

1 International Criminal Court
2 Article 85 Chamber
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé
5 Goudé - ICC-02/11-01/15
6 Presiding Judge Reine Alapini-Gansou, Judge Joanna Korner, * Judge Sergio Gerardo
7 Ugalde Godinez
8 Article 85 Hearing - Courtroom 1
9 Monday, 13 December 2021
10 (The hearing starts in open session at 3.00 p.m.)
11 THE COURT USHER: [15:00:55] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE ALAPINI-GANSOU: [15:01:23](Microphone not
15 activated)(Interpretation)
16 Good afternoon to everybody.
17 I was saying on behalf of the Court and, personally – and on behalf of my colleagues
18 present here, I would like to express my gratitude.
19 I'm going to ask -- before anything else, I will ask the court officer to present the case.
20 THE COURT OFFICER: [15:02:33](Microphone not activated)
21 THE INTERPRETER: [15:02:35] Microphone, please.
22 THE COURT OFFICER: [15:02:40] My apologies.
23 Good afternoon, Madam President. Good afternoon, your Honours.
24 This is the situation in the Republic of Côte d'Ivoire, in the case of the Prosecutor
25 versus Laurent Gbagbo and Charles Blé Goudé, sitting today, 13 December, for an

1 Article 85 compensation hearing.

2 And for the record, we are in open session.

3 PRESIDING JUDGE ALAPINI-GANSOU: [15:03:10](Interpretation) Thank you very
4 much, court officer.

5 I would like to introduce myself, Madam Reine Alapini-Gansou, and, on my right,
6 you have the honourable Judge Joanna Korner, my colleague; and on my left, you
7 have the honourable Judge Sergio Ugalde. And with my colleagues, as was said
8 a moment ago, we make up the Chamber under Article 85; so the Article 85 Chamber.
9 And since this Chamber has been constituted by the Presidency, further to an
10 application for compensation of Mr Blé Goudé, it is the first time that we are in open
11 session, and, in this regard, I would like to welcome everyone in the courtroom here
12 and all those who are present.

13 I would also like to extend my regards to everybody following us from the gallery
14 and those who are following us via the Internet.

15 I would also like to extend my regards to the representatives of the Prosecutor - and,
16 we are spoilt today because I can see that the Office of the Prosecutor is highly
17 represented; and furthermore, we also have the highly represented Defence team and
18 members of the Registry. You are all most welcome.

19 Before I go into the subject of our hearing, I would first of all ask you, the
20 representative of Mr Blé Goudé, the Defence team, to be so kind as to do the usual
21 former vanities, and, after that, it will be the turn of the Office of the Prosecutor and
22 then of course the other teams to introduce themselves.

23 MR KNOOPS: [15:05:44] Madam President, your Honours, dear colleagues of the
24 Prosecution and Registry, good afternoon. The Defence of Mr Charles Blé Goudé is
25 today before this Chamber with, on my left side, Ms Carry Knoop-Hamburger; on

1 the right side, Ms Nina Dyk; on my very left side, Ms Despoina Eleftheriou; and on
2 my left side, behind, Ms Sara Pedroso.

3 My name is Geert-Jan Alexander Knoops. I'm counsel for Mr Blé Goudé, who's
4 present in the courtroom as well, Madam President. And my co-counsel, Mr
5 (Overlapping speakers)

6 PRESIDING JUDGE ALAPINI-GANSOU: [15:06:35](Interpretation) Thank you.

7 MR KNOOPS: [15:06:37] -- co-counsel, Mr Claver N'Dry, he's following the
8 proceedings from Abidjan as well as our legal assistant, Ms Lauriane Vandeler,
9 currently in France, following the proceedings also remotely.

10 These were our introductions, Madam President.

11 PRESIDING JUDGE ALAPINI-GANSOU: [15:07:01](Interpretation) Thank you very
12 much, Counsel.

13 Office of the Prosecutor.

14 MR KHAN: [15:07:08] Madam President, your Honours. A great privilege to
15 appear before you in court for the first time as Prosecutor. I'm joined by
16 Deputy Prosecutor, James Stewart, to my left; and behind, Associate Appeals Counsel,
17 Nivedha Thiru. My name is Karim Khan. Thank you.

18 PRESIDING JUDGE ALAPINI-GANSOU: [15:07:29](Interpretation) Very well.
19 Thank you.

20 MR HENQUET: [15:07:32] Good afternoon, Madam President, your Honours. The
21 Registry today is represented by Vera Wang of the Division of External Operations
22 and myself, Thomas Henquet, senior legal adviser. Thank you.

23 PRESIDING JUDGE ALAPINI-GANSOU: [15:07:46](Interpretation) Thank you very
24 much. I would like to thank you.

25 So we shall go into the heart of our meeting here today.

1 I was able to say that we are here in this case specifically in response to an application
2 for compensation from Mr Charles Blé Goudé, who introduced an application for
3 compensation under Article 85 of the Rome Statute.

4 To summarise, on the 15th of January 2019, Mr Charles Blé Goudé was acquitted by
5 Trial Chamber I by the majority of judges in the case that I indicated a moment ago.

6 And on 31 March * 2021, the Appeals Chamber confirmed the acquittal decision of the
7 Trial Chamber. And on 9 September 2021, Mr Charles Blé Goudé introduced to the
8 Presidency of the Court an application for compensation, and, it is in this regard, that
9 our Chamber was composed. And in its application, Mr Charles Blé Goudé

10 indicated that on the part of the Prosecutor, he had been victim of an unjustified
11 procedure and it led to a grave and *manifest miscarriage of justice, and, as such, he
12 claims the sum of €819,900 as principal sum, to be precise, €819,300 in the alternative,
13 the sum of €381,900 by way of reparations for harm suffered under Article 85(3) of the
14 Rome Statute.

15 Now with regards to the Chamber, the Registry provided *on 25 October 2021 certain
16 information on the conditions and the circumstances for addressing Mr Charles Blé
17 Goudé and this information was sent to all parties present. Now, in accordance with
18 the order of the Chamber present here, the Prosecution under Rule 100 (sic) and ...
19 well, it produced a reply to the application under Rule 174(1) from November 2021.

20 And, in accordance with the rule in the Rules of Procedure and Evidence, a hearing
21 can be held when the Prosecutor or the applicant makes an application therefor or at
22 the discretion of the Chamber under Rule 174(22) (sic) .

23 So Mr Charles Blé Goudé formulated such a request, which was not rejected by the
24 Prosecutor, and, as such, an application was made under his initial application.

25 And we have, as I said a moment ago, received the written submissions from the

1 parties in this regard. So the Chamber, as you all know, received written
2 submissions from the parties, and here today, I think that we have not a need to
3 reassess the content of those written submissions. If there are more precise matters
4 which you would like the Chamber to focus on, we are perfectly available to receive
5 these elements. If not, then you would be so kind as to not go back over the content
6 of your written submissions.

7 I've also understood that the counsel of Mr Blé Goudé has notified us of certain
8 documents about which he wanted to intervene. I don't know, as things currently
9 are, if these documents are relevant to us with regards to this particular case, but we
10 shall listen to what is to be said to the extent that for each party we have provided for
11 speaking time.

12 In the meantime, I would also like to recall that the counsel of Mr Blé Goudé has
13 proposed that he takes the floor at a given time in our hearing. We therefore have
14 retained the point with regards to the order already given; that the counsel of
15 Mr Blé Goudé takes the floor for 45 minutes. Because he is the applicant, he will take
16 the floor first, and then we shall accord five minutes to Mr Blé Goudé, if he wishes to
17 intervene with regards to the observations and comments of his counsel. And in the
18 same way, we shall grant 45 minutes to the Prosecutor. And here, the Prosecutor
19 also -- if the Prosecutor also has the intention of taking some more time with regards
20 to what we grant to Mr Blé Goudé and his counsel, then the Chamber is open to that
21 with a view to equality of arms.

22 That's what I wanted to say first and foremost.

23 The Registry as well is also with us today and they have already given us certain
24 information, but I imagine that they could perhaps provide us with more. As we say
25 in French, who can do the most can do the least. That's what we say in French; so if

1 you have additional information to share with us, we are very much open to that.

2 So that is what I wanted to say to start with.

3 And by way of conclusion, before I start to give you the floor, I would just like to
4 remind you that we are in open session here. However, it does not prevent us, if
5 necessary, from going into private session and, as such, please do not hesitate to
6 express the need to do so if you feel that.

7 Having said that, Maître Knoops, I give the floor to you.

8 MR KNOOPS: [15:15:46] Thank you very much, Madam President. May I suggest
9 the Chamber -- that the address of Mr Blé Goudé of five minutes could be scheduled
10 by the Chamber after the Prosecution's submissions because I believe that
11 the acquitted person would have the (Overlapping speakers)

12 PRESIDING JUDGE ALAPINI-GANSOU: [15:16:15](Interpretation) Maître, we have
13 debated at length the procedure before coming here this afternoon, and I think within
14 the case in point it's the defender who should have the floor lastly. So we've really
15 done our utmost to authorise him to speak after you and that's the responsibility
16 which we have taken upon ourselves. We cannot violate the rules of procedure in
17 such a way. Thank you.

18 MR KNOOPS: [15:16:47] Thank you, Madam President. I appreciate your
19 comment and the Chamber's authorisation that Mr Blé Goudé can address the
20 Chamber. Thank you so much.

21 Dear members of the Chamber, before I respond to the submissions of the Prosecution,
22 a brief introduction. It was almost six years ago, Madam President, in this very
23 courtroom - although, I was standing on the left side of the courtroom here - that our
24 Defence team gave an opening statement in the case of Mr Blé Goudé.

25 Already then in the opening statement, we submitted that the Prosecution suffered

1 from - what we mentioned - wilful blindness in its prosecution -- in its case theory of
2 Mr Blé Goudé. And I still remember from six years ago that I quoted from an
3 impressive book written by Reuven Fenton, author at the New York Post, the book
4 mentioned, "The Stolen Years, Stories of the Wrongfully Imprisoned" persons. And
5 in this book, Madam President, your Honours, you'll find an impressive foreword
6 written by the late Rubin Carter, also known as "The Hurricane", in which Mr Denzel
7 Washington later featured in the movie, which was based on his life story.
8 Unfortunately, Rubin Carter passed away on 20 April 2014, and he was wrongfully
9 convicted initially for three murders, serving a life sentence before he was exonerated
10 after two decades in 1985. And in my opening statement six years ago, I quoted the
11 following words -- and these words are now even more topical.
12 Rubin Carter wrote in his foreword:
13 "My view is that the real cause of wrongful convictions is wilful blindness. And
14 that's something most defendants never imagine is possible."
15 End of quotation.
16 Now, of course, Mr President -- Madam President, your Honours, we all know that
17 Mr Blé Goudé was acquitted, acquitted at first instance before the Defence was even
18 requested to present its case. So wasn't justice served in this case? Wasn't his story
19 the opposite of Rubin Carter's narrative?
20 Our answer is, no. No, your Honours.
21 While the judges of Trial Chamber I and the Appeals Chamber, who confirmed
22 Mr Blé Goudé's acquittal, saw the truth, the Prosecution did not. The Prosecution
23 pursued this case on the basis of a pre-constructed narrative, and despite years -- in
24 fact, nine years of investigation in a country which was more favourable to its cause,
25 and years of presenting evidence that could -- that did not confirm this narrative in

1 the slightest, the Prosecution never took stock of the situation, never did try to see
2 objectively the case before it and see that Mr Blé Goudé -- that his case should never
3 have come before this Court due to wilful blindness.

4 Due to wilful blindness, the Prosecution was never willing to admit -- and still not
5 willing to admit -- the truth. That it had, in the words of Judge Henderson, put the
6 cart before the horse in that it started from the premise that, as Judge Henderson put
7 it in paragraph 79 of his reasons, the premise that its case theory is the correct one.

8 Now, we all know the consequences of this wilful blindness. The consequences were
9 disastrous. Almost five years, 1,778 days, Mr Blé Goudé spent of his life in prison,
10 right here in the city of The Hague.

11 And, to this day, Madam President, he is not free. He's far from free. Can we say
12 that the Trial Chamber's decision to acquit, therefore, however early it came,
13 remedied the years of suffering endured by Mr Blé Goudé as a result of the
14 Prosecution's blindness?

15 Our answer is a resounding no, your Honours. That's why we're here before you
16 today. We know that the threshold to satisfy the requirements of Article 85(3) is
17 high, as highlighted correctly by the Prosecution in its response. But Madam
18 President, your Honours, if there's -- if Charles Blé Goudé's case does not fit within
19 the raison d'être of Article 85, which case does? Which case does, your Honours?
20 That's the key question.

21 We're also mindful of the compensation request and decision in Bemba, where the
22 Pre-Trial Chamber II rejected Mr Bemba's request for compensation. However, it
23 acknowledged in paragraph 69 that "[...] ten years" - in the case of Bemba - "is
24 a significant amount of time to spend in custody," and it would "likely to result in
25 personal suffering, which would trigger compensation in many national systems for

1 violation of the fundamental fair trial right[s] [...] Whilst the statutory constraints, as
2 illustrated in [its] decision, are such as to make it impossible for the Chamber to
3 compensate this [...] The Chamber finds it urgent for the State Parties to embark on
4 a review of the Statute so as to consider addressing these limitations [...]"

5 Madam President -- end of the quotation of the judges in the Bemba Pre-Trial
6 Chamber II, paragraph 69.

7 Madam President, your Honours, the reality -- the reality is that State Parties did not
8 reform the Statute, even during the later session. However, the Defence submits that
9 this Chamber's hands are not tied like the Chamber's hands were in Bemba. You are
10 not tied to the apparent limitation of the Statute.

11 If it's the Court's aim to serve as a beacon at the forefront of all matters pertaining to
12 individual human rights, as the Chamber found in Bemba, in the Bemba
13 compensation decision, then we submit to this Chamber, Madam President, that this
14 Chamber could apply what we call a teleological interpretation of Article 85(3);
15 meaning that it's completely within the spirit, the object and purpose of the drafters of
16 Article 85(3) to grant Mr Blé Goudé's request.

17 And, your Honours, again, if the drafters had one case in mind to subsume under
18 Article 85(3), it is the case of Charles Blé Goudé. There was no case to answer. That
19 was the ultimate verdict upheld on appeal. No case to answer. And such an
20 interpretation, a teleological interpretation of the Statute, is also in accordance with
21 Article 31 of the Vienna Convention on the Law of Treaties, which obliges the
22 international community to interpret it, the Statute, within its spirit, object and
23 purpose.

24 Now, we will outline for this Chamber why we think this is the case. Why this
25 Chamber should have the courage to do what the State Parties didn't do: Apply

1 a teleological interpretation of Article 85.

2 First, we'll argue that the circumstances of this case do fall within the scope of 85.

3 And the Prosecution submits that we, as Defence, just took a few remarks from the
4 Trial Chamber's judgment and are trying to re-litigate trial issues, but, your Honours,
5 the contrary is true.

6 What the Prosecution characterises as "merely remarks," are specific references, legal
7 findings of the judges, which show that the conditions for a grave and manifest
8 miscarriage of justice in terms of a wrongful prosecution is satisfied.

9 It's the Prosecution, in turn, in its response, who reopens the litigation, going so far as
10 to suggest what the judges in the majority really meant; whereas, the litigation on the
11 merits of this case was closed when the Appeals Chamber rendered its judgment
12 confirming Mr Blé Goudé's acquittal. *Lites finiri oportet*, the Latin maximum saying:
13 Litigation must be concluded at some point in time.

14 Secondly, the part of our submissions which deal with the content of the Prosecution
15 request will focus on rectifying some of the Prosecution's submissions with respect to
16 its narrative, investigation and the quality of evidence.

17 We maintain our position, Madam President, that an appeal of an acquittal in which
18 the Prosecution cannot even definitely state whether it can retrial an acquitted person
19 is a frivolous appeal -- after nine years of investigation, mind you.

20 Now, let us first look at the scope of 85(3).

21 The Prosecution submits that we failed as Defence to meet the strict requirements of
22 85(3). Our response, Madam President, your Honours, of course we are aware that
23 the Statute does not provide an automatic right to compensation for acquitted persons.
24 But this is not our argument. Our argument is that Mr Blé Goudé was the victim of
25 a wrongful prosecution in that the Prosecution did not exercise due diligence when it

1 turned a blind eye to the weakness of its case during the nine years' investigation and
2 subsequent Prosecution appeal in the case.

3 And we all know what constitutes a wrongful prosecution. It has been defined by
4 this Court in both the Chambers -- in Ngudjolo and Bemba -- explicitly listed
5 wrongful prosecution as an example of a manifest and grave miscarriage of justice
6 without specifying what such a prosecution might entail.

7 We agree with the Prosecution's submissions that Article 85(3) does not require
8 a showing of *mala fides*. The requirement of *mala fides* was explicitly excluded during
9 the drafting history of 85(3). We are mindful to this, but this is not our argument.

10 It means that a wrongful prosecution does not require malice on the part of the
11 Prosecution and should not be conflated with the tort or malicious prosecution found
12 in common law systems.

13 It is not the position of the Defence that the Prosecution acted with malice or ill intent.
14 Therefore, the Prosecution's submissions stating that we, the Defence, disregarded
15 Judge Henderson's reasonings in which he held that any criticism did not impugn
16 "the integrity, [or] good faith and commitment of the women and men who
17 represented the Prosecutor in this case", all those submissions are not relevant
18 because we are not submitting this.

19 It's our position that there was a systematic or a systemic failure to deliver justice in
20 this case, which was not caused by the ill will of any individual affiliated with the
21 Prosecution, but rather it's the institution of the Prosecution who, lacking due
22 diligence, never objectively assessed the quality of the evidence it had gathered and
23 whether this evidence confirmed its case theory regarding Mr Charles Blé Goudé,
24 which accordingly constituted a wrongful prosecution.

25 Madam President, your Honours, the exceptional weakness of the evidence the

1 Prosecution gathered should have raised red flags for the Prosecution office early in
2 its investigation. Especially, in the context of the situation of Côte d'Ivoire, a country
3 where the Prosecution could not find a more favourable country to investigate those
4 nine years in, given it was headed by the political opponents of Mr Charles Blé Goudé
5 and Mr Gbagbo.

6 However, the Prosecution never discontinued its case. Throughout the proceedings,
7 the Prosecution perceived the criminal prosecution of Charles Blé Goudé as
8 a "sporting match" -- to employ a term used by the appeals counsel at the appellate
9 hearing on 20 June 2020, transcript number 238 at page 21 -- a sporting match that it
10 needed to win, and, it needed, just to get all through the procedural hoops to make it
11 happen: To first get an arrest warrant, then the confirmation decision and then next,
12 to concur the no case to answer motion.

13 However -- and that's the issue, at no point in time it objectively considered whether
14 it would have gathered sufficient probative evidence to prove Mr Blé Goudé's guilt
15 beyond reasonable doubt. Even on appeal, Madam President, the Prosecution could
16 not state whether it would be able to retry Mr Blé Goudé and prove his guilt. Nor
17 did the Prosecution show -- ever try to show on appeal, advancing just two
18 procedural alleged errors in appeal, nothing on the merits, it did not ever try to show
19 that any reasonable Trial Chamber would have convicted Mr Charles Blé Goudé, as
20 deplored by the presiding judge of the Appeals Chamber, the honourable Judge
21 Eboe-Osuji, in his separate concurring opinion in paragraph 13.

22 Your Honours, this is definitely a situation where Article 85(3) should apply. While
23 the Prosecution emphasises the very strict requirements of 85(3), it's important to
24 stress the raison d'être of this provision. In Bemba, the Court found the existence of
25 this provision to be, I quote from that decision, it "[...] is grounded in the belief that

1 there is an inherent unfairness when an innocent person has spent time in prison and
2 that some form of reparation is due as a matter of fundamental justice."

3 And the Pre-Trial Chamber II in the Bemba case further emphasised that
4 Article 85(3), "[...] marks a step forward as regards the scope of rights pertaining to
5 those having been adversely affected by the operation of international criminal law
6 and tribunals: in the words of one scholar," quoted by the Bemba decision,
7 "it is 'the most advanced text in terms of protection of the right of compensation, even
8 compared to the provisions of the international conventions on human rights.'"

9 I hope these words, Madam President, can be realised in this case.

10 Your Honours, the Chamber in appeal unequivocally found that both
11 Judge Henderson and Judge Tarfusser, I quote, "shared the view that the evidence [...]
12 was 'exceptionally weak', and that the fundamental flaw of the Prosecutor's case lay
13 in the numerous divergencies between the Prosecutor's 'one-sided' narrative and the
14 facts emerging from her own evidence." Unquote.

15 And you will find this in paragraph 328 also in the appeals judgment.

16 Moreover, the Appeals Chamber emphasised that the Prosecution
17 arguments -- merely based on two just procedural appeal grounds, not on the
18 merits -- if accepted, did not demonstrate, according to the majority of the
19 Appeals Chamber, that the Trial Chamber would not have acquitted Mr Blé Goudé
20 had it not made the alleged errors on appeal. Paragraph 374 of the appeals
21 judgment.

22 Your Honours, this says it all about a wrongful prosecution. The Prosecution
23 submits that the Defence inappropriately places an obligation of result on the
24 Prosecution, but even this is not our case, your Honours. This was not a typical case
25 of just weak evidence that resulted in this early acquittal. This was a case where the

1 Appeals Chamber emphasised that the Trial Chamber found the evidence to be
2 exceptionally weak and one where both judges in the majority were critical on the
3 Prosecution's case, also accepted by the Appeals Chamber in paragraph 267.

4 This was also an appeal where the Prosecution made no arguments on the merits of
5 an absence of an alleged link between Mr Blé Goudé and the crimes charged, as
6 observed by the appeal judges in the majority in paragraph 374.

7 Therefore, Madam President, unlike the Bemba compensation decision, where there
8 were no circumstances of such gravity as to make it plausible or necessary to consider
9 that such a miscarriage of justice might have indeed occurred, here, in the case of

10 Charles Blé Goudé, these circumstances do exist, derived from both the

11 Trial Chamber and appeals judgments. What the Prosecution refers to as being

12 merely remarks by Judge Henderson and Judge Tarfusser, Madam President, these

13 are specific references and legal findings from an Article 74 trial judgment, that was

14 notably confirmed on appeal, now, *res judicata*, which show definitely that Article 85(3)

15 was met.

16 The fact that Judge Carbucciona dissented from the majority or that two judges

17 dissented from the appeals judgment is irrelevant and impermissible to rely on in this

18 compensation procedure under the jurisprudence of the European Court of Human

19 Rights. It would amount to a violation of the presumption of

20 evidence -- presumption of innocence, sorry, as enshrined in Article 6(2) of the

21 European Convention on Human Rights, if, in a compensation procedure, one would

22 rely on dissenting opinions.

23 In the case of *Sekanina v. Austria*, the European Court of Human Rights in its

24 judgment of 25 August, 1993, paragraph 30, 3-0, ruled in this regard, the following.

25 I quote from that judgment:

1 "The voicing of suspicions regarding an accused's innocence is conceivable as long as
2 the conclusion of [the] criminal proceedings has not resulted in a decision on the
3 merits of the accusation. However, it is no longer admissible to rely on such
4 suspicions once an acquittal has become final."

5 Even the mere suggestion -- end of quote -- sorry, end of quote.

6 Even the mere suggestion, Madam President, of guilt is impermissible to rely on after
7 an acquittal has become final under the same jurisprudence of the European court. I
8 refer to the judgment of 11 February 2003, in the case of O. v. Norway, paragraph 39,
9 where the judges of the European court held that even the mere inference to guilt, is,
10 in this regard, when it concerns the adjudication of a compensation after an acquittal,
11 impermissible.

12 Mind you, Madam President, your Honours, that the Sekanina case I just mentioned
13 is especially instructive in these proceedings of Charles Blé Goudé, since Austria does
14 not provide an automatic right to compensation to acquitted persons like Article 85(3)
15 and, therefore, its provisions resemble Article 85(3).

16 Therefore, any reference to the dissenting opinions in this case should be disregarded
17 and be seen as a reversal of the burden of proof, effectively making Charles Blé
18 Goudé to prove again that he is innocent.

19 Madam President, moreover, the Prosecution's reliance on the confirmation decision
20 in this case, in which all three judges confirmed the charges -- we all know this --
21 blatantly ignores the Defence's submission on this very point. I refer your Honours
22 to paragraph 12 of our request.

23 The Prosecution never responded in this regard to our argument, which was the
24 following: Yes, Pre-Trial Chamber II did confirm the charges, but it did so under the
25 assumption, Madam President, under the assumption that the Prosecution would at

1 trial present evidence capable of proving guilt beyond a reasonable doubt. That was
2 the assumption of the confirmation decision.

3 At that time the judges of the confirmation chamber had no clue about what
4 happened during trial. The Prosecution never assessed whether its narrative would
5 hold up in court and even tried to beat the Defence at the no case to answer stage, by
6 requesting the chamber to provide guidance on the test that would apply to the no
7 case to answer motion.

8 The Prosecution should not have treated this case as a sportive game. As the
9 Appeals Chamber put it in paragraph 347, Madam President, I quote:

10 "[.] the Prosecutor was, and is, at all times aware that she is required to prove her
11 case beyond reasonable doubt ... with credible evidence." End of quote.

12 These words were written not without reason by the majority.

13 Therefore, why did the Prosecution not adjust its narrative so as to reflect the reality
14 of the Côte d'Ivoire situation and Mr Blé Goudé's alleged role?

15 The Prosecution never provided the chamber with any answer to this question.

16 Your Honours, Mr Blé Goudé was held in prison for nearly five years, and even after
17 his acquittal, he remains subject to restrictions on his liberty rights and continues to
18 suffer from them to this very day, nearly eight years after he was brought to the seat
19 of this Court.

20 Does, therefore, this acquittal remedy the harm he has suffered? No.

21 Your Honours have read it in the request. So many years in prison necessarily
22 causes much human suffering and could have been completely avoided had the
23 Prosecution acted diligently and dropped the case in its early stages.

24 As recalled by the Bemba Pre-Trial Chamber --

25 "[...] the 'right to an effective remedy [...] undoubtedly forms part of customary

1 international law ..."

2 It recalled the Rwamakuba ICTR case, where the Chamber found – and you can find it
3 in paragraph 50, 5-0, of the Bemba compensation decision, I quote:

4 "[...] 'its inherent power to give effect to an accused's or former accused's right to an
5 effective remedy encompasses the power to grant financial compensation where, in
6 the specific circumstances of a case, it constitutes the appropriate remedy to redress
7 a violation of the human right in question.'" End of quote.

8 Madam President, your Honours, granting Mr Blé Goudé's Article 85(3) request does
9 constitute in this situation a proper remedy to redress the violation of his right to
10 liberty and a right to a speedy trial. Unlike the Rwanda Tribunal Statute, the ICTR
11 Statute, where there is no provision to be found governing compensation of acquitted
12 persons, the ICC, as we know, has such a provision. And while we do not submit
13 that the Prosecution acted maliciously, it undoubtedly showed complete disregard for
14 Mr Blé Goudé's rights to liberty, producing the one-sided narrative that never
15 squared with its own evidence, as observed by Judge Henderson and Judge Tarfusser.
16 This concludes the submissions on the scope and the applicability of 85(3).
17 And now, we briefly address some of the specific submissions of the Prosecution's
18 written arguments.

19 First, the Prosecution alleges that it has met its 54 obligations in that it had collected
20 a substantial body of evidence, whether documentary or testimonial, including
21 exonerating information. Our answer, Madam President: This is an irrelevant
22 argument for these proceedings.

23 JUDGE KORNER: [15:46:53] Could you – I'm sorry to interrupt, Mr Knoops – could
24 you refer us to the paragraphs of the Prosecution's response when you're dealing with
25 them.

1 MR KNOOPS: [15:47:03] I will do so, Madam Korner.

2 The first argument, a substantial body of evidence – the Prosecution says we have met
3 our 54(1)(a) obligations in that we collected a substantial body of evidence is to be
4 found in the Prosecution written submissions paragraph 17 till 21.

5 Our answer: This might be, but it's not relevant for and not decisive for the case at
6 hand.

7 The Prosecution is not discharged of its investigative obligations under 54 by merely
8 collecting and disclosing incriminating and exonerating evidence, however
9 voluminous it might be, and by applying a certain methodology as the Prosecution
10 suggests. And that's to be found at paragraph 17 of its response.

11 Now, Madam President, your Honours, the Prosecution has also an obligation to
12 extend its investigation to all aspects of the case, but, of course, only to the extent that
13 such evidence contributes to the assessment of whether there is a matter of criminal
14 responsibility or not; so that once the Prosecution determines to proceed with its case,
15 the relevant chamber and parties can get a clear indication that the case has substance
16 and are able to assess holistically the evidence.

17 It is this holistic assessment that the Defence, as we submit, was not appropriately
18 completed by the Prosecution. The Prosecution lacked due diligence in refusing in
19 two ways – first, to attach the required significance to the weak, exceptionally weak,
20 contradictory and exonerating evidence it had collected; and, more generally, second,
21 draw the obvious conclusions from the evidence, which the Trial Chamber ultimately
22 did in its no case to answer judgment, namely, that its case theory was flawed.

23 As pointed out by Judge Henderson in his reasons, and you can find it in paragraph
24 90, 9-0, of Judge Henderson's reasons, I quote:

25 "[...] the Prosecutor should not be allowed to hide behind large volumes of submitted

1 evidence and an indeterminate 'system of evidence' to avoid scrutiny of her case".

2 End of quote.

3 Madam President, we never alleged that the evidence was withheld -- that any
4 evidence was withheld as the Prosecution mistakenly advances in its response in
5 paragraph 24. We allege that the evaluation of the information collected, however
6 considerable and complex it was, should have led the Prosecution to conclude, in
7 light of its duty to establish the truth, that the office would never be able to show guilt
8 beyond a reasonable doubt under Article 66 of the Statute.

9 In light of this, the fact that the Prosecution sought to interview Mr Blé Goudé
10 regarding the allegations against him is also, with all due respect, totally not relevant,
11 apart from the suspect having the right to remain silent. We presented in detail in
12 our opening statement the views of Charles Blé Goudé, which reflected also his own
13 statement.

14 With respect to the narrative of the Prosecution, Judge Henderson did acknowledge
15 that the Prosecution case was prima facie plausible, indeed. You can find it in the
16 Prosecution response paragraph 25. Indeed, that was the observation of
17 Judge Henderson in the majority reasons, but Judge Henderson said something
18 different in addition to that. In his preliminary statement, he emphasised that, upon
19 scrutiny, the Prosecution systematically omitted or downplayed significant factual
20 elements which resulted in a highly misleading and somewhat skewed version of the
21 events, which did not reflect the reality of the case. Paragraph 66 of
22 Judge Henderson's reasons.

23 It was not merely a difference of interpretation, your Honours, of the evidence
24 between Defence and Prosecution, as the Prosecution suggests. No. Rather, there
25 was a fundamental divergence between the Prosecution's one-sided narrative and the

1 facts emerging from its own evidence as observed by Judge Henderson's reasons in
2 paragraph 1 and 2038; and in Judge Tarfusser's opinion in the paragraphs 68, 74 and
3 12.

4 It was actually on the basis of this fundamental flaw of the Prosecution's case that
5 Trial Chamber I dismissed the case halfway through the proceedings. It's important
6 to emphasise to this Chamber, Madam President, that the Appeals Chamber affirmed
7 that both judges in the majority believed that the Prosecution's one-sided narrative
8 was manifestly unsupported by the evidence. Paragraph 340 of the appeals
9 judgment and paragraph 317 and paragraph 328 till 330 of the appeals majority
10 judgment, Madam President.

11 The majority in the Appeals Chamber also accepted that the Prosecution evidence
12 against the appellant, Mr Charles Blé Goudé, was to be qualified not only weak, but
13 exceptionally weak. And this exceptionally weak, this was of great significance, as
14 the majority ruled, when applying any test of sufficiency. Paragraph 340 of the
15 Appeals judgment. Judge Carbuccia's dissent is therefore not relevant to rely on as
16 a matter of *res judicata*.

17 The Prosecution's argument on documentary evidence and receipts is also not
18 relevant. The Defence in its request was not merely disagreeing with the
19 Prosecution's exercise of its discretion in the presentation of its evidence -- no, we
20 highlighted the implausibility of the Prosecution's narrative when faced with the lack
21 of evidence to support it.

22 And, secondly, its failure to comply with its obligation to genuinely search for the
23 truth by omitting to progressively adjust its narrative to the insufficient evidence
24 presented at trial.

25 The Prosecution further alleges that we impermissibly re-litigate the trial issues again,

1 such as, the authenticity of documents and the use of anonymous hearsay. And

2 that's to be found in the response, paragraphs 5 and 30.

3 Your Honours, this is far from the truth. To the contrary, we are not asking this

4 Chamber to reassess whether the Prosecution failed to establish the authenticity of

5 documents. The reason why we are not asking this is that these are matters of

6 *res judicata*.

7 The Prosecution is, to the contrary, reopening the debate, requesting this Chamber to

8 look back in the evidence to assess how certain witnesses authenticated documents

9 et cetera. We, on the other hand, are simply asking this Chamber to take the

10 conclusive findings of the Trial Chamber and the Appeals Chamber into

11 consideration in the context of this request.

12 It's therefore also completely irrelevant that the Prosecution provided the Chamber

13 with investigation reports or that it tried to establish the authenticity of some

14 documents at trial, as it suggested in its response paragraphs 32 and 33.

15 The Prosecution is part of the judicial system and is a gatekeeper within that system,

16 and, in this vein, these arguments therefore cannot foreclose this Chamber for

17 accepting the acquittal.

18 Here it's also totally irrelevant that Judge Henderson's view that the authenticity of

19 signatures could not be taken for granted might have been based on one insider

20 witness, as the Prosecution suggests in its response paragraph 34. Judge Henderson

21 identified not just one discrete problem affecting the documents, but he identified

22 "pervasive" authenticity "problems affecting a considerable number of documents" in

23 his reasons, paragraph 36.

24 In his view, I quote:

25 "[...] a majority of documentary exhibits that were submitted by the Prosecutor [...]"

1 would not pass even the most rudimentary admissibility test in many domestic
2 systems." Paragraph 36 of his reasons.

3 And in the same paragraph Judge Henderson does say that:

4 "This is especially true in a case like ..." here, "where much of the evidence was
5 essentially provided by the current government, which [was] headed by political
6 opponents of the accused. Indeed, under these circumstances" - as Judge Henderson
7 mentions - "the Chamber would have expected the Prosecution to take further steps to
8 ensure that important documentary evidence was properly and demonstrably
9 authenticated before being submitted" to the Court.

10 Now regarding the judges' conclusions of the Trial Chamber I on the inappropriate
11 use of anonymous hearsay during the proceedings, we didn't mischaracterise
12 Judge Henderson's findings. He did seriously question and criticise the
13 Prosecution's choice of using anonymous evidence -- anonymous hearsay evidence on
14 such a considerable proportion of evidence, that he explained that this so-called
15 "relaxed approach" - to be found in paragraph 43 (sic) of his reasons - had a direct and
16 a very impact consequence for the case because it made the Chamber -- for the
17 Chamber impossible to ascribe any probative value to the evidence in question.
18 Judge Henderson gave countless examples, Madam President, throughout his
19 reasonings of evidence based on anonymous hearsay, which was either
20 uncorroborated or corroborated just by hearsay and could, therefore, not be relied on.
21 The Prosecution failed to act appropriately in refusing to attach more
22 significant -- significance to the very problematic fact that its case was based largely
23 on hearsay and anonymous hearsay.
24 For sure this should have put the Prosecution on notice that its case was too weak to
25 sustain a conviction. And you find countless examples of Judge Henderson's

1 observations in the paragraphs 608, 622, 653, 665, 713, 749, 909 and 915 et cetera.

2 Madam President, the Prosecution also overlooks the fact that the --

3 PRESIDING JUDGE ALAPINI-GANSOU: [16:00:20](Interpretation) Counsel, you

4 are eating into the speaking time of those who will follow you. You have already

5 been speaking for more than 45 minutes. So can you kindly speed up or summarise?

6 MR KNOOPS: [16:00:53] Thank you, Madam President.

7 The observations by the ...

8 (Trial Chamber confers)

9 PRESIDING JUDGE ALAPINI-GANSOU: [16:01:22](Interpretation) Please, go ahead.

10 Please, go ahead. I can see -- I can see certain people from your team who are

11 nodding their heads. But I think that you have already used up the 45 minutes, but

12 you can go ahead by way of summary.

13 MR KNOOPS: [16:01:46] Thank you, Madam President. Thank you so much.

14 I'd like to point, Ms -- Madam President, that in the judgment of the Trial Chamber I,

15 the judges acknowledged that, indeed, the Prosecution narrative was confined to one

16 narrative and not two. And I refer the Chamber to the second order of the

17 Trial Chamber of 8 June 2018 where, the judges, unanimously, including Judge

18 Carbuccia, noted that, notwithstanding some minor changes in respect of a limited

19 number of allegations, the overall narrative of the trial brief, which was ordered by

20 the Chamber, remained essentially the same as the one mirrored in the pretrial brief.

21 It's, therefore, not correct to state that the changes, which were apparently ordered by

22 the Chamber, related just to corrections and footnotes. The Chamber clearly ordered

23 the Prosecution to review its case, and in its second order observed that, despite the

24 filing of the trial brief, the theory of the Prosecution effectively did not change.

25 Second point is that the order -- procedural order is quite important in this case. The

1 Prosecution only during the NCTA proceedings, no case to answer proceedings, was
2 willing to withdraw some of the charges, while in – and that was in September 2018 –
3 while the Chamber in its order, and that was the order which the Chamber gave in
4 March, asked the Prosecution to file a trial brief and reframe its narrative by taking
5 into consideration the testimonies heard in the documentary evidence submitted at
6 trial. That's to be found at paragraph 10 of the first trial brief order.
7 Notwithstanding this order, the Prosecution continued with its narrative, and, only
8 after the NCTA motion was introduced by the Defence, the Prosecution was willing
9 to amend in a way the charges, by dropping two charges, the third and the fourth
10 incident. And, therefore, also, this is a clear example that the Prosecution was
11 staying on to its theory as long as possible.
12 Finally, Madam President, the appeals proceedings -- very briefly, to illustrate that
13 indeed there was a one-sided narrative and never a two-sided narrative, you will find
14 in the appeals proceedings that the Prosecution was not in the position to inform the
15 Chamber whether it was willing and able to retry its case.
16 The dissenting -- even the two dissenting judges, Judge Ibáñez and Judge Bossa,
17 observed in their dissenting opinions that it remained unclear throughout the
18 appellate proceedings what precisely the Prosecution considered the procedural effect
19 of such a declaration of a mistrial would be; that was the initial request in appeal,
20 a mistrial. But even the dissenting judges observed that the mistrial cannot be part
21 and parcel of an appeal proceedings before the ICC proceedings.
22 The Prosecution's unclear position regarding the relief sought was also made
23 apparent during the appeals hearing on 26 June 2020, where the Prosecution clarified
24 that they were not asking the Appeals Chamber to directly order a retrial; rather, the
25 Chamber is free to do so -- the Appeals Chamber, should they consider this to be the

1 correct remedy.

2 A few minutes later, at the same hearing, the counsel for the Prosecution stated that,
3 now – to confirm the Prosecution's present intention is to hold a retrial should her
4 appeal succeed. You can find this is in the transcript, page number -- 240, page 28,
5 lines 15 till 18.

6 PRESIDING JUDGE ALAPINI-GANSOU: [16:06:35](Interpretation) Counsel, you
7 are taking up the speaking time of your client. You are currently taking your client's
8 speaking time and that of the defender as well.

9 MR KNOOPS: [16:06:52] Madam President, is it my understanding that the speaking
10 time for Mr Blé Goudé is in addition to the speaking time we were granted? I'm
11 aware that I've taken more time than ... But then, if that's the case, I will conclude.
12 And --

13 PRESIDING JUDGE ALAPINI-GANSOU: [16:07:13](Interpretation) That's exactly
14 what we said at the start, when you were presenting the case. We gave you 45
15 minutes, and at your request, and at the request of Mr Blé Goudé, we also accorded
16 five minutes to him. So, in a general way, on your side, you have covered 50
17 minutes in total.

18 MR KNOOPS: [16:07:39] In that regard, Madam President, I will conclude and I
19 would invite, finally, Madam President, the Chamber to acknowledge that the raison
20 d'être of Article 85 is met. And if this would be acknowledged by your Chamber, by
21 granting this request, it would make Article 85 not redundant, not an empty shell,
22 and it would encourage the institution of the Prosecution not to continue to bring
23 exceptionally weak cases to this Chamber.

24 Thank you.

25 JUDGE KORNER: [16:08:21] Mr Knopps, before you sit down, I have a question

1 which we will not deduct from your client's --

2 PRESIDING JUDGE ALAPINI-GANSOU: [16:08:29](Interpretation) Mr Knoops,
3 there is the judge who would like to put a question to you before continuing.

4 JUDGE KORNER: [16:08:37] Yes, thank you. Thank you, Madam President.

5 Sorry, I started before you speaking.

6 Mr Knoops, I just have one question for you. In the course of what could be said to
7 be highly emotional, not to say emotive language used in your application for
8 compensation from about paragraphs 25 onwards, you divide the periods for which
9 you request compensation into three. And, effectively, it's not so clear from the
10 redacted public version, but you are saying that there is a second period which begins
11 from the 1 February 2019 until 31 March 2021. And, again, you've repeated that even
12 though he's been released with conditions, he's still not free. And that is the basis of
13 your application, is it not, for compensation for these periods.

14 And what I'd simply like to know is this, do you not consider that by failing to
15 mention in your application -- or, indeed, at any stage during your oral submissions --
16 that effectively your client cannot go back to the Côte d'Ivoire because if he does, he's
17 going to be serving 20 years' imprisonment past in, I understand it, December 2019?
18 You could be said to be misleading the Court if by omission, if nothing else?

19 MR KNOOPS: [16:10:37] I understand your question, Madam Korner.

20 First of all, it's a very intriguing question. First of all, Mr Blé Goudé, of course, didn't
21 waive his right to liberty, as the Prosecution suggests, by accepting the restrictions for
22 house arrest. I think the Court is well aware, as my first observation, with the
23 decision of Buzadji v. Moldova in the European Court of Human Rights court, where
24 this exactly was the same problem, the defendant agreeing -- conceding to conditions
25 of house arrest, but had no choice. And the European court said this is a matter of

1 duress.

2 So the fact that Mr Blé Goudé, first of all, did accept the conditions here by the
3 Trial Chamber and the Appeals Chambers, that's, of course, something important.

4 Your question is: Did he --

5 JUDGE KORNER: [16:11:57] No. My question is directed to you, Mr Knoops, not
6 to your client. My question is, do you not think that you should have mentioned in
7 your application for compensation, particularly for that period, that one of the
8 reasons that your client cannot go back to the Côte d'Ivoire, or presumably does not
9 wish to go back to the Côte d'Ivoire, is because he has been sentenced to 20 years in
10 his absence? And, therefore, remaining in Holland is probably a positive plus.

11 MR KNOOPS: [16:12:36] Now I understand your question, Ms Korner. Thank you.

12 PRESIDING JUDGE ALAPINI-GANSOU: [16:12:42](Interpretation) Thank you.

13 Thank you, Judge. Now I think that the Chamber has discussed this question. We
14 have already ruled on this, even if Mr Knoops is not able to give us a satisfactory
15 response. But this is a point which we will come to at the appropriate time. We
16 will give notification on this.

17 (Trial Chamber confers)

18 JUDGE KORNER: [16:13:20] Mr Knoops, just in one sentence - really, it is either yes
19 or no - you don't consider it or you do consider it to be misleading?

20 MR KNOOPS: [16:13:32] No, honourable Judge Korner, I don't think it's misleading,
21 bearing in mind that Mr Blé Goudé does want to go back, because the trial, with all
22 due respect, in Côte d'Ivoire -- we don't have the time to go into it -- was a farce. And
23 he can receive a retrial. So he's adamant to go back. So it's not a positive thing that
24 he can remain for now in the Netherlands.

25 Thank you so much.

1 PRESIDING JUDGE ALAPINI-GANSOU: [16:14:19](Interpretation) Honourable

2 Judge, you don't wish to ... ? No.

3 In which case, have you finished, Counsel? Have you concluded, Counsel? Have
4 you concluded?

5 MR KNOOPS: [16:14:28] Yes, Madam President. Thank you.

6 PRESIDING JUDGE ALAPINI-GANSOU: [16:14:31](Interpretation) Very well. So
7 your client can therefore have the five minutes accorded to him.

8 So should we accord the five minutes to your client or have you said everything in his
9 stead?

10 MR KNOOPS: [16:14:45] I think, Madam President, it would be instructive for the
11 Chamber to listen five minutes to Mr Blé Goudé because of the ... a personal address.

12 PRESIDING JUDGE ALAPINI-GANSOU: [16:14:55](Interpretation) Exactly.

13 Exactly, that's what we thought. But I wanted to have exchanges in the right
14 procedure and we cannot go beyond the five allocated minutes. He has the floor.
15 You have five minutes.

16 MR BLÉ GOUDÉ: [16:15:31](Interpretation) Thank you. I am just waiting for the
17 lectern to be provided to me.

18 PRESIDING JUDGE ALAPINI-GANSOU: [16:15:53](Interpretation) You have the
19 floor.

20 MR BLÉ GOUDÉ: [16:15:55](Interpretation) Honourable judges, ladies and
21 gentleman of the Court, I am Charles Blé Goudé. I greet you with deference. I'm
22 a native of Guibéroua from Côte d'Ivoire, and Africa is my continent.

23 Law is my backbone. Honourable judges, as for myself, I do not know the judges
24 who acquitted me at trial, just as I also do not know those who definitively confirmed
25 my acquittal in appeal. Only law has taken me out of prison and it is to this law that

1 I would like to have recourse to this afternoon to ask for reparations.

2 And why? After eight years, eight years of my life which was eaten up, it was taken
3 from me. I didn't say eight days. I didn't say eight weeks. I didn't say
4 eight months. I am speaking of eight long years of deprivation, of desocialisation.
5 Eight years that I was presented to everyone as a criminal. Eight years of trauma.

6 Your Honours, as you know, I was arrested in Ghana without even being presented
7 to a lawyer. I was in Côte d'Ivoire to execute the arrest warrant. I was detained for
8 14 months without seeing the day. In execution of the arrest warrant of the ICC, I
9 was transferred in 2004, in execution of the arrest warrant, and for six years I was
10 subject to proceedings here. There was the work of my lawyer, and, thanks to that, I
11 was acquitted.

12 But during all these years, you can imagine, Madam, honourable judges, that my
13 children had to flee. They had to flee the view of their -- their classmates at school.
14 They were the children of a criminal. They grew up without their father and they
15 had to say, "Mummy, why isn't our father there?" Because he was never there,
16 because he could not be there.

17 Your Honours, that was a difficult moment for me and my family. And when I was
18 acquitted I was happy because, for me, it was the end of this calvary. But I've made
19 a major mistake. The calvary continues, and it continues to this very day. While
20 the ICC had the authority and power through cooperation with Côte d'Ivoire,
21 cooperation in the name of which there was ... a special aeroplane was made
22 available to travel without a passport or visa. But since my acquittal, the ICC has not
23 carried out the clause of cooperation, other than at a formal level, by providing me
24 with a passport. A passport that I'm waiting for and I have been waiting for it for 11
25 months. Six to obtain a meeting, and, now, I'm awaiting still my passport. That is

1 to say, that I am currently losing my Ivorian citizenship and Blé Goude has become
2 an -- *apatride*.

3 But if the ICC can arrest somebody, can transfer somebody, can transport somebody,
4 can try and convict somebody as being guilty, then it can also free somebody. It can
5 rehabilitate somebody. It can re-establish their lives.

6 Your Honours, that is what I would like to put to you. Not necessarily to ask for
7 money, because the harm that I have suffered represents far more than money. It is
8 my dignity, my image that has been destroyed.

9 PRESIDING JUDGE ALAPINI-GANSOU: [16:21:13](Interpretation) Mr Blé Goudé,
10 could you conclude.

11 MR BLÉ GOUDÉ: [16:21:13] (Interpretation) Madam Judge --

12 PRESIDING JUDGE ALAPINI-GANSOU: [16:21:14] Can you hear me,
13 Mr Blé Goudé?

14 MR BLÉ GOUDÉ: [16:21:20](Interpretation) Yes, I can hear you.

15 PRESIDING JUDGE ALAPINI-GANSOU: [16:21:22](Interpretation) This is taking
16 time. And do you trust your counsel?

17 MR BLÉ GOUDÉ: [16:21:27](Interpretation) Indeed. I am going to conclude,
18 therefore, Madam Judge, to say that here, in Holland, what my counsel hasn't said, I
19 can't even have access to public services. Even the vaccine, the COVID vaccine for
20 which everybody is encouraged to take, Madam, I cannot even have access to that
21 vaccine.

22 I am before you and I ask for reparations and compensation for all that, and I believe
23 you have the power, you have the authority, to take me to Côte d'Ivoire, in a safe
24 place, as was indicated by the Appeals Chamber, such that I can rebuild my life,
25 rebuild myself, and take up my activities again, and enjoy my normal family life.

1 Because I was acquitted. The trial in Côte d'Ivoire was not a proper trial. I was
2 tried on the same facts.

3 I have said it, and I would like to thank you.

4 PRESIDING JUDGE ALAPINI-GANSOU: [16:22:33](Interpretation) Thank you very
5 much. We take good note that your question is not, above all, about money but
6 about dignity.

7 MR BLÉ GOUDÉ: [16:22:44](Interpretation) Indeed. And that goes -- the moral
8 reparations go along with financial reparations as well.

9 PRESIDING JUDGE ALAPINI-GANSOU: [16:22:56](Interpretation) Very well. It's
10 interesting to hear you say that, because I thought that your question wasn't
11 a financial one, but a question of dignity. But thank you for that. Thank you.
12 Thank you.

13 MR BLÉ GOUDÉ: [16:23:03](Interpretation) You're welcome, Madam.

14 PRESIDING JUDGE ALAPINI-GANSOU: [16:23:10](Interpretation) Can I give the
15 floor -- can I give the floor to the Prosecutor?

16 You have the floor, Prosecutor. You have 45 minutes.

17 MR KHAN: [16:23:19] Madam Prosecutor, your Honours, I'm most grateful. And
18 bearing in mind the injunction at the outset, I don't intend to repeat what's in the
19 response. I think that sets out, with the greatest of respect, quite comprehensively
20 the proper answer as to why the Prosecution say the application of Mr Blé Goudé
21 should be dismissed.

22 From what my learned friend has said today and what Mr Blé Goudé has stated, it's
23 clear that he is pleased to be acquitted, but unhappy to have been charged, arrested
24 and detained. I can understand that; it's natural. But that's legally irrelevant as a
25 consideration as to the applicability of Article 85(3).

1 This is a judgment of course that was strident, in part, in its language in areas of
2 criticism regarding the office – stinging criticism, in part as well, I fully concede.

3 Could the Office of the Prosecutor have done better? Of course we can always do
4 better. But that similarly is not the question. That similarly does not bring an
5 unmeritorious case within the confines of Article 85(3).

6 And the difficulty perhaps that my learned friend is grappling with is evidenced by
7 his opening submission, praying in aid a teleological approach, emotively asking
8 your Honours to be courageous – as if your Honours need any encouragement to do
9 that – but courageous by doing precisely that which the Assembly of States Parties
10 have declined to do.

11 On the one hand, my learned friend says that the Rome Statute regime is the most
12 advanced text in terms of compensation. I can agree with that. But again, Article
13 85(3), as the Bemba jurisprudence and the Ngudjolo jurisprudence make clear, sets
14 out very deliberately a high threshold. It is of a discretionary nature, but the high
15 threshold simply has not been made out in this particular case.

16 My learned friend Mr James Stewart will go into some more detail, but perhaps I can
17 just very briefly address a few points.

18 The first is the very notable feature of this case, that five judges, indeed six judges, of
19 this International Criminal Court either confirmed the case - or, in terms of the three
20 judges at confirmation, at least in part, two judges completely on all counts, Judge
21 Christine van den Wyngaert in relation to three of the incidents, Judge Carbuca
22 dissented, and two judges, of course, at the appellate level would have remitted the
23 case back to retrial.

24 Now, I simply don't concede for a moment that my learned friend's contortion, in my
25 submission, of *res judicata* is appropriate. The -- and I would ask you to look at the

1 two European court cases that my learned friend has prayed in aid, O. v. Norway and
2 Sekanina v. Austria. This is not a case in which there is a smell of suspicion that is
3 being cast upon somebody who's been declared not guilty. This is a case in which
4 my learned friend, who has the burden of proof, has to establish a grave and manifest
5 miscarriage of justice has taken place.

6 And to establish that conclusively, how is it other than extremely relevant to the
7 appropriateness of the warrant being issued, or the case being confirmed, that judges
8 at different stages – in issuing a warrant, in confirming the case, in dissenting, and
9 two judges that would have remitted him -- would have remitted the case back, were
10 of a mind that the evidence disclosed something that required an answer?

11 The fact that those judges spoke in the manner that they did, is relevant to whether or
12 not there's been a miscarriage of justice. In other words, whether or not this is
13 a prosecution that should never have been brought.

14 Your Honour, my learned friend largely glosses over those six judges and he says, in
15 terms of respect to Judge -- Judge Carbuca that her dissent was irrelevant.

16 Inconvenient, perhaps. Irrelevant, not a bit of it.

17 Your Honours, those requirements of Article 85(3), exceptional circumstances,
18 conclusive facts and a grave and manifest miscarriage of justice cannot be airbrushed
19 out by my learned friend with the litany of complaints and grievances that he has put
20 forward in his submissions and in -- today.

21 The conjecture that is a feature of the written submissions and, again, today, for
22 example, the assumptions as to what the confirmation -- the judges of the Pre-Trial
23 Chamber were doing when they were issuing their confirmation decision is similarly
24 revealing because it is a conclusion that counsel does not pray in aid any authority in
25 support of that proposition. The judges were rather restricted to the requirements of

1 the Statute and whether or not the case should be confirmed. So, again, when one
2 looks at the conjecture, the views as to why things were done, one needs to do so with
3 a lens of some circumspection in my respectful submission.

4 Your Honours, I don't intend to go into more detail. The fact that two judges would
5 have remitted the matter back for a retrial, the fact that one judge dissented, the fact
6 that three judges confirmed the case, the fact that an arrest warrant was properly
7 issued on the Prosecution's application is not sufficient to give rise to complaint, nor
8 is the acquittal, at the end of day.

9 Indeed, if anything, my learned friend -- one would have expected perhaps a degree
10 of commendation of the Trial Chamber in engineering in a procedural safeguard that,
11 as compared with Mr Bemba or Mr Ngudjolo, he was not required to put on a defence.
12 However one looks at it, from whatever vantage point one reviews this case, there has
13 not been a miscarriage of justice. My learned friend has failed to discharge his
14 burden of proof as required by the Statute, and, for that reason, we say the claimant's
15 application should be dismissed.

16 But perhaps, with your leave, Mr James Stewart will go into further detail on these
17 issues.

18 PRESIDING JUDGE ALAPINI-GANSOU: [16:31:42](Interpretation) Thank you,
19 Mr Prosecutor.

20 Mr Stewart, you have the floor.

21 MR STEWART: [16:31:49](Microphone not activated) We're all making the same
22 mistake. Thank you.

23 Madam President, your Honours, I'm going to expand very briefly on what the
24 Prosecutor has submitted to you. And just to pick up on one aspect of Mr Knoops's
25 submissions to you, I think you're well aware that we are not challenging the outcome

1 of the case. We've acknowledged the outcome and accepted it with deference and
2 respect in paragraph 9 of our response; so that's -- that's not the issue for us.

3 The question before the Chamber today, as the Prosecutor has outlined, is whether
4 exceptional circumstances exist in Mr Blé Goudé's case where the Chamber could find
5 conclusive facts that he has been the victim of a grave and manifest miscarriage of
6 justice. And, of course, our submission is that the answer must be no.

7 The standard under Article 85(3), as the Prosecutor has outlined, is a high one.

8 Mr Knoops has acknowledged that we're not dealing here with malice; so we must be
9 dealing, I suppose, with gross negligence in the administration of justice. And our
10 submission is simply that a fair examination of the record of this case reveals that
11 whatever criticisms -- whatever criticisms may be levelled against the Prosecution's
12 handling of the case, there was no such miscarriage of justice.

13 In the end, Mr Blé Goudé benefitted from the full panoply of right afforded to the
14 defence of any accused under the Rome Statute. The Prosecution having failed in
15 the view of the majority of the Trial Chamber to prove his guilt, Mr Blé Goudé was
16 acquitted of the charges of crimes against humanity that he faced. His rights were
17 equally safeguarded on appeal. In the result, the Appeals Chamber, by a majority of
18 three judges to two, affirmed his acquittal.

19 Now, in responding to Mr Blé Goudé's compensation claim, we've organised our
20 arguments around four key phases of the judicial proceedings. And those are, the
21 point reached by the time of the confirmation hearing; the trial, and notably the no
22 case to answer litigation; Mr Blé Goudé's release by the Appeals Chamber on
23 conditions pending the former Prosecutor's appeal; and, finally, the appeal itself
24 against acquittal.

25 And we submit that those four moments in the judicial proceedings offer the best

1 opportunity to measure whether or not Mr Blé Goudé has made his case for
2 compensation.

3 Now, our response to his claim is fully developed in our written submissions. I'm
4 only going to touch on key highlights. I'm also going to leave to our written
5 submissions the position we take on his calculations in respect to what he says he's
6 owed in compensation.

7 If we look briefly at the confirmation hearing, this, of course, is the point where the
8 Prosecution had completed, or nearly so, its investigation, made disclosure to the
9 Defence, and described through the DCC the shape of its case against the suspect.
10 Of course, the Prosecution is required to investigate to determine the truth and to
11 look for incriminating and exonerating circumstances equally. And to do that, the
12 Prosecution has to act in good faith and to take all reasonable steps available to it.
13 And we submit that that's exactly what happened in this case.

14 By the time of the confirmation of charges, the Prosecution had not only disclosed its
15 case against Mr Blé Goudé, but had disclosed to the Defence material from its
16 investigation concerning armed opposition elements, variously described as
17 "*Commando Invisible*", "*Forces Nouvelles*" or "rebels," who were active in Abidjan at the
18 relevant time.

19 And this information was pertinent to the Defence. It came from many sources,
20 including, the range of witnesses the Prosecution interviewed and who gave evidence
21 respecting the post-election violence from their diverse vantage points. It came from
22 extensive archival material that the Prosecution reviewed in Côte d'Ivoire. So by the
23 time that the Prosecution came to the confirmation hearing, it believed it had
24 understood the context, it had identified the crimes committed during the conflict
25 surrounding the contested presidential election in Côte d'Ivoire, and it had described

1 what it believed was Mr Blé Goudé's part in those crimes.

2 The Prosecution's case theory was based on its assessment of the evidence as a whole,
3 taking into account both incriminating and exonerating aspects. And in presenting
4 its case against him, in the DCC and later in the pretrial brief, the Prosecution did not
5 omit mention of factors relevant to the Defence.

6 In those circumstances, in our submission, it's very hard for Mr Blé Goudé now to
7 claim that he was subjected to a wrongful prosecution as a result of the Prosecution's
8 investigation and presentation of its case theory.

9 Coming briefly to the trial.

10 The arguments that he makes in his compensation claim were arguments that he
11 raised before the Trial Chamber, which, by a majority, resolved them in his favour.

12 In our submission, that's why they really don't belong in this application. And we
13 say that Mr Blé Goudé, in criticising the Prosecution for failing to establish the
14 authenticity of documentary evidence that it presented, overlooks efforts that the
15 Prosecution did make in good faith by examining official markings and formats, by
16 assessing the context in which the documents were found, steps that it described in its
17 investigation reports. This, in our submission, was a fair way to proceed.

18 The Prosecution also attempted further to authenticate documents through witnesses
19 at trial, including high-level insider witnesses who did authenticate many of the
20 documents shown to them. These were reasonable steps to take, we submit,
21 particularly in circumstances where information about authorship and chain of
22 custody was no longer available or even obtainable. And this is a situation that is
23 not uncommon in international criminal trials.

24 In addition, reliance on anonymous hearsay is not impermissible, and such evidence
25 is not devoid of value. But the Prosecution didn't seek to rely on it alone to prove

1 the material facts against Mr Blé Goudé. It attempted to use this evidence in support
2 of other evidence in the case. That it ultimately did not succeed in some instances
3 does not mean that the Prosecution acted wrongfully or in a manner that gave rise to
4 a grave and manifest miscarriage of justice.

5 We know what impression the Prosecution case ultimately made upon the minds of
6 the judges hearing the case. But we do say that the comments made by
7 Judge Henderson, whose views reflected the majority opinion, are telling about the
8 conduct of the Prosecution.

9 Speaking from hindsight in offering his criticisms, he said, and you have already had
10 this brought to your attention:

11 "[...] although this opinion is at times critical of the Prosecutor, it is crucial to
12 understand that this criticism is aimed at the Prosecutor's case and not at the
13 individuals who have represented the Office of the Prosecutor. The fact that this
14 case has ended in an acquittal is due to the fact that the Prosecutor did not present us
15 with sufficient evidence to persuade us that a reasonable trial chamber could convict
16 the accused of these specific charges. It may well be that some of us may be of the
17 view that they would have done things differently. However, this in no way
18 impugns the integrity, good faith and commitment of the women and men who
19 represented the Prosecutor in this case and whose incredibly hard work and great
20 efforts should not be disparaged because it did not lead to a conviction."

21 We submit that such comments undermine the suggestion that Mr Blé Goudé has
22 been the victim of a miscarriage of justice.

23 The dissenting judge, Judge Herrera-Carbuccia, careful to frame her opinion in terms
24 of what a reasonable trial Chamber could find on the evidence, took a different view
25 of the Prosecution case and the evidence against Mr Blé Goudé. And you're well

1 aware of the view that she took.

2 As the Prosecutor has pointed out, our point is simply this: There was a divergence
3 of views on this case in the Trial Chamber, and judicial criticism of the case brought
4 by the Prosecution – even expressed in strong language in the acquittal judgment – is
5 not determinative of the question whether a grave and manifest miscarriage of justice
6 occurred.

7 Whatever the criticisms here, there can be no suggestion that such a miscarriage
8 happened in this case. Mr Blé Goudé has -- Mr Knoops on his behalf has placed
9 a great deal of emphasis on the suggestion that the Prosecution maintained the
10 narrative of its case unchanged from before the trial opened until after the close of its
11 case.

12 Whatever the merits of such an argument may be, Mr Blé Goudé has failed to show
13 why this narrative caused him any prejudice or subjected him to a grave and manifest
14 miscarriage of justice. Even if the Prosecution at that stage, that is, after the close of
15 its case, continued to put forward what it felt was its best case, it still included in its
16 narrative evidence that was potentially exonerating. Mr Blé Goudé, we submit,
17 suffered no prejudice here, and this is really what the issue is before the Chamber.
18 The Prosecution continued to be transparent in its inclusion of those aspects of the
19 evidence that were potentially helpful to the Defence in its written submissions to the
20 Chamber.

21 And with respect to the timing of the Prosecution's statement to the Trial Chamber,
22 that it would not oppose a dismissal of two of the incidents relating to the case
23 against Mr Blé Goudé, we would submit that, in responding to the no case to answer
24 motion was a perfectly legitimate time, a perfectly proper time for the Prosecution to
25 make that concession, if you will.

1 A trial is a dynamic process and the decision to withdraw two of the charges of the
2 five was a product of how the trial had unfolded to that point, and the decision of the
3 Prosecution enured to the benefit of Mr Blé Goudé and demonstrates that the
4 Prosecution was in an adversarial system where it was putting forward its case and
5 the Defence could challenge that case, acting responsibly by conceding that the nexus
6 between Mr Blé Goudé and the two incidents that are referred to, the Abobo incidents
7 in March of 2011, was not made out.

8 In my submission, that really demonstrates that far from what is being claimed by
9 Mr Knoops on behalf of his client, the Prosecution acted responsibly and fairly
10 throughout.

11 Let me come briefly to the release on conditions.

12 Mr Blé Goudé faults the former Prosecutor for requesting his conditional release in
13 light of her position about a retrial. In our submission, however, there are three key
14 reasons why his arguments fail to demonstrate a grave and manifest miscarriage of
15 justice.

16 First, in relation to the conditional release that the Prosecution requested,
17 Mr Blé Goudé's rights had judicial safeguards. The Appeals Chamber imposed
18 conditions of release on Mr Blé Goudé following hearings. In the first set of hearings,
19 in February of 2019, the reasons for judgment had not yet been released, and so the
20 Prosecutor was not in a position to be able to say precisely what shape her appeal
21 would take, but she was intending to appeal.

22 If we go forward to May of 2020, when the Appeals Chamber reviewed its conditional
23 release order, following a hearing on Mr Gbagbo's request for reconsideration, it
24 unanimously found no error or injustice. In the meantime, of course, there had been
25 another hearing on -- in February of 2020 on the issue of conditional release. But in

1 May of 2020, the Appeals Chamber unanimously found that there had been no error
2 or injustice in the way in which the then accused had -- or at least the then acquitted
3 men had then been treated. Of course, the Appeals Chamber on its own motion
4 relaxed the conditions pending the outcome of the appeal. And when the
5 Appeals Chamber by a majority ultimately upheld Mr Blé Goudé's acquittal, all of the
6 release conditions imposed by the Court were lifted.

7 So our submission is that Mr Blé Goudé thus received a fair adjudication of his
8 conditional release throughout the appeal proceedings.

9 Secondly, the former Prosecutor's position on conditional release before the
10 Appeals Chamber, as conveyed through counsel, was both reasonable and
11 transparent. In January and February 2019, as I've said, when she first sought
12 Mr Blé Goudé's release on conditions, she was not in a position to specify exactly
13 what remedy she would seek. And, of course, by that time, the time for appeal had
14 not even begun to run.

15 She was anxious, of course, to preserve her statutory right of appeal and any remedy
16 that she could seek. By February of 2020, of course, the second hearing on release,
17 the Trial Chamber's written decision -- reasons had been released, I should say, the
18 reasons had been released and the appeal had been briefed, and, at the hearing, the
19 Prosecution confirmed if successful on appeal she was seeking the remedy of reversal
20 and mistrial.

21 Now, through counsel, the former Prosecutor further explained if this remedy were
22 granted she intended to retry Mr Blé Goudé, but her final decision, including on the
23 exact scope of any trial, would depend on the appeal judgment itself, which, of course,
24 was not yet out, and several other factors affecting the feasibility of a retrial. And
25 we've -- we have dealt with those factors in our written response and I refer you

1 primarily to paragraphs 49 to 52. But she also acknowledged the Appeals Chamber's
2 own power to order a retrial regardless of the remedy she requested.

3 Now, in the end, of course, the former Prosecutor never had to decide. Her appeal
4 was rejected and the acquittal upheld. Our position is simply that the former
5 Prosecutor took a reasonable position on conditional release and she was always
6 transparent with the Appeals Chamber and with Mr Blé Goudé about the remedy she
7 sought and its relevance to conditional release.

8 Thirdly, and finally, there are some features of Mr Blé Goudé's position respecting
9 conditional release which are peculiar to his situation, but which I won't address in
10 open session and we dealt with those in paragraphs 46 and 53.

11 To sum up, Mr Blé Goudé's conditional release pending appeal cannot support an
12 argument in our submission that there is conclusive proof he fell victim to
13 a miscarriage of justice.

14 The final point I can make very briefly relates to the appeal itself.

15 The Prosecutor's appeal cannot be described as frivolous. It followed the acquittal
16 entered by the Trial Chamber at the no case to answer stage of the trial in
17 a two-to-one decision where there was a clear dissent. The appeal raised for decision
18 serious issues of law and procedure; namely, compliance with the provisions of
19 Article 74(5) and the legal standard of proof test and its proper application to no case
20 to answer motions. Although dismissed by a three-to-two majority in the
21 Appeals Chamber, the appeal, as the Prosecutor has pointed out, drew two strong
22 dissents. Such an appeal cannot be described as frivolous.

23 Now, Mr Blé Goudé criticises the way the former Prosecutor framed her appeal on
24 grounds of legal or procedural errors and not on the basis of errors of fact. However,
25 appeals may be brought on the basis of errors of law, procedure, or of fact, and it was

1 up to the former Prosecutor how best to frame her appeal.

2 Two of the appeal judges in dissent would have given effect to the Prosecutor's
3 appeal based on the alleged errors of law and procedure and their impact and would
4 have ordered a new trial. Mr Blé Goudé also criticises the appeal based on the
5 approach of the Prosecution to the matter of retrial, but I've addressed that issue.

6 Our submission is simply that the appeal offers no comfort to Mr Blé Goudé and his
7 claim that he is the victim of a grave and manifest miscarriage of justice.

8 Madam President, your Honours, I am going to leave it there.

9 In conclusion, none of Mr Blé Goudé's allegations taken individually or
10 accumulatively establish conclusive facts proving a grave and manifest miscarriage of
11 justice. Madam President, your Honours, for all the reasons we've given, we would
12 ask that Mr Blé Goudé's claim for compensation under Article 85(3) be denied.

13 Thank you.

14 PRESIDING JUDGE ALAPINI-GANSOU: [16:52:05](Interpretation) Thank you very
15 much, Mr Representative of the Office of the Prosecutor, that is, Mr Stewart.

16 I will now give the floor to the representative of the Registrar, Mr Henquet.

17 Am I pronouncing your name well?

18 MR HENQUET: [16:52:30](Interpretation) Absolutely.

19 PRESIDING JUDGE ALAPINI-GANSOU: [16:52:31](Interpretation) Thank you.

20 MR HENQUET: [16:52:30](Speaks English) Thank you very much. If you allow me
21 to continue in English, please, Madam President, your Honours.

22 In so far as it is helpful, in view of the purpose of this hearing, in open session,
23 what -- what I could submit on behalf of the Registrar is that the Appeals Chamber
24 judgment has been considered and is being implemented by the Registrar, that is to
25 say, insofar as the Registrar was directed pursuant to Rule 185 (1) of the Rules of

1 Procedure to make such arrangements as considered appropriate as soon as possible
2 for the safe transfer of Mr Blé Goudé to a State or States contemplated in that role,
3 taking into the account the view of the acquitted person.

4 If it is helpful for your Honours for the Registry to briefly highlight some of the points
5 we have submitted in our confidential filing, I would respectfully request that we go
6 into private session.

7 PRESIDING JUDGE ALAPINI-GANSOU: [16:53:45](Interpretation) Absolutely,
8 absolutely. I agree. That would be very useful.

9 THE COURT OFFICER: [16:53:51](Overlapping speakers)(Microphone not activated)
10 Your Honours, we are in private session.

11 (Private session at 4.53 p.m.) * Reclassified partially in public

12 MR HENQUET: [16:53:58] Thank very much, Madam President. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted).

17 When it comes to the views of Mr Blé Goudé, as has been recalled today, he has
18 expressed the view that he wished to be returned to Côte d'Ivoire, this turns
19 on -- apparently on the issuance by the State of a passport to Mr Blé Goudé.

20 The Registry has, as we have submitted in our written filing, been in contact with the
21 authorities. This is an administrative process about which we have asked an update
22 and we are in regular contact with the authorities about the implementation of this
23 process. We have also reached out, as I said, to the Defence and we would be -- I
24 think it would be helpful to continue to work together to hear about their interactions
25 with the State about the implementation of this administrative process and progress

1 that may be made with the issuance of the passport to Mr Blé Goudé.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Thank you very much.

12 PRESIDING JUDGE ALAPINI-GANSOU: [16:56:53](Interpretation) Can we go back
13 to open session?

14 Thank you very much.

15 I believe that, at this point, we should stay in private session because there's
16 a question to be put by one of my colleagues.

17 THE COURT OFFICER: [16:57:15] Your Honours, with your instruction, we can
18 move to open session or remain in private session.

19 PRESIDING JUDGE ALAPINI-GANSOU: [16:57:22](Interpretation) Yes, we stay in
20 private session because one of my judge colleagues, Judge Ugalde, has a question.

21 * JUDGE UGALDE: [16:57:42] Thank you, Madam President. Thank you to all. I
22 have a number of questions. To start with, this question is for both Mr Blé Goudé's
23 counsel and the Office of the Prosecution -- or Office of the Prosecutor in this case.
24 In your view, what conclusive facts must be present for a wrongful prosecution to
25 constitute a grave and manifest miscarriage of justice?

26 This is directed again to both Mr Blé Goudé's counsel and to the Office of the

1 Prosecutor.

2 Also, to the Office of the Prosecutor, I -- in your presentation, I heard you refer more
3 than once -- actually, quite often -- to "her" and "she", I suppose, referring to the
4 former Prosecutor. I just want to have clarity as to how the Office of the Prosecutor
5 as an organ of this Court frames itself -- views itself in terms of its action, whether the
6 actions are concerning the decision of the head of organ, in this case, the Prosecutor,
7 whether it is a her or a him, or when -- or you are referring as the Office of the
8 Prosecutor as this organ, the responsibility attaches to whom? To the head or to the
9 organ? And I think this is important.

10 And to the Registry, I wish to ask, what avenues -- other avenues have you been able
11 to carry out in consultation with Côte d'Ivoire concerning the issuance of a passport of
12 Mr Blé Goudé?

13 And, more specifically, I wish to know what has Côte d'Ivoire told the Registry what
14 are the reasons for the delays on issuing Mr Blé Goudé a passport.

15 Thank you.

16 PRESIDING JUDGE ALAPINI-GANSOU: [17:00:15](Interpretation) I will now give
17 the floor following the initial order.

18 Mr Knoops, can you begin by answering the concerns raised by the judge.

19 MR KNOOPS: [17:00:32] Yes. Thank you so much, * Judge Ugalde Godinez for
20 your question.

21 As to your question, what constitutes a wrongful prosecution, what could be the
22 elements of such a phenomenon, of course, we have no definition nowhere. But if
23 you ask me, why, in this case, very essentially, there was a wrongful conviction,
24 a wrongful prosecution, I would say, first, a systematic failure to review the evidence.
25 And even the Prosecution, Mr Stewart, just acknowledged, there was, at a certain

1 point in time, quite some exonerating evidence on, for instance, the *Commando*
2 *Invisible*, who was active in Abidjan.

3 So, first of all, the failure -- the systematic failure to review, during the investigation,
4 the evidence, in light of the burden of proof, first of all.

5 Secondly, the Prosecution - and this is acknowledged by both the majority of the
6 Trial Chamber and the Appeals Chamber - was always insisting on a one-sided
7 narrative. It never occurred to the Prosecution that the evidence it gathered could
8 have led to a different scenario. That's the second element of a wrongful prosecution.
9 It's called, in the legal philosophy, tunnel vision. Tunnel vision -- meaning, the
10 Prosecution assumes a certain theory and it sticks to the theory no matter what
11 happens during the investigation in the trial.

12 And, thirdly, your Honour, in February 2013 -- sorry -- 2018, the Trial Chamber
13 ordered the Prosecution to amend its narrative on the substance and not to the form.
14 It expected the Chamber -- the Chamber expected the Prosecution to amend its
15 narrative. You can find this in -- and I have the filing number here. It's the trial
16 brief order of February 2018, paragraph 10. You will find that the judges say that the
17 Prosecution should file a trial brief and reframe its narrative by taking into
18 consideration the testimonies and the documentary evidence submitted at trial.
19 At that time, the Prosecution was put on notice that the Chamber at that time didn't
20 believe anymore in the one-sided narrative. The fact that the Prosecution
21 nonetheless didn't change its narrative -- to the contrary, in March 2018, it filed its
22 trial brief with no amendments as to its theory.

23 Even today, the Prosecutor acknowledges that only after the no case to answer
24 proceedings were instituted, it opted to drop two incidents, the third and the fourth
25 incident. That's the third point.

1 That means that the Prosecution prolonged the trial while it was put on notice by the
2 Chamber in February 2018 that the Chamber, or at least the majority, didn't believe
3 anymore the narrative of the Prosecution. Because why would the Chamber
4 otherwise order a brief in which order they expected the Prosecution to take into
5 account all the testimonies at trial and documentary. It was a clear indication that
6 the Chamber said to the Prosecution, We don't believe anymore this narrative. So
7 you have a chance, Prosecutor, to re-evaluate your theory. And it didn't do so.
8 And that's the third point, why a wrongful prosecution is at stake.

9 So, therefore, the systematic failure in investigation in accordance with the burden of
10 proof; secondly, the tunnel vision, one-sided narrative acknowledged by the majority
11 of the judges at appeal and first instance; and, thirdly, the Prosecution, against all
12 odds -- against all odds continued with this one-sided narrative.

13 I hope that my answer fulfils your expectation, your Honour.

14 And in my submission, Madam President, this could have been elicited in open
15 session. To me --

16 We are not in open session.

17 (Trial Chamber confers)

18 PRESIDING JUDGE ALAPINI-GANSOU: [17:07:01](Interpretation) We've
19 understood what you said. Thank you very much.

20 But now, can we return into open session? Because the questions that were put by
21 Judge Ugalde also partly come to the private session -- part public session. As such,
22 I will ask if we can go into open session for the questions that were put.

23 Would you be in agreement? Thank you.

24 Yes, please go ahead.

1 (Open session at 5.07 p.m.)

2 PRESIDING JUDGE ALAPINI-GANSOU: [17:07:43](Overlapping speakers)

3 THE COURT OFFICER: [17:07:44](Overlapping speakers) We're back in open
4 session, Madam President.

5 PRESIDING JUDGE ALAPINI-GANSOU: [17:07:49](Interpretation) Very well.

6 Thank you very much.

7 Prosecutor, you can answer the question from honourable Judge Ugalde.

8 MR KHAN: [17:08:05](Overlapping speakers) I'm grateful. I'll answer just the part
9 of your Honour's Ugalde's question regarding the drafting. I think the terminology
10 of "her" was just to -- in the filing, referring to my predecessor, was simply a term of
11 art in the drafting to separate the two terms of office. But in terms of the specific
12 question, the Prosecutor embodies, in my view, the office. There's a continuity of
13 responsibilities under the Rome Statute such, that on 15 June, there was no sunset
14 clause that would give rise to any guillotine effect, and those responsibilities are of
15 a continuous nature.

16 MR STEWART: [17:09:02] With your permission, the question that I'm going to
17 address is --

18 PRESIDING JUDGE ALAPINI-GANSOU: [17:09:03](Interpretation) You may go
19 ahead, Mr Stewart.

20 MR STEWART: [17:09:04] *Merci*. The question that I am going to address is, what
21 conclusive facts must be present to prove a grave and manifest miscarriage of justice?
22 And, of course, I suppose in the abstract, your Honour, I could answer that question
23 by simply saying, conclusive facts demonstrating malice or such gross negligence in
24 the administration of justice that the fundamental rights of the accused person are
25 demolished, if I was to answer it very briefly.

1 Dealing with this particular case – and I think Mr Knoops in his answer has tried to
2 come back to the particular case – I suppose the simple answer for me to give is,
3 whatever we may think in hindsight during the course of the unfolding of the
4 investigation in the prosecution, the Prosecution believed in its case. They believed
5 they had understood the context, and, as I said earlier, what had happened around
6 the contested election, and Mr Blé Goudé's part in it. But in forming that view on the
7 whole of the evidence, the Prosecution didn't ignore issues or evidence that would be
8 of value to the Defence and made disclosure. And, in fact, that disclosure assisted
9 the Defence to attack the Prosecution case, to cross-examine Prosecution witnesses.
10 If I could really put it down in a line, as I understand it, the Defence was putting
11 a great deal of emphasis on the fact that the government troops were coming under
12 attack in certain neighbourhoods in Abidjan, that there was -- there were active armed
13 groups. You're dealing, really, with, in a sense, a kind of guerilla warfare, an urban
14 kind of guerilla warfare. And I suppose, from the Prosecution's perspective, that
15 was accepted, that that was the case, that was the context, that these were, in fact,
16 happening.

17 But the issue for the Prosecution was, did that justify targeting civilians? And the
18 answer from the Prosecution's point of view was no. And the case that they tried to
19 put forward was, This is what had happened, that Mr Blé Goudé had a part in it.
20 In the end, they were unsuccessful. That case -- that theory, if you will, was rejected.
21 As the Prosecutor himself has accepted -- acknowledged, stingingly rejected. But
22 was it entirely unreasonable? And that's why it becomes important to look at the
23 dissenting view.

24 What Judge Herrera Carbucciona may have seen was a narrower case than the case that
25 the Prosecution had put forward, but she saw a case, a case that called for an answer.

1 Now, in making that argument, your Honour, I'm not suggesting for an instant that
2 we should try and re-litigate the guilt or innocence of Mr Blé Goudé. He's been
3 found not guilty. We accept that. What we are looking at, is, having been the
4 subject of an unsuccessful prosecution, was he the victim of a wrongful prosecution?
5 In our submission, he was not. In the end, his rights were vindicated.
6 I'm sorry. If you'll permit me just another moment.
7 My friend has referred to the February 9, 2018 order on the conduct of the
8 proceedings, and I think it's important, really, to see what the Chamber was doing at
9 the time. If you'll indulge me for a moment, I will read paragraph 10 that
10 Mr Knoops has referred to. And this is how it starts out:
11 "The Chamber recalls that the Defence for Mr Gbagbo had indicated that, for the
12 Defence and the Chamber to be able to appreciate and assess the Prosecutor's case (in
13 particular in light of the significant number of witnesses withdrawn since the opening
14 of the trial), the Prosecutor should provide an amended pre-trial brief, where all the
15 evidentiary items submitted and the testimonies would be specifically linked to each
16 of the charges. At this stage, in accordance with its statutory powers and
17 responsibilities and with a view to meeting its obligation to ensure the fairness and
18 expeditiousness of the trial, the Chamber considers it indeed necessary to invite the
19 Prosecutor to file a trial brief containing a detailed narrative of her case in light of the
20 testimonies heard and the documentary evidence submitted at trial. More
21 specifically, she should indicate to the Chamber in which way she thinks the evidence
22 supports each of the elements of the different crimes and forms of responsibility
23 charged."
24 And then in -- I won't read it, but in paragraph 14, the Defence is given certain
25 instructions as well with respect to how the proceedings were to continue.

1 I submit that what you see there is not really what Mr Knoops is representing. The
2 Chamber is trying to organise the mass of evidence in an intelligent way to decide,
3 you know, what proceeds and what doesn't proceed, in anticipation of what
4 ultimately it did.

5 Thank you.

6 PRESIDING JUDGE ALAPINI-GANSOU: [17:14:34](Interpretation) Thank you very
7 much.

8 Mr Blé Goudé, do you have an urgent need? You can go very quickly. We will
9 make this concession to you.

10 (Mr Blé Goudé exits the courtroom)

11 (Pause in proceedings)

12 PRESIDING JUDGE ALAPINI-GANSOU: [17:15:25](Interpretation) While waiting,
13 we will go back into private session.

14 (Private session at 5.15 p.m.) * Reclassified partially in public

15 THE COURT OFFICER: [17:15:35] Your Honours, we're back in private session.

16 (Pause in proceedings)

17 (Mr Blé Goudé enters the courtroom)

18 PRESIDING JUDGE ALAPINI-GANSOU: [17:19:09](Interpretation) Thank you very
19 much.

20 We'll continue in private session on the question of Judge Ugalde's.

21 Registry.

22 MR HENQUET: [17:19:19] Thank you very much, Madam President, your Honours.

23 Now that we're in private session, I can -- I believe I can answer the question by

24 Judge Ugalde, by referring to the earlier Registry report that was filed in July, which

25 is referenced in the October filing that you have before you.

1 However, the July filing by the Registry is dated 15 July, with a corrigendum dated 19
2 July, is confidential ex parte Defence only because of the interest of individuals and
3 States. But rather than asking for an ex parte session it might be helpful, considering
4 the time as well, if I referred your Honours to the relevant paragraphs of that
5 submission in July, if that's helpful. And I'm referring to paragraph 16 to 22 of that
6 filing of 19 July, which sets out the efforts undertaken by the Registry and the
7 interactions that have taken place.

8 I hope that's helpful. Thank you very much.

9 PRESIDING JUDGE ALAPINI-GANSOU: [17:20:46](Interpretation) I see no further
10 concerns or questions.

11 Oh, Madam Honourable Judge Korner would like to put a last question. A very
12 quick question, I think.

13 JUDGE KORNER: [17:21:00] I'm at a complete loss because I haven't got
14 the -- Mr -- I'm sorry, I've forgotten your name, from the Registry.

15 Has the Côte d'Ivoire applied for his extradition, Blé Goudé's?

16 MR HENQUET: [17:21:31] Thank you very much, Judge Korner.

17 We have not been informed of any information in that regard. So I'm afraid I can't
18 give you any further details. I'm sorry.

19 JUDGE KORNER: [17:21:39] I may say, it's all very unsatisfactory all round as to
20 what his actual situation is at the moment.

21 PRESIDING JUDGE ALAPINI-GANSOU: [17:21:55](Interpretation) Very well. I
22 think that we are ...

23 Maître Knoop, did you want to take the floor?

24 MR KNOOPS: [17:22:04] Well, Madam President, only if I can assist the Chamber
25 with giving the information on the status quo of this conviction in Côte d'Ivoire

1 because I don't think the Court is aware of what happened there, but it just takes me
2 one minute to give the information.

3 PRESIDING JUDGE ALAPINI-GANSOU: [17:22:31](Interpretation) Please go ahead.

4 MR KNOOPS: [17:22:34] Madam President, Mr Blé Goudé is convicted in Côte
5 d'Ivoire in absentia for essentially the same events which were part of the Prosecution
6 case before the ICC. I think that's very important for the Chamber to be aware, and
7 that his lawyers were not allowed to effectively participate in the proceedings against
8 Charles Blé Goudé.

9 It means that this conviction which, in our submission was politically motivated,
10 because Blé Goudé is a potential candidate for the presidency, the current president is
11 not in favour of his return. That explains, your Honours, why his passport, while we
12 are aware -- we are notified that his passport is in the hands of the authorities there, is
13 not released. Because upon his return to Côte d'Ivoire, he can ask for a retrial. So
14 this is not just a conviction, this is a serious violation of the Rome Statute by a State
15 Party who adheres to the principles of this Court, the principle of *ne bis in idem*.
16 The lawyers of Mr Blé Goudé, such as Mr Claver N'Dry, who's following the
17 proceedings from Abidjan, and his other lawyers, have submitted to our team the
18 documents which show what really has happened.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted).

So, therefore, we submit that there is

1 a duty of the ICC to ensure that he can return.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 But I think for the Court it's important to know that this conviction is a conviction in
6 violation of the Rome Statute. It's for the same facts as for which he was tried.

7 And therefore, Madam President, this explains the dilemma where not only the Court
8 is in, but also Blé Goudé.

9 But he wants to return.

10 Thank you.

11 PRESIDING JUDGE ALAPINI-GANSOU: [17:26:15](Interpretation) Thank you very
12 much. The Court is doing its best with regards to the situation of Mr Blé Goudé I
13 think, and we know. Thank you.

14 Prosecutor, did you want to intervene?

15 Please go ahead.

16 MR KHAN: [17:26:31] With your leave, I am really not informed regarding the
17 nature of the charges back in Côte d'Ivoire. But rather than have conjecture, I think
18 perhaps the appropriate course to be certain is for an Article 20 application to be
19 made in which there could be a review of the nature of the charges in Côte d'Ivoire,
20 the charges that were dismissed by this Court, and then there be a review if there's an
21 overlap or not.

22 And if there isn't an overlap, of course Article 20 provides protection. But if there is
23 not an overlap in relation to any other area, then there wouldn't be automatically a
24 prohibition on investigation or prosecution by a domestic authority.

25 So at the moment, evidence of course can't be given from the bar table; that's my

1 essential point.

2 PRESIDING JUDGE ALAPINI-GANSOU: [17:27:32](Interpretation) Thank you.

3 You're indeed right, Prosecutor. I think we have to go more further into the
4 substance and not just listen to one voice on this matter.

5 I'm now looking around the room. I don't see anyone else who wishes to take the
6 floor or to provide assistance.

7 I think at the request of Mr Blé Goudé, we have opened this hearing and the
8 observations and submissions that have come from each other shall edify our work.

9 Now, if at this stage there is no other information to be given to us, we can therefore
10 conclude our hearing of today; unless I am mistaken.

11 Your Honour, your Honours, is that correct?

12 Very well, we are going to adjourn the case.

13 THE COURT OFFICER: [17:28:54](Overlapping speakers) Your Honour, my
14 apologies, we are in private session.

15 PRESIDING JUDGE ALAPINI-GANSOU: [17:28:59](Interpretation) Yes, of course,
16 we have to return into open session. That's it.

17 (Open session at 5.29 p.m.)

18 THE COURT OFFICER: [17:29:11] We're back in open session, your Honours.

19 PRESIDING JUDGE ALAPINI-GANSOU: [17:29:16](Interpretation) Very well.
20 Thank you, court officer.

21 I was saying that at this stage of our exchanges, we can say that our hearing of today
22 has now concluded. I don't see anybody having any other issues to bring to bear at
23 the moment. So as such, we shall adjourn and the Chamber will take into account all
24 the different information that it has been gathering from the start of the proceedings
25 and it shall take into account the submissions of the parties and all who have taken

- 1 part in the proceedings, and it will render its decision at the appropriate juncture.
- 2 So if there is nothing else on the agenda, I now consider that the Chamber can
- 3 withdraw.
- 4 And I consider that the case is adjourned and the Chamber shall withdraw.
- 5 I would like to thank you for your attention.
- 6 THE COURT USHER: [17:30:27] All rise.
- 7 (The hearing ends in open session at 5.30 p.m.)