

Trial Hearing
WITNESS: CIV-OPT-P-0435

(Open Session)

ICC-02/11-01/15

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera-Carbuccia and
7 Judge Geoffrey Henderson
8 Trial Hearing - Courtroom 1
9 Monday, 24 October 2016
10 (The hearing starts in open session at 9.46 a.m.)
11 THE COURT USHER: [9:46:39] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:47:08] Good morning, good morning to
15 everybody.
16 Good morning, Mr Witness.
17 First of all, sorry for this delay, but we had a problem inside the Chamber. We will
18 nevertheless follow our normal schedule, so finish at 11 o'clock, so instead not to go
19 beyond and alter our way forward. So now it's -- good morning, Mr Witness. It is
20 time for the Defence to start its questioning, and therefore I give the floor, I think, to
21 the Defence of Mr Blé Goudé, which starts.
22 So Maître Gbougnon, yours is the floor.
23 The recommendation to you, Mr Witness, is always the same. The main one is to be
24 say the truth and the other one to say it slowly and clearly.
25 Maître Gbougnon.

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- 1 MR GBOUGNON: [9:48:31] (Interpretation) Good morning, Mr President.
2 Good morning, Witness.
3 WITNESS: CIV-OTP-P-0435 (On former oath)
4 (The witness speaks French)
5 THE WITNESS: [9:48:43] (Interpretation) Good morning, Counsel.
6 QUESTIONED BY MR GBOUGNON: (Interpretation)
7 Q. [9:48:46] And how should I call you? Should I call you Commander H?
8 Commander Hôtel? What should I call you? Commander Hotel?
9 A. [9:49:04] I think that during my, during my testimony I have already provided
10 my identity.
11 PRESIDING JUDGE TARFUSSER: [9:49:17] I think you should call him
12 "Mr Witness" like we do, and this is the way to address the witness, please. Thank
13 you.
14 MR GBOUGNON: [9:49:28] (Interpretation) Thank you, Mr President.
15 Q. [9:49:39] Now, Mr Witness, under which of your names or under which of your
16 pseudonyms did Mr Charles Blé Goudé know you?
17 A. [9:49:58] It was araignée or spider.
18 Q. [9:50:08] Thank you, Mr Witness. In the year 2002 you said that you were in
19 the third year at school; is that correct?
20 A. [9:50:31] That is correct.
21 Q. [9:50:41] In October 2002 you were in the third year, were you?
22 A. [9:50:48] I stopped my schooling in the third year, so in the year 2002 I stopped
23 my schooling when I was in the third year, so yes, that's correct.
24 Q. [9:51:00] What I am attempting to ascertain is whether you completed your third
25 grade, because in Côte d'Ivoire we go back to school in the month of October and you

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1 said that in November you joined the Jeunes Coureurs, so that's why I am asking you
2 whether in the year 2002 you completed your entire school year in the third grade.

3 A. [9:51:33] To be more specific, as I said, I completed my third year in 2001. In
4 2002 I was due to start my professional training. As I said to you, I finished school at
5 the third grade and I was due to begin my professional training and that had not yet
6 commenced, so I was waiting to register and that's when this happened in September.

7 THE INTERPRETER: [9:52:13] The witness said there was a delay in September.

8 MR GBOUGNON: [9:52:16] (Interpretation)

9 Q. [9:52:17] I am going to read the transcript from 18 October 2016, page 3, line
10 18: "En, en, yes, in 2002, yes, I was in the third grade." End of quote. You didn't
11 talk about 2001. You said that in 2002 you were in the third grade.

12 I would suggest that while I'm talking you turn your microphone off so that we do
13 not overlap. So please turn your microphone off and then when I have finished
14 talking, you turn your microphone on again so that you can speak so that you wait
15 until I have finished so that you can start speaking.

16 As I was saying, in 2002, according to what you stated, you were in the third grade.
17 You said -- or never did you say, never did you speak about the year 2001.

18 A. [9:53:16] Thank you, Counsel. I said that I was in the third grade and that's
19 what I said, because in 2002, that was in -- I was either going to do the third grade
20 again, to do the BEPC or do the technical --

21 THE INTERPRETER: [9:53:39] Message from the interpreter: Could the witness
22 please be requested to enunciate.

23 MR GBOUGNON: [9:53:50] (Interpretation)

24 Q. [9:53:52] So in October 2002, and unfortunately you did not finish that grade
25 and you joined the Jeunes Coureurs, is that correct?

1 A. [9:54:06] That is correct.

2 Q. [9:54:07] In 2002 you were 19 years of age, if my calculations are correct; 19,
3 were you?

4 A. [9:54:13] Mm-hmm.

5 Q. [9:54:14] Did you have any difficulties in your schooling?

6 A. [9:54:20] Of course, I did.

7 Q. [9:54:28] You had to repeat many a class, did you?

8 A. [9:54:34] Well, it's not that I had to repeat a lot. I had a school year that I did
9 not finish. I did not finish that school year.

10 Q. [9:54:52] And so in the year 2002, with your level of schooling, what was your
11 level of English, your knowledge of the English language?

12 A. [9:55:13] As I said, my level of English was average.

13 Q. [9:55:24] So your level of English is average. Let me summarise. We start
14 English in the sixth grade in Côte d'Ivoire. So you did the sixth, fifth and fourth and
15 part of the third grade. So what do you mean by "average," an average level of
16 knowledge of the English language?

17 A. [9:55:47] What I mean by "average" proficiency is that when somebody speaks,
18 apart from any problems of accent, I do manage to understand what they are saying
19 to me. I might be able to understand what that person is saying.

20 Q. [9:56:16] So you are telling the Chamber that after three years of basic English
21 tuition, you are able to have a conversation in the English language; is that correct?

22 A. [9:56:33] I did not say that I had a good level, I said that I had an average level of
23 proficiency, because I could not talk to people in English but I could have myself be
24 understood if I had somebody standing in front of me. But, you know, in the third
25 grade, in Côte d'Ivoire, we do know how to say "good morning" and "good evening,"

1 and we can conjugate verbs and we have a minimum level of proficiency in the third
2 grade in Côte d'Ivoire.

3 Q. [9:57:23] Let's move on to another subject area. When and under what
4 circumstances were you arrested?

5 A. [9:57:55] I was arrested in 2014 in Tabou.

6 Q. [9:58:08] And under what circumstances?

7 MR WAGEMAKERS: [9:58:37] your Honour, the witness is able and willing to
8 answer the question in closed session.

9 PRESIDING JUDGE TARFUSSER: [9:58:44] Is it incriminating?

10 MR WAGEMAKERS: [9:58:48] Yes, it is.

11 PRESIDING JUDGE TARFUSSER: [9:58:50] Okay. Well, I will not accept
12 discussions. If the counsel says it is, I have not the possibility to judge it in advance.
13 So this is the request coming from counsel of the witness, and I ask, please, can we go
14 in private session.

15 (Private session at 9.59 a.m.)

16 (Redacted)

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1 (Redacted)

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18 (Redacted)

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22 (Redacted)

23 (Open session at 10.03 a.m.)

24 THE COURT OFFICER: [10:03:05] We are in open session.

25 PRESIDING JUDGE TARFUSSER: [10:03:07] Maître Gbougnon.

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1 MR GBOUGNON: [10:03:10] (Interpretation)

2 Q. [10:03:20] Mr Witness, at a particular point in time, I don't know whether it was
3 before or after your arrest, at any point in time did you play dumb?

4 A. [10:03:35] Yes, I did.

5 MR GBOUGNON: [10:03:59] I beg your pardon. My learned -- my assistant has
6 just pointed out an error in translation or a problem with translation.

7 Apparently, the transcript reads "dumb" and that is not what I meant.

8 PRESIDING JUDGE TARFUSSER: [10:04:46] Can you repeat what you meant so the
9 translator can get it better, the interpreter can get it better.

10 MR GBOUGNON: [10:05:01] (Interpretation) I meant "fou," as in crazy.

11 PRESIDING JUDGE TARFUSSER: [10:05:15] Okay.

12 THE INTERPRETER: [10:05:17] Message from the interpreters: We understand
13 what the problem was. Mr Gbougnon said, "joué les fous," to play crazy.

14 Correction accepted.

15 PRESIDING JUDGE TARFUSSER: [10:05:29] Okay, thank you.

16 MR GBOUGNON: [10:05:34] (Interpretation)

17 Q. [10:05:36] And exactly when did you begin pretending you were crazy?

18 A. [10:05:46] Before my arrest. I spent several months, several months in the bush
19 because people were looking for me. The police, the gendarmerie, the law
20 enforcement agents were looking for me, and also a number of Dozo were looking for
21 me. I had come out and I had let my beard grow during that time, and ultimately I
22 came out and I played -- I pretended I was crazy, and that is when I was arrested.

23 Q. [10:06:51] I would like to read your interview back to you, one particular point,
24 CIV-OTP-0057-075 -- I beg your pardon, CIV-OTP-0063-1615 at page 1620. 0063-1615
25 at page 1620, and I quote, because, you see, you said this, and I quote: "I said that I

1 did not acknowledge the events that people were saying I had been involved in. I
2 played crazy until I got to Abidjan. I pretended I was crazy."
3 I beg your pardon, "I said that I did not recognise or acknowledge the events that I
4 had been accused of. I played crazy until I got to Agban in Abidjan, and on Monday
5 I was taken to the investigation brigade and then on to the DST. Once I got to the
6 DST, I acknowledged what had happened and I gave an account of the events that I
7 had experienced."

8 And now, when you were interviewed by the OTP, were you playing -- were you
9 pretending to be crazy at the DST, or did you begin pretending you were crazy well
10 before that point in time?

11 A. [10:09:09] I think that the statement is clear, Counsel. I did not say -- I did not
12 say that I pretended to be crazy. Well, it wasn't gendarmes who arrested me, you
13 see. It wasn't gendarmes. I was taken to the gendarmerie. I said that I was
14 arrested in a village. I was arrested, I was taken to the gendarmerie. I don't know.
15 Well, I don't see any, any difference. You asked me -- you asked me whether I was
16 pretending to be crazy when I was arrested, yes. But it wasn't gendarmes who
17 arrested me, I was taken to the gendarmerie.

18 Q. [10:10:12] Very well. Understood. You don't see any discrepancy, fine.
19 I would like to quote you once again about the same event, and I'm going to quote
20 from another statement that you made. CIV-OTP-0093-0060 at page 0064, page 0064.
21 And, now, if you say that you were pretending to be crazy and you were eating
22 eggplant raw, that allowed me to get out of the situation and then I was turned over
23 to the Dozo. And this is a statement that you gave during the trial of Mrs Simone
24 Gbagbo; is that what you said?

25 A. [10:12:05] Counsel, I think it's all very well to read back my words to me, but

1 maybe you could ask a question because I think the question is supposed to guide me
2 so that I can -- well, perhaps the -- could you read the first question because
3 maybe -- you know, if you put the question differently the answer may be different.
4 It'll depend. Because I explained how it came to be that -- you see, I had been asked
5 to describe in detail how the arrest unfolded and how it came to be that I was being
6 held by the Dozo, and then the FRCI, and the gendarme and they vetoed and they
7 took me to the gendarmerie.

8 If I could explain the details. Because, you see, when I was at the camp where I was
9 arrested there were no -- it was really the Dozo and they wanted to hand me over to
10 the FRCI because the FRCI did not intend to take me to any police station or to any
11 gendarmerie, they wanted to send me into the bush and shoot me. And, you see, I
12 alerted the gendarme and I said, "They wanted to kill me." They asked what had
13 happened.

14 And the Dozo, the villagers explained that, well, "We found this man in the bush
15 pretending to be crazy." But they, they said -- they gave details, this is a tall person,
16 and they had the impression that this man was not some kind of crazy; rather, it was
17 the person, the fugitive who had been -- that people had been looking for in the area
18 for a long time.

19 They took me to the station to determine my identity, and that is when I was turned
20 over to the gendarme and I was taken to Tabou, escorted by the FRCI. But it was the
21 gendarme. And then the camp commander at Tabou wanted to see me first and ask
22 me some questions before I was to go to the gendarmerie.

23 So those are the details of my arrest and how it unfolded.

24 Q. [10:15:17] Thank you. So you said one thing and you said that -- that your
25 answers would vary depending on the questions that were put to you; is that correct?

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1 A. [10:15:35] I don't see -- I don't see the variation or the change. You said, for
2 example -- well, you put a question to me, you asked me -- well, my counsel asked
3 that we go into private session and I thought you were going to ask me why I had
4 been arrested and all that. And so I didn't understand that you didn't want to go
5 into those details but that, rather, you wanted to talk about my arrest. And
6 the Defence counsel --

7 Q. [10:16:09] Please, please.

8 A. (No interpretation)

9 Q. Please, please, I must stop you, please.

10 MR DEMIRDJIAN: [10:16:22] Your Honour, I think the witness should be allowed to
11 complete his answers.

12 PRESIDING JUDGE TARFUSSER: Yes.

13 MR DEMIRDJIAN: He's being asked about his arrest and his credibility.

14 PRESIDING JUDGE TARFUSSER: [10:16:29] Yes, but I think he is now repeating
15 what he already said. I think in this case, otherwise I would have allowed him to
16 continue.

17 But, please Maître Gbougnon.

18 MR GBOUGNON: [10:16:43] (Interpretation) Thank you, your Honour.

19 Q. [10:16:50] So when you were taken to the gendarmerie brigade you did not
20 acknowledge what had happened, then you were taken to Tabou.

21 A. [10:17:06] I think that I've already said, I've already answered, I've already
22 explained where I was taken from and to.

23 Q. [10:17:13] Mr Witness, here I am the one asking the questions and you answer.

24 I am asking you, and I repeat my question: From the gendarmerie brigade in Tabou,
25 where were you taken?

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1 A. [10:17:33] You are asking me questions and then you don't let me finish my
2 answer, because I am in the -- I'm explaining and then you interrupted me. I was
3 taken to the Agban barracks and then to the recherche brigade -- barracks, rather.

4 THE INTERPRETER: Correction: The investigation brigade.

5 MR GBOUGNON: (Interpretation)

6 Q. [10:18:00] Before you were questioned?

7 A. [10:18:02] No.

8 Q. [10:18:03] So at the investigation brigade were you questioned?

9 A. [10:18:09] I wasn't questioned there, no.

10 Q. [10:18:14] So on the Monday, 1 May you were taken to the -- 5 May, Monday
11 5 May you were taken to the DST?

12 A. [10:18:27] Yes, yes, that is correct.

13 THE INTERPRETER: [10:18:30] Interpreter correction: The date mentioned was
14 5 May.

15 MR GBOUGNON: [10:18:36] (Interpretation)

16 Q. [10:18:43] And at the DST you were questioned several times; isn't that so?

17 A. [10:18:50] Yes.

18 Q. [10:18:53] And you were detained there for how long?

19 A. [10:19:15] A week, more or less.

20 Q. [10:19:26] And what were the conditions of your detention?

21 A. [10:19:34] I was in a cell.

22 Q. [10:19:48] You said more than a week, do you mean two weeks, three weeks,
23 a month, two months, three months? How much time do you mean?

24 PRESIDING JUDGE TARFUSSER: [10:19:58] You are also pointing out what he said.

25 He said more or less one week, at least in the translation. He said one week, more or

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1 less. This is in the translation.

2 MR GBOUGNON: [10:20:18] (Interpretation) I am putting this question quite
3 deliberately, your Honour, because, you see, he was interviewed at the DST by DST
4 officers from the 5th to the 13th, and then from OTP investigators from the 14th to the
5 19th. So this is definitely more than a week, that is why I put the question to him.

6 PRESIDING JUDGE TARFUSSER: [10:20:47] I just was saying that you started the
7 question by saying "You said more than a week ..." and I just say he did not say more
8 than a week, he said one week, more or less. This is at least how I understood it
9 from the English translation.

10 MR O'SHEA: [10:21:11] Can I just indicate, your Honour, that in the transcript the
11 words "more or less" is marked as a question, I don't if that's a mistake or not.

12 THE INTERPRETER: [10:21:28] Message from the interpreters: There may have been
13 an error in interpretation.

14 MR GBOUGNON: [10:21:33] (Interpretation) In the French transcript, page 14, line
15 15, what I read here is "more than a week." "More than a week" in the French
16 transcript. Page 14, line 15, "more than a week."

17 PRESIDING JUDGE TARFUSSER: [10:21:55] In the English is "A week, more or
18 less." Well, I'm reading from the English transcript, so.

19 MR GBOUGNON: [10:22:09] (Interpretation) The translation was incorrect, done
20 badly.

21 Q. [10:22:17] Mr Witness, do you mean a week, two weeks, three weeks, a month,
22 more than that?

23 A. [10:22:25] I can't be too specific, but it was more than a week. It was more than
24 a week.

25 Q. [10:22:43] So you don't remember how much time it was, how long you were

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1 detained at the DST?

2 A. [10:22:51] Well, at the DST --

3 THE INTERPRETER: [10:22:54] Inaudible.

4 THE WITNESS: [10:22:57] I don't have the exact dates. I was eventually turned
5 over to the --

6 THE INTERPRETER: [10:23:07] Message from the interpreter: The interpreter had
7 not finished interpreting the witness's question.

8 PRESIDING JUDGE TARFUSSER: [10:23:16] The interpreter has not finished the
9 interpretation. There is overlap, was an overlap. Sorry about that.

10 MR GBOUGNON: [10:23:37] (Interpretation)

11 Q. [10:23:39] I was saying that you forgot the name, or the day, or the month, or the
12 amount of time that you were at the DST?

13 A. [10:23:56] I was more than a week there. Less than two weeks but more than
14 one week. The second week I was turned over to the Abidjan public prosecutor's
15 office.

16 Q. [10:24:26] Could you describe, if you know, if you remember, the building or the
17 cell in which you were detained?

18 A. [10:24:43] It was a cell with -- well, not a gate, but a metal door, a metal door.
19 And I think the cell, there was a metal door and there was a toilet inside. That's
20 where I was detained.

21 Q. [10:25:34] I will now have a video played, just to refresh your memory.
22 CIV-D25-0012-0001.

23 MR DEMIRDJIAN: [10:26:09] Your Honours.

24 PRESIDING JUDGE TARFUSSER: [10:26:11] Mr Demirdjian.

25 MR DEMIRDJIAN: [10:26:14] May I ask what is the foundation of using a video and

1 what is the relevance to the charges in this case?

2 PRESIDING JUDGE TARFUSSER: [10:26:21] Yes, but if we start asking the relevance
3 of the charge in this case, then I would ask this very often.

4 MR DEMIRDJIAN: [10:26:33] well, We laid the foundations to every documents we
5 showed and we want to know what is the foundation to show whatever video it is to
6 the witness. We would like to know what is the foundation first.

7 PRESIDING JUDGE TARFUSSER: [10:26:46] Yes, I think Mr Gbougnon asked about
8 the cell and the conditions, and I think that is related to that, but I, I don't know.

9 MR DEMIRDJIAN: [10:26:57] But it's a video of the accused, Mr Blé Goudé, it's not
10 a video of the witness's detention, that's why --

11 PRESIDING JUDGE TARFUSSER: [10:27:06] Well, I don't know what it is.
12 Maître Gbougnon, there is an opposition to this and I ask you to make your
13 observations.

14 MR GBOUGNON: [10:27:27] (Interpretation) Your Honour, the witness is saying
15 that he was detained at the DST for a certain period of time and I have asked him to
16 describe his conditions of detention and explain about being in a metal cell and so on
17 and so forth. I have, I have a video which shows the same images.

18 I think that perhaps we should have had this discussion without the witness being
19 present, but, in any event, the witness is here. But we are trying to get some kind of
20 confirmation from the witness that this is where he was detained, so this is why it is
21 relevant.

22 MR DEMIRDJIAN: [10:28:30] Your Honours, the video shows another person
23 detained in a different cell. It is not relevant to this witness. They can put to him
24 directly the question what were the conditions and so on. The video is not relevant
25 to this witness.

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1 PRESIDING JUDGE TARFUSSER: [10:28:46] Yes, this witness already once was in
2 question and we already said once that this video cannot be shown to this witness
3 because it doesn't relate to him and therefore the Chamber will not allow to show this
4 video to the witness.

5 Please, Maître Gbougnon, go ahead.

6 MR GBOUGNON: [10:29:17] (Interpretation) Thank you, your Honour.

7 Q. [10:29:27] Now during the week when the OTP questioned you at the DST -- it
8 was indeed at the DST that you were questioned by the OTP; isn't that so? Answer
9 into the microphone.

10 A. [10:29:42] Yes, Counsel.

11 Q. [10:29:50] And during your discussions with the investigators of the
12 Office of the Prosecutor you were often interrupted by people coming and going,
13 people who were working in the DST; is that correct?

14 A. [10:30:08] Yes, there were often people, well, because the conversation was held
15 in an office and people were often trying to gain access to the office.

16 Q. [10:30:24] And then you were obliged to change offices subsequently?

17 A. [10:30:30] No, we didn't change offices. The investigators would open the door
18 to see who was there and why because it was their office and they often came in to
19 take documents, and they didn't know that these were the investigators from the OTP
20 who were in their office.

21 Q. [10:31:00] And at no moment in time did you change room in order to conduct
22 the interview. At no moment in time?

23 A. [10:31:13] All the interviews were not held in the same room. I didn't change
24 rooms in the same day. I don't remember having done so anyway in the same day.

25 Q. [10:31:28] I'm talking about the first interview that was conducted between

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1 14 May and 19 May 2014. That's the interview I'm referring to.

2 A. [10:31:44] Yes, we were moved during that one. We were in an office and we
3 are sent into another office because they had to do some works on the air conditioning
4 and there was a humming sound in the office.

5 MR GBOUGNON: [10:32:15] (Interpretation) Mr President, I would like us to move
6 into private session, please.

7 PRESIDING JUDGE TARFUSSER: [10:32:23] Let's go into private session.

8 (Private session at 10.32 a.m.)

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Trial Hearing
WITNESS: CIV-OPT-P-0435

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12 (Open session at 10.53 a.m.)
13 THE COURT OFFICER: [10:53:42] We are in open session.
14 PRESIDING JUDGE TARFUSSER: [10:53:43] Thank you.
15 Maître Gbougnon.
16 MR GBOUGNON: [10:54:00] (Interpretation)
17 Q. [10:54:04] Do you recall Minister Assoa Adou?
18 A. [10:54:11] Yes.
19 Q. [10:54:18] You made a statement before the Chamber in regard to this person; is
20 that correct?
21 A. [10:54:29] Yes.
22 Q. [10:54:29] I shall read to you what you said. It is in the official transcript of
23 20 October 2016, page 19, from line 10 onwards. And the Prosecutor is talking
24 about -- so you say: "So there were, with Mr Assoa Adou in Abengourou, where we
25 also sent elements in order to take care of the training, and also to Niablé." End of

1 quote.

2 You say in page 26 in a question by the Prosecutor, quote, he was asking you how
3 you knew this.

4 You said: "I went -- I entered into contact with Bouazo because I was the person
5 who was in charge of the military aspect during that period." End of quote. Do
6 you confirm having said that?

7 Do you remember having said that to the Chamber?

8 A. [10:56:03] This was about 2010, then yes.

9 Q. [10:56:07] I put a question to you: Do you recall having stated what I just read
10 to the Chamber?

11 A. [10:56:13] Yes, yes.

12 Q. [10:56:15] Wait until I have finished speaking for the interpreters, wait for five
13 seconds. We have got all the time in the world.

14 Do you recall having made that statement?

15 A. [10:56:29] Yes, I do recall having made that statement.

16 Q. [10:56:48] Do you recall having spoken about this same event of Mr Assoa Adou
17 during the Simone Gbagbo trial?

18 A. [10:57:03] Yes.

19 Q. [10:57:05] I shall read to you what you said during the Simone Gbagbo trial.

20 I am talking of the statement CIV-OTP-0093-0060, at page 0065.

21 You say, quote: "I know Assoa Adou well. He is close to Laurent Gbagbo. We
22 had a confrontation and if I said that he was financing -- yes, I did say that he was
23 financing our movement."

24 but you go on to say in our next line: "It is true, but afterwards I came back on what
25 I said."

1 And you went on to say, finally: "I said no, I said no, because I did not personally
2 meet Assoa Adou."

3 And you finish off by saying: "In fact it was Dogbo Raphaël who told me, but he
4 was not the person who provided the means by hand. We cannot confirm that he
5 was the one who financed."

6 That's what was said in the Simone Gbagbo trial. Can you confirm that that was
7 what was said?

8 A. [10:58:39] I can confirm.

9 Q. [10:58:39] So here you were talking about Dogbo Raphaël who allegedly said to
10 you -- before the Chamber, you talked about Bouazo, and in the same Simone Gbagbo
11 trial -- let me finish, in the Simone Gbagbo trial you come back on what you said
12 because you acknowledge that you never met Mr Assoa Adou so that you could not
13 accuse him of having financed your activities; is that correct?

14 A. [10:59:13] That is not correct, Counsel.

15 Q. Thank you.

16 A. Can I explain?

17 Q. [10:59:24] Go ahead.

18 A. [10:59:27] At the trial with regard to the confrontation that I had with Mr -- the
19 minister Assoa Adou, I wanted to talk about the events in 2010 when the political
20 personalities had requested that we send elements and that we train young people in
21 their regions, and we had given that over to the GPP commanders of their regions
22 where we had sent them. And in the confrontation with Mr Adou he said that no, it
23 was, rather -- not with regard to those events but rather with regard to who was
24 financing the attacks, the subversive attacks that occurred subsequent to the arrest of
25 the President Gbagbo.

1 So it was after the end of the year 2011. And that is what was of interest to them.

2 A question was put to me and I clarified by saying that I had never had any dealings
3 with justice before. I was asked who financed us and I gave the name of Mr Assoa
4 Adou, amongst over political personalities. And when I had the confrontation with
5 him, I was asked whether he handed that money over to me. And because these
6 were the same lawyers who were defending Mr Assoa Adou and Mr Lida Kouassi
7 and also Dogbo Raphaël, these were one and the same people.

8 So I believe that they knew, they did have a knowledge of the statements and the
9 unfolding of the various confrontations that I had had with their clients. So I said to
10 them that, as I had said to you beforehand, if I did not receive any money in my own
11 hands, I did not say that that person was my financier or financed me, because that's
12 the question that you asked me, as to whether he gave me money in my hands. I am
13 not talking about 2010 when he sent the elements, because the question that I
14 answered to the prosecutor, I think it was the date yesterday or the day before or last
15 week, was -- did not talk about the attacks as such, the attacks in Abengourou,
16 because we didn't even talk about that. The Prosecutor only spoke about the -- about
17 before and after the elections of 2010, and I explained that Mr Assoa Adou had
18 requested that elements, young people be trained in his area and I talked about
19 Bouazo, and this had nothing to do with the events that were talked about in Simone
20 Gbagbo's trial because the events talked about then were with regard to who had
21 financed the attacks that took place after President Gbagbo was transferred to the
22 court here. Those two events are two very distinct events.

23 PRESIDING JUDGE TARFUSSER: Thank you very much.

24 MR GBOUGNON: [11:03:14] (Interpretation) Your Honour, before the break, just to
25 conclude on this particular topic, I would just like to read out the said statement and

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1 then we can go to break. If that is all right with you, your Honour.

2 PRESIDING JUDGE TARFUSSER: [11:03:30] That's all right with me.

3 MR GBOUGNON: [11:03:33] (Interpretation).

4 Q. [11:03:38] This is what you sate to the DST, CIV-OTP-0077-0222 at page 0254:

5 "From 2009 to 2010 I took part in the training of several militia members in

6 Abengourou and in the d'Adaou village on the instructions of the minister, Minister

7 Assoa Adou. We trained about 30 young militia members. We taught them how to

8 handle AK-47s."

9 And this was indeed the period of time in question, 2009 to 2010. What is more, you
10 added this at page 0255 of the same document, you said:

11 "Well before the attack in 2014 -- or plans, rather, there were other plans, including
12 other attacks that had been funded by several sponsors, including Minister Assoa
13 Adou."

14 When you go back on your words, you see this statement, this statement, when you
15 change your account, your version of the events.

16 PRESIDING JUDGE TARFUSSER: [11:05:05] This was more a comment than
17 a question. But you will have the possibility to get into this comment as soon as we
18 resume after the break, which will be in half an hour, and therefore shortly after 11.30.

19 THE COURT USHER: [11:05:27] All rise.

20 (Recess taken at 11.05 a.m.)

21 (Upon resuming in open session at 11.41 a.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE TARFUSSER: [11:42:02] Good morning, again. The

25 Prosecutor requested the floor for a few minutes to address the Chamber. And I

1 give the floor to the Office of the Prosecutor.

2 MR DEMIRDJIAN: [11:42:20] Thank you, your Honours. Your Honours, we
3 didn't wish to interrupt my learned friends during the first break, and we wanted to
4 hear the witness answer the questions, and we want to hear his testimony. However,
5 there is a number of issues we noted that were procedurally incorrect and that it
6 wouldn't be helpful to your Honours and for the record.

7 Firstly we noted that a number of statements were put to the witness, two, three, four
8 of them, and at the end the witness was asked to comment on four statements.

9 Now, first of all, this is unfair to the witness. The witness can be given -- can be
10 confronted with one, two statements and then asked to explain. Putting four of them
11 at once makes that we have a confused record. We are not sure exactly to what
12 original statement we are being confronted with.

13 And for your Honours it will be also very difficult later on to look at all this and to
14 figure out to which statement was really the witness answering. That is the first
15 point.

16 The second point is the editorial comments such as "different versions of your story."
17 These are comments that counsel can make at the end of this case in their final
18 submissions. It may be intimidating the witness, influencing him, and what we're
19 asking is that no comments be made during the witness's testimony. Facts be
20 requested, period.

21 The last thing, your Honour, is that some of the prior testimony from last week, the
22 interviews that the witness gave to the Office of the Prosecutor had question, answers;
23 whereas some of the records that are being referred to from the proceedings in front
24 of the Abidjan courts, particularly in the case of Ms Simone Gbagbo, we only have the
25 answers. We don't have the questions. The record is not a verbatim record. This is

1 why it is even more important in those situations that counsel does not interrupt the
2 witness and allow him to explain.

3 The same goes with the statements. There are no questions. It's only a summary of
4 what the witness said. So in those situations we would ask, your Honours, again to
5 remind counsel that the witness fully give his answers.

6 Now, again, we don't want to get up every time, but if we have to we will. We don't
7 want to interrupt our learned friends and we wanted to give them a chance to get the
8 procedure right, but I think that we should follow those few remarks we made for the
9 record. Thank you, your Honours.

10 PRESIDING JUDGE TARFUSSER: [11:45:07] Thank you very much.

11 Maître Gbougnon.

12 MR GBOUGNON: [11:45:09] (Interpretation) Your Honour, overall, when I'm
13 criticised or if ever I'm criticised with confronting the witness with other statements
14 that he made, it seems to me I believe that my learned friend knows full well what my
15 intent is, I am showing the credibility of this witness. This witness in several cases,
16 or at least in several statements regarding one single incident or event, as you will
17 have noted, has given several accounts. It was necessary for me to show the
18 Chamber, to show this august Chamber that and -- well, I will refrain from using a
19 number of terms, but I do think it is important to drive this point home.

20 As we move forward, I will show how the witness changes his account from one day
21 to another regarding one single incident. And I think the Chamber is entitled to
22 know what kind of witness we are dealing with here. The Chamber is entitled to
23 know that this gentleman never, never has given the same account twice. What is
24 more, these are --

25 PRESIDING JUDGE TARFUSSER: [11:46:59] Here we are not discussing about the

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1 credibility. Here is -- I give you the floor in order to respond to the question or to
2 what the Prosecutor just said. It's not here now to make comments on the comments
3 of his credibility or not credibility of the witness, please.

4 MR GBOUGNON: [11:47:25] (Interpretation) Your Honour, the Prosecution is
5 criticising me for putting several statements to the witness, and they say this is not
6 fair. That is what they have said. Presenting multiple statements is not fair
7 according to them. But I would like to justify my approach, because I believe the
8 Chamber needs to have an opportunity to make a proper assessment of the witness's
9 credibility, so I am responding to their criticism made earlier.

10 What is more, regarding your earlier remark and saying that I was not allowing the
11 witness to speak, you see, I allowed the witness to go ahead on several occasions and
12 he gave long accounts. I just don't want any overlapping.

13 I would point out to my learned friend opposite that I will continue to confront this
14 witness with all the statements he gave before coming before the Court because his
15 statements consistently and repeatedly contradict --

16 MR DEMIRDJIAN: [11:48:41] There might be an error in the translation, your
17 Honours. Maybe that's what's going on here. I'm looking at the French translation.
18 My intervention was to say that many translation at once, he can show the prior
19 statements, but it is the at once procedurally that we were objecting to.

20 PRESIDING JUDGE TARFUSSER: [11:49:09] Maître Altit.

21 MR ALTIT: [11:49:11] (Interpretation) Thank you, your Honour. Mr Gbagbo's
22 Defence team wishes to make a number of remarks subsequent to remarks made by
23 the Prosecution.

24 First of all, I think we need to note that the Defence is proceeding, and I make
25 reference to the Blé Goudé Defence, of course, that Defence team is proceeding in

1 accordance with paragraph 41 of the decision regarding the conduct of proceedings,
2 which states that, "A party may challenge a witness with previous statements so as to
3 allow the witness to give an explanation." And the witness has done this.
4 In this particular instance, the person who is cross-examining the witness, it's not a
5 matter of avoiding his duty, but rather he has a duty, a true duty to ask the witness to
6 give explanations for these contradictions. And how can he do so? Well, how could
7 he not quote the various accounts that the witness has given of one and the same
8 event? If there are two successive versions, how can he be criticised for quoting from
9 the two different versions? If there are three different versions, how can he be
10 criticised for quoting from the three? In short, how can he be criticised for quoting
11 all the inconsistencies and discrepancies that the witness has given regarding one
12 single event?

13 Secondly, the Defence has a duty to test the plausibility of the witness's account, and
14 in a way testing the plausibility of a witness's account in a way boils down to putting
15 his credibility to the test as well.

16 Thirdly, allow me to say this, it is not the Prosecution's task to tell the Defence how to
17 examine a witness.

18 What is more, I note that we are here, your Honour, and you have reminded us of this
19 point, ever since the very beginning of this trial, we are here to come to the truth, to
20 demonstrate the truth. It is absolutely necessary if we want the trial to proceed
21 smoothly. And if we are to avoid going constantly back to other witnesses'
22 testimony, I think it is very important for us to really get to the heart of the matter;
23 and if we refuse to get to the heart of the matter we refuse to establish the truth.
24 And from that standpoint, I am somewhat surprised by the Prosecution's approach
25 since the Prosecution also and first and foremost has this duty to establish the truth.

1 If the witness gives five versions of one particular event, perhaps it is not the truth,
2 and I think that is of interest to everyone.

3 Regarding the manner in which one looks for the truth, there are not 50 different
4 ways of doing this. We have to test the witness, put him to the test so we understand
5 who he is. And that is the task of the party that is examining the witness, the
6 Prosecution, when they examine the witness that they have called, the Defence when
7 they question a witness called by the Prosecution.

8 What is more, I note that when it comes to the way in which one proceeds, the
9 Prosecution has made a number of remarks that are not really formulated as an
10 objection. So what are these objections all about? Yet we can have a debate because
11 this is an interesting issue. And really I think we need to find an effective *modus*
12 *operandi* here. That is the issue at hand.

13 My fourth point, your Honour, is this: The Prosecution is proceeding in exactly the
14 same way when they question this witness.

15 And finally, my fifth point, regarding previous statements that were taken in
16 Côte d'Ivoire, the Prosecution has said, oh, but the questions are not always there.
17 But we must work with what we have. And yet this information was actually
18 provided by the Prosecution. And I note that there are earlier statements taken by
19 the Prosecution investigators in which questions are not recorded. That never was a
20 problem. And the Office of the Prosecution uses such statements when it is in their
21 interest, so you can't ask for one thing and then a moment later ask for the contrary.

22 If you will, I will remind the Chamber that these statements were filed by the
23 Prosecution, put on the case record under Article 68 in their entirety. So how can
24 one use a particular line of argument and then at the same time do exactly the
25 contrary. So those are my observations, your Honour.

1 PRESIDING JUDGE TARFUSSER: [11:56:17] I think that the Chamber has
2 perfectly understood the reasons of the OTP and the reasons by the Defence.
3 The issues raised are substantively two. One is the use of the way how the multiple
4 statements are used in confronting the witness with, and the second is the comments
5 which sometimes are made.
6 To the use of multiple statements in the confronting, I think that paragraph 44 of the
7 conduct of the proceedings is quite clear. It is absolutely allowed. If a person has
8 given four statements or five statements I think he can be confronted with four
9 statements or five statements. I think also that we should be more -- or the only
10 thing I would say is we should be more precise because it must come out maybe a
11 little bit better from the record that I -- the start of quote, end of quote, so that we
12 know exactly what the statements are with which the witness is confronted.
13 The Chamber knows also perfectly that to be a witness is not a mathematical
14 operation, so there can be discrepancies and that will be -- and the credibility will be
15 assessed in due course, but knowing perfectly that to give the witness statements is
16 not a mathematical operation. So I think the witness can be confronted with the
17 statements he gave in -- to other authorities and in other times, but it must be clear to
18 the witness with what he is confronted and it must be also clear to the -- on the
19 record. I think this witness is absolutely capable also to help himself because he -- in
20 the way he reacts, I think he is not -- one cannot say that to confront him with these
21 statements is unfair.
22 As far as the comments is concerned, I think they are absolutely not -- I would really
23 ask counsel, all counsels not to comment on the witness statement, but just limit
24 yourself to questioning, to put questions and to receive answers, and instead of
25 commenting the answers, to put other questions. And then the comments you will

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1 have all the time to comment in due course.

2 Therefore, I think we can now continue with the questioning of the witness.

3 And I ask the court usher to bring the witness in.

4 (The witness enters the courtroom)

5 PRESIDING JUDGE TARFUSSER: [12:00:40] Welcome again, Mr Witness. We

6 have now one hour questioning by the Defence of Mr Blé Goudé.

7 Yours the floor, Maître Gbougnon.

8 MR GBOUGNON: [12:00:55] (Interpretation) Thank you, your Honour.

9 Q. [12:01:01] Good morning once again, Mr Witness. Now, you wish to provide
10 some explanations before the break. If you could please provide these explanations.

11 A. [12:01:21] Well, it's been a while now and I've lost the question. Please repeat
12 the question.

13 Q. [12:01:29] If you don't have any further explanations I will proceed, but I think
14 that before the break you had indicated that you were going to provide some
15 explanations and the President has said you could do that and you said you were
16 going to do so.

17 A. [12:01:41] I have said that I lost my thoughts and I have asked you to kindly
18 repeat the question.

19 PRESIDING JUDGE TARFUSSER: [12:01:46] I think that you should, if not repeat,
20 try to re -- make him, make the witness re-enter into the arguments we were debating.

21 MR GBOUGNON: [12:02:14] (Interpretation)

22 Q. [12:02:16] The issue, well, which might appear to be a comment, was in
23 relation to the discrepancies between your statements, that is what you said to the
24 Court here and in relation to Mr Assoa Adou and also to what you said to the Court
25 here as compared to what you said at the court of first instance in Abidjan during

1 Madam Gbagbo's trial.

2 I was pointing out to you, and I'm trying to summarise, I was pointing out to you that
3 during that trial you revisited your statements and we see through those statements
4 that you sort of went back on your statement to the extent that you said that you had
5 not received any funding from Mr Assoa Adou's hands properly, whereas that's what
6 you said to the Court.

7 You also said that you were looking at the 2009-2010 period, so I read back to you the
8 statements you made to the DST to point out that it was indeed about that period we
9 were talking and that you had come back on your statement. That is what we said.
10 That was the issue.

11 A. [12:03:29] Thank you, Counsel. First of all, let me say that during the
12 confrontation with Minister Assoa Adou, the examining magistrate did not touch on
13 the issue of my relation which I may or may not have had with Mr Assoa Adou
14 during the crimes. The examining magistrate looked at the events that had occurred
15 after the post-electoral crisis, the things that happened after 2011.

16 When I was asked at the DST who my financial supporters were, the question did not
17 seek to find out who the financiers of the GPP were, but rather the financiers of the
18 operations that took place after 2011. So the subject matter was not the same. That's
19 the first comment I want to make, the subject matter was not the same.

20 Now, in court I was asked whether I knew Mr Assoa Adou and I said yes, that he was
21 a minister under President Laurent Gbagbo. Did he give you any money directly?

22 And I said no. Because when you talk about financiers, I don't know legally what
23 that entails. My understanding was that there are people from whom you receive
24 financial support, but if legally it is to mean people who give money to one directly,
25 that is why I went back to that statement to clearly indicate that I did not personally

1 receive any money directly from Mr Assoa Adou, from his own hand, but I had

2 comrades or companions who said that they had received money from him.

3 So the issue of my presence, given that I was not personally involved, I wanted to

4 clarify the matter because I had previously said that they were our financiers, but I

5 never said that I had received money from them. Mr Assoa Adou's defence lawyers

6 gave me to understand that there's a distinction between being a financier and

7 receiving money directly from somebody directly. So that's what happened and

8 that's how I came to say that I did not receive any money from his hand.

9 And once again we are not dealing with the same facts here. In 2009, whenever the

10 Prosecutor asked me how it was possible for me to implicate those persons, I said, no,

11 all those who were involved in providing training in 2009 in each area were under the

12 authority of these people. When you arrive, this is what's going to happen, this is

13 how you're going to get food.

14 So that's what I said. And these are very distinct things, quite separate from each

15 other.

16 Q. [12:07:18] Before I concluded, I read out your statement to the DST in which

17 you mention the two periods, 2009-2010 and 2013 and 2014. I can re-read those

18 statements to you if you so desire. I'm referring here to CIV-OTP-0077-0222, at page

19 0254. This is what you state, and at that time it was the confrontation between

20 yourself and Mr Assoa Adou at the DST. This is what you say:

21 "I maintain my first statement. From 2009 to 2010 I participated in the training of

22 several militia, that is how in Abengourou, particularly in Adaou and Sankadjokro

23 villages, upon the instructions of Minister Assoa Adou we provided training for some

24 30 militia in the handling of the AK-47 weapon."

25 That is your statement. Now, at page 0255 you continue as follows:

1 "The said Koné Katinan, Amara Touré, Assoa Adou and Damana Pickass were
2 involved in the project to destabilise that took place in August 2014 involving attacks
3 to start or to be launched in the western region. Let me specify that well before the
4 2014 project, other projects had been undertaken, including the attack of the
5 Abengourou project in August 2012 and also in May 2013 funded by several
6 supporters, including Minister Assoa Adou." End of quote.

7 Now, in those two statements you put together the 2009 and 2010 period as well
8 as 2012 to 2014. Now, it is in relation to those statements that you came back on your
9 statements when you were questioned at the court of first instance in Abidjan. Now,
10 in the court here you have again repeated that Mr Assoa Adou was one of your
11 finance supporters and that is why I put it to you why is it that you came back on
12 those statements relating to those two periods within the jurisdiction of Côte d'Ivoire
13 and yet here you have repeated the same thing which is the contrary?

14 MR DEMIRDJIAN: [12:10:40] So we have one statement with an ERN and then we
15 have a comparison with two or three statements and it's quite confused. What is the
16 witness being confronted with. So we have one quote you read into the record and
17 then we're going back to other statements. Nobody knows which statements we're
18 talking about right now. No precise quote is given. How is the witness supposed
19 to answer this question.

20 PRESIDING JUDGE TARFUSSER: [12:11:05] No, I think that the question is
21 absolutely too complicated and too complex. I think the question has to be put
22 straightforward to the witness, the question, and then I think that we have to compare
23 apples with apples and pears with pears, and I don't think that, as far as I can
24 understand, this has happened.

25 MR GBOUGNON: [12:11:34] (Interpretation) Mr President, I will answer. This

1 is what the witness states in the Abidjan trial, CIV-OTP-0093-0060, page 65. He says
2 the following:

3 "I know Assoa Adou well. He is a close supporter or associate of Laurent Gbagbo.
4 We had a confrontation. Yes, I said that he funded our movement. It is true, but
5 then I came back on that statement. I said no because I did not meet Mr Assoa Adou
6 in person."

7 Mr President, that is what the witness said during that trial. Now, we have talked
8 about this already because the witness had provided a time frame and that's why I
9 referred to his testimony at the DST and stated that he had mentioned the periods at
10 the same time and had then come back on his statements.

11 Q. [12:13:15] Are you with me now, Witness?

12 A. [12:13:17] Yes. I think I have already provided an explanation. I explained
13 that, well, in relation to the statement you have just quoted, I said that the lawyers
14 had raised an objection, asking whether I had received any funding or any finances in
15 my own hand or with my own hand from Minister Assoa Adou and I said no.

16 So when the Prosecutor asked me the question, I did not go back to say that
17 Mr Assoa Adou had given me the money directly to me. So I think I wanted to
18 distinguish between that statement and what happened at the trial in Abidjan to the
19 extent that there was an issue about whether I received money in my own hand and
20 whether somebody was funding. And I said that I did not receive the money
21 directly in my own hand and I explained those who received -- who those who
22 received money from Mr Assoa Adou were. When I met Minister Dogbo Raphaël,
23 he told me that he was working with Mr Damana and Mr Assou, so I think that in a
24 way that is the clarification that I can provide to this issue.

25 Q. [12:14:59] You also testified before this Court and reiterated the same

1 statement that Assoa Adou was your financier. Are you now telling this Court that
2 this is not the case and that Assoa Adou was not your financier?

3 A. [12:15:19] What I said to this Court is that Mr Assoa Adou did not give money
4 directly to me. I said that upon instructions from Mr Assoa Adou a number of
5 troops were trained in his region in Abengourou. I also said that during the trial in
6 Abidjan when we talked about the 2013 events, I explained that Mr Assoa Adou had
7 provided some financial support based on the statements made by the persons whom
8 I cited. I did not come to the Court or to the trial there, nor here in court to say that I
9 had received money directly.

10 I said he was a financier because the following people had declared that they were
11 aware of funding coming in from Mr Assoa Adou. Minister Dogbo Raphael said
12 that Tchang, whom I had quoted, had also received some money and that money had
13 been sent to Damana Pickass and that the money was going to trickle down to us.
14 Mr Dogbo Raphaël had just left prison and he probably did not have the details as to
15 how the money was going to be forwarded, but the money had already been sent to
16 Damana Pickass after one of his vehicles had been sold, a vehicle that had been given
17 back to him had been sold, and I provided this explanation throughout the various
18 phases of the. Because during the trial I was asked about Mr Assoa Adou and I
19 wanted to clarify that he was a financier but that he didn't hand money to me directly.
20 They asked me whether I received any money from his hand and I said no.

21 So let me confirm here that I did not receive money from his hands, but people
22 confirmed to me that they had received money from him or had transmitted money
23 that was related to funds from Mr Assoa Adou for funding various operations.
24 That's the clarification that I can provide.

25 Q. [12:18:04] Just one last point on this and then we'll move on to another line of

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1 questioning.

2 This is your statement to the Court here. So in -- Mr Assoa Adou had --

3 THE INTERPRETER: [12:18:26] Mr President, could counsel be requested to repeat
4 the quotation.

5 PRESIDING JUDGE TARFUSSER: [12:18:30] Could you please start again with the
6 quotation, saying when you quote and when you end quote, please. Thank you.

7 MR GBOUGNON: [12:18:41] (Interpretation) Transcript of 20 October 2016, page
8 19, line 10 -- from line 10. I'll spare you the other details.

9 Quote: "Therefore, with Minister Assoa Adou in Abengourou there was also troops
10 sent there to take care of training."

11 Then later, further below at line 26, further down: "I contacted Bouazo," then you
12 talk about Tchang, you talk about Minister Dogbo Raphaël. And this is your
13 statement before this Court, you do not refer to -- now, when the Prosecutor asks
14 about who your financiers are, you mention Minister Assoa Adou, but you do not talk
15 about anyone being an intermediary.

16 MR DEMIRDJIAN: [12:19:56] Your Honours.

17 PRESIDING JUDGE TARFUSSER: [12:19:56] But I think we have understood what
18 he means.

19 MR DEMIRDJIAN: [12:20:01] Just to be clear, I think to be fair to the witness, they
20 should read to him the sentences before so that the temporal framework is clear,
21 otherwise we're confusing the different years.

22 PRESIDING JUDGE TARFUSSER: [12:20:11] I think we should go ahead.

23 MR GBOUGNON: [12:20:17] (Interpretation) Thank you, Mr President. We'll
24 move on to something else.

25 Q. [12:20:47] Mr Lida Kouassi Moïse, when did you know him or get to know

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1 him?

2 A. [12:21:10] I knew Mr Kouassi before I -- before he went into exile, but it is in
3 Algeria that we got to know each other much better. I had met him before going into
4 exile, but it is whilst on exile that we became closer.

5 PRESIDING JUDGE TARFUSSER: [12:21:40] And when is that timing, in terms of
6 years or month or period?

7 THE WITNESS: [12:22:07] (Interpretation) When I talk about exile, it is from
8 September 2011.

9 MR GBOUGNON: [12:22:17] (Interpretation)

10 Q. [12:22:23] You said that you knew him before going into exile. That must be
11 the President's question. When you say "know him," what do you understand by
12 that, what time frame and what do you understand by "know"?

13 A. [12:22:46] When I say "know," I can say that I know you today, Counsel, but if
14 people ask me whether I have contacts or social contacts with you, I would say no
15 because we are not friends. But I know you to the extent that if I see you in the
16 streets I would be able to recognize you. So I can say that I know you.

17 Q. [12:23:17] So you know Mr Kouassi simply because he was a minister, but you
18 at the time, that is by the time he was minister, from the year 2000 to about 2011,
19 when you were supposed to have seen him for the first time in that period, so before
20 going into exile you had never met him?

21 Please hold on, let me finish my question, then you can answer, otherwise if we both
22 speak at the same time, we will not be able to get a proper interpretation.

23 Now, when you say that you knew him, how, when and at what time before going
24 into exile?

25 A. [12:24:11] Before going into exile, I had met him at his house. I told you that

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1 he was one of the godfathers in the marriage of my father, or something like that.

2 That's the explanation I provided when the Prosecutor put the question to me.

3 Q. [12:24:37] So you were introduced to him by your father; is that correct?

4 A. [12:24:46] First of all, we used to attend the same church. And I cannot say
5 that he was introduced to me by my father. It's not my father who introduced him
6 to me, but as I said, he was, well, not a friend but he was like a senior brother to my
7 father and he was the godfather at his wedding. But it's not my father who
8 introduced him to me. I went to see him myself. I was not sent to see him by my
9 father. When I went to see him at his house, I went there on my own personal
10 account.

11 Q. [12:25:28] I haven't understood very well.

12 A. [12:25:31] I said I --

13 Q. [12:25:36] I want to suggest to you that we can avoid overlapping by you
14 switching off your microphone and when my microphone is switched off then you
15 can have enough time to switch on your microphone and that will stop us from
16 speaking at the same time.

17 Now, this is my question: You have talked about a church, you have said that he
18 was not introduced to you by your father, so can you explain to the Court in which
19 year you got to know him and how did you -- well, maybe not got -- how did you get
20 to know him, but maybe because he was a minister you had seen him on TV. If you
21 had met him physically, can you tell the Court how this happened? That's my
22 question.

23 A. [12:26:57] I have explained that I met the minister in his house in Cocody.

24 Then you asked me whether it was my father who introduced him to me and I said no.

25 However, how do I put this now? They knew each other, that is my father and

1 himself. But I don't know how to put it to you. If someone you know or somebody
2 whom I know can have contact with my child, with my son, how else do you want me
3 to explain this to you?

4 Q. [12:27:54] Let me explain this to you. Please switch off your microphone
5 while I have the floor.

6 A short while ago you talked about a church, and the question to you is the following:
7 You got to know Mr Kouassi outside of any relationship to your father. But I don't
8 understand what you mean, and I'm putting this question to you once again. Can
9 you explain to this Court and all of us the year and the circumstances, the
10 circumstances in which you physically saw Mr Lida Kouassi Moïse? That's a simple
11 question.

12 A. [12:28:47] If I remember properly it was in 2004, and that deals with the year.
13 In the course of the year 2004, and it was at his house in Cocody, I explained to the
14 Court already that I went to pay him a private visit. Now, when it comes to
15 whatever conversation we had, he said "Good morning," "Hello," "How are you?"
16 And I don't know what other information you're asking of me.

17 Q. [12:29:49] After that meeting, did you see him again before 2011, that is
18 between 2004 and 2011?

19 A. [12:30:12] I've already explained that the first time I saw him was during that
20 period. But, you know, it happened that he came to our house and so I must have
21 seen him, I must have seen him after that meeting.

22 Q. [12:30:36] So sometimes he would come to a house, which house?

23 A. [12:30:39] My father's house.

24 Q. [12:30:47] When were you living with your father?

25 A. [12:30:58] I can't give you the details because there were times when I was

1 living with my father and sometimes I was living with people from my mother's side
2 of the family.

3 Q. [12:31:13] I'll repeat my question. When --

4 A. [12:31:17] Si --

5 Q. [12:31:19] Please, please, I hadn't finished. I'm asking you a question. I have
6 the floor.

7 When, in which year, did you live with your father?

8 Please, go ahead.

9 A. [12:32:24] I said I don't want to answer that question because often -- well, I
10 did some years with my father and some years I was -- or sometimes, rather, I was
11 staying with relatives on my mother's side of the family in order to go to school. So I
12 can't tell you. I can't give you details, because often I would do one school year with
13 my father. But during the school holidays I, I -- so to give specific dates, you're
14 really asking me for a lot. I can't give you those details. It's really -- I can't.

15 PRESIDING JUDGE TARFUSSER: [12:33:09] May I just say that, because you
16 started, and I always say with the caveat that I'm listening to the English translation,
17 saying that you don't want to respond to this question, and then you said you can't.
18 What is the right thing? Because you cannot choose if yes or if no. You cannot
19 choose. You have to respond. But obviously I can't force you to have a memory of
20 everything.

21 THE WITNESS: [12:33:44] (Interpretation) Your Honour, I didn't say that I didn't
22 want to answer. I said I couldn't answer the question, because truly often I was with
23 my father. And I've said this already, even in Abidjan at the court there, I was asked
24 and I told them that often I was either living with my father in order to go to school or
25 living with a relative, either on my father's side or on my mother's side to go to school.

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1 Ever since I was a child that has been the case, ever since my childhood. So I can't
2 say truly which year I was living -- I can't give you those details.

3 PRESIDING JUDGE TARFUSSER: [12:34:31] Okay. The floor is back to
4 Maître Gbougnon.

5 MR GBOUGNON: [12:34:36] (Interpretation)

6 Q. [12:34:38] We will continue on this topic. Now, you said something about
7 in 2004, in 2004 you said you went to Mr Lida Kouassi for the first time. In 2004 you
8 said that you were no longer going to school. So my question is this: After 2004,
9 you say that you saw Mr Lida Kouassi at the home of your father. So my question is
10 this, when -- because in 2004 you weren't going to school, so you can't be telling me
11 that you were at one relative's home or another.

12 After 2004, were you living with your father when Mr Lida Kouassi would come,
13 because you weren't going to school then anymore at that time?

14 A. [12:35:38] Counsel, my being at my father's home, it didn't have anything to do
15 with going to school or not going to school. At my father's home, you see, I might go
16 and spend a week there or some time there for some other reason. You're asking me
17 to specify, and I've told you that I can't give you details because I didn't -- well, I
18 might have been living with an uncle or with my father. There weren't any definite
19 periods of time when I was living with my father or someone else.

20 I think I've already answered your question. I don't know what other detail I can
21 give you.

22 Q. [12:36:43] In 2011, when you saw Mr Lida Kouassi in Togo, who introduced
23 you to him?

24 A. [12:37:06] In 2011, meeting Mr Kouassi, Mr Lida Kouassi, that was through
25 various people. Before meeting him, I had met some other people, be it -- they

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1 wanted to be sure of me before I was to go and meet the minister. There was, I
2 explained there was Depri Aristide, who was the president of the association of
3 Ivorian refugees of the diaspora in Togo. There was also a former member of
4 parliament, William Atteby and Franck Dali, former secretary general of --

5 THE INTERPRETER: [12:38:13] Inaudible.

6 THE WITNESS: [12:38:14] (Interpretation) We met those people first before we
7 met the minister, Minister Kouassi.

8 THE INTERPRETER: [12:38:24] And the interpreter apologises, but the last
9 sentence was inaudible.

10 MR GBOUGNON: [12:38:28] (Interpretation)

11 Q. [12:38:29] Why did you have to meet this person whom you knew so well
12 through intermediaries? Why did you have to go through intermediaries?

13 A. [12:38:40] In exile, well, when you're in exile, you trust no one, everyone
14 distrusts everyone else. Some people had come together and rallied and others, you
15 see, were in exile. People in exile, some people were actually there to get
16 information, and they wanted to know about the activities of people in exile.
17 When we were supposed to meet the minister, first of all, we were in a refugee camp.
18 And then I met some people with whom -- well, people -- some people who had
19 fought, but others had no knowledge of the armed conflict.

20 But you must realise that in a refugee camp, there were not only pro-Gbagbo
21 supporters, there are also Ouattara supporters who are also in the camp. I tried to
22 find out what I could to determine who I could trust and who I couldn't trust.

23 So I was working with a former from SGS --

24 THE INTERPRETER: [12:40:24] Inaudible.

25 THE WITNESS: [12:40:25] (Interpretation) -- because he had information related

1 to the minister. And I also went through this person to determine who I could talk
2 to, who I could contact so as to meet with the minister. She, you see, she, she had a
3 conflict with the minister beforehand, she had gone and said along with some other,
4 other people. And you see, the minister did not look very favourably on the fact that
5 she had gone off and given a statement. And you see, the services, the interior
6 services of Togo were using her to find out what activities were underway. So she
7 said she had been in touch with the minister, but the person, well, Depri Aristide was
8 his name, and I went to organise this meeting with the minister.

9 Q. [12:41:56] So the minister -- so did the minister tell you anything in confidence
10 about the death of General Guéi?

11 A. [12:42:27] Yes.

12 Q. [12:42:36] Where and in what manner?

13 A. [12:42:46] During a meeting, one of our meetings, it was in -- well, at a place, a
14 place where we used to go and we would see once -- one another in Lomé at that
15 place. It was a place we would go to to have a drink. And he made that confidence
16 not just to me, not just to me, but he did make mention of it, yes.

17 Q. [12:43:27] So you are telling the Chamber now that during a meeting with the
18 minister, Minister Kouassi, can you describe what you mean by a buvette, a place
19 where you go to have drinks?

20 A. [12:43:48] Well, it's a drinking spot, a place -- well, food is sold and also
21 refreshments. It is a place where -- well, that the minister had chosen because it was
22 a low-key kind of place that belonged to a person from Côte d'Ivoire that he trusted.
23 So it wasn't the first time that we met at that place.

24 MR DEMIRDJIAN: I am sorry to interrupt my learned friend, your Honours.

25 We've had four names so far that are inaudible, so before we move forward, it might

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1 be good for the record to clarify them. I thought my learned friend would do it, but I
2 waited a bit. So there was a Myriam, and there's three people at page 58, line 6 in
3 French. There was a député and a secrétaire général and there was a third inaudible
4 in that same sentence. And page 59, line 7, there's Lydian, or I heard Myriam.
5 Anyway, if we could clarify those four names for the record.

6 MR GBOUGNON: [12:45:04] (Interpretation) Thank you, my learned friend, for
7 that reminder.

8 Q. [12:45:14] Now, Witness, could you give us those names.

9 A. [12:45:18] Member of Parliament Willy -- Mr Frank --

10 Q. (No interpretation)

11 A. A-T-T-O-B-Y. A-T-T-E-B-Y, William, Member of Parliament.

12 PRESIDING JUDGE TARFUSSER: [12:45:43] Excuse me, which parliament?

13 THE WITNESS: [12:45:52] (Interpretation) He was a member of parliament
14 before -- before -- well, I don't know how to explain it, but the -- the election began --

15 PRESIDING JUDGE TARFUSSER: [12:46:10] In Côte d'Ivoire?

16 THE WITNESS: [12:46:11] (Interpretation) Yes, in Côte d'Ivoire, in Côte d'Ivoire.

17 MR GBOUGNON: [12:46:20] (Interpretation)

18 Q. [12:46:20] Now, there was three names, another name. You mentioned
19 William Atteby.

20 A. [12:46:42] Franck Dali, former secretary general of --

21 THE INTERPRETER: [12:46:49] Inaudible.

22 PRESIDING JUDGE TARFUSSER: [12:46:52] Secretary general of? Former
23 secretary general?

24 THE WITNESS: [12:46:54] (Interpretation) Of a newspaper called Notre Voix, a
25 newspaper known as Notre Voix, Our Voice.

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- 1 PRESIDING JUDGE TARFUSSER: [12:47:09] Then the other two names.
- 2 THE WITNESS: [12:47:18] (Interpretation) Depri Aristide. There was Mr Dali
- 3 Bah (phon), he was also from the GSPR also, and another fellow. The elements that I
- 4 was in Togo with, the name's 222.
- 5 MR GBOUGNON: [12:48:11] (Interpretation)
- 6 Q. [12:48:12] Now, this drinking establishment, was this a public place?
- 7 A. [12:48:16] Well, you're talking to me about the bar and the people that I met
- 8 before I met the minister? I think that you were asking me about the people I'd met
- 9 with before talking to the minister. So you're talking about the people who are at
- 10 this bar or drinking establishment.
- 11 Q. [12:48:36] Let me repeat, I said -- I was mentioning, I was asking you a
- 12 question about this thing that Mr Moïse told you in confidence about General Robert
- 13 Guéï.
- 14 A. [12:48:54] Okay.
- 15 Q. [12:48:55] So I think now you understand my question.
- 16 A. [12:49:00] That was in the presence of Mr Franck Dali and the Member of
- 17 Parliament, William Atteby. There was also Dah Machiani Maxime, Mr Depri
- 18 Aristide, Jean-Yves Dibopieu.
- 19 Q. Now, I believe there are two names -- no, no, it's all right. Two names did not
- 20 quite appear on the transcript, but don't worry, that's fine.
- 21 A. [12:50:37] These were well-known people who were with the minister as well.
- 22 I went with Dah Machiani Maxime. There was Kipré, chief corporal of the
- 23 Republican Guard, Alexis.
- 24 Q. [12:51:09] So in a public bar the minister explained to you how it came to be
- 25 that he killed the former president of the rebel --

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1 PRESIDING JUDGE TARFUSSER: [12:51:24] I don't understand why you
2 now -- this is a comment.

3 MR GBOUGNON: [12:51:33] (Interpretation) It is not a comment. I want things
4 to be recorded properly in the transcript, so for the record of the case, your Honour --

5 PRESIDING JUDGE TARFUSSER: [12:51:46] They are recorded properly in the
6 record of the case.

7 MR GBOUGNON: [12:51:56] (Interpretation)

8 Q. [12:51:57] What was the purpose, why did he explain this to you?

9 MR MACDONALD: [12:52:15] I'm sorry, I'll intervene but there's nothing on the
10 record right now as to any admission of Mr Kouassi in relation to Mr Guéi. It is
11 Mr Gbougnon putting that to the witness, but the witness never -- never related what
12 was the admission itself about Mr Guéi. That is not on the record. So there's a
13 presumption again, that's all.

14 MR GBOUGNON: [12:52:50] (Interpretation) Your Honour, I'm trying to proceed
15 quickly. I will quote from the witness's statement to the DST on 13 May 2014,
16 CIV-OTP-0066-0033, at page 0034. And I quote:

17 "In addition to that case, I should say as well that I learned from Minister Kouassi
18 during my exile in Togo, during a conversation in a little restaurant, a café, in the
19 presence of Kipré, 'Mazou' Alexis, K-I-P-R-É, Mazou, M-A-Z-O-U, Alexis, alias
20 Colonel Golgotha, G-O-L-G-O-T-H-A, formerly serving within the Republican Guard;
21 Dah Machiani, alias -- D-A-H, Machiani, M-A-C-H-I-A-N-I, alias Diable un pied,"
22 between brackets, "(deferred) that the assassination of Robert Guéi was carried out by
23 Colonel Katé Gnatoa and Dassé," in brackets -- no, I beg your pardon, "K-A-T-É
24 G-N-A-T-O-A, Dassé, D-A-S-S-É. The minister revealed to us that he had provided
25 them with two vehicles, two four-by-fours with weapons inside."

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1 Now, Mr Witness, this is what you said on 13 May 2014 to the DST; is that correct?

2 A. [12:55:36] That is correct.

3 Q. [12:55:46] Do you remember in the same connection making a statement at the
4 court during Madam Gbagbo's trial?

5 A. [12:55:54] Yes.

6 MR GBOUGNON: [12:56:05] I will now quote from CIV-OTP-0093-0060, at page
7 0070.

8 Q. Thus, after the statement -- two years later, in 2016, during Ms Gbagbo's trial
9 you said:

10 "For example, there was the death of General Guéi who had taken refuge in the
11 cathedral, where he was drawn out by the death squad. It was the minister, Lida
12 Kouassi, who said to Touré that he was the one who had coordinated" -- please,
13 please, turn off your microphone because we can hear.

14 "It was the Minister Lida Kouassi who said to Touré that he was the one who
15 coordinated the death of Guéi. It was indeed Lida Kouassi who gave the order to
16 kill General Guéi."

17 So my question is this, Witness: In May 2014, Lida Kouassi allegedly made that
18 admission to you and then two years later, when you were in the stand, you said that
19 he said that to Mr Touré.

20 A. [12:57:57] I'll answer.

21 Q. [12:57:59] Go ahead.

22 A. [12:58:00] First of all, regarding Mr Touré, I don't know anyone called
23 Mr Touré. No, no, let me talk. Let me, let me -- because I read that transcript of
24 that hearing, and before the trial I think the one -- the one --

25 THE INTERPRETER: [12:58:22] Inaudible.

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1 THE WITNESS: [12:58:23] (Interpretation) When I saw that he said, "And I didn't
2 acknowledge. I didn't recognize this Touré." He said that to Lomé -- in Lomé. I
3 didn't say anything about Touré. In none of my statements did I say anything about
4 a person called Touré, but I did not mention anything about this story about a
5 meeting with Mr Kouassi, because in Togo when I talked about those people and the
6 meeting with the minister, I didn't say anything about Touré. I said that's the
7 whole -- all that part of the answer, that's not -- that was seized or recorded, but I
8 didn't say that. I didn't say that.

9 But since I'm being told that I'll have an opportunity to set the record straight, if you
10 ask me a question, when that happens I'll set the report straight.

11 PRESIDING JUDGE TARFUSSER: [12:59:33] It's straight.
12 Please.

13 MR DEMIRDJIAN: [12:59:36] Your Honours, this is again coming back to the
14 testimony of the witness in the case of Simone Gbagbo.

15 PRESIDING JUDGE TARFUSSER: [12:59:41] I know.

16 MR DEMIRDJIAN: [12:59:42] We can see the difficulty again of putting to the
17 witness --

18 PRESIDING JUDGE TARFUSSER: [12:59:45] No, no, but --

19 MR DEMIRDJIAN: [12:59:46] -- words that he -- it's not a signed statement, first of
20 all, and it is not a verbatim record. And we're putting it to him -- first of all, my
21 learned friend didn't ask him to explain, and he's putting it to him even before the
22 witness has an opportunity to describe the incident.

23 PRESIDING JUDGE TARFUSSER: [13:00:02] But you see also that the witness is
24 perfectly capable to handle with it and, therefore, I give him the opportunity to set the
25 record straight.

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1 MR O'SHEA: [13:00:14] Your Honours, I'm slightly disturbed, if I may say so, at
2 the fact that this statement has been made in front of the witness. You know, there
3 are other people behind in terms of the examination of this witness, and I don't want
4 this witness to, as it were, have a degree of preparation through certain things which
5 are said. I'm not saying it is intentional, but the witness should not have heard what
6 my learned friend just said.

7 PRESIDING JUDGE TARFUSSER: [13:00:54] Mr Witness.

8 THE WITNESS: [13:00:57] (Interpretation) Yes, your Honour, this statement, it
9 was the hearing, and now the one who recorded, who listened and recorded, that
10 person, he understood -- I don't know how he recorded. I don't know, I don't know
11 how he gave. But what I do know is that he said that the minister said that in Lomé
12 how did -- how he provided Katé with two vehicles at station F. And then in here it
13 says the Total station. And keys in the contact and weapons inside used for the
14 operation at the residence of the former president Robert. I didn't say anything
15 about Touré.

16 MR GBOUGNON: [13:02:09] (Interpretation) Mr President, I see it's 1 p.m.
17 With your leave, maybe we could have the break now, and I would have a thing or
18 two to say about what the Prosecution has just said a short while ago, but I would like
19 to do that in the absence of the witness. Thank you.

20 PRESIDING JUDGE TARFUSSER: [13:02:33] Thank you very much.

21 I ask the witness -- I think we should take the break now, and when we come back I'll
22 give you the floor for a few minutes before the witness is brought in.

23 Thank you. We are breaking for the lunch.

24 THE COURT USHER: [13:02:52] All rise.

25 (Recess taken at 1.02 p.m.)

1 (Upon resuming in open session at 2.34 p.m.)

2 THE COURT USHER: [14:34:54] All rise.

3 Please be seated.

4 PRESIDING JUDGE TARFUSSER: [14:35:17] Maître Gbougnon, I think you

5 wanted the floor. Good afternoon. I think you wanted the floor to speak to the

6 Chamber on the issue raised by the Prosecutor, I think. The floor is yours.

7 MR GBOUGNON: [14:35:38] (Interpretation) Yes, Mr President. Thank you.

8 I would like to remark and, first of all, let me join the comments made by Mr O'Shea,

9 which I believe were to the effect that it was not proper for the Prosecution to make

10 those comments regarding the documents from the court in Abidjan in the presence

11 of the witness. Furthermore, Mr President, the document under consideration was

12 disclosed by the Prosecution. I am therefore of the view that the Prosecution did not

13 disclose any false documents to us. I believe that such cannot be the case and I do

14 believe so even now.

15 The documents, the purported document was drawn up by the court of first instance

16 in Abidjan and it bears the seal of the court of first instance in Abidjan and it was

17 disclosed by the Prosecutor and not by the Defence.

18 Now, if one claims then that the content of the document may be false, I believe that

19 this is the kind of thing that the Prosecution should not do. And until we have

20 contrary evidence, we do give the benefit of the doubt to the Prosecution in terms of

21 its good faith.

22 On several occasions, Mr President, it has been mentioned that this submission,

23 several times it has been said that this document does not contain any questions.

24 Maître Altit said, and Witness P-414 and P-00238 have been questioned on

25 testimonies or on submissions that did not bear questions but simply answers. So

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1 I believe therefore that the two arguments by the Prosecution put forth cannot hold
2 and, without going into any further details, because we are in open session, and in
3 order to avoid taking the witness in and out of the courtroom, maybe we might be
4 also hearing the Prosecution on this matter, we want to talk about a document which
5 has already been challenged by the Prosecution because they have indicated that they
6 will be objecting to it, a document which we would like to produce into evidence,
7 Mr President. Maybe it will be timely to talk about that right now. Thank you.

8 PRESIDING JUDGE TARFUSSER: [14:39:02] Mr Prosecutor.

9 MR MACDONALD: [14:39:07] Your Honours, two things: We will go in closed
10 session to debate now since there's a clear indication of the use of that document, and
11 my colleague Mr Demirdjian with be presenting the Prosecution's argument on this.
12 But I just want to come back on, once more, the process. This PV d'audition, your
13 Honour, is a disclosure under Rule 77, it's our obligation. We received it, we provide
14 it to the Defence. And we've seen in other cases anyway they obtained such similar
15 documents about Prosecution witnesses testifying before the CIV authorities.
16 Now, the question is we're not following a logical process and that the Chamber will
17 understand we've been following in the past. The first question is you put the
18 content of the PV d'audition and the witness will acknowledge if he said that or not.
19 If he says no, then it stops there or we ask immediately a clarification which he will
20 say in this last case, I don't know if we were in audience publique, about the country
21 instead of a name. So the point being is we're not even doing that. We're not even
22 putting the question to the witness as if he remembers saying that. We have the
23 document and we presume that what he said previously is exactly what was said.
24 And we know even from our own court records, your Honours, that there are
25 mistakes. We send clarifications and we have a verbatim account. This is a

1 procès-verbal that is not a verbatim. It is for the witness to tell the Chamber first, do
2 you remember saying that previously. If he says no, well, theoretically, it is
3 supposed to stop there and my colleagues will have to bring in their own defence the
4 person that did the PV d'audition, because a PV d'audition is not a verbatim account.
5 There could be mistakes, just like in our transcripts, then the accuracy of the PV
6 d'audition needs to be established. We're merely a vehicle of disclosure. Of course
7 we're disclosing this in good faith and we're not saying that the witness, as he has
8 mentioned, "Yes, I have said this. No, I didn't say this." And here he corrected.
9 But we had to wait and mix things with other statements, four statements mixed
10 together, without going through a due process of each time having the witness
11 recognize if he remembers saying that and correcting immediately "yes" or "no".
12 It's not a question we're not trying to prevent the Defence from cross-examining with
13 the use of prior statements made outside of this courtroom or in this courtroom.
14 What we're saying is a witness needs -- we need to be fair and he needs to have a
15 chance to accept the content or make corrections if there is a need. So that's our
16 position on this matter, your Honour.
17 So I think the Defence is simply jumping the gun so they can do that, but there's in
18 French, il saute des étapes.
19 On the second point, your Honour, we'll be able to debate in closed session, in light of
20 the nature of the document being discussed, a report made by an expert or a
21 professional in Côte d'Ivoire and, again, how it should or can it be used.
22 Thank you.
23 PRESIDING JUDGE TARFUSSER: [14:43:16] On the issue regarding the position
24 or the intervention made by the OTP just before adjourning the hearing, I think the
25 OTP didn't intervene on the merits of the testimony, but intervened on the

1 methodology. And I think rightly did so. The methodology of the statements the
2 witness is confronted with.

3 I think it's crucial to know, also for the Chamber not only for the witness, if the
4 quotation and the confrontation with the statement comes from a verbatim statement
5 taken before by the OTP in another case, or by summary, on the basis of question and
6 answers or only answers.

7 And I think it's also crucial for the Chamber, because also the Chamber would not like
8 to be misled on that. Therefore, I would really ask when confrontation comes with
9 previous statements it's indicated -- besides being quoted, I would really like to know
10 what type of statement it is, how this statement was given to the relevant authority,
11 be it Ivorian or not. So in order for us also to know what the background is.
12 That's it.

13 Therefore, now I think we should continue with the questioning by the witness and
14 therefore I introduce -- I ask the court usher to introduce the witness.

15 Yes, but it's not yet --

16 MR MACDONALD: [14:45:19] Just before entering -- sorry, I don't want to
17 interrupt and of course the Chamber is very well in charge, but my colleague was
18 recommending that we may have this debate now before the witness comes in instead
19 of -- because it's going to become a live issue pretty soon. So that's what they just
20 said. That's what they just said.

21 PRESIDING JUDGE TARFUSSER: [14:45:42] Yes, but I don't know if it's becoming
22 a live issue pretty soon. That's up to the Defence. Therefore, I know what it is
23 about. But if it's an issue which comes maybe tomorrow, I think we should just
24 continue. Otherwise if it comes up soon, the issue on this document which the -- to
25 which the OTP will oppose, I have no idea. Depends on the strategy of the Defence.

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1 MR MACDONALD: [14:46:20] My colleague said earlier that's what --

2 PRESIDING JUDGE TARFUSSER: [14:46:24] Yeah, yeah.

3 MR GBOUGNON: [14:46:28] (Interpretation) That will happen very soon. Right
4 now, Mr President. So I think we should go into private session.

5 PRESIDING JUDGE TARFUSSER: [14:46:41] Mr O'Shea.

6 MR O'SHEA: [14:46:43] Your Honours, just on the issue of private session, because
7 my learned friend for the Prosecution has indicated that we need to go into private
8 session. We submit that it's not actually necessary to go into private session over the
9 discussion of this expert report, because this expert report has been discussed in
10 public in Ivory Coast in the trials there. And so, as it were, if there was any question
11 of privacy for the witness it's already been unveiled.

12 MR MACDONALD: [14:47:20] But contrary to Côte d'Ivoire we are public, is the
13 world, via the Internet and, therefore, this is a personal health allegation which I don't
14 think the world needs to know. In Côte d'Ivoire the proceedings are public for the
15 people attending the proceedings from the courtroom and what is being reported in
16 the news. So I see this as when we're discussing the aptitude of someone, we do it
17 confidentially. I remember all the debate about a certain person in the courtroom.
18 So why is it different for a witness. He has his right to privacy on such matters.

19 (Trial Chamber confers)

20 MR MACDONALD: [14:48:20] And I would add even more so, if the document
21 cannot be used, if ever you're ruling is the document cannot be used, therefore we're
22 exposing someone's report.

23 (Trial Chamber confers)

24 MR MACDONALD: [14:48:54] I think this may fall within Rule 88 or Rule 87, your
25 Honour.

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1 (Trial Chamber confers)

2 MR O'SHEA: [14:49:08] Sorry, your Honours. Just two points, one being
3 that -- you've already decided. All right.

4 PRESIDING JUDGE TARFUSSER: [14:49:18] No, we are not going in private
5 session. We leave it to the parties not -- obviously, we are not discussing here the
6 content, we are discussing what happened and how it how this came into existence,
7 this document, but not the content of the document, because otherwise we are making
8 another expertise here. And we are not. We are just -- we hear the discussion can
9 we use it or can we not use it and what it is.

10 MR MACDONALD: [14:49:53] But we will -- I understand the Chamber's position.
11 We're just discussing the issue, your Honour. It is difficult I believe for the parties,
12 be it my colleagues or us, to distinguish the content and the use unfortunately, and it
13 will become difficult, I believe. Maybe we see this as being more complicated than
14 the Chamber does at this very moment, but I think it's unavoidable that we will go
15 into the content, because we'll have to explain what it is, when it was made, by whom
16 and so on.

17 PRESIDING JUDGE TARFUSSER: [14:50:36] Well, that's not the content. That is
18 not the content. What was made by whom and when it was made, this is what we
19 are discussing about. We are not discussing on what was the outcome of it. We are
20 discussing on what was done, when was it done --

21 MR MACDONALD: [14:50:58] And its purpose.

22 PRESIDING JUDGE TARFUSSER: [14:51:00] -- who did it and that's it, and that's not
23 the content.

24 MR MACDONALD: [14:51:03] No, it isn't, your Honour, but okay. I see that
25 you're giving clear instructions --

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- 1 PRESIDING JUDGE TARFUSSER: [14:51:11] Yes.
- 2 MR MACDONALD: [14:51:13] -- not to go into the content. My colleagues are on
3 notice and we'll see how we can deal with it.
- 4 PRESIDING JUDGE TARFUSSER: [14:51:22] That's it.
- 5 MR O'SHEA: [14:51:23] Your Honour, just to assist the Chamber, of course, if there
6 comes a point in the discussion, then we can just go into private session and go out
7 again, but it's important that we have a public trial, of course.
- 8 PRESIDING JUDGE TARFUSSER: [14:51:32] That's important and, therefore, I
9 give the floor to Maître Gbougnon, because he is the one who wants to use the
10 document. I ask you to be aware of what the Chamber wants or does not want even
11 more, so please, because we can decide also on the basis of without going into the
12 content.
- 13 Yours the floor.
- 14 MR GBOUGNON: [14:52:05] (Interpretation) Thank you, Mr President.
- 15 Mr President, are we waiting for the witness?
- 16 (The witness enters the courtroom)
- 17 PRESIDING JUDGE TARFUSSER: [14:53:00] I wonder if it's wise that the witness
18 is here, I must say.
- 19 MR DEMIRDJIAN: [14:53:05] That's what I was going to say, your Honours.
- 20 MR GBOUGNON: [14:53:11] (Interpretation) Mr President, I'm in your hands.
- 21 MR MACDONALD: [14:53:17] We make a request for the witness to be excluded,
22 your Honour.
- 23 PRESIDING JUDGE TARFUSSER: [14:53:20] Yes, maybe it's better the witness be
24 excluded, yes.
- 25 Sorry, Mr Witness. Mr Witness, sorry for this.

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1 (The witness stands down)

2 PRESIDING JUDGE TARFUSSER: [14:53:35] Maître Gbougnon.

3 MR GBOUGNON: [14:53:39] (Interpretation) Thank you, Mr President.

4 Mr President, our position is as follows: We note that from the beginning of our
5 questioning there have been variations in the witness's testimony, and these
6 variations were noted in the expert report. Defence, therefore -- it is true that we're
7 in open session, so I will not go into some details. The Defence, therefore, intended
8 to use the substance of this report in private session in questioning the witness with a
9 view to obtaining clarification on the various discrepancies.

10 PRESIDING JUDGE TARFUSSER: [14:54:58] Well, I ask first, have you, Mr O'Shea
11 or Madam Naouri, do you want to intervene on this?

12 MR O'SHEA: [14:55:10] Your Honour, yes. But I would prefer if the Prosecution
13 states his objection and the grounds for it and then your Honours give me an
14 opportunity to respond, if your Honours are happy with that procedure. It's his
15 objection.

16 MR DEMIRDJIAN: [14:55:26] But counsel has to actually demonstrate the
17 relevance and the reason why they want to use it so we can actually answer. It's on
18 your list of evidence as well, I believe.

19 MR O'SHEA: [14:55:39] Is that amenable to your Honours?

20 PRESIDING JUDGE TARFUSSER: [14:55:43] Yes.

21 Mr Demirdjian, please, yours the floor.

22 MR DEMIRDJIAN: [14:55:48] Very well. Your Honours, we just heard
23 Mr Gbougnon say to you that the reason why they wished to use this report was that
24 the report notes that there are variations in the witness's answers. Now, this report
25 was done before the witness had testified in any proceeding. The report was written

1 two years ago. So at this stage there isn't anything that we can infer from this report.
2 This evaluation, your Honours, was done for the purposes of establishing the
3 witness's fitness to stand trial in Ivory Coast, not for the purposes of giving testimony.
4 That's number one.
5 Number two, although the report was available at the time of the Simone Gbagbo trial,
6 the witness did testify and was heard.
7 Number three, this evaluation was not ordered by your Honours, which means that
8 this expert was not selected according to the rules and the regulations of this Court.
9 Making use of a report of an expert of which we know nothing about, we don't have
10 the resume, we don't have his background, would not be the right course of conduct.
11 The report also contains subjective appreciations of a third party of the witness's
12 alleged personality traits. By tendering this document into evidence or questioning
13 the witness on these conclusions, the Defence is attempting to contaminate the most
14 essential function of this Court, which is to assess the credibility of the witness.
15 Now, your Honours, looking at the report, we also do not have any information as to
16 how the examination was conducted. We have statements made by the witness and
17 we have conclusions by the expert as to what tests were done, what methodology was
18 used. None of that is available.
19 Your Honours, I will also note that counsel is commenting right now about the
20 answers the witness gave you. However, your Honours noted yourself that the
21 witness is quite capable of answering questions earlier today.
22 Now, because of all these reasons, your Honours, allowing the Defence to submit the
23 report or to question the witness on the basis of this report would be unfair to the
24 witness and would not help the Court in its truth-seeking mission.
25 The Defence can always attempt to call the expert to testify in their case.

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1 Finally, your Honours, this is an area of privacy which can only be invaded in
2 cross-examination or in examination when required in the interests of justice, and at
3 the present time we say it does not.

4 For the record the report has the following ERN: CIV-OTP-0095-1119. Thank you,
5 your Honours.

6 PRESIDING JUDGE TARFUSSER: [14:59:23] Mr O'Shea.

7 MR O'SHEA: [14:59:24] Yes, your Honours. My learned friend of course has said
8 nothing which undermines the reliability of the document itself, which one would
9 have thought would have been the basis of such an objection.

10 The Prosecution are objecting to a psychiatric report which was made in July 2014
11 within the framework of a judicial procedure in Ivory Coast. And there are three
12 points I'd like to make. The first point is this, is to outline and highlight the
13 importance of this document.

14 My learned friends and I agree that the issue is one of credibility of the witness, but
15 it's also an issue of reliability. It's fundamental that the importance of this document
16 is understood in that context.

17 This was an official evaluation done on the -- and I'll quote in French just so that the
18 official nature of it is very clear, (Interpretation) "Upon the order of the investigating
19 judge, Madam Essienne Josiane Adrah, investigating judge in Abidjan, in the context
20 of the investigation."

21 (Speaks English) And that in the context of charges which are described, and I quote
22 in French, as (Interpretation) "Against the security of the state considering armed
23 gangs, participating in armed gangs and assassination." End of quote.

24 (Speaks English) This report was done by a psychiatrist, a professional psychiatrist in
25 Ivory Coast, in this case Dr Adama Koné. And the report contains information of a

1 very serious nature when one is looking at questions of credibility and reliability.

2 I trust that your Honours have had an opportunity to read the report. And I draw
3 your Honours' attention in particular to page 1130 and what is written there, because
4 in our submission what is written there is of fundamental importance.

5 And if your Honours wish, I can go into private session briefly and quote the
6 important paragraph. Would your Honours like me to do that?

7 PRESIDING JUDGE TARFUSSER: [15:02:18] No, I don't think we need the
8 quotation.

9 MR O'SHEA: [15:02:21] All right. So the information that I'm referring to on that
10 page of the report is important for the evaluation of the plausibility of this Witness
11 435 and it follows credibility and reliability of the testimony of the witness. And it is
12 quite frankly incomprehensible in our submission why the Prosecution would want
13 to put this document aside.

14 The second point is this, that it is fundamental that the context in which this report
15 was made as well as its contents can be discussed by the Defence with this witness.
16 That in our submission makes perfect sense and it is in accordance with the primary
17 duty of this Court to search for the truth. So it is as much a tool for the Defence as it
18 is essential for the Chamber to have the opportunity to have the witness's answers to
19 the Defence's questions in relation to their context and content.

20 Thirdly, in our submission this is an exercise which should have been done by the
21 Prosecution themselves. The Prosecution of the International Criminal Court is
22 deemed to have a degree of impartiality, and if there are potential problems with the
23 reliability of a witness, the Prosecution must address those problems themselves, not
24 simply wait for the Defence to do it.

25 The Prosecution, however, in this case has demonstrated itself to be totally

1 disinterested in the psychiatric state of this witness.

2 Remember that the Prosecution interviewed this witness in May 2014, which was
3 immediately following the arrest and interrogation by the DST. The Chamber is well
4 aware by now of the methods which have been used within the DST and may have
5 been used in relation to this particular witness, such methods including no less than
6 torture.

7 The first time that the Prosecution raises this very significant question is on
8 25 May 2015 and they produce a health and security assessment, which is
9 CIV-OTP-0086-0625-R01. This is a report of one page and says nothing about the
10 psychological state of this witness.

11 So it is in that context that it is incumbent upon the Chamber and the Defence counsel
12 to shed some light on these issues through the witness, and it is the Defence's right to
13 do so.

14 The Prosecution is effectively, by raising this objection, sweeping under the carpet the
15 conditions of detention of the witness, potential influence that the witness may have
16 undergone while in detention or otherwise, as well as, importantly, the witness's state
17 of mind, which is fundamental to the assessment of credibility and reliability.

18 We have in this instance more than a thousand pages in relation to this witness, and
19 thousands of pages generally, which fail to provide the Defence with adequate
20 information about the psychological or psychiatric state of the witnesses in this case,
21 and including documents from the Ivory Coast authorities.

22 If the document -- if the Prosecution is not challenging the reliability of this document,
23 in my submission, there is no basis upon which the Defence can be fairly excluded
24 from addressing the document through this witness. Unless I may be of further
25 assistance on this point.

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1 PRESIDING JUDGE TARFUSSER: [15:09:12] I suspend for 10, 15 minutes in order
2 to --
3 MR MACDONALD: [15:09:18] One -- no, but your Honour, one point only to add,
4 which is very important.
5 PRESIDING JUDGE TARFUSSER: [15:09:24] No, but we cannot play ping pong.
6 You had the possibility to --
7 MR MACDONALD: [15:09:32] (Microphone not activated) Sorry. The witness
8 had a counsel present when he was interviewed with the OTP.
9 PRESIDING JUDGE TARFUSSER: [15:09:42] Yes.
10 MR MACDONALD: [15:09:42] My colleague dropped the word "torture" --
11 PRESIDING JUDGE TARFUSSER: We know that.
12 MR MACDONALD: -- and there's nothing of torture in this case, nothing. So
13 I think it's very important that we set the record --
14 PRESIDING JUDGE TARFUSSER: [15:09:54] The hearing is suspended for
15 15 minutes.
16 THE COURT USHER: [15:10:05] All rise.
17 (Recess taken at 3.10 p.m.)
18 (Upon resuming in open session at 3.38 p.m.)
19 THE COURT USHER: [15:38:08] All rise.
20 Please be seated.
21 PRESIDING JUDGE TARFUSSER: [15:38:32] On the psychiatric report, the
22 Chamber accepts the submission in the record of the case of the psychiatric report as a
23 document but, on the basis that the witness cannot comment on a document related to
24 his own mental health, to an expert report related to his own mental health, will not
25 admit questions on the report itself.

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1 Now for the last 20 minutes, I ask the court usher to introduce the witness.

2 (The witness enters the courtroom)

3 MR O'SHEA: [15:39:54] Your Honours, we were just thinking --

4 PRESIDING JUDGE TARFUSSER: [15:39:57] Mr O'Shea.

5 MR O'SHEA: [15:39:59] -- we were just thinking to try and understand the extent of
6 the decision. I'll tell you what I think your decision is saying and your Honours can
7 tell me if I'm right.

8 PRESIDING JUDGE TARFUSSER: [15:40:12] I can tell you what our decision is
9 saying: That this can be submitted, and we have it in the record of the case for our
10 evaluation in due course, but there is no possibility to ask questions on the content of
11 the report itself.

12 MR O'SHEA: [15:40:33] That's where the nub of my doubt lies --

13 PRESIDING JUDGE TARFUSSER: Yes.

14 MR O'SHEA: -- is on the question of -- on the issue of what is meant by content.

15 My understanding is that we cannot use the document in front, use the content of the
16 document in front of the witness, but I presume that that does not exclude questions
17 to the witness which relate to the subjects dealt with in that content; so in other words,
18 the Chamber is not excluding us from addressing through the witness the witness's
19 mental health through questions, what's being excluded is that we put parts of the
20 report to the witness? Have I understood correctly?

21 PRESIDING JUDGE TARFUSSER: [15:41:24] We'll see. I don't know.

22 MR O'SHEA: [15:41:27] Yeah, all right.

23 MR MACDONALD: [15:41:30] Well, on this point, your Honour, I think it
24 becomes important that any prior statements can maybe be used, but anything as to
25 any conclusion of the expert the witness cannot say anything about that.

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1 PRESIDING JUDGE TARFUSSER: [15:41:43] Well, of course not. On the
2 conclusion of the expert the witness cannot say because he's not meant to comment on
3 a judgment made by an expert.

4 Mr Witness, we have another 20 minutes to go.

5 So please, Maître Gbounon.

6 MR GBOUGNON: [15:42:20] (Interpretation) Thank you, Mr President.

7 Mr President, can we go into private session, please?

8 PRESIDING JUDGE TARFUSSER: [15:42:37] Yes. Let's go into private session.

9 (Private session at 3.42 p.m.)

10 (Redacted)

11 (Redacted)

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14 (Open session at 3.57 p.m.)
15 THE COURT OFFICER: [15:57:17] We're in open session, your Honour.
16 PRESIDING JUDGE TARFUSSER: [15:57:20] Thank you very much.
17 So it's 4 o'clock. I think we should leave it for today with the witness examination,
18 and I ask the court usher to accompany the witness out.
19 We have to discuss also the schedule of the next few days because as Mr Wagemakers
20 said, he is not available on Wednesday, which makes -- which complicates obviously
21 the whole proceedings a bit, but you're not available on Wednesday and that's it.
22 And then you could continue?
23 (The witness stands down)
24 MR WAGEMAKERS: [15:58:06] I can -- I can be available on Thursday and also
25 Friday, also Monday, the 31st. Not on Tuesday, 1 November. But I am available

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1 2 November, also 3 November.

2 PRESIDING JUDGE TARFUSSER: [15:58:32] Okay. So until -- okay. Thank you
3 very much.

4 Therefore, I would just -- it's difficult now to plan the following weeks because on
5 the -- I think this witness will go until the break, I assume.

6 MR MACDONALD: [15:58:52] Well, now with the fact, your Honour, that
7 Mr Wagemakers -- we're not, we would not be sitting this Wednesday and this Friday,
8 and next week we have four days, I think then in all circumstances --

9 PRESIDING JUDGE TARFUSSER: [15:59:07] We have three days.

10 MR MACDONALD: [15:59:09] The following week?

11 PRESIDING JUDGE TARFUSSER: [15:59:11] Yes, because --

12 MR MACDONALD: Okay.

13 PRESIDING JUDGE TARFUSSER: -- Monday, Wednesday and Thursday. Tuesday
14 not, because Mr Wagemakers is gone.

15 MR MACDONALD: [15:59:17] So I would recommend that unfortunately the next
16 witness be postponed to after the break --

17 PRESIDING JUDGE TARFUSSER: [15:59:23] That's it.

18 MR MACDONALD: [15:59:24] -- and we leave it at that, because we had a proposal
19 of maybe calling a witness earlier, but I think in light of what was just mentioned, it
20 would be much safer. It means we may lose a sitting day or two but, yeah.

21 PRESIDING JUDGE TARFUSSER: [15:59:41] Or not. In any case, I think the best
22 thing to do is -- obviously, we have to grant the absence to Mr Wagemakers on
23 Thursday and next -- and on 1 November, and we have you here until -- on the other
24 days until the end of this witness. This is okay?

25 MR WAGEMAKERS: [16:00:03] This is okay. But then the Court should prolong

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- 1 my mandate.
- 2 PRESIDING JUDGE TARFUSSER: [16:00:10] That's a matter for the Registry to do.
- 3 You just -- the Registry is informed.
- 4 So we adjourn the matter until tomorrow morning at 9.30. Thank you.
- 5 THE COURT USHER: [16:00:27] All rise.
- 6 (The hearing ends in open session at 4 p.m.)