-Saxon system at any rate, the best  
20 evidence rule.

21 The Prosecution has failed to do this, in my submission, either because it has not  
22 bothered to supply you with the best evidence, or does not want to supply you with  
23 the best evidence. And if it can't get you the best evidence, I expect to hear  
24 explanations as to why not.

25 But my client insists that the complete speech is nowhere to be found, the complete

1 speech. Everything that he said on that day, which includes exonerating aspects as  
2 well, is not to be found in the Prosecution's evidence.

3 Let us examine closely the words that Mr Blé Goudé used in the speech.

4 (Interpretation) "When you return to your neighbourhoods, you have to contact the  
5 presidents of the neighbourhoods. You have to get together so as to find out and  
6 crosscheck the comings and goings in your neighbourhoods and denounce any  
7 strange person coming into your neighbourhood."

8 Now, as Mr Blé Goudé has rightly pointed out to me, and your Judges have found in  
9 the Gbagbo confirmation decision, Abidjan had at this stage been ripped apart by civil  
10 strife. Indeed, on the very morning of the Baron Bar speech, pro-Ouattara  
11 supporters had allegedly carried out an attack on a vehicle. I think people were  
12 killed.

13 The people to whom Mr Blé Goudé was speaking, a certain part of them at any rate  
14 wanted revenge. Mr Blé Goudé argues that he was calming them down and urging  
15 them to conformity with the law.

16 He used the word "dénonces" and not "tuer." And if the word has some hidden  
17 meaning, the word "dénonces," then the obligation is on the Prosecution to bring  
18 evidence to show the use of the word "dénonces" in other contexts or to bring an  
19 expert to prove the use of the word "dénonces" if it has some kind of cultural  
20 significance in Côte d'Ivoire to prove the use of that word in its context.

21 Prosecution have not done that. Now, let me stress the use of the word "personnes  
22 étrangères" and not "étranger." Now, you might think, well, Mr Kaufman, he's such  
23 a crafty devil, he's playing semantics with us. Well, I'm not playing semantics. If  
24 you would, Ms Bossette, please portray us picture number 1. Image in yourselves  
25 in -- let's take for example Quebec City, where last I was told they still speak French.

1 You're travelling around in your car, you're looking for somewhere to park, you're in  
2 a rush, and then you decide to park by a sign such as this. Note the sign. It's a  
3 public picture. It can be published.

4 "voie privée interdite aux personnes étrangères..." (Interpretation) Private,  
5 forbidden --

6 MR MACDONALD: Sorry, your Honours. What's the ERN of that --

7 MR KAUFMAN: There is no ERN. It's a visual aid, Mr MacDonald. Thank you very  
8 much for interrupting me.

9 MR MACDONALD: Your Honours --

10 MR KAUFMAN: What, are you denying that I made -- do you think I made this sign up?

11 MR MACDONALD: No, no. Listen, we're -- we're -- even in your PowerPoints or your  
12 visual aids you need to refer what's on the evidence. You cannot draw in things that are  
13 from the outside. Now, I understand that this may be innocuous, and you're trying to make  
14 a point with visual aids taken from, you know, the Internet, but the bottom line that this is a  
15 court of justice, and a court of justice is based on list of evidence. You know that very well.  
16 So, you know, I'm just raising the issue at this very moment that the Prosecution is not put on  
17 notice that my colleague will be using pictures that are not on the list of evidence of the  
18 parties. That's the point.

19 MR KAUFMAN: Well, thank you, Mr MacDonald. I -- let's just leave it that it's a matter of  
20 public record. I think that Mr MacDonald is fairly familiar with these signs in his own home  
21 city. Anyway, so I should move on.

22 MR MACDONALD: And, again, it's based on your testimony that it's, you know, home city.  
23 My home city is not Quebec City, so my colleague is, again, making -- personalising the  
24 debate. It's not professional. He does not need to do that.

25 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Please proceed, Mr



1 Kaufman.

2 MR KAUFMAN: So the regrettable and wildly accepted assumption that this particular  
3 speech at the Baron Bar led to a spontaneous -- or led to the spontaneous erection of  
4 checkpoints throughout Abidjan and violence, in my submission, is a distortion of the truth.  
5 Now, as far as I'm concerned, the blame for this fully lies at the door of Amnesty  
6 International and one completely unsubstantiated sentence written in its report  
7 entitled "They looked at his identity card and they shot him dead."

8 Now, in my opinion, the bombastic title of this report hardly suggests academic  
9 objectivity, but rather emotive sensationalism. And the sentence, which has founded  
10 the Prosecution's obsession with the events in the days following 25 February reads as  
11 follows: "The violence carried out by these militias increased sharply after Charles  
12 Blé Goudé, leader of the Young Patriots, made a speech at a bar in Yopougon (Baron  
13 Bar) on 25 February 2011."

14 Now, I ask myself what is the basis for this assertion that violence increased sharply?  
15 There is no proper empirical support for this one-line allegation, and what I mean by  
16 "proper empirical support" is an examination of the number of checkpoints set up and  
17 lynchings carried out before and after the speech in question.

18 Have we been provided with any proper data on this matter? All one has is the  
19 Prosecution's document containing the charges and the NGO reports which  
20 enumerate the incidents which are of interest to them, but are by no means  
21 representative of all.

22 It is most misleading to assert that these barricades sprung up as a result of Mr Blé Goudé's  
23 speech at the Baron Bar on 25 February 2011, or that Mr Blé Goudé was, as the Prosecution  
24 puts it, at paragraph 160 of the document containing the charges, l'initiateur des barrages.

25 Let me refer you to witness statements -- witness statements on which the Prosecutor

1 relied on the Gbagbo case. Witness 297, who stated as follows: (Interpretation)

2 "The roadblocks by the invisible commando started when the supporters of Alassane  
3 Ouattara marched to free the RTI after an appeal from Guillaume Soro."

4 This Prosecution witness also elaborated on how she had seen several barrage dotted  
5 about the city of Abidjan and the environs also controlled by the commando invisible.  
6 CIV-OTP-0041-0412, at 0420.

7 The Defence investigation reached similar conclusions, and I refer the learned  
8 Pre-Trial Chamber to Defence exhibit CIV-D15, this is the Gbagbo Defence, 0001-0019,  
9 which talks about pro-Ouattara barricades set up on 13 January 2011 and  
10 therefore -- thereafter on 20 January 2011 at principal highways linking Yopougon to  
11 Plateau. That's to be found also in a Prosecution exhibit CIV-OTP-0003-0438.

12 Other pro-Ouattara barricades set up on the 1 February, CIV-D25-0001-0935, as a result of the  
13 order of Mr Soro and Mr Ouattara to commit civil disobedience. This is all a month to three  
14 weeks before the Baron Bar speech.

15 Similarly, at Defence exhibit CIV-D25-0001-0937, this talks about street blockades  
16 complete with burning tyres being set up at the Koumassi and Treichville areas on 24  
17 February 2011, once again by pro-Ouattara supporters. And the same again on 25  
18 February 2011 in Yamoussoukro, CIV-D25-0001, and I will have to get you the extra  
19 digits at a later stage.

20 In fact, barricades at Koumassi, according to the highly placed prosecution Witness  
21 Number 9, was quite a regular occurrence, CIV-OTP-0006-0112 at 0122.

22 The list goes on: In fact, if I really had to do it, I'm pretty sure that I could find more  
23 examples of barricade activity arising out of the so-called Soro/Ouattara call for civil  
24 disobedience than out of the Blé Goudé Baron Bar speech, something which has not  
25 been proved.

1 So let us now examine Mr Soro's entreaties and exhortations to civil disobedience and  
2 compare what he said to what Mr Blé Goudé said. And in this respect, I refer you to  
3 CIV-D25-0001-0923. Let me give you a few choice quotes from Mr Soro.

4 (Interpretation) "On 21 February, that will be the revolution. It is up to Ivorians to  
5 mobilise themselves."

6 I think we've heard someone else use those words. I wouldn't suggest that these  
7 words mean anything -- this -- the very word "mobiliser" means "commit acts of  
8 violence."

9 And then Mr Soro continues: (Interpretation) "The head of state arrives here. It is  
10 a good thing for us, but it will be up to the people of Côte d'Ivoire from the 21st to  
11 carry out their revolution like the Egyptians and Tunisians and God knows that they  
12 know how to do things well. They should show us palpable examples."

13 Yes, indeed, and let us just remember these palpable examples of revolution lauded  
14 so highly by Mr Soro. 300 people were murdered in the name of revolution in  
15 Tunisia and 846 in Egypt, Defence exhibit CIV-D25-0001-0964 and CIV-D25-0001-0963  
16 respectively.

17 And so Mr Soro goes on and on in a rather peripatetic and rambling discourse.

18 (Interpretation) "The West African Cooperation Union has recommended legitimate  
19 force, and we are perfectly in agreement to use legitimate force. It will not be the  
20 first time this organisation used the same force in Sierra Leone. And today the  
21 people in Sierra Leone is in a democratic state. I am trying to struggle against the  
22 person confiscating power, but once again I say that the people of Côte d'Ivoire will  
23 carry out their revolution. They will provide themselves the resources to carry out  
24 the revolution just like Gbagbo gave themselves the resources for the -- for their  
25 resistance. Initially people continued going to the houses to kill people, and they

1 ended up seizing two Kalashnikovs from the policemen. With those to Kalashnikovs  
2 they are managing fairly well. If the people of Côte d'Ivoire give themselves the  
3 resources to carry out their revolution, they will carry out that revolution."

4 So there you have it on the face of it, crystal clear, it was Mr Soro who was actively  
5 advocating the use of violence, not Mr Blé Goudé. It seems to me that the wrong  
6 person is sitting behind the two security officials at the back of these benches. So let  
7 us hope that when Ms Bensouda continues her investigations and concludes them the  
8 real culprits for violence in Côte d'Ivoire will be sitting in court today.

9 So let us now examine the evidence which pertains to the crimes allegedly committed  
10 on 25 February including the burning of Doukouré mosque.

11 At paragraph 157 of the document containing the charges, the Prosecution eludes to  
12 Mr Blé Goudé's personal involvement, arriving as it were like Napoleon to survey his troops  
13 before the battle in a 4X4 vehicle at the Police Commissariat of the 16th arrondissement.  
14 The witness on who the Prosecution relies is Witness 433, who reports this fact as a matter of  
15 hearsay, namely, something that he heard from Witness 436. Witness 436 admits, however,  
16 that he never even saw Mr Blé Goudé on the day in question, merely assuming that he was  
17 present because the assembled crowd was shouting "Général, Général."

18 Well, whether he was a général or wasn't a général in the popular conscience, they  
19 were proper generals in the country and they were extremely popular as well, as we  
20 know. The Prosecution showed you a video involving General Mangou, a very  
21 popular general.

22 Exactly the same thing was said by Witness 447, and it has no corroborating value,  
23 because the substance of his evidence itself, namely, the fact that he heard the people  
24 shouting "Général, Général" is insufficient to place Mr Blé Goudé at the  
25 Commissariat.

1 In fact, I place a serious question mark over the impartiality of both this witness and  
2 Witness 436, all of whom were apparently interviewed or met by members of the  
3 OPCV, the Common Legal Representative.

4 And more importantly, self-admittedly, they are pro-Ouattara political activists in the  
5 RDR party with Witness 447 apparently acting as the intermediary with the victims'  
6 representative. No doubt happy to recruit other like-minded people wanting to  
7 implicate Mr Blé Goudé on the basis of pernicious speculation.

8 Witness 436 in any event is the most incredible liar. At paragraph 43 of his witness  
9 statement he talks about seeing Mr Blé Goudé on television on the day of the so-called  
10 enlistment speech dressed in military fatigues, brandishing a Kalashnikov, as it were,  
11 in the air.

12 I wrote a letter to Mr MacDonald, and he will not deny this, that no, the Prosecution  
13 do not have in their possession any video recording or something from the television  
14 showing Mr Blé Goudé wearing military fatigues and holding a Kalashnikov. And I  
15 can assure you if there was something like that, then it would have been produced at  
16 the very first opportunity.

17 As for Witness 447, perhaps one of the few truthful aspects of his evidence is the fact  
18 that he actually confesses at paragraph 68 of his statement to setting up a barricade  
19 with Witness 433 and Witness 436 in order to prevent the local police from entering  
20 the Doukouré neighbourhood. In other words, he and his friends engaged in a  
21 mutual exchange of thrown projectiles with the security services.

22 The witnesses state that they even went so far as to knock down the very walls of  
23 their own Doukouré mosque in order to reinforce their arsenal of rocks,

24 CIV-OTP-0058-0488 at 0504. It will thus be appreciated that the grand mosque in

25 Doukouré was effectively turned into a battleground with Witness 447 and his friends

1 conducting their spirited defence from within the precincts of this very sacred  
2 establishment.

3 According to Witness 447, the police eventually replied to their onslaught of rocks by lobbing  
4 a grenade into the mosque itself which caused the prayer mats to catch fire. Now, we have  
5 no evidence as to what type of grenade was thrown into the mosque. I know what grenades  
6 are all about. There are different types of grenades. There are smoke grenades. There are  
7 stun grenades. There are fragmentation grenades. But no evidence in the Prosecution's  
8 case file as to what type of grenade was lobbed into the mosque if it was indeed the grenade  
9 that caused the mosque to catch fire.

10 According to Witness 442, on whose evidence the Prosecution also relies, however, it  
11 was a BAE vehicle, a tank, which shot something at the roof of the mosque,  
12 CIV-OTP-0062-0860 at 0869.

13 One of the most senior officials interviewed by the Prosecution and best placed to  
14 know the acts of the various security forces in Abidjan, Witness 46 indeed admitted  
15 that it was the gendarmerie which was most likely responsible for the fire in the  
16 mosque, CIV-OTP-0014-0479 at 0503.

17 Nothing in the three witness statements -- the three witnesses' statements however  
18 gives substantial grounds to believe that the burning of the mosque was a deliberate  
19 act of arson or racist pyromania as opposed to collateral damage committed without  
20 the requisite criminal intent.

21 In any event, blame for the deaths occasioned in the immediate aftermath of the fire at  
22 the mosque most likely lies at the door of someone else. Now, here I want to preface  
23 something. Mr Blé Goudé insists on one thing. He is present here today because  
24 the Prosecution have filed a case against him. And he does not believe in defending  
25 himself by accusing others. He wants to make that very clear. And when I make

1 these comments, it's because I'm relying on the Prosecution evidence alone, not  
2 because Mr Blé Goudé has instructed me to do this.

3 And according to the Prosecution's evidence alone, Prosecution's evidence, Maguy le  
4 Tocard, the militia leader with an agenda of his own, as determined in the United  
5 Nations report on human rights abuses in the Abidjan district, was present there that  
6 day and most likely responsible. The citation is CIV-OTP-0044-0392 at 0416.

7 You will note that at the relevant section United Nations human rights report  
8 includes the very same story given by Witness 436 and 447 concerning the Mosque  
9 Guardian and the gris-gris amulet discovered on his person which led him to be  
10 lynched and burned to death.

11 Let me quote from that UN report if I may: (Interpretation) "On Friday, 25 February 2011  
12 at around 13 hours, a hundred militia headed by Maguy le Tocard, the militia leader, bearing  
13 Kalashnikovs and automatic firearms, clubs and machetes, as well as tens of others invaded  
14 the Yopougon mosque and intercepted Cissé Moussa, the watchman of the mosque. As they  
15 searched him they found a small amulet which was used for his protection. That was the  
16 excuse for him to be clubbed to death and burnt alive. A total of 11 persons were killed by  
17 the militia during that attack. The militia leader Maguy le Tocard and his band had  
18 previously announced that they were going to finish off the Muslims in Dioula on that day."  
19 Mr Blé Goudé is not connected in any way whatsoever to Maguy le Tocard. We  
20 have not heard any evidence as to that.

21 Maguy le Tocard's presence in the vicinity of the 16th arrondissement at the relevant  
22 time is corroborated by the testimony of a fire brigade officer interviewed by the  
23 Gbagbo Defence. CIV-D15-0001-5461.

24 And, and by Prosecution Witness 109 who goes so far as to say that Maguy le Tocard had  
25 even set up his headquarters in the commissariat itself. CIV-OTP-0020-0335, at 0364.

1 This was also confirmed by an official who was in the position to know the truth of  
2 such an assertion, Witness 440, who we've already mentioned, (Redacted)  
3 (Redacted) and who added that Maguy le Tocard had put his forces at the  
4 disposal of the local commissariat. CIV-OTP-0062-0212, at 217.

5 Now, Maguy le Tocard since deceased, so some people say made diseased, was  
6 interviewed by human rights officers attached to the United Nations. And while not  
7 denying the presence of his militia in the 16th arrondissement, put the blame on  
8 various residents who had acquired knowledge as he had apparently from the Imam  
9 himself that the mosque was being used to store munitions. CIV-OTP-0053-0227, at  
10 0278.

11 Nevertheless, with rather shocking candour and without a hint of remorse, he added,  
12 and I quote in French, (Interpretation) "Well, I, as soon as a weapon was found in a  
13 mosque" -- CIV-OTP-0053-0280.

14 Quite an astounding confession, which is corroborated by Witness 435. Incidentally,  
15 when questioned by the United Nations as to Mr Blé Goudé's role in the crisis, he  
16 flatly denied that Mr Blé Goudé had ever distributed weapons. And who better than  
17 him to know?

18 To conclude, despite Witness 433, 436 and 447's desire to pinpoint Mr Blé Goudé's  
19 presence in the vicinity of the Doukouré mosque on the day in question, the burning  
20 of this mosque was carried out by other elements.

21 The events of 26, 27 and 28 February 2011, attributed to pro-Gbagbo youth,  
22 mentioned in paragraphs 158 and 159 of the document containing the charges, in my  
23 submission, are pure hearsay and merely statistics cited in NGO reports.  
24 That concludes my presentation on the second incident. I shall now turn to the third  
25 incident.



1 So the third incident being the attack on the woman's demonstration in Abobo on 3  
2 March 2011.

3 Here, once again, I refer to the Gbagbo confirmation decision and, in particular, to paragraph  
4 45 where the Pre-Trial Chamber specifically found that it was FDS troops that opened fire on  
5 the demonstrators and that there was no youth involvement.

6 It should be stressed that of those who testified concerning this incident and were  
7 relied upon by the Pre-Trial Chamber in its former composition, Witnesses 106, 107  
8 and 112, they did not see the incident with their own eyes.

9 All of these witnesses nevertheless, including Witness 172, reported having heard  
10 heavy gun fire which would corroborate the fact that a tank of some sort was  
11 involved in the incident.

12 Indeed, the injuries sustained by the victims can clearly be seen in the video to be  
13 found at CIV-OTP-0042-0587 and are consistent with shrapnel from heavy weapon  
14 fire.

15 Witness 117, also not a witness to the actual discharge of the weapon involved, noted  
16 that she saw a military convoy leaving Camp Commando in the direction of Abobo  
17 town hall. I shan't cite from her evidence, but it's to be found at paragraph 157,  
18 0020-0033.

19 The presence of a tank in a military convoy was witnessed by Witness 189, Witness  
20 293 and Witness 184, the latter of who was herself a victim of this attack and  
21 fortunately managed to survive.

22 The nature of this tank and the identity of the forces involved was described in more  
23 detail by Witness 217. Once again, I shan't cite from the evidence because I want to  
24 save time.

25 Now, I'm fully aware that a couple of witnesses, Witness 10 and Witness 46,

1 specifically gave evidence about a high-level meeting which took place in the  
2 immediate aftermath of this incident. Although near of these witnesses were able or  
3 prepared to shed light on the exact identity of those responsible for the attack, they  
4 did nevertheless appear to hint at the involvement of one unit or another of the FDS.  
5 Now, I would beg the Chamber's forgiveness if my coverage of the evidence relating  
6 to this instance has been rather superfluous. Nevertheless, I do think that it is  
7 important to stress that not one of the witnesses cited by the Pre-Trial Chamber in the  
8 Gbagbo confirmation decision mentions the involvement of jeunes patriotes. This  
9 was an attack which, even according to the Prosecution, was carried out only by  
10 forces belonging to the FDS.

11 The Defence investigated this incident with one of the individuals who was in the  
12 hierarchy of the police nationale, and this is what he had to say, and I cite to  
13 CIV-D25-0001-0849, at paragraph 69. (Interpretation) "During the crisis, Cema  
14 asked me to send some BAE troops to General Deto in order for them to assemble at  
15 the Agban gendarmerie camp. They were no longer under my command. So if by  
16 chance some of those BAE troops were present at the women's demonstration, they  
17 were no longer under my control."

18 In fact, the only specific allegation that the Prosecution alleges or levels against  
19 Mr Blé Goudé in connection with this incident is a comment which he made on 23  
20 March 2011, where, so the Prosecution alleges, he denied the FDS's involvement in the  
21 attack. So let us examine for a moment what Mr Blé Goudé actually said and I will  
22 quote. It's to be found at CIV-OTP-0063-2928, at 2935.

23 And I quote from Mr Blé Goudé: (Interpretation) "Do you understand? Do you  
24 understand the desire that before information is given, it should be crosschecked.  
25 How can it be said to the media that there was a demonstration in Abobo but that

1 Gbagbo's army, the FDS, killed seven women? Whereas some 24-to-48 hours before  
2 the same media was reporting that Abobo was under rebel control or the control of  
3 the rebels. So if Abobo is under the control of the rebels and families are dead..."

4 Now, let me make it clear the Blé Goudé Defence is not, not going to argue that the  
5 incident was staged or that the images viewed on television were a montage. We  
6 have sufficient respect for those who were tragically killed that we will not insult  
7 their memory in such a fashion.

8 These comments, however, of Mr Blé Goudé were made in the wake of intense public  
9 debate over the identity of those responsible. So even if these comments could be  
10 interpreted as a denial, as mistaken as they may appear with the benefit of hindsight,  
11 they cannot and should not be seen as approval ex post facto of what happened.

12 Indeed, it is only now, with the benefit of an exhaustive ICC investigation, and the  
13 Gbagbo confirmation decision, that the Prosecution is able to say who it really  
14 believes is responsible for this incident. Perhaps we should not be so harsh in  
15 judging Mr Blé Goudé for jumping on the bandwagon of those who believe otherwise  
16 when the information, as it was emanating contemporaneously from the military  
17 hierarchy, was not so clear.

18 Let me also add that even if these comments made three weeks after the incident  
19 could be interpreted as tacit endorsement, which they cannot, that would not make  
20 Mr Blé Goudé liable as an indirect co-perpetrator. Being the spin doctor that he was,  
21 I rather think they Mr Blé Goudé was commenting on what he believed to be the  
22 hypocrisy of the opposition's media outlets.

23 That concludes the presentation of the third incident. I now move to the fourth  
24 incident.

25 Count 4 -- or incident 4, sorry, the bombing of Abobo market. Once again, I fail to

1 see how it is possible to impute liability to Mr Blé Goudé for an attack which  
2 according to the previous findings of the Pre-Trial Chamber was purely military in  
3 nature and involved no mercenaries or militia, let alone juvenes pro-Gbagbo.  
4 Personally, I do not subscribe to the version of events proffered by the Gbagbo Defence, one  
5 of which being that the destructive fire originated from rebel positions. The evidence for this  
6 incident is clear and was succinctly analysed by the Pre-Trial Chamber in paragraphs 52 to 64  
7 of the Gbagbo confirmation decision.  
8 So let me clarify: I don't challenge the number of deaths, nor do I, for the sake of these  
9 proceedings, deny, and I say, for the sake of these proceedings, do I deny that the  
10 destructive shells were fired from FDS placements in Camp Commando. I do  
11 however strenuously deny that this was an attack which targeted the civilian  
12 population per se, and here I would respectfully beg the Pre-Trial Chamber to  
13 reexamine the evidence.  
14 Please bear in mind that on this account the Prosecution alleges inter alia murder as a  
15 crime against humanity. Accordingly, it is necessary to show that the perpetrators  
16 who fired the shells acted with a criminal state of mind, namely with the requisite  
17 intent and knowledge.  
18 Now, we know who fired these shells. According to the very witnesses on which the  
19 learned Pre-Trial Chamber relied, in order to determine that air artillery unit BASA  
20 was responsible for the shelling, two soldiers by the name of Brice and Pegard were  
21 handling the mortars on the day in question. In fact, according to Witness 164,  
22 whose relations were actually killed at the market, Brice and Pegard has  
23 miscalculated when targeting their weapons - CIV-OTP-0037-0425 at 0443 - and failed  
24 to achieve what was in effect a true military objective, namely, the junction in front of  
25 the Abobo town hall.

1 This military objective needs to be examined in light of the Pre-Trial Chamber's  
2 various findings with respect to the security situation -- the contemporaneous security  
3 situation in Abobo.

4 At paragraphs 62 and 172 of the Gbagbo confirmation decision for example, the Pre-Trial  
5 Chamber recognised that there were indeed organised resistance groups in Abobo.

6 At paragraph 155 of the same decision, the Pre-Trial Chamber in its former  
7 composition also held that a week prior to the market attack, President Laurent  
8 Gbagbo had conducted a high-level meeting in the course of which it was debated  
9 whether Abobo should be declared a zone de guerre, and orders were given to  
10 liberate the axis Abengourou-MACA.

11 President Gbagbo asked the FDS to do everything in its power to recover Abobo and  
12 to normalise the security situation.

13 There is no evidence, needless to say, to show that Mr Blé Goudé was a party to any  
14 aspect of this military planning.

15 Nevertheless, the acts and the deeds of Brice and Pegard, who were most likely  
16 responsible for the shelling incident, were performed in the context of a pre-ordained  
17 military operation.

18 The fact that this military objective was obtained by the use of inappropriately  
19 stationed mortars firing into an -- into an urban environment may very well be  
20 criticised, but this is an issue of military distinction and proportionality.

21 Let us remember that Mr Blé Goudé is not charged with a war crime of targeting a  
22 civilian population in a non-proportionate manner. He's charged with a crime  
23 against humanity of murder.

24 In fact, it is difficult to conceive how his individual responsibility is actually engaged  
25 for an incident which he neither planned nor instigated nor facilitated. What piece

1 of evidence has the Prosecutor produced which can even show that Mr Blé Goudé  
2 was aware of the facts which precipitated this shelling incident?

3 As it would most likely appear, the shells were fired in the same trajectory as the  
4 intended military target but, by tragic mistake, fell short and landed on a purely  
5 civilian installation.

6 Now, I don't wish to make too much of a discourse on this, but shells when they're fired,  
7 mortar shells, normally are preceded by a ranging shot, and when you use a mortar in order  
8 to fire a shell, you might very well criticise the use of a mortar and shell in an urban  
9 environment, but in order to use it properly, you have to first of all fire a ranging shot which  
10 might very well, as tragic as it might seem, end of killing somebody. That is the way that  
11 mortars and shells are used. That is the proper way of using mortar and shells in a conflict  
12 situation. But once again, we're not in the context of violations of the laws of war. We're  
13 talking about crimes against humanity.

14 So fired in the same trajectory but falling short and landing on a purely civilian  
15 installation. In this respect, let me quote from the summary of an interview with  
16 Witness 239 interviewed by the Prosecution, CIV-OTP-0038-0002, at paragraph 136.

17 And I quote: (Interpretation) "Regarding the shelling of the Abobo market, the witness  
18 recalls that it is Brice and Pegard who were responsible. Brice and Pegard fired the 120  
19 millimetre shell to disperse or to disperse people at the outlet of Abobo, but they  
20 miscalculated and the shell fell in the market."

21 This was further explained in the full witness statement which he gave to the  
22 Prosecution, CIV-OTP-0037-0425.

23 And this was also corroborated by another BASA soldier present on the same day and  
24 interviewed by the Prosecution, Witness 234, and I quote from him once again to show the  
25 pure military context of this and why we are arguing that there was no criminal intent:

1 (Interpretation) "My personal opinion is that on that day, since they were unable to access or  
2 penetrate Abobo because of the security situation there, they definitely stopped somewhere  
3 and fired the shell after assessing the distance. I do not know where they were positioned.  
4 You see, they could have stopped at any location and loaded the shell and all of that can be  
5 done within two minutes."

6 So I very respectfully dissent from the finding of the majority of the Pre-Trial  
7 Chamber in its former composition. Once again, in my respectful opinion, the  
8 Prosecution has not provided you with substantial grounds to believe that this was  
9 deliberate targeting of civilians by virtue of them being civilians as opposed to a  
10 botched military enterprise.

11 And let me stress negligence cannot serve as criminal intent. The fact that the chief  
12 of operations at Camp Abobo was relieved of his post because he disagreed with the  
13 positioning of the mortars is relevant only insofar as it attributes a callous disregard  
14 for the principle of military distinction to those who endorsed the positioning. But  
15 even bearing this in mind, the onus is still on the Prosecution to show that the three  
16 cumulative conditions are satisfied -- the following three cumulative conditions are  
17 satisfied:

18 Firstly, that Brice and Pegard were aware of the fact that mortars were  
19 inappropriately positioned.

20 Secondly, that Brice and Pegard were aware this inappropriate positioning would  
21 lead to the deaths of civilians, let's take the test proffered by the Prosecution in  
22 ordinary course of events.

23 And thirdly, yet most importantly, that Brice and Pegard intended or wanted civilians  
24 to die.

25 There is no evidence in support of the third aspect of this test. Brice and Pegard

1 claimed that they were acting on orders from their immediate superior, a man by the  
2 name of Gnawa, who himself denied giving the order. All of this arises out of the  
3 criminal proceedings which were conducted in the military tribunal in Abidjan. In  
4 any event, we have stretched far, far away from Mr Blé Goudé's possible involvement  
5 in this incident.

6 So let me conclude by stating that the Abobo market bombing was a tragic affair, but it was  
7 certainly not intentionally criminal.

8 We now come to incident number 5, the attacks perpetrated in Yopougon on or about  
9 12 April 2011, 11th, 12th.

10 Now, here we do dispute the number of deaths and I will come to that later, but the  
11 Defence case is very simple and has been announced to you well in advance by the  
12 Prosecution and by us.

13 Mr Blé Goudé has an alibi. He simply left Côte d'Ivoire almost a fortnight earlier. The  
14 document containing the charges mentions of course the fact that a motley mix of militiamen,  
15 mercenaries and of course jeunes pro-Gbagbo carried out the attacks.

16 But let us recall how the Prosecution attributed Laurent Gbagbo liability for this  
17 incident.

18 And I refer the Pre-Trial Chamber to paragraph 125 of the Prosecution's  
19 post-confirmation submissions where it argued that right up to his arrest on 11  
20 April 2011, there was clear evidence of Mr Gbagbo directing the pro-Gbagbo forces.  
21 The Prosecution in particular referred to a communiqué disseminated via email on 9  
22 April in which Mr Gbagbo incited the people at large to continue the resistance and  
23 the population to stay resolute in its fight for revolution.

24 For Mr Blé Goudé, however, the last communication attributed to him is a videotaped  
25 discourse circulated on or around 6 April 2011. That at any rate is what the



1 Prosecution put in the metadata associated with the video of this speech, and it's to be  
2 found at CIV-OTP-0047-0604.

3 Now, I suggest that this speech was actually filmed a lot earlier. In the video  
4 Mr Blé Goudé looks plainly dishevelled, rather down at heel. He was living it rough  
5 on the road, as it were, on his way to Ghana or already in Ghana. Examination of  
6 the speech itself suggests that Mr Ouattara's forces, the FRCE, were at the gates of  
7 Abidjan, but yet to enter.

8 So that would place the speech at the last day or two of March 2011 at the very latest  
9 on the first day or two of April 2011.

10 So what was this speech? The speech where you can see Mr Blé Goudé in a black  
11 and white striped shirt. We've seen it a number of times from the Prosecution.

12 Well, it was a speech designed to boost morale and nothing more. I find it hard to  
13 connect this message, which was nothing more than support for a dying regime, to  
14 what happened in Yopougon.

15 It was a call to an invading -- to oppose an invading force. And how? Not with  
16 guns, not with violence, but through passivity, roadblocks and prayer.

17 That part of the speech the Prosecution didn't show you.

18 As distinct from Mr Gbagbo, Mr Blé Goudé was not the head of a fighting unit, and if  
19 he was, as the Prosecution alleges, such a wickedly violent militiaman, why did he  
20 urge his followers to stay at home, genuflect and supplicate the Lord Almighty?

21 That's what appears in that video, the bits that the Prosecution didn't show you.

22 We've heard all about the power of prayer, but surely this is going a bit too far.

23 How was this plea and others of its ilk capable of generating the bloodshed which  
24 took place on Yopougon on 12 April 2011? Are we supposed to believe that

25 Mr Blé Goudé is ultimately responsible for the Yopougon massacre having sowed, as

1 it were, like Jason the Argonaut, the dragon's teeth before he fled?

2 The learned President of this Pre-Trial Chamber found that Laurent Gbagbo's individual  
3 responsibility for the Yopougon attacks was engaged by virtue of him having stoked  
4 pre-existing intercommunity tensions.

5 The Chamber will no doubt be tempted to apply the same reasoning to Mr Blé Goudé.

6 I refer to paragraph 70 of the Gbagbo decision here. But I do confess, and I'm  
7 treading very carefully here, Madam President, with the utmost respect, that I do  
8 have a certain amount of difficulty with this argument.

9 Even if such intercommunity tensions existed, it is rather a big stretch of the  
10 imagination to argue that because Mr Blé Goudé's key speeches in January and March  
11 of 2011, he should have foreseen that intercommunity strife which existed despite him  
12 and not because of him would thereafter be exacerbated to the extent that in  
13 April 2011 people would be murdered and raped or that he should have foreseen that  
14 it would occur in the ordinary course of events.

15 It's an even bigger stretch of the imagination to suppose that these speeches reveal  
16 Mr Blé Goudé's true wish and desire that such atrocious acts should be committed.

17 The Pre-Trial Chamber in its former composition seemed to be hinting that Charles  
18 Blé Goudé's very decision to attend a couple of rallies in Yopougon as opposed to  
19 elsewhere was provocative in of itself, but I have news for you. Charles Blé Goudé  
20 grew up, studied and lived in Yopougon. We know where his house was thanks to  
21 Witness 226. His presence in Yopougon was not out of the ordinary. In fact, once  
22 he'd been nominated the Director of the National Election Campaign for the Youth, he  
23 was ironically less present in Yopougon but more out on the road making speeches  
24 throughout the whole of Côte d'Ivoire which, as we note, is a huge country.

25 Furthermore, let us not forget that the alleged common plan, the objective of which

1 was to keep Laurent Gbagbo in power at all costs, including if necessary by  
2 committing crimes against civilians, with that in mind let's remember that Mr Gbagbo  
3 at this stage was well and truly out of power and Mr Blé Goudé himself was already  
4 well and truly out of Côte d'Ivoire.

5 Even Human Rights Watch does not argue that the attacks took place in a desperate  
6 last attempt to retain power, asserting rather that they were motivated by revenge,  
7 and I quote, "Many of the killings that took place in the days after Gbagbo's arrest as a  
8 militiaman overtly sought retribution," end quote.

9 The same appears to be the conclusion of a human rights organisation closer to home,  
10 (Redacted) and I quote in

11 French, (Interpretation) "On 12 April 2011, when former president Gbagbo had been  
12 arrested, the militiamen came to my neighbourhood Sogefia and said that all the  
13 women had to be subjected to war because our brothers were the rebels and they  
14 were the ones who contributed to Gbagbo's arrest." That's CIV-OTP-0022-0042 at  
15 0047.

16 So here two things are worry of note: One, that the killings were more than likely  
17 committed in the context of overt retribution and not pursuant to the alleged common  
18 plan; and, two, that they were committed by militiamen and not youth.

19 The fact that militiamen principally bore the responsibility for these killings is  
20 something which the Defence has verified through its analysis of the applications for  
21 victim participation filed with the Court. I'm not going to trouble you with that now  
22 and in our written brief we will submit this information in tabular format.

23 The topic was also given special attention by Human Rights Watch, who in their  
24 report stated as follows: "Yopougon residents from both political parties said they  
25 had seen a few well-known militia leaders in and around the sub-neighbourhoods of

1 Yopougon where large numbers of killings occurred. Witnesses described  
2 repeatedly seeing militia leader Bah Dora in the area of Toit Rouge. Witnesses there  
3 described the involvement of militiamen under Bah's command in multiple killings of  
4 civilians from alleged pro-Ouattara groups. Several neighbourhood residents told  
5 Human Rights Watch that Bah was captured by the Republican Forces and held at the  
6 19 precinct police station."

7 According to Human Rights Watch as well: "Two witnesses also said they saw  
8 Maho Glofiéhi, a longtime militia leader from Western Côte d'Ivoire in Yopougon just  
9 before Gbagbo's arrest."

10 Now, once again, Mr Blé Goudé is not accusing anybody, but I rely on the  
11 Prosecution's evidence. Witness 109 was one of these witnesses and, according to  
12 him, a well-known militia leader, Maho Glofiéhi, had at the relevant time period  
13 taken up residence in the Hotel Assavnon and he was seen strutting about like a  
14 peacock smoking cigarettes on the balcony, dressed in military fatigues and  
15 fraternising with English-speaking Liberian mercenaries.

16 When this witness was attacked on 12 April 2011 he claims that his identity card was  
17 seized by a nondescript jeunes patriotes who he happened to recognise from the  
18 neighbourhood, but those who actually shot him and thus committed the criminal  
19 offence on his person were not patriots - jeunes patriotes - but rather militiamen, as he  
20 says dressed in black, and English speaking mercenaries, CIV-OTP-0020-0335 at 0367.

21 Now, you might very well ask yourself why Maho Glofiéhi of all people should  
22 suddenly turn up in Yopougon of all places when, according to the Prosecution and  
23 the evidence, his normal stomping ground was the west of Côte d'Ivoire. Well, a  
24 good question, but it has nothing to do with Mr Charles Blé Goudé.

25 As Witness 449 stated -- and he's a militiaman himself. He stated Maho Glofiéhi,

1 and I quote, (Interpretation) "... was not even part of General Charles Blé Goudé's  
2 circle and was not part of the Patriotic Galaxy, his movement, even."

3 CIV-OTP-0063-1377 at 1383.

4 So there you have it. The Prosecution's own witness says that there was no link  
5 between Mr Blé Goudé and this person Mr Maho Glofiéhi, who once again  
6 Mr Blé Goudé does not accuse of doing anything.

7 But I do however refer you to the register of visitors to the presidential residence of  
8 Cocody, recently disclosed by the Prosecutor. Mr Blé Goudé's supposed meetings  
9 are recorded here by -- well, supposed meetings on a one on one basis are supposedly  
10 recorded here. From examination of this register, one will note that Charles Blé  
11 Goudé hardly ever set foot in the place and, when he did, it was virtually only in the  
12 company of other members of the government cabinet. The last entry for  
13 Mr Blé Goudé was 14 March 2011, almost a month before these attacks took place.  
14 So before I conclude my submissions concerning the fifth incident, I do think it's  
15 important to stress that the Defence respectfully dissents from the Gbagbo decision  
16 which found that the number of mortalities sustained on or around 12 April 2011  
17 exceeded 68, while the Prosecutor argued that they exceeded 75.

18 We would submit that the communal grave discovered after the events in Yopougon  
19 is not a reliable means of assessing the body count.

20 In the Gbagbo case, it will be noted, the Pre-Trial Chamber relied uniquely on the  
21 evidence of Witness 109, thereby including the communal graves found in the  
22 Doukouré claims in the body count. Yet Witness 109 states that the number of  
23 corpses, which he personally helped to bury, totaled 28 plus a couple more in other  
24 graves. According to him, one of the victims was not killed but died of a heart  
25 attack.

1 Witness 185 also saw 17 corpses near the local market on 11 April 2011, but we have  
2 no way of knowing whether these 17 should be factored into the 28 which was seen  
3 by Witness 109. Of the 28 bodies, furthermore, it is by no means clear that these  
4 individuals even died as a result of an unlawful attack, or that each and every one of  
5 them were civilians.

6 So that concludes my examination of the incidents.

7 Now, I see that I have ten minutes left before the break, so I'm going to move on to a  
8 brief interlude and discuss the contextual elements of crimes against humanity as we  
9 believe they ought to be applied. I will take a sip of water.

10 So with respect to the contextual elements of crimes against humanity, I think it's  
11 important to recall the reason for which the Pre-Trial Chamber originally adjourned  
12 the confirmation proceedings in the Gbagbo case back in June 2013 and permitted the  
13 Prosecution to continue its investigations.

14 If I may refer the Pre-Trial Chamber to ICC-02/11-01/11-432, at paragraphs 21 and 22,  
15 it was held that even the incidents forming the basis for the contextual element of the  
16 attack had to be proved to the requisite standard of "substantial grounds to believe."

17 The Pre-Trial Chamber refused to rely merely on the hearsay evidence, whether it  
18 emanate from NGO reports or other unverifiable sources. Instead, at paragraph 44  
19 the Pre-Trial Chamber set out its expectations as to the sort of evidence required to  
20 substantiate the existence of an attack; namely including the identity of the exact  
21 sub-group of the pro-Gbagbo forces to which the physical perpetrators belonged,  
22 especially if different sub-groups were involved in the same incident.

23 We suggest that the Prosecution's evidence remains deficient in this very important  
24 respect, insofar as the nebulous terminology "jeunes patriotes" or "jeunes pro-Gbagbo"  
25 does not allow the Chamber sufficiently to identify the exact perpetrators of the 38

1 incidents on which the Prosecution relies as the basis for the contextual requirement  
2 of the attack.

3 In any event, the Defence will not deny that a number of acts of violence took place in  
4 Abidjan between November 2010 and April 2011. Yet, as we will later maintain,  
5 they were not of sufficient severity to meet the gravity threshold for the prosecution  
6 of the case at the International Criminal Court.

7 For the purpose of assessing, however, the existence of an attack and whether or not it  
8 was widespread, the Defence submits that the number of verifiable acts perpetrated  
9 against actual Ouattara supporters were not, as defined in the Bemba confirmation  
10 decision, either, and I quote, "massive or frequent."

11 Of course when it comes to numbers everything is indeed relative, but the very fact  
12 that the Prosecution alleges that there was an increase in violence after  
13 Mr Blé Goudé's speech on 25 February - which of course we deny - that would  
14 indicate that prior thereto the intensity of the generalised attack was very much less  
15 serious.

16 Furthermore, if we are to follow the Prosecution case theory to the letter, the attack  
17 neither encompassed the whole of Abidjan, but only those specific areas where  
18 perceived Ouattara supporters were presumed to reside; namely certain specific areas  
19 of Abobo and Yopougon.

20 To say that the aforementioned acts of violence constitute a systematic attack, insofar  
21 as they were not committed in a totally random fashion, well, I have two things to  
22 say:

23 One, we have an expression in English that just as "two swallows do not make a  
24 summer," sporadic criminal acts throughout a period of four or more months, more  
25 akin to sectarian violence, do not constitute a systematic pattern of conduct;

1 Two, I've always credited the OPCV as being the long arm of the Prosecutor, but here  
2 I'm going to give an apology. I do believe that they are now the short arm of the  
3 Defence.

4 Let me quote you what Ms Massidda said in her opening speech at the Gbagbo  
5 confirmation hearing, which confirms what I have just said. It's to be found at  
6 transcript 15, page 5, line 13:

7 "Once again ...", she said, "... the Prosecution choose only to rely on the attacks upon  
8 the Grand Bassam, Abobo and Williamsville mosques on 17 and 18 December 2010, as  
9 well as the Yopougon mosque on 22 February 2011, which does not reflect the  
10 systematic nature of events."

11 How right you were, Ms Massidda. Thank you very much.

12 So with respect to yet another contextual issue, the Defence contends that the  
13 Prosecution's identification of a group of individuals which it describes as "perceived  
14 Ouattara or perceived opposition supporters" cannot fulfil the chapeau requirement  
15 of a civilian population against which an attack could have been directed.

16 Now, we're aware that crimes against humanity may be committed against any  
17 civilian population but, in our submission, that civilian population must be readily  
18 identifiable, especially when, as in the present instance, the attack was not directed  
19 against the entire population of Côte d'Ivoire but, rather, against those civilians who  
20 were challenging the Gbagbo regime.

21 Now, here I must stress that I am not arguing that proof of discriminatory intent is a  
22 contextual requisite for crimes against humanity, contextual requisite. We will deal  
23 with the discriminatory intent as far as it concerns persecution in our written brief.

24 And if I'm not mistaken, this is indeed what seems to be implied in paragraph 209 of the  
25 Gbagbo confirmation decision. If one thinks about the matter logically, however, the



1 targeted population would need to have been conceptualised at the time the organisational  
2 policy was formulated.

3 Accordingly, a consensus would have had to have been reached as to the need to  
4 target a population or a part thereof and, furthermore, such population or part thereof  
5 would have been identified in sufficiently concrete fashion.

6 The architects of the organisational policy would not have left the identity of the  
7 targeted population to the potentially undisclosed discretion of each of those who  
8 executed the policy. So while it is arguably possible to target Ouattara supporters by  
9 virtue of party membership cards or the placards that they bear at demonstrations,  
10 how can one possibly defined, as I mentioned in my opening statement, a perceived  
11 Ouattara supporter?

12 As the Prosecution would have it, any person originating from the north of Côte d'Ivoire, or  
13 any person of the Muslim faith would fall within the category of a perceived Ouattara  
14 supporter. But this, as we have shown through our evidence, is plainly incorrect.

15 There were both northerners and Muslims among the leaders of the *galaxie*  
16 *patriotique*. Indeed, it's simply not possible to find that there was a policy to attack a  
17 population, the identity of which is so nebulous. Each and every architect of the  
18 policy would potentially have a different idea of how to perceive an opposition  
19 supporter.

20 To take the matter to a logical but not so ridiculous extreme, it might even be agreed  
21 that a supporter of the opposition could be perceived by the colour of the shirt that he  
22 wears. Of course, the reason why the Prosecution requires two categories of  
23 targeted population, namely, actual opposition supporters and perceived opposition  
24 supporters is obvious.

25 While the first and third incidents, namely, the attacks on the RTI march of 16

1 December 2010 and the woman's demonstration of 3 March 2011, plainly targeted  
2 placard bearing opposition supporters, the same is not the case for the second, fourth  
3 and fifth incidents, the targets of which were geographical locations, neighbourhoods.  
4 Indeed, it is not reasonable to believe that the perpetrators of the violence in these  
5 neighbourhoods ask their victims what their political views were before they attacked  
6 them. Nor is there any evidence to suggest that in formulating the organisational  
7 policy, its architects envisaged an attack on perceived Ouattara supporters, even if it  
8 is accepted that a policy to attack actual Ouattara supporters per se was  
9 conceptualised.

10 So mindful of the time, and two minutes to go, to summarise this particular issue:

11 The Blé Goudé Defence suggests that when only part of a civilian population is  
12 targeted, then the identity of that part cannot be left to the subjective determination of  
13 those charged with executing the organisational policy but must be objectively and  
14 readily identifiable.

15 Indeed, the more nebulous and subjective the identity of the targeted population is,  
16 the less likely it can be held that there was a direct -- distinct, sorry, distinct policy or  
17 even a meeting of minds for a common plan or common purpose under Articles  
18 25(3)(a) and 25(3)(d).

19 Finally, we dispute that Mr Blé Goudé was part of an organisation which formulated  
20 a policy to attack civilians. I shall, however, deal with this matter after the break  
21 when I come to discuss the nature of Mr Blé Goudé's contribution to the so-called  
22 plan or, rather, his lack of contribution to such a scheme which we submit never  
23 existed. Thank you.

24 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Merci.

25 THE COURT USHER: All rise.

1 (Recess taken at 10.59 a.m.)

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

3 THE COURT USHER: All rise.

4 Please be seated.

5 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) We are going to  
6 continue with the Defence presentation.

7 Mr Kaufman, please proceed.

8 MR KAUFMAN: Thank you, Madam President, your Honours. I see that I have  
9 approximately one hour left at my disposal, and I do think that I will be able to conclude all in  
10 that period of time.

11 So now I turn to Mr Blé Goudé's contribution. And it will be noted that a  
12 considerable part of the Prosecution case is devoted to the contribution by way of  
13 making speeches at the rallies and the very mass assemblies that took place. And we  
14 do have transcripts of some of these speeches available for you, and I think that they  
15 pretty much speak for themselves. But I would caution you before you rely on the  
16 Prosecution's interpretation of these speeches, frequently, I would say, they are taken  
17 out of context. In some instances they are even partially transcribed with the parts  
18 supporting the Prosecution's case theory left cited in the document containing  
19 charges.

20 Let me give you a good example to be found at paragraph 139 of that very same  
21 document containing the charges, and I quote:

22 (Interpretation) "Between the 14 and 19 December, Charles Blé Goudé made a  
23 speech to the Young Patriots as a 100 percent or full-fledged general and a  
24 full-fledged minister and called them to mobilise particularly in Port Bouet on the 19  
25 December 2010."

1 My apologies to the interpreters for going straight into French without breaking.

2 Now, if one looks at the reference cited in support of this quote, CIV-OTP-0003-0551,  
3 it is a newspaper article, and I will quote it for you in full, and then you will realise  
4 why the Prosecution is not correct when it wants you to believe that this supports a  
5 call to arms, and I quote, going back into French:

6 (Interpretation) "First of all, General Blé Goudé stated that he was in Yopougon, not  
7 as a member of government, but in his capacity as the leader of the Patriotic Youth of  
8 Côte D'Ivoire. 'I did in fact say that I was a full-fledged general and a full-fledged  
9 minister, in other words, 100 percent.' That is what he said.

10 Secondly, the general, as the young people who had gathered in their numbers to  
11 raise up their two hands in order to show that they were not carrying any weapons,  
12 there were no firearms and no edged weapons, this was a message to the French  
13 President Nicolas Sarkozy, that contrary to RHDP, which organised so-called peaceful  
14 demonstrations with Kalashnikovs, rocket-launchers and other edged weapons, he,  
15 Charles Blé Goudé, was carrying out patriotic resistance without weapons.

16 Thirdly, Blé Goudé stated clearly that he would never ask Ivorian patriots to attack  
17 the staff of ONUCI or the property of the United Nations in Côte d'Ivoire, nor would  
18 he ever ask the young people of Côte d'Ivoire to attack the French citizens living in  
19 Côte d'Ivoire or their property."

20 This is Charles Blé Goudé's message. And I know that the Prosecution cannot find  
21 one speech to the contrary, because if it could, it would have cited it instead of  
22 partially citing his speeches, hiding their exonerating content, seeking to extrapolate  
23 so-called mot d'ordres or commands from non-existent codes.

24 We really have reached the realm of Orwellian doublespeak if white has become  
25 black and a televised exhortation to peaceful resistance has become a command for

1 bloodshed and slaughter.

2 Let me give you one more example of how I submit the Prosecution has tried to  
3 swindle us into believing that Charles Blé Goudé was fomenting violence merely by  
4 distorting the true meaning of his words.

5 Once again in paragraph 139 of the document containing the charges, the Prosecution  
6 states, and I quote in French:

7 "On 21 December, Blé Goudé mentions the imminent final assault for the total  
8 liberation of Côte d'Ivoire," end of quote.

9 Now, it sounds pretty menacing on the face of it. Nevertheless, if we actually look at  
10 the evidence cited in support, CIV-OTP-0052-0653 at 0665 in its entirety, not as  
11 selectively produced by the Prosecution, we will see what Mr Blé Goudé actually  
12 meant by "liberation." In effect he was encouraging those people who prided  
13 themselves in Côte d'Ivoire not to shelter themselves at home, but to liberate  
14 themselves from fear, to venture out and to carry on business as usual, and I quote:  
15 (Interpretation) "Dear friends of Koumassi, I have come here and I spoke to you.  
16 For those who go to work and who are there today, who answered our call, I would  
17 like to tell you once again to go about your business. Go about your business.  
18 Open your shops. Open your stores."

19 Now, the tone of the speech is indeed forthright. It is directed against the French  
20 military and even, may I say it, aggressively so.

21 Charles Blé Goudé, and it's his right, viewed them as occupiers and meddling in  
22 affairs not their own, but putting aside the anti-colonialism, there is no incitement to  
23 violence here. And who will fault a man for exercising his right to free speech even  
24 if you do not like what he has to say? Once again in the very same speech which the  
25 Prosecution produces, in order to show that Blé Goudé was a nasty warmonger, she

1 neglects to mention the following passage, and I return to French:

2 (Interpretation) "It is for this reason that I say to you, you the young Ivorian, why  
3 are you looking for a kalach? Why are you looking for a stone? Why are you  
4 bothering yourself? Why do you doubt, whereas you have the sun with you? Why?  
5 Whereas you have the moon with you. You are looking for stars elsewhere. Why?  
6 Because you have God with you. You have nothing to fear. You have nothing to  
7 fear. You have nothing to fear."

8 I just apologise for not being able to make the gesticulations with my arms, as  
9 Mr Blé Goudé would do it, but I think you get the message.

10 And if that was not clear enough let me cite you this quotation too, also taken from  
11 the same speech of 21 December 2010:

12 (Interpretation) "You came along with tanks and helicopters. We came just the  
13 way we are. Just the way we are. And in front of the whole world we have shown  
14 you strength. We have demonstrated to you the power of non-violence."

15 So now let me turn to the famous rally held on 19 March 2011, the so-called  
16 enlistment rally. Now, we've heard so much about the famous call for enlistment  
17 broadcast so publicly on television. The reasons for this public appeal I will address  
18 later, but the most important question we need to ask ourselves is whether this  
19 grandiose gesture actually had any practical effect. If I'm not mistaken, a member of  
20 the Prosecution yesterday said that it didn't have any practical effect. I will tell you  
21 later who that was, but in one of the submissions I distinctly heard it.

22 But if you were to ask some of the highest-ranking military personnel interviewed by  
23 the Office of the Prosecutor, the answer would appear to be in the negative. It had  
24 no practical effect.

25 Witness 47 learned about the event from official military sources -- not from official

1 military sources, but from the television. And despite his seniority, he does not  
2 know how many were enlisted and could only hazard a guess and state that perhaps  
3 there were a few who at some later stage might have been given training and sent off  
4 to Yamoussoukro or to the west of the country. CIV-OTP-0015-0323 at 0335.

5 In any event, these recruits, if they were recruited, had no role in the alleged crime  
6 base in Abidjan, which is the subject matter of this case.

7 The person who should have been in the best position to know, in fact the most senior  
8 person interviewed by the Prosecutor, Witness number 9, states that he was not even  
9 consulted in advance about this call for enlistment, learning about it, just like Witness  
10 47 on the evening news bulletin. When questioned about the matter, Mr Blé Goudé  
11 allegedly told Witness 9 that he knew that the army was short of weapons and  
12 ammunition, so all he wanted to do was to facilitate a big theatrical display of  
13 enlistment so as to frighten the so-called enemy. All of this exchange took place over  
14 the telephone whilst Witness 9 had his feet up in front of the television.

15 According to Witness 9, a large number of youth arrived at the etat major on the  
16 following day -- it was Monday -- on the following Monday morning, I apologise, 21  
17 March 2011, as did Mr Blé Goudé himself bright and early at 9 o'clock sharp.

18 Well, Witness 9, this senior military official, himself, only turned up at 12 midday  
19 because, as I've already explained, the whole affair was not planned in advance. It  
20 was stage managed by Mr Blé Goudé alone, partly personal wheeze, partly publicity  
21 stunt. This was Mr Blé Goudé in his element, and this was Mr Blé Goudé's hope, to  
22 quell vigilantism by channelling the patriotism of the pro-Gbagbo supporters into a  
23 legitimate state structure, the army.

24 Indeed, he said as much in the speech which he gave in a television interview in the evening,  
25 both of which you may find amongst the Defence exhibits at CIV-D25-0001-0741. At minute

1 3.45 of this video, you will hear the suspect state quite clearly that if you take up a weapon, it  
2 has to be done in a legitimate fashion.

3 One cannot just distribute weapons to civilians in the neighbourhoods. And he said  
4 the same thing when interviewed by the authorities during his captivity at the DST  
5 Abidjan prior to his surrender to The Hague, and I quote:

6 (Interpretation) "Considering that the army is the only legal institution authorised to  
7 handle weapons, it is with a great sense of responsibility that on 24 March 2011 I  
8 asked the young people who felt the need to defend the motherland to go to the  
9 general staff headquarters and enlist. This made it possible for me to avoid the  
10 creation of armed groups whose proliferation was becoming a dangerous reality in  
11 the neighbourhoods. In the final analysis, this operation did not go very far given  
12 the rapidity with which the events evolved.", end of quote.

13 One needs to understand the context in which this speech was made. Once again, as  
14 I said in my opening statement, and I stress, there is no shame in patriotism, and there  
15 is nothing criminal in calling one's fellow countrymen to enlist in the armed forces,  
16 legitimate legal armed forces of one's own country.

17 Now, I'm aware that perhaps in the Gbagbo decision, confirmation decision, the  
18 whole of the FDS and the state infrastructure of President Laurent Gbagbo at a certain  
19 stage was described as a criminal enterprise, but one has to show that Mr Blé Goudé  
20 actually knew this if that was the case. And I reject that.

21 In any event, coming back to enlistment, such cause to enlist have always been a  
22 means of encouraging national pride from time immemorial.

23 There is no difference between Lord Kitchener and Uncle Sam pointing their fingers  
24 from their respective posters and Mr Blé Goudé. As I said, the only misfortune is  
25 that perhaps the Pre-Trial Chamber in the Gbagbo confirmation decision appears to



1 have declared that the whole military structure which served Laurent Gbagbo was a  
2 criminal entity but, once again, I dissent from that view. And we suggest that at the  
3 time that he made this speech no such thought ever crossed Mr Blé Goudé's mind.  
4 Now, the cinematic nature of this enlistment or attempt to enlist was all the more  
5 evident when Mr Blé Goudé requested that Witness 9 make it look as though the  
6 assembled youth were receiving weapons. Now, Witness 9 drew the line at such a  
7 comical enterprise adding that he could not allow the volunteers to remain any longer  
8 on the premises of the etat major for reasons of security. This is the Prosecution's  
9 own witness by the way.

10 And most importantly, he states as follows:

11 (Interpretation) "Later on, none of those people stayed in the army."

12 CIV-OTP-0006-0112, at 0156.

13 So there we have it, from the horse's mouth, as it were, despite the bombastic nature  
14 of the call to enlist, in reality, I would submit, and the Prosecution apparently agrees,  
15 not one soldier was drafted into military service as a result of Mr Blé Goudé's appeal.  
16 Whatever contribution such a call might have led to in future enlistment, it didn't  
17 serve in the context of a so called common criminal plan, which we say of course  
18 never existed.

19 And let's look at the matter from a commonsense point of view. I've done military service,  
20 and I can tell you you just can't turn up to enlist on a whim. You can't just turn up at a  
21 military base and say, "Here I am, give me my gun." It doesn't work like that.

22 One is normally interviewed, subjected to a broad array of medical tests and made to sit  
23 psychometric examinations. No self-respecting military unit would just enlist any old Tom,  
24 Dick and Harry who comes knocking at their door. To suggest otherwise is an insult to the  
25 Ivorian armed forces, the complex hierarchy of which the Prosecution was at pains to detail.

1 Now, it was in the latter part of March 2011 that a couple of weeks -- a couple of  
2 weeks before the arrest of Laurent Gbagbo this all took place. So even if the  
3 suspect's call had led to the actual enlistment of new soldiers, they would hardly have  
4 had time to put on their uniforms and engage in any form of training to make them  
5 ready for any form of useful combat duty.

6 To sum it all up, the top military brass was completely unaware of the suspect's  
7 initiative in advance and when they knew about it they humoured him by playing  
8 along with it, albeit not giving it any true practical effect.

9 Looked at in retrospect, the call to enlist was a masterful propaganda coup and  
10 nothing more. It most certainly did not and could not contribute to advancing a  
11 common criminal plan.

12 Now, the Prosecution might want you to believe that Mr Blé Goudé's true intention in  
13 swelling the ranks of the army was to further enhance his capacity to attack innocent  
14 civilians. Nothing, however, could be further from the truth. Please do not ignore  
15 the situation, once again, which was present, or which was happening in Côte d'Ivoire  
16 at the relevant time period.

17 There was, I submit, a genuine sense of fear and belief that Abidjan was under attack.  
18 There is no doubt that militia forces such as the commando invisibles and force  
19 nouvelles were operating in Abidjan, and the suspects call to enlist was motivated by  
20 the need to prevent factional warfare, sectarian violence, call it what you will. His  
21 target or his military objective was the armed forces of the opposition and not  
22 innocent civilians.

23 Let me refer you now to Mr Blé Goudé's final -- one of his final rallies before actually  
24 fleeing Côte d'Ivoire. It's a rally which was held at -- I'm not sure if it's CP1, but it  
25 was one of the rallies any way, and the reason why I want to show you this is in

1 response to a comment which was made yesterday by my learned colleague,  
2 Mr Stang, about the weapons which were seen at Mr Blé Goudé's rallies and how  
3 hard the Prosecution had to look because there were fleeting images.  
4 So I am going to show you one of my excerpts from a rally which has a not so fleeting image.  
5 Now, Ms Bossette, if you could present to the Chamber the exhibit CIV-D25-0001-2076.  
6 And before you start to play it, let me just say that for at least one of the mass rallies,  
7 namely the mass rally held on the 26 March at CP1, Mr Blé Goudé ensured that a flier  
8 was distributed in advance, and this is part of the Prosecution's evidence, inviting all  
9 sections of the Côte d'Ivoire public to attend, to attend a rally, which the purpose of  
10 which inter alia was for prayer, and you will see that bishops, priests, religious  
11 officials attended these rallies as we will now see on the video.

12 (Viewing of the video excerpt CIV-D25-0001-2076)

13 MR KAUFMAN: There we are, stop if you could there.

14 That's not such a fleeting image of the sort of people that were attending  
15 Mr Blé Goudé's rallies. I can't tell you with any degree of certainty whether that's  
16 the Cardinal Archbishop of Abidjan, but I don't think he's wearing a dog collar just  
17 for the sake of it.

18 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Can you repeat the  
19 date?

20 MR KAUFMAN: The metadata which we have suggested it was around or about the 28th of  
21 March. It can't have been the 28th of March, because in our submission he left, but it was  
22 definitely in the final days. But we will get back to you on that, Madam President.  
23 So that concludes my presentation on the contribution as it were via the  
24 speech-making activity which is attributed to Mr Blé Goudé. I now move to two  
25 further issues, and this is the use of militia and mercenaries, the alleged contribution

1 that Mr Blé Goudé made by supplying these individuals or financing them.

2 The Prosecution alleges that Mr Blé Goudé acted as an intermediary for the financing  
3 and arming of militia. For this assertion it relies on two sources alone and nothing  
4 more, namely, Witness 44, about who we will or have already had much to say, and  
5 an article written by an academic called Dr Karel Arnault.

6 Now, with all due respect, Dr Karel Arnault's article was written in 2008, way before  
7 the events relevant to the charges. What is more, the reference cited does not  
8 support the contention that Mr Blé Goudé armed militiamen, but rather cites spurious  
9 hearsay to the effect that he had obtained funding for the GPP.

10 Coming back however to Witness 44, this individual opines, and heaven knows how,  
11 that Mr Blé Goudé armed his own private army of 7,000 militiamen with weapons  
12 that he received from the Commander of the Garde Republicaine Général Dogbo Blé.

13 Now, this is quite a preposterous claim even for Witness 44. Fortunately we do have  
14 something from Dogbo Blé, who was not interviewed as a witness by the Prosecution,  
15 the interview which he gave to the authorities in Abidjan and on the basis of which he  
16 was sentenced to 15 years in prison. And it probably didn't suit the Prosecution's  
17 purposes, because General Dogbo Blé had the following to say, and I'm going to  
18 quote in French:

19 (Interpretation) "If I had weapons, I would have given them to those whom I  
20 trained." CIV-OTP-0013-0146 at 0154.

21 An individual particularly close to Dogbo Blé was however interviewed by the  
22 Prosecution, namely Witness 68, and he confirmed that there was no official arming  
23 of militiamen by the authorities. To the best of his knowledge and as he saw on 5  
24 April 2011, these militiamen who did possess guns, namely, the GPP, had managed to  
25 scavenge their weapons from the bodies littering the streets of Abidjan.

1 CIV-OTP-0028-0023 at 0026.

2 That's for the militiamen.

3 Now I turn to mercenaries. Distribution of arms I've already mentioned with  
4 reference to the Maguy le Tocard interview, so I won't touch on that any further. But  
5 mercenaries, the mercenaries who were supposedly recruited by Mr Blé Goudé.

6 This is an allegation which Mr Blé Goudé personally finds extremely objectionable.

7 Indeed, the allegation flies in the face of the Prosecution's case theory. After all if as  
8 the Prosecution argues Mr Blé Goudé was such a racist champion of the philosophy of  
9 Ivoirité that he could not tolerate people of Burkinabé and Malian extract in Abidjan,  
10 not least because it offended his patriotic principles, why on earth would he want to  
11 enlist English-speaking Liberian guns for hire into the services of the FDS? It just  
12 does not stand to reason. And this is the institution allegedly for which he ran a  
13 recruitment drive.

14 In any event, let me remind the learned Pre-Trial Chamber of its own findings at  
15 paragraph 145 of the Gbagbo confirmation decision. Individuals close to Laurent  
16 Gbagbo were involved in the recruitment, organisation and supervision of  
17 mercenaries as well as Simone Gbagbo's aide-de-camp and possibly Charles Blé  
18 Goudé.

19 Now, I stress of course the words "possibly," because for the purpose of confirmation,  
20 possible involvement does not meet the requisite standard of proof. In fact, the real  
21 question we need to ask ourselves is to what extent the Prosecution has succeeded in  
22 substantiating this particular allegation since the Gbagbo decision. And I would  
23 suggest that the Prosecution has tried perhaps earnestly, perhaps frantically, but  
24 ultimately in vain.

25 Witness 435 is the only new witness to mention Mr Blé Goudé in my submission in

1 the context of foreign mercenaries, and he states as follows, and I now turn to French:  
2 (Interpretation) "In September 2010, prior to the presidential elections, the said  
3 Charles Blé Goudé recruited 100 Liberians from the Buduburam Liberian refugee  
4 camp in Ghana. The warrant officer known as 'Major Charles' of the Second Infantry  
5 Battalion in Daloa went to the Noé border to fetch those Liberians."

6 CIV-OTP-0060-0028 at 0031.

7 First of all, this is not based on personally acquired knowledge and as such the  
8 information is flagrant hearsay. Secondly, it's a lie and a lie which can be proved.

9 The Prosecution itself has very kindly provided us with the complete ordre de bataille  
10 of the Second Infantry Division -- Battalion, sorry, of Daloa. It's to be found at  
11 CIV-OTP-0048-0955.

12 In this 17-page document, every single soldier in that battalion is listed from the  
13 commander in chief, Lieutenant Colonel Alphonse Gouanou, right down to the  
14 potato-peeling cook. There is no adjutant-chef called Charles, and what is more,  
15 there is no person called Charles at the rank of major.

16 The Defence, let me stress, will not contradict the Chamber's finding that there could  
17 indeed have been a certain degree of mercenary involvement in at least two of the five  
18 incidents with which Mr Blé Goudé is charged. Mr Blé Goudé nevertheless had no  
19 knowledge of such mercenary involvement and was certainly not involved in their  
20 recruitment.

21 Mr Blé Goudé could not move with ease across international borders as it will be  
22 remembered, as was stressed by the Prosecution. He was subject to a travel ban  
23 under a United Nations sanctions regime. And his final flight from Côte d'Ivoire  
24 was virtually a military operation. I refer you to the evidence of Witness 68 on that  
25 matter. It had to be done in secret lest he were to have been recognised by agents at

1 the border.

2 Furthermore, the Defence has collected statements which confirmed that

3 Mr Blé Goudé never left Côte d'Ivoire in the run-up to and during the election crisis.

4 And I refer the learned Pre-Trial Chamber to paragraphs 45 and 46 of the statements

5 provided by Defence Witness 13 and Defence -- and also to the statement provided by

6 Defence Witness 12.

7 If one remembers, Witness 226 said that he made a search of Mr Blé Goudé's house in

8 Bel Air district of Yopougon and there they found all sorts of documentation

9 pertaining to Liberian mercenaries. Well, Witness D12 disputes that and shows that

10 that is plainly false. So to conclude, Mr Blé Goudé did not recruit any mercenaries,

11 nor did he know anything about their deployment.

12 So I've very nearly finished. I don't want to spend too much time on modes of

13 liability here, because we will go into that in detail in our closing submissions. All I

14 would wish to do in the remaining few minutes which remain, and I really will take

15 only take a few minutes now, is touch on a couple of topics.

16 And I believe that these issues are glaringly obvious from the way the Prosecution has

17 presented its case and from the evidence provided by the Defence.

18 For the purposes of indirect co-perpetration 25(3)(a) or contribution liability 25(3)(d),

19 there simply in our submission was no common plan nor common purpose.

20 Mr Blé Goudé's individual responsibility was allegedly engaged by his role in such a

21 common criminal plan and in the formulation of a criminal organisational policy.

22 But we have shown that, physically speaking, he never had the opportunity to do so.

23 After all, there is nothing even in the logbooks to show that he ever met Simone

24 Gbagbo and President Gbagbo at one and the same time. And these are the three

25 core members, do not forget, of the inner circle.

1 Now, the Prosecution is of course aware of this problem, and that's why they so  
2 blithely assert that if hubby was at home then so must have been the wife. But it  
3 doesn't work like that, I'm afraid, in criminal proceedings. The Prosecution needs to  
4 prove these matters so that there are substantial grounds to believe that both  
5 President Laurent Gbagbo and Madame Simone Gbagbo were together, conspiring  
6 together with Mr Blé Goudé.

7 In any event, as her Honour Judge Van den Wyngaert has rightly held, and of course  
8 with no disrespect to Madam President, there is nothing to suggest that the whole  
9 State infrastructure headed by President Laurent Gbagbo had adopted a plan to stay  
10 in power at all costs, including by attacking the civilian population, nor is there any  
11 evidence to suggest that Mr Blé Goudé commanded almost automatic compliance of  
12 those who perpetrated the specific incidents with which he is charged if he is to be  
13 defined as an indirect co-perpetrator. Indeed, to adopt her Honour Van den  
14 Wyngaert's terminology, he subjugated the will of no one.

15 Mr Blé Goudé made no essential contribution to the five criminal incidents nor a  
16 significant one, and I have already mentioned how the Prosecution glossed over the  
17 ICC jurisprudence as it were by deleting the Mbarushimana's confirmation decision  
18 from the Court's records.

19 As for the subjective elements of the modes of liability, I remind respectfully her  
20 Honour Judge Trendafilova of her decision in the Bemba confirmation, particularly in  
21 the context of knowledge of past misconduct being an indicator of future intent.

22 What is required is foresight as a virtual certainty that crimes will be committed.

23 And the Prosecution have made much of that video of Mr Blé Goudé travelling in a  
24 vehicle with a journalist where almost in Donald Rumsfeld-type fashion he said,  
25 "Well, in times of conflict, stuff happens." That is not virtual certainty, Madam



1 President.

2 With that, I conclude my submissions, with 20 minutes to spare.

3 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Thank you. Would  
4 that conclude the Defence presentation?

5 MR KAUFMAN: Thank you.

6 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) We had set aside  
7 some time for questions from the Chamber, but we want to at this juncture thank all parties  
8 and participants because your presentations have been very concrete and we do not have any  
9 questions for you at this juncture. We have also decided that -- please be seated if you have  
10 concluded.

11 MR KAUFMAN: I thought you were addressing me so I stood up.

12 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Not at all. Please sit  
13 down. I was not going to address you or the Prosecution.

14 But before we receive your closing statements, it might be best to do that tomorrow so  
15 that everything can be concluded at that time and so we might rise a little bit early  
16 today.

17 You made your presentations, the Defence have made their presentations, and I think all these  
18 have to be filed with the court officer to be properly recorded in this case. Is that not so?

19 MR MACDONALD: (Interpretation) On that point, Madam President, we have forwarded  
20 to the Chamber the PDF versions of all our presentations, and we shall be forwarding them  
21 electronically to the Registry as instructed, and I will leave it to my learned colleague opposite  
22 to tell the Court how he intends to proceed.

23 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, indeed. I  
24 believe that your presentations have not been submitted.

25 MR KAUFMAN: Well, there's a very simple explanation for that, Madam President. I was

1 assuming that we would be able to submit written submissions afterwards. My own  
2 personal pleadings are always recorded in my own illegible personal scrawl. That's how I  
3 work. That's how I prepared my submissions. I do not have a typewritten version of my  
4 submissions to submit to the Court.

5 I will, however, review the transcript with due diligence and make sure that if there is  
6 anything there which does not correctly reflect what I have argued, then that is  
7 corrected by way of application to the Court.

8 My friend Mr Engel has his presentation in typewritten format, as does my friend Mr  
9 N'Dry, if I'm not mistaken. So we will be able to submit those to the Chamber.

10 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Very well.

11 MR MACDONALD: And while my colleague will be doing the review of his notes, we did  
12 receive Mr Engel's and we thank the Defence for that, but what we are more interested in, and  
13 I'm sure the Chamber will be interested in, is all the references to the ERN, the evidence, that's  
14 what counts. So I understand that today my colleague was making an effort because we had  
15 raised the issue with him to refer to ERNs, but not always did he refer.

16 For instance, I'll give you just an example. At the very end he referred to the procès verbale  
17 of his client, he doesn't mention the ERN. So those are examples.

18 And the first speaker of the Defence never referred to anything of ERN in nature so for us  
19 then it's gospel in the air.

20 MR KAUFMAN: I can assure you, Mr MacDonald, and I will do so, Madam President, your  
21 Honours, supply the missing ERNs from my particular pleading, which I submit are few,  
22 because I cited extensively and only when I had reason to do so.

23 As for Mr Engel's presentation, it was given to the Prosecution without the ERN  
24 numbers and they can be easily put back and they will be -- will do so. And I believe  
25 the same goes for Mr N'Dry as well. So we will manage that issue.

1 MR MACDONALD: And I'm sorry to get up again, but it has to be in a timely fashion. If  
2 we are to provide written submissions -- sorry -- oral submissions tomorrow, the Defence  
3 cannot disclose this at 8 p.m. It has to be provided with due diligence, and that I understand  
4 was made clear from the very beginning, that parties referring to texts, referring to ERNs, we  
5 would have to provide the other party that information.

6 MR KAUFMAN: Yes, I think it's a bit of the pot calling the kettle black when we start talking  
7 about timely submission of things, bearing in mind that the document containing the charges  
8 was filed early at midnight when it should have been filed at 4 o'clock in my submission.  
9 But we shall give the Prosecution by lunch-time, assures me Mr Engel, the ERN numbers for  
10 his particular presentation. And if the Prosecution would like to submit me the missing ERN  
11 numbers from my pleadings, I will endeavour to do so as quickly as possible today.

12 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) If I have understood  
13 you well, you will be providing the missing numbers to the OTP in time, that is early enough.  
14 By noon, did you say?

15 MR KAUFMAN: Indeed, madam.

16 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Very well.

17 MR KAUFMAN: Yes, indeed.

18 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Are we all on the  
19 same wavelength? It is noon already. Are you going to provide all the missing numbers?  
20 And when do you intend to do so?

21 MR KAUFMAN: As far as Mr Engel is concerned, he can give them right away, our missing  
22 ERN numbers. As far as I am concerned, if the Prosecution supplies me, and I believe that  
23 there are only about three or four citations that I made that I didn't give the ERN number,  
24 then I will endeavour to do so as quickly as possible.

25 MR MACDONALD: The Prosecution has no obligation here. It's the text of Mr Kaufman.

1 Mr Kaufman quotes things. Mr -- I will not start going through a transcript to tell him how  
2 to do his job and how to source it.

3 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) I believe that  
4 Defence should do this job itself, to go through its presentation and find the missing numbers  
5 and provide them.

6 MR KAUFMAN: Okay. Madam President, I shan't continue this (overlapping speakers).

7 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Please do. How  
8 much time do you think you need for that?

9 MR KAUFMAN: Well, it depends on today's activities, as it were. I believe that there is  
10 now going to be a session where the --

11 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: There is no activities so you are free to  
12 look into the numbers.

13 MR KAUFMAN: In that case, I shall get them to the Prosecution by the end of the day.

14 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: By the end of the day?

15 MR KAUFMAN: Hopefully, yes.

16 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: No. Because I think you will need to  
17 do that before that, because I understand that this is necessary also for the final submissions.  
18 So we expect that you do that much earlier than that.

19 MR KAUFMAN: As soon as possible, Madam President. I can't give an exact time limit  
20 because the Prosecution is not helping me in this matter. It's to help the Prosecution with  
21 their final submissions, so if they think that something is lacking, and I submit that there is  
22 very little lacking, then I would be assisted if the prosecution will be able to assist me. If it's  
23 a matter of me going through any entire submissions and finding the missing ERN numbers,  
24 it will take me slightly longer. That's all. I will do it as quickly as possible.

25 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Well, I do hope that you will both try

1 to co-operate, but it is indeed your obligation also to provide all the necessary numbers in  
2 your submissions. So if it is only a few that are missing, I do expect that you will be able to  
3 go through them and provide them as soon as possible, and not tonight. It should be in the  
4 afternoon so it is -- has a meaningful -- can be revised in a meaningful way.

5 MR KAUFMAN: Very well, madam.

6 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Regarding the  
7 written submissions, we had felt that it might not be necessary, but I would like to hear from  
8 the parties and participants whether such is the case. We can address this question  
9 tomorrow after the oral submissions if you want to sleep on the question, so to speak. That  
10 way tomorrow we may be able to determine whether or not we need any further written  
11 submissions.

12 MR MACDONALD: (Interpretation) Madam President, I believe that it is quite exceptional  
13 that a document containing the charges of about 130 pages can be filed without footnotes.  
14 And we need to look at various options, the questions to the Chamber, and different versions  
15 of various filings. So I think that for the Prosecution, we would rather not have any further  
16 written submissions, because it would be a repetition of what we have already said.  
17 And in any event, tomorrow we have time to deal with all the issues that have been raised by  
18 both -- by all parties and even address any questions that may come from the Bench and at  
19 that time we can close the submissions and the 60 days can begin to run for the Chamber to  
20 deliberate. That is after tomorrow's session.

21 But in any event, we're in the hands of the Chamber. We are here to assist the  
22 Chamber. If the Chamber believes that it needs further written submissions in order  
23 to clarify points that were raised during the oral submissions or clarify any other  
24 points, we are ready to assist the Chamber in that connection.

25 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: (Interpretation) Yes, I understand.

1 Mr Kaufman, you have the floor now.

2 MR KAUFMAN: Yes, Madam President, with respect to written submissions, I would need  
3 to consult my client on that matter. That is a very complex issue. But I'm still smarting I  
4 must say from the demand of the Prosecution that I supply my ERN numbers. I'd like to  
5 refer the learned Pre-Trial Chamber, and this is why I stress the need for co-operation here, to  
6 pages 57 and 58 of the document containing the charges as filed in the Court record.  
7 I refer you to footnotes 263, 264, 266, 268 and all the way down to 272 and over the  
8 following page, 275, 276 and the reference which is given error, exclamation mark,  
9 reference source not found, error, reference source not found.

10 Now, if Mr MacDonald wants to help me over the lunch-break with the ERN  
11 numbers which are missing, I will be very glad to get him these numbers as soon as  
12 possible. We did not raise this issue, Madam President, because we felt was  
13 pedantic to do so.

14 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Thank you. I think it would be  
15 helpful for the Chamber that the parties try to co-operate, and indeed try to co-operate over  
16 lunch so the missing numbers can be found and then everybody has the full version as soon  
17 as possible. So I do count on your co-operation which has been very helpful to the Chamber  
18 so far because we have been able to have very focused confirmation proceedings thanks to the  
19 co-operation of the parties. So I do hope that this will continue over lunch.

20 On the written submissions, we can come back to this tomorrow. So you have the time to  
21 reflect. It is indeed our preference, and I will listen to you, don't worry, but it is indeed the  
22 preference of the Chamber not to have them in order to indeed expedite our proceedings as  
23 much as possible and in light of the very focused presentations that we have had. But since  
24 we said it on the first day, it is indeed -- an idea was to indeed address this issue again with  
25 the parties and participants, and I will give the floor to Ms Paola Massidda to also give us her

1 views, but we can decide on this tomorrow.

2 MS MASSIDDA: Thank you, Madam President. I will be very brief. It's indeed also our  
3 preference eventually not to submit written submission. However, we have noticed several  
4 times the Defence referring to final written submissions, including arguments not fully  
5 addressed before the Chamber during the hearing.

6 So I think it will also depend on the Defence choice on which kind of written  
7 submission they would like to file. I'm addressing this issue because the Defence  
8 referred today specifically to developments in relation to Article 25 of the Rome  
9 Statute and also development in relations to an analysis of application forms by  
10 victims, which I believe was in page 34 of the non-edited version English of our  
11 transcript today.

12 It's my understanding that Maître Kaufman would like to supply a table in relation to  
13 an analysis of certain data taken from the application form, so it will also depend on  
14 which kind of submission Mr Kaufman would like to supply the Chamber with.

15 Thank you very much.

16 PRESIDING JUDGE FERNÁNDEZ DE GURMENDI: Thank you very much.

17 On this I would like to clarify that written submissions at the end of the confirmation  
18 process have always been in the understanding that the written submissions are not  
19 additional submissions, but just submissions to clarify issues that were already  
20 discussed during the hearing. So it's not a reopening of arguments and additional  
21 arguments, but to address specific issues that were already discussed in the hearing.

22 So in order to discuss whether you would need them or not, you have to take this into  
23 account. It's not an additional opportunity for additional submissions.

24 Is that clear?

25 (Interpretation) All right. Let me return to French. Is that clear?

- 1 Okay. We shall now rise and return tomorrow at 9.30 for the final submissions of
- 2 these hearings. Thank you.
- 3 (The hearing ends in open session at 12.25 p.m.)