

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Koudou Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Geoffrey Henderson and
7 Judge Olga Herrera-Carbuccia
8 Trial Hearing - Courtroom 1
9 Wednesday, 22 February 2017
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:21] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:33:40] Good morning.
15 Before giving the floor to the Defence of Mr Blé Goudé for the questioning of the witness,
16 we have to start with the observations on the filing of the counsel of the witness himself,
17 which was filed yesterday, I think, yes, and therefore I give the floor -- I would keep it
18 short, obviously, give the floor to the Office of the Prosecutor for his observations, and
19 then I will give also an opportunity to the LRV to intervene if they wish so on this matter.
20 Mr MacDonald.
21 MR MACDONALD: [9:34:40] Your Honours, I thought all these issues had been
22 resolved and that it is clearly indicated in the system which documents are public, which
23 documents are confidential for the case. It is in the eCourt protocol. It is in the case
24 record, which is in eCourt, and electronically in the metadata the information is indicated.
25 There's also a protocol on confidentiality of management of information between the

1 parties. When we disclose evidence again in the metadata it is indicated which
2 documents are to be considered public and the ones that are to be considered confidential.
3 So I don't see any issues.

4 Now in terms of, your Honour, the closed session hearings, this information is
5 confidential. When public transcripts are made available to the public there are redacted
6 versions. Same thing with the audio and video recordings.

7 And finally, if ever there is a request for cooperation, if ever there was to be one, there is
8 still a discretion on the part of the Office of the Prosecutor and also the Court as a whole,
9 at Article 93, paragraph 10, if I'm not mistaken, as to transfer or disclosure of such
10 information. And it is clearly indicated that if it can put the security of witnesses at risk,
11 this information may not be disclosed.

12 So I think here it is all covered. The only thing additional that maybe the Chamber can
13 do that was a practice I think in the Kenya case, if I'm not mistaken, is to seal the closed
14 sessions. And that's, I think, the further step that was taken by the Presiding Judge in the
15 case of Mr Ruto et al. Voilà.

16 PRESIDING JUDGE TARFUSSER: [9:37:39] Thank you very much.

17 Legal representative.

18 MS MASSIDDA: [9:37:43] Good morning, your Honours. We do not have any
19 observation.

20 PRESIDING JUDGE TARFUSSER: [9:37:46] Thank you very much.

21 Maître Altit, for the Defence of Mr Gbagbo.

22 MR ALTIT: [9:37:52] (Interpretation) Thank you, your Honour. And good morning.
23 Good morning, your Honours, ladies and gentlemen.

24 As regards the various points made we leave it up to the Chamber. We would simply
25 like to make a comment regarding what the Prosecutor has just said regarding putting

1 documents under seal. We consider that things have been going well. The process has
2 been working well and, therefore, there's no reason to correct something if it's not broken.

3 PRESIDING JUDGE TARFUSSER: [9:38:25] Mr Knoops.

4 MR KNOOPS: [9:38:27] Yes, Mr President, good morning.

5 The Defence team of Mr Blé Goudé has several observations. First on the request that the
6 Chamber confirmed the binding nature of the protocole d'accord, and secondly as to the
7 administrative instruction and its nature.

8 As to the first question, Mr President, the protocole d'accord, as the Court already
9 observed is first and foremost confidential. In this regard, the Court has already ruled
10 that the request of the counsel of the witness is outside the scope of his mandate when he
11 requested access to this protocol; therefore, in the request of counsel for the witness, we
12 have not seen any new arguments or facts on this issue and, therefore, our first argument
13 is that the request should be declared moot.

14 The competence of the Chamber, and that's why we go into this issue a little bit further
15 than the other parties, might be of relevance for the future of the Court's perception to
16 these kind of agreements. The competence of the Chamber is not a competence which
17 can be accepted in this case.

18 First of all, Rule 74(3) clearly aims at the issue of self-incrimination before the ICC. The
19 Court has no competence to extend this power to national prosecutions.

20 Scholarly opinion, such as the opinion of Professor Ambos in the Leiden Journal of
21 International Law of 2012 clearly indicates that from a legal point of view national
22 prosecutions cannot be interfered by the ICC. *It may have this effect, given the
23 confidentiality rule in 74(3)(c)(i), because it could prevent national courts from being
24 informed of potentially incriminating statements, but from a legal point of view assurances such
25 as the one in 74(3) are not binding on national organs. That would require a binding effect

1 relating to a corresponding provision in the national legislation which is clearly absent in
2 the legislation of Côte d'Ivoire.

3 In the Lubanga case, 30 January 2009, transcript page 9, the Court decided to recommend
4 to former child soldiers above the age of 18 that the relevant lawyers must provide
5 appropriate advice to their clients as regards self-incrimination, because the Court could
6 not guarantee that testimony would not be used in Prosecution by national courts in the
7 Democratic Republic of Congo.

8 The conclusion, therefore, Mr President, is that the Court has no competence to provide
9 further assurances or reassurances to a witness appearing before this Court outside the
10 scope of Rule 74(3).

11 Moreover, Mr President, the system of the ICC Rules of Procedure and Evidence, Article
12 93(1)(e) provides for facilitating the voluntary appearance of persons as witnesses before
13 the Court. Given that a form of cooperation already exists between Côte d'Ivoire and the
14 Court, and given that the Court has already given the assurance to the witness at hand,
15 under Rule 74(3)(c), there is no competence to issue further binding reassurances.

16 Now, with regard to the question whether the Chamber's competent to declare a
17 document such as the protocol as legally binding, the answer is also to be put in the
18 negative.

19 The counsel for the witness refers to the case, the ICJ case concerning maritime
20 delimitation and territorial questions between Qatar and Bahrain of 1994, in paragraph 4
21 of his submissions. That case, Mr President, is a different case, it revolved around the
22 competence of the ICJ based on an exchange of letters and minutes between the ministers
23 of foreign affairs of Bahrain and Qatar in which it was agreed to submit a dispute to the
24 ICJ over the islands and maritime areas situated between the two states.

25 The ICJ, in paragraph 23 till 30, accepted the minutes and the meetings and the letters

1 between those two ministers of foreign affairs as constituting jurisdiction of the ICJ as
2 being not a simple record of a meeting, but creating rights and obligations in international
3 law for the parties.

4 That case is not applicable in the case at hand as suggested by the counsel of the witness.

5 Three reasons very briefly: The paragraph 23, on which counsel for the witness relies,
6 stipulates that and relies on the Vienna Convention on the Law of Treaties of 1969 which
7 applies to states. There is another convention of 1986, but that is not invoked by counsel
8 of the witness because that treaty relates to international organisations. The application
9 of this case is, therefore, restricted to states as also explicitly stated in paragraph 23 of the
10 ICJ's ruling.

11 Now, indeed, there are scholars, such as Professor Malcolm Shaw and Professor Ian
12 Brownlie in their books, Principles of International Public Law, agreeing that such a
13 situation can be transposed to an agreement between an international organisation and a
14 state; therefore, that an international organisation and a state can indeed constitute an
15 international agreement.

16 This is supported, that could be argument in favour of counsel for the witness by the fact
17 that the ICC as an international organisation, as a legal organisation has treaty-making
18 powers which are presupposed from its statute.

19 However, Mr President, the ICJ to date has never ruled based on similar facts that such an
20 agreement could be accepted between an international organisation and a state. It is for
21 the Chamber to adopt the reasoning of Mr Laucci's request would amount to a decision
22 made by the ICJ -- by the ICC, pardon, which the ICJ itself has not made yet. There is no
23 precedent by the International Court of Justice whereby based on these facts an
24 international agreement has been accepted between an international organisation such as
25 the ICC and a state.

1 Moreover, in the case at hand, Mr President, the Court, your Chamber would be a party to
2 the agreement, as for Bahrain and Qatar, and is not the judicial body competent to settle a
3 potential dispute about this protocol between Côte d'Ivoire and the ICC itself, the doctrine
4 of competence to competence in international law.

5 The Trial Chamber, therefore, does not have the competence to impose binding
6 obligations on a state, also not seeing the light of the horizontal relation between State
7 Parties and the ICC, unlike the ICTY and ICTR, which are based on a vertical relationship
8 with states.

9 In the Kenyatta case, Trial Chamber V issued a decision finding that the Republic of
10 Kenya had failed to comply with its obligations to cooperate and the Chamber deemed it
11 necessary to rule that the best place to address issues of cooperation, to the Assembly of
12 State Parties.

13 Our conclusion is, therefore, that there is no competence of the Court to declare this
14 protocol as being of a binding nature.

15 Lastly, Mr President, the second issue raised by counsel of the witness in its submissions
16 of yesterday is whether the witness might infer rights from the ICC's information policy
17 and whether the witness can enforce that policy, that administrative instruction. Two
18 reasons why this cannot be adopted, this view: First, the document in question defines in
19 the administrative instruction in its explanatory note that this instruction is directed only
20 to staff and not to elected officials and that this document is to ensure staff to understand
21 how to handle information once judicial level of confidentiality has been applied by
22 Chambers. That your Honours can find in the explanatory note to this administrative
23 instruction. *Therefore, this instruction is not directed to witnesses or to infer rights for
24 witnesses appearing before this Court.

25 Secondly, the document distinguishes between staff and external participants. And legal

1 representatives of witnesses or for witnesses are considered, Section 17 of this instruction,
2 as external participants and, therefore, neither counsel of the witness nor the witness itself
3 can infer rights from this instruction.

4 As to the right to notify a suspicion of mistake in case of potentially improper
5 classification, Section 8.5 of this instruction might dictate the possibility that recipients of
6 this information might inform the Registry of improper classification or inappropriate
7 classification markings, and that suspicion shall be brought to the attention of the
8 originator, the provider or the classification officer as section 8.5 dictates in this
9 instruction.

10 On its face it would therefore justify counsel of the witness to inform the Court about
11 potential improper classification. On the other hand, the instruction clearly says that the
12 recipient might provide a suggestion for the classification marking which he or she
13 believes to be appropriate or inappropriate. Also here you find no binding nature in this
14 instruction which infers rights to Witness P-46.

15 This concludes my submission, and my end conclusion that the request of witness -- for
16 the counsel for the witness should be denied. Thank you.

17 PRESIDING JUDGE TARFUSSER: [9:51:33] Thank you very much.

18 The Chamber will take the decision very soon, of course, because we have to take the
19 decision before the witness leaves the stand.

20 And now, Mr Knoop, I have understood why yesterday you wanted to be assured that
21 the time for observations will not affect the first session. Thank you very much.

22 Now, can we call the witness in.

23 (The witness enters the courtroom)

24 PRESIDING JUDGE TARFUSSER: [9:52:45] Good morning.

25 WITNESS: CIV-OTP-P-0046 (On former oath)

1 (The witness speaks French)

2 THE WITNESS: [9:52:56] (Interpretation) Good morning.

3 PRESIDING JUDGE TARFUSSER: [9:52:59] Bonjour Monsieur le témoin, for the last
4 time, I would say.

5 Now today it's time for the Defence for Mr Blé Goudé and, therefore, I give the floor to
6 Mr Knoops.

7 MR KNOOPS: [9:53:18] Mr President, Mr Gbougnon will conduct the examination on
8 behalf of our team. Thank you very much.

9 PRESIDING JUDGE TARFUSSER: [9:53:26] Thank you very much.
10 Mr Gbougnon.

11 MR GBOUGNON: [9:53:37] (Interpretation) Good morning, your Honour,
12 your Honours, ladies and gentlemen.

13 QUESTIONED BY MR GBOUGNON: (Interpretation)

14 Q. [9:53:45] Good morning, Witness.

15 A. [9:53:49] Good morning, Counsel.

16 Q. [9:53:50] My name is Jean-Serge Gbougnon. I am a member of the Abidjan bar
17 and I am Defence counsel for Mr Charles Blé Goudé.

18 I'm going to be asking you some questions, as was the case of my colleagues previously.
19 And as you've already noticed, I'll be calling you "Mr Witness" because that is the
20 procedure we use here.

21 And I'm going to try to be concise, quick and efficient so that you can go home as soon as
22 possible. I know it's difficult because since you're a policeman, you're the one who's
23 usually asking the questions. But we're going to do our best so that you can get home
24 quickly.

25 Mr Witness, before we actually discuss the subject matter, there were two things you said

1 yesterday that I think we could correct together. You said that Madam Atsin Viviane
2 was the former director of the police school, that she was from the west. Are you sure
3 that wasn't a mistake?

4 A. [9:55:17] Yes, I would repeat --

5 THE INTERPRETER: [9:55:23] The interpreter did not understand that last part of the
6 answer. Please ask the witness to repeat.

7 PRESIDING JUDGE TARFUSSER: [9:55:32] The interpreter did not understand the last
8 part of your answer. You said that you would repeat that, but then part was missed.

9 THE WITNESS: [9:55:48] (Interpretation) Thank you, your Honour. I said that
10 Viviane Atsin was an Attié from the *east of Côte d'Ivoire.

11 MR GBOUGNON: [9:56:04] (Interpretation)

12 Q. [9:56:05] Thank you. You said Commissioner Ossohou Léopold from the 11th
13 arrondissement was from the west. Is that another error on your part?

14 A. [9:56:24] *Well, I must admit I don't know. I saw "Ossohou" so I thought it was the west. I don't know.

15 Q. [9:56:29] Thank you.

16 THE INTERPRETER: [9:56:34] Interpreter's correction: Madam Atsin is from the east of Côte d'Ivoire.

17 MR GBOUGNON: [9:56:39] (Interpretation)

18 Q. [9:56:40] *No problem. We shall continue. One last thing: The commanders of
19 the CRS3 and the CRS4, you said you didn't remember the names. I'm going to suggest a
20 couple of names to see whether or not you remember. Commander CRS3 from Divo,
21 second class commissioner Séka Yapo, does that name ring a bell, Antonin (phon)?

22 A. Séka is an Attié. Séka Antonin (phon) is an Attié.

23 Q. *CRS4, Gagnoa, Police Commissioner Second Class Niamkey Fernand, does that name ring a bell?

24 A. [9:57:25] I'm afraid I don't remember. I think they're from the south, however.

25 Q. [9:57:30] Thank you very much.

1 THE INTERPRETER: [9:57:38] Could counsel be requested to pronounce the names
2 very clearly and into the microphone. He's not speaking into the microphone. It is very
3 difficult to hear the names he's giving.

4 PRESIDING JUDGE TARFUSSER: [9:57:51] Two things, counsel: Speak into the
5 microphone and pronounce clearly the names in particular. This is a request from the
6 interpreters, which you do not hear, but I do.

7 MR GBOUGNON: [9:58:15] (Interpretation) Your Honour, would you like me to
8 repeat the last name that I asked the witness about?

9 PRESIDING JUDGE TARFUSSER: [9:58:25] Yes, please, and then continue to speak
10 clearly and into the microphone. And when you are moving the things you have in hand,
11 we can hear this in our ears. Okay.

12 MR GBOUGNON: [9:58:55] (Interpretation) Thank you, your Honour. Let me
13 repeat. It was second class commissioner from CRS4, Niamkey, N-I-A-M-K-E-Y,
14 Fernand.

15 THE WITNESS: [9:59:23] (Interpretation) Thank you. Let me repeat my answer: I
16 don't remember that name Niamkey Fernand, but the name you mention is a name from
17 the south.

18 MR GBOUGNON: [9:59:46] (Interpretation)

19 Q. [9:59:48] Mr Witness, in your statements, in particular transcript 126, dated
20 February 20, 2016, on page 96, you say the following, starting line 1:
21 "Commander 2 of Toits Rouges recognized that it was those elements who attacked."
22 And then further along, line 26, you say, you refer to the gendarmerie who attacked or
23 was attacked. On the basis of the report that was read to you during the hearing and that
24 I'm going to read once again, I believe there's a mistake in the verb "attack." This is
25 CIV-OTP-0046-0099, *page 01101. In the penultimate paragraph it is written, it is not on the

1 screen, "Subsequent to the statements of this person before reaching Commander
2 Koukougnon by telephone, commander of the Yopougon squadron attempted to ascertain
3 whether he led an operation in Yopougon Wassakara specifically at the RDR
4 headquarters. He answered us in the affirmative stating that the elements told him that
5 they had to retaliate after having come under fire."

6 Mr Witness, this is the report that this chief of the district of police Yopougon made. So
7 in place of the word "attack" should one not insert the word "retaliate"?

8 A. [10:02:20] I am entirely in agreement with you. It is not I who lived through this
9 experience, so what is written here is what should be maintained.

10 Q. [10:02:43] I thank you, Mr Witness. There was also an exchange between yourself
11 and the OTP and during -- or, at the end of this exchange you stated that the minister,
12 Charles Blé Goudé, allegedly attended a meeting in the company of other ministers with
13 the members of the high command with a view to coming up with a proposal to be made
14 to the chief of state -- or, the head of state at the time. Are you not also confused in this
15 regard?

16 A. [10:03:56] Well, whatever the case may be, if my recollection serves me correctly, I
17 do not believe that I am confused.

18 Q. [10:04:26] I'm going to be reading your statement to you, 0014-0443.

19 THE INTERPRETER: Request from the interpreter: Could counsel please wait for it to
20 come up on the screen before we start interpreting it? Thank you.

21 PRESIDING JUDGE TARFUSSER: [10:04:41] Can you wait until it comes up on the
22 screen.

23 MR GBOUGNON: [10:05:24] (Interpretation)

24 Q. [10:05:25] In order to give you an overview of what transpired from this interview,
25 I'm going to start reading from line 564 from page 0459.

1 Interviewee: "I do not recall, but it dates back to the month of March. And as things
2 were dragging their feet, at another meeting I said that we had to go and see the
3 president."

4 Investigator: "In order?"

5 Interviewee: "In order for him to resign."

6 Investigator: "You wanted to ask him to resign?"

7 Interviewee: "Yes. And on that day all of the military chiefs were in agreement with
8 me. So finally I left in the company of General Kassaraté, General Mangou, and we went
9 to the president's house. He received us in the presence of the minister of interior, the
10 minister of defence, the minister of foreign affairs." End of quote.

11 Mr Witness, this is what you stated before the Office of the Prosecutor, you did not quote,
12 or you did not mention the minister of work and youth -- employment and youth at the
13 time, it was Mr Blé Goudé. The ministers you stated were the ones I just mentioned. So
14 in this meeting did you not or were you not confused?

15 A. [10:07:09] No, I was not confused. The list that I provided was not exhaustive.

16 Q. [10:07:22] Thank you, Mr Witness. Mr Witness, throughout your testimony you
17 often made mention of -- made mention of activists and RHDP and LMP militants, and
18 this has been mentioned many a time in the various reports that were presented to the
19 OTP.

20 Now, the question that I would like to put to you is whether objective criteria existed for
21 the identification of such groups of individuals in order to determine an LMP or RHDP
22 activist, you and your co-workers, did you at any moment in time come up with any
23 specific criteria?

24 A. [10:08:45] Thank you. We did not draft any specific criteria per se, but when we
25 are talking about a march initiated by the RHDP, of course those in assistance are going to

1 be the RHDP activists. On the other hand, when it is a march or a demonstration
2 initiated by the LMP, those participating are LMP activists.

3 Q. [10:09:29] Mr Witness, I am tempted to ask you that if it is not a march organised
4 by either of these organisations that you just mentioned, and if it is not in the context of a
5 march, then what?

6 A. [10:09:42] Well, if it is not in the context of a march, it depends on the individuals
7 present; for example, at Riviera II the students who were often gathered at the
8 intersections and who were acting against the police or against the ONUCI agents, they
9 are the ones who were saying they were patriots, so at that moment in time we cannot use
10 another term other than the term that they used themselves.

11 Q. [10:10:29] Thank you, Mr Witness. I am going to be reading to you your
12 statement to the OTP investigators, 0014-0170, page 0176.

13 I am going to start reading from line 204. "Very well" -- I'm quoting the investigator, who
14 says:

15 "Very well. The other thing that we discussed on the last cassette that I would like to
16 specify, you said that there were incidents in Yopougon and in Williamsville where
17 civilians were killed. What was this?"

18 Interviewee: "The incidents, I know that on one occasion the BAE, I believe, came under
19 attack, if I am not mistaken, by some youths because the BAE is just next to Mossikro.
20 Mossikro is a neighbourhood that is next door to the BAE barracks."

21 I go on to line 232 and the investigator says to you:

22 "Okay. Who instigated those disturbances?"

23 Interviewee: "Ah, well, I can't tell you that because I know that when I was given the
24 information, they said that there were some youths who came, they wanted to attack them
25 and they were obliged to push them back." End of quote.

1 Mr Witness, here is an example of an attack led my youths in Mossikro, in Mossikro
2 against the BAE, and neither you, nor those who gave you the information are able to
3 identify this. Why is that?

4 A. [10:13:47] Well, it's very simple. If they themselves do not say that they are a
5 member of one or other party, we are not able to say that they are members of a specific
6 group, firstly.

7 Secondly, we did not identify that group specifically. We can't say we talked about the
8 term or used the term "youths" because we didn't know how to label them and we didn't
9 know which group they were members of.

10 Q. [10:14:20] So you say, or you're saying to the Chamber that you did not identify
11 them because, when they came to attack the BAE, they didn't say they were youths from
12 the RHDP or another group of youths, and you didn't identify them; is that what you're
13 saying to the Chamber?

14 A. [10:14:43] That is correct.

15 Q. [10:15:14] Mr Witness, I'm going to be reading another report to you, a report that
16 was presented to you by the OTP, it is item 0046-0097. I'm going to be reading page 98.

17 THE INTERPRETER: [10:15:38] Says counsel.

18 MR GBOUGNON: [10:15:54] (Interpretation)

19 Q. I'm quoting here: "Re: Attack on the communal delegation of the PDCI-RDA in
20 Abobo Sogephia by individuals stating they are from the FESCI of the university campus
21 Abobo number II.

22 Honour, it is my honour to report to you that on this day, 3 December 2010, at
23 approximately 10 hours and 24 minutes, 10 hours 24 minutes, Mr Essan Kouadio
24 Fulgence, from the communal delegation of the PDCI-RDA of Abobo Sogefiha, is
25 informing us by telephone that the delegation situated not far afield from the police

1 station of the 13th arrondissement came under attack by approximately 20 students from
2 the FESCI who had come from Abobo to university campus."

3 Mr Witness, in the first part of this document it is said that the students who claim that
4 they were from the FESCI attacked a university campus and, as such, if I follow what you
5 told me earlier from -- or on the basis that they claim that they are from FESCI, can we say
6 or can we come to that conclusion in this report by saying that elements of the FESCI
7 attacked the PDCI-RDA communal delegation in Abobo?

8 A. [10:18:16] I believe that we should not confuse a police investigation and a police
9 report. The report by the sergeant or the officer reports back on what he saw and heard
10 and that is different, indeed, from an investigation where he is looking for evidence.
11 And here he is reporting back saying that they were student who claimed that they were
12 from FESCI. Here he is reporting back.

13 Q. [10:18:53] Mr Witness, at an earlier stage in your identification criteria you said, if I
14 am not mistaken, please pull me up if I am, you said that one of the criteria is that an
15 individual who claims that they are from group X or Y, and I'm trying to follow your logic
16 here because I don't know how things function, so here are people who allegedly attacked
17 the communal delegation in Abobo and who said that they were from FESCI. And if I
18 follow your -- the way you think, then these people from the FESCI attacked Abobo
19 commune. If you say to me, no, we have to have an investigation to determine who they
20 are, then that's quite something else. Please, go ahead.

21 A. [10:20:01] Thank you. When you put the question to me I said that we did not
22 come up with criteria. That's what my answer was. And then, indeed, to answer the
23 question put to me just now, there was no investigation. So as I said earlier, all he is
24 doing is reporting back or saying what he said. So it is announced to him that it was
25 students who claimed that they were from FESCI who launched the attack. All he is

1 doing is reporting that back.

2 Q. [10:20:51] I have finished my reading and then -- well, I'll finish my reading and
3 then we'll move on.

4 At the penultimate paragraph of the same document the person reporting says as follows,
5 and I quote:

6 "Mr Akpli Cyriaque known as General Krado, secretary general of Abobo to university
7 campus, cell number 07-39-63-50, claims that these individuals do not come from his
8 campus." End of quote.

9 So contrary to a number of reports that we have seen here, and your chief of service is
10 asking the secretary general of the FESCI, who is then -- told him that those people
11 mentioned did not come from the university campus. Is this not a difference, as you just
12 said, between a report and a police investigation? Does that not illustrate it?

13 A. [10:22:14] Well, thank you for comforting me in my position. He is just reporting
14 back on what he saw. As I said, this is quite different from an investigation, because on
15 the basis of this information an investigation would be led in order to ascertain who
16 attacked the house in Abobo of the PDCI.

17 Q. [10:22:39] So what should the Chamber understand then, that the entirety of the
18 reports or the sum of the reports that your co-workers draft is only a sum of non-verified
19 allegations, allegations that are not yet verified?

20 A. [10:23:07] That is not quite correct, because if we were to suppose that he had not
21 called the secretary general in the campus to ask, then it would be said that those who
22 claimed that they were from that structure had perpetrated those acts. That is what he
23 heard and that is what is -- what he saw. But it could be that, and this is often the case,
24 another group came to say that I am a robber and I am such and such, and then later on in
25 the investigation you realise that this person is not a robber and they are not who they say

1 they were. So this report gives information but it has not yet been completely verified.
2 So I'm not going to say immediately that what the policeman wrote is an unjustified
3 allegation. It is true that it is information that he is providing, but in the investigation we
4 will dig deeper and see whether *what the secretary general said is true, or whether what
5 the plaintiff who came to the police station said is true. On the basis of this, the police
6 can take a particular position and then write a report or draw up a statement.

7 Q. [10:25:26] Mr Witness, the French journalist who was part of the incident during
8 the crisis, did you see that person yourself?

9 A. [10:25:47] I would like for us to say who that is, is it the PDCI Cocody house
10 incident?

11 Q. [10:25:55] Yes, that's correct.

12 A. [10:25:57] Thank you. Well, if it is that person, I received that person in my office
13 even.

14 Q. [10:26:04] And so these are facts that you are all too familiar with; is that correct?

15 A. [10:26:12] Precisely.

16 Q. [10:26:33] I'm going to be reading to you your statement here dated -- well, this is
17 transcript, edited version T-125 17 February 2017, which brings us exchanges between you
18 and the OTP, page 88, line 1:

19 "I believe that it is the contrary, it is the marchers who attacked the journalist who was, in
20 fact, wounded and taken into the PDCI house, whom we then retrieved to accompany
21 him to the hospital."

22 THE INTERPRETER: [10:27:34] Message from the interpreter: Could counsel please
23 be requested to wait until it is up on the screen. Thank you.

24 PRESIDING JUDGE TARFUSSER: [10:27:40] Can you please wait until it is up on the
25 screen so -- because it is better for the interpreters to follow better. Thank you.

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

2 Q. [10:28:13] And so when you say that the Prosecutor goes on. Allow me to call up
3 item 0045-0489, 0045-0489. And the Prosecutor goes on, line 10 -- so this is a duty report
4 dated 21 to 22 of December 2010 and he goes on:

5 "I would like to draw your attention, Mr Witness, to page 0492 to the entry number 11
6 which indicates 11.30 in Cocody. Don't worry, I'm going to present the report to you, but
7 I'm just going to read what the Prosecutor said.

8 THE INTERPRETER: [10:29:19] It is still not up on the screen.

9 PRESIDING JUDGE TARFUSSER: [10:29:21] It is still not up on the screen.

10 MR GBOUGNON: [10:29:31] (No interpretation)

11 PRESIDING JUDGE TARFUSSER: [10:29:34] (No interpretation) I'm not speaking like
12 this, you know.

13 MR GBOUGNON: [10:29:54] (Interpretation) I'm quoting from a transcript, T-125,
14 edited version of 17 February 2017. I do apologise. It is a transcript of 17
15 February 2017.

16 THE INTERPRETER: [10:30:10] Message from the interpreter: But the interpreter
17 does not have it on the screen and she does not have time to look for it while she is
18 interpreting. Thank you.

19 PRESIDING JUDGE TARFUSSER: [10:30:20] Yes, we know, but we have never had on
20 the screen the transcripts. We had the statements, the former statements, but not the
21 transcripts of the last days. So I think we should just read it slowly and go ahead,
22 otherwise if we always wait for everything being brought up on the screen, we will never
23 finish.

24 Maître Gbougnon, please doucement.

25 MR GBOUGNON: [10:30:54] (Interpretation) I thank you, Mr President. I shall read

1 slowly.

2 Q. So let me start again from line 1, and I quote:

3 "I believe that it is the contrary, it is the marchers who attacked a journalist who, what is
4 more, was injured, and he withdrew into the house of the PCDI whom we retrieved and
5 accompanied to the hospital."

6 Line 6 the Prosecutor continued, and I quote: "I'm going to repeat the reference
7 0045-0489. There you are."

8 I'm going to skip to line 12 and quote:

9 "I would like to draw your attention, Mr Witness, to page 0492 under 11 where it says
10 "11.30 Cocody."

11 And I continue on page 89, line 2, the Prosecutor states:

12 "Have you been informed or were you -- you were informed, you received that person.
13 Who were the aggressors that were on the two four-by-four vehicles, beige coloured
14 vehicles?"

15 And your answer starting line 4:

16 "Well, the individuals who were on the four-by-four beige vehicle were not the attackers.
17 There is a document already in the case file. Do you remember whether the two
18 individuals on the four-by-four vehicles were soldiers or not, military individuals.
19 *Unfortunately they did not inform us and therefore when they were attacked we had to
20 get them out of there so as to protect them. They were not the attackers." End of quote.

21 Mr Witness, that is what you stated to the Prosecutor, but I'd also like to read out what the
22 Prosecutor read to you. We've already referred to the document, it's 0045-0489, page
23 0492. We're going to read what it says for 11.30 in Cocody.

24 "Aggression, armed aggression with rifles on France 3 journalist followed by the
25 confiscation of his camera. According to what the journalist stated, Mr Banerjee Joy

1 Christophe, born January 19, 1960 in Paris, son of Ramaprasad and *the late Kamal
2 Ghosal --" and I continue a bit further along, "on the day of the march, these two
3 individuals wearing combats uniforms and armed with Kalashnikovs arrived in front of
4 the headquarters of the RHDP in Cocody where they were filming for the France 3
5 television channel in two four-by-four beige vehicles. When they got out of the vehicle,
6 those individuals shot them with real bullets. Following the shooting, they confiscated
7 the camera which was a Panasonic." End of quote.

8 Mr Witness, upon reading this report which leads the Prosecutor to making a mistake,
9 you pointed out this mistake; is that correct?

10 A. [10:36:41] Yes, that's correct.

11 Q. [10:36:42] This error you pointed out because those facts were reported to you
12 personally; is that correct?

13 A. [10:36:53] Yes, and I also met with the journalist.

14 Q. If there is a mistake in a report in a situation where you yourself had not been
15 present or had not met with the individual involved, such a mistake would have been
16 maintained and reported as such and might stay in a report; is that correct?

17 A. [10:37:30] That's correct. I would even go as far as to say that that is why we
18 always ask that reports go through the entire hierarchy because as each hierarchical chief
19 reads the report and sees errors, he asks that they be corrected. You have seen that on
20 occasion I have sent a report back asking for further precisions. That's how it works. A
21 report is not always perfectly correct depending on who has drafted it. And as I said
22 earlier, a report is not the same thing as a police investigation.

23 Q. [10:38:16] Thank you, but you see how useful it is to clarify these matters because
24 indeed we have been shown many reports here.

25 Mr Witness, I'm going to read something, one last report, one last report.

1 CIV-OTP-0045-1319. I'm going to read from the report:

2 "I have the honour of responding to letter number 12/MI/DGPN/PPA/Pu-ANY dated
3 January 10, 2011, from the chief of the Anyama police station recording the setting up of a
4 self-defence group in Akeikoi extension following post-electoral disorder. We must
5 emphasise that setting up such a structure corresponds to a non-satisfied requirement on
6 the part of police services. This situation risks being more harmful than useful to the
7 peace of the populations concerned. We request, therefore, that the security measures be
8 taken in order to reassure the populations." This letter was sent on February 7, 2011.

9 Mr Witness, my first question: Given your limited means as the division commissioner
10 who signed this letter has stated, were the necessary measures to reassure the population
11 in terms of their security, were those measures taken?

12 A. [10:41:25] I believe that measures were taken, but were they effective or not, that is
13 another question. But, yes, measures were taken.

14 Q. [10:41:44] The concerns and fears after all Akeikoi is in Abobo; is that correct?

15 A. [10:41:50] Yes, that's correct.

16 Q. [10:41:52] Were the concerns of the people in Abobo -- well, put it this way: Did
17 you receive any information regarding concerns, similar concerns in other areas of
18 Abobo?

19 A. [10:42:09] In the period referred to, generally speaking, as we said yesterday from
20 the point of view of personnel and equipment means, if you will, we didn't really have
21 what was required in order to protect the entire population. It's true that measures were
22 taken, but it was not totally satisfactory for the population and that's why, unfortunately,
23 defence committees were set up.

24 THE INTERPRETER: [10:42:54] Self-defence groups were set up.

25 MR GBOUGNON: [10:43:06] (Interpretation)

1 Q. [10:43:06] Thank you, Witness.

2 Mr Witness, mention has been made on the part of the Prosecutor of amounts of money
3 that allegedly were given by Mr Charles Blé Goudé to Commander Loba from the BAE.
4 Do you remember approximately at what point in time that amount of money is said to
5 have been given?

6 A. [10:44:16] It was between November and April. It was that period, but I don't
7 know the exact date.

8 Q. [10:44:35] Who informed you that money was handed over? How did you learn
9 about that?

10 A. [10:44:44] Well, I believe I indicated that it was *the BAE Commander,
11 Commissioner Loba Patrice Emmanuel himself, who called me.

12 Q. [10:45:01] I know it's a bit difficult, but do you remember approximately what he
13 said, what explanations he gave you, you being his hierarchical superior? Do you
14 remember how he described to you the fact that Mr Charles Blé Goudé gave you an
15 amount of money? Do you remember the words he used to explain it to you?

16 A. [10:45:24] Yes, I do remember, he said "I received Minister Blé Goudé who gave me
17 2 million francs." That's what he said. Those were his words.

18 Q. [10:45:51] Did he indicate why that amount of money was given to him precisely?

19 A. [10:46:00] Well, what I just said is exactly what he said, he said he gave me 2
20 million. That's what he said. That's all he said.

21 Q. [10:46:24] Mr Witness, I'd like to examine once again your statement given to the
22 investigators of the OTP?

23 MR MACDONALD: [10:47:13] (Speaks French) 0249.

24 MR GBOUGNON: (Interpretation) Yes, there were many pages. The one you just
25 indicated, 0249, is not the one I wanted to read from. 0014-0326.

- 1 MR MACDONALD: [10:48:18] It's the cover page, your Honour, of the transcript in
2 question, it's not the line or page number.
- 3 MR GBOUGNON: [10:48:32] (Interpretation) Your Honour, I don't understand why
4 the Prosecution is rushing in.
5 Page 0333, it's line 248.
6 Person interviewed, and I quote:
7 "No, he told me he met with Blé Goudé who gave him 2 million and he reported to me. I
8 told him, 'Okay, well, if somebody comes to give you money you take it with your
9 collaborators.' Because I really didn't know why he gave it." *End of quote.
10 And then I'd like to continue a little bit further along, line 269:
11 "Oh, that depends. If he felt that he came to congratulate him because he'd done a good
12 job, you take it. That's congratulations, that happens to everybody."
13 Line 289: "It's not illegal."
14 Line 296: "No, I never said that. What you said, I never said that. I said it's by
15 comparison that I understood later on that he had been working with some people, with
16 mercenaries or perhaps with the young patriots. Because I never saw it with my own
17 eyes and I never went to the barracks and I never saw a patriot or a mercenary, never
18 ever." Thank you. End of quote.
19 Mr Witness, can you confirm that you made that statement to the investigators of the
20 OTP?
21 A. [10:51:21] Yes, that is my statement, indeed.
22 Q. [10:51:27] I'd like to show you a video.
23 MR MACDONALD: Sorry, your Honour.
24 PRESIDING JUDGE TARFUSSER: [10:52:20] Mr Prosecutor.
25 MR MACDONALD: [10:52:22] If you allow me just one second before we go any

1 further, I just want to look at -- maybe -- it's all right. I can come back in re-examination,
2 your Honour. Sorry.

3 PRESIDING JUDGE TARFUSSER: [10:52:44] Good.

4 Maître Gbounon.

5 MR GBOUGNON: [10:53:04] (Interpretation) Your Honour, I would like to show
6 video 0064-0113, minute 44.38 to 48.54. The transcript is 0086-1028. And it's a public
7 document.

8 PRESIDING JUDGE TARFUSSER: [10:53:49] Is there a transcript? Yes.

9 MR MACDONALD: [10:53:53] Yes, your Honour, there is. We showed the excerpt
10 in-chief.

11 PRESIDING JUDGE TARFUSSER: [10:53:58] Yes, I know. Sorry.

12 Have you the transcript? Okay, good. You can proceed.

13 (Viewing of the video excerpt)

14 THE INTERPRETER: [10:55:00] Your Honour, I believe the microphone was not on. I
15 beg your pardon.

16 PRESIDING JUDGE TARFUSSER: [10:55:08] The microphone of the interpreter was
17 not on, so she interpreted without us hearing.

18 MR GBOUGNON: [10:55:23] (Interpretation) We'll play it again.

19 THE INTERPRETER: Apologies from the booth.

20 (Viewing of the video excerpt)

21 THE INTERPRETER: [10:55:35] "Before he, Mambo Abbé followed the preparatory
22 measures for this meeting, the spouses of the FDS repre -- along with the chief of the
23 major commands, the wives of the major commands, received a visit from Minister
24 Charles Blé Goudé. They are living day by day in anguish and worry about their
25 husbands who are fighting in the operations in these times of disorder. They are here to

1 support the morale of their husbands in defence of the nation. Charles Blé Goudé came
2 to bring supplies, they've been resisting for two months."

3 MR GBOUGNON: [10:56:39] (Interpretation) Your Honour, we stopped at 45.29. In
4 fact, I have a precise question for the witness here.

5 Q. [10:56:49] Did you notice the person dressed in green and white next to
6 Mr Blé Goudé who's holding an envelope?

7 A. [10:57:00] I can't see him very well.

8 Q. [10:57:02] Do you want to play it again? Just a couple of seconds to see this
9 person?

10 A. [10:57:10] If you want me to identify him, perhaps, yes, because I can't see him
11 well.

12 Q. [10:57:15] I'm not asking you for the name, my question is as follows: Do you see
13 a young man in a green and white T-shirt who is giving an envelope to
14 Mr Charles Blé Goudé?

15 A. [10:57:27] Yes, I can see that.

16 Q. [10:57:30] Thank you. Let's continue playing the video:
17 (Viewing of the video excerpt)

18 THE INTERPRETER: [10:57:38] "Two former prime ministers, Ouattara and Soro.
19 The police was thanked and encouraged by Minister Charles Blé Goudé for their
20 determination and patriotism in their avant-garde fight during which they have historic
21 responsibility for Côte d'Ivoire. It was a difficult day for Charles Blé Goudé.
22 Around 500 young people from the town of Yopougon invaded the area of his residence
23 and encouraged the minister to shorten his sleep and he met with them. 'We are ready.
24 We are ready to defend the mother country because we are tired of being attacked
25 uselessly.'

1 For Charles Blé Goudé, the president of the republic, Laurent Gbagbo, and his army are
2 holding out and leave no room for feverishness. The country Côte d'Ivoire, if the
3 situation requires, will be defended without any weakness or calculation. 'I don't want
4 war in this country.' When I say 'I don't want war,' it doesn't mean I'm weak, but I'm
5 saying it and repeating it once again to all those can hear, 'I don't want war in this
6 country.'

7 Raila Odinga, who goes from one country to another, if you don't know who he is, he
8 lived through exactly the same thing that we're going through in Côte d'Ivoire in Kenya.
9 At the time when the Kenyan president won the elections, Raila Odinga said that he had
10 won the elections and then he accepted to be prime minister to avoid war in Kenya.
11 What he avoided in Kenya, that's what we need to do in Côte d'Ivoire. We cannot accept
12 it. Thousands of young people like you are burning in their very flesh in their rooms, in
13 their homes, and what they're waiting for, and it's my responsibility to do this for them, to
14 relay this message to them is to say that they are not alone, and that behind them there's
15 the entire youth that's ready.

16 At this point in time what's happening, it's not -- it doesn't go beyond the capacity of the
17 head of state. It doesn't go beyond for the time being the capacity of our army.
18 They're fighting a psychological war for us. There is nothing new in Côte d'Ivoire. The
19 very same ones, the ones who were together in 2002 to attack us, it's the same ones once
20 again who have come together, and they've made some statements, that's all. Sarkozy,
21 that's France; he replaced Chirac, that's all. Sarkozy replaced Chirac.

22 Alassane, he's denied for a long time that he's with the rebels, but God's done everything
23 so that we know at long last that he is with the rebels. Compaoré and his rear base is
24 with the rebellion. Nothing new in all that. And before that crisis is over, we will
25 discover little by little exactly what the role of that base is in that crisis. Let me repeat, I

1 repeat again, I hope you've understood, I don't want war in this country. I want to avoid
2 that situation. That's why I was appointed minister of employment and youth and that's
3 why I've come here to tell you that I don't want war. I want you to find work. That's
4 my task."

5 PRESIDING JUDGE TARFUSSER: [11:01:15] I'm looking at the watch, at the clock, the
6 time. Yes.

7 MR GBOUGNON: [11:01:25] (Interpretation) I hadn't really been paying attention at
8 the time flying by, Mr President. I'm just going to put one question, then we'll go to the
9 break, and then when we come back I believe that I can finish off.

10 PRESIDING JUDGE TARFUSSER: [11:01:48] Okay.

11 MR GBOUGNON: [11:01:57] (Interpretation)

12 Q. [11:01:59] Mr Witness, I thought I heard in the comment that these were the wives
13 of members of the high command. Did you recognize any of them on the video?

14 A. [11:02:09] I would admit to not recognising. I did hear in the commentary that
15 these were the spouses of the members of high command. I didn't recognize any wives
16 of policemen, whatever the case may be.

17 Q. [11:02:25] Mr Witness, I would like to put a cultural question to you. Is it
18 customary in Côte d'Ivoire for a figure of authority to hand over money to law
19 enforcement in broad daylight on the occasion, for example, of a ceremony? Is it
20 customary?

21 A. [11:03:01] It is really exceptional. It's very rare indeed.

22 Q. [11:03:08] But it can happen?

23 A. [11:03:12] Well, as we have the case, as I said, we've got the case here, but it really
24 is exceptional.

25 Q. [11:03:19] Thank you, Mr Witness.

1 Mr President, I do believe we can go to the break.

2 PRESIDING JUDGE TARFUSSER: [11:03:24] Yes, let's go to the break. Thank you
3 very much. We come back in half an hour. Thank you.

4 THE COURT USHER: All rise.

5 (Recess taken at 11.03 a.m.)

6 (Upon resuming in open session at 11.33 a.m.)

7 THE COURT USHER: [11:33:53] All rise.

8 Please be seated.

9 PRESIDING JUDGE TARFUSSER: [11:34:18] Mr Knoops.

10 MR KNOOPS: [11:34:27] Mr President, our team has just one question left, which will
11 be posed by Mr N'Dry.

12 PRESIDING JUDGE TARFUSSER: [11:34:33] Okay.

13 MR KNOOPS: [11:34:34] Thank you.

14 PRESIDING JUDGE TARFUSSER: [11:34:36] Maître N'Dry.

15 QUESTIONED BY MR N'DRY: (Interpretation)

16 Q. [11:34:48] Good morning, Mr Witness.

17 A. [11:34:51] Good morning, Counsel.

18 Q. [11:34:53] As Mr Knoops just said a moment ago, I just have one question to put to
19 you.

20 But I would like to have brought up on the screen document CIV-OTP-0448-1303.

21 THE COURT OFFICER: [11:35:30] Could you repeat the ERN number, please. We
22 don't find it here. Thank you.

23 MR N'DRY: [11:35:36] (Interpretation) This is a document that was presented by the
24 Prosecution in the day of 16 February 2017. I repeat. 0448-1303.

25 THE COURT OFFICER: [11:36:04] It's 0048 and not 0448.

- 1 MR N'DRY: [11:36:13] (Interpretation) I think the Registry misheard me. I said 0048.
- 2 Q. [11:36:28] Mr Witness, do you have the document before you on the screen?
- 3 A. [11:36:32] Yes.
- 4 Q. [11:36:36] I would like to call upon the Registry to zoom in to the top part of the
- 5 document.
- 6 Can you see it a little bit better now, Mr Witness?
- 7 A. [11:36:52] Indeed.
- 8 Q. [11:36:53] Very well. Just so that you can shed light on the matter for me, we
- 9 have a document dated 27 March 2011.
- 10 THE WITNESS: [11:37:09] (Interpretation) I'm reading 21 March 2011.
- 11 MR N'DRY: [11:37:13] (Interpretation)
- 12 Q. [11:37:15] Very well, I can confirm that. I misread the "1." So 21 March 2011.
- 13 And at the top you can see the writing or the heading referring to a fax. Can you see
- 14 that?
- 15 A. [11:37:34] Yes, I can.
- 16 Q. [11:37:36] Could you read out the date to us?
- 17 A. [11:37:40] 27 February 2006.
- 18 Q. [11:37:46] So my question to you is how can you explain that a document dated
- 19 21 March 2011 bears a fax date anterior to that date, namely 27 February 2006? Can you
- 20 give us any explanation?
- 21 A. [11:38:20] Thank you very much. I really don't have any explanation to give you.
- 22 This seems to be so big as a mistake that I really don't know what to say. I don't know
- 23 how this happened.
- 24 MR N'DRY: [11:38:35] (Interpretation) Mr President, we have no further questions to
- 25 put to the witness.

- 1 PRESIDING JUDGE TARFUSSER: [11:38:39] Thank you. Thank you very much.
2 This concludes the questioning by the parties. Before asking the Prosecutor if he wants
3 to re-question the witness, I would like to have a couple of clarifications. One is also
4 related to a fax, to a fax number and the date, the dates. And I'm referring to the
5 document which I ask to be displayed, it's 0045-0750. And it was displayed to you a few
6 days ago, and I make reference to transcript 123, pages 83 and following. Yes, exactly
7 this one.
- 8 You said that this was, this fax was sent to the préfet of the police, lines 16, 17, page 78 of T-123.
9 I see here two fax numbers. Do you recognize both fax numbers? And which one was
10 first sent and the second and which one was second?
- 11 THE WITNESS: [11:40:43] (Interpretation) I would admit that the first fax is that from
12 the préfet as he is his direct co-worker. He must have sent the fax. So the first fax at
13 the top is that from the préfet. That's the first person he sent it to.
- 14 PRESIDING JUDGE TARFUSSER: [11:41:08] The 225 number, beginning with 225, you
15 mean?
- 16 THE WITNESS: [11:41:17] (Interpretation) I can't see that -- oh, yes, yes, 225, I can see
17 that. 225 20224176, that is the fax from the préfet. I think that that must have been the
18 first person to receive that fax. And maybe when he received it he sent it. You can see
19 "from." So it went from that fax; otherwise I don't understand very well.
- 20 *But generally speaking, when you fax a document, you have the person who is sending
21 the document, and you can see the number of the person who is receiving it. But I can't
22 see -- maybe this was worked with twice. I don't have any explanation, particular
23 explanation to provide with regard to this document.
- 24 PRESIDING JUDGE TARFUSSER: [11:42:08] But do you recognize the number, the
25 second number 20380899?

1 THE WITNESS: [11:42:19] (Interpretation) *I don't know that number. I do not
2 know that number from memory, 2038.

3 PRESIDING JUDGE TARFUSSER: [11:42:40] Okay. Thank you.

4 A second question is the following. You spoke of the operations in Abobo and you said
5 at transcript 125, page 98, lines 24, 25, and I quote: "The events in Abobo were serious.

6 We lost many of our men and, therefore, the army took over the leadership."

7 And on page 103, line 7 and 8, you said: "Though the chief of staff took the lead and took
8 all the measures necessary." End of quote.

9 What are these necessary measures? Do you know which measures he took?

10 THE WITNESS: [11:43:35] (Interpretation) *Well, he took various measures, that is to
11 say, the patrols from then on, it was the chief of staff who gave the instructions, and it was
12 the soldiers who took action first, with the resources they had.

13 PRESIDING JUDGE TARFUSSER: [11:44:03] Are these the measures taken you're
14 referring to, you referred to in your statement?

15 THE WITNESS: [11:44:18] (Interpretation) Yes, that is correct.

16 PRESIDING JUDGE TARFUSSER: [11:44:20] Which units from the FDS were present
17 *in Abobo under the leadership of the army which took over, or was it only the army?

18 THE WITNESS: [11:44:40] (Interpretation) Well, I said formerly that the police was
19 no longer acting. There was only the Abobo camp remaining. And then subsequently
20 they were also forced to leave because they were pushed out by the rebels. So they also
21 left in the end. So in the end the only force that could have been -- that could have left
22 was the army.

23 PRESIDING JUDGE TARFUSSER: [11:45:11] So and the army didn't coordinate with
24 the others, other FDS branches or the heads of the other FDS branches? Was there a
25 coordination under the lead of the army where you were somehow, if not involved,

1 informed?

2 THE WITNESS: [11:45:41] (Interpretation) There was a coordination conducted by
3 the army, so there was the army. I already said this.

4 *The army was supported by the gendarmerie, and in terms of the positions, the police
5 were really behind.

6 PRESIDING JUDGE TARFUSSER: [11:46:05] Yes, but there was the coordination also
7 on top, on the top level. You were involved in these coordination meetings, if we talk
8 about coordination and think about meetings?

9 THE WITNESS: [11:46:23] (Interpretation) Well, I'll come back to it again to say that
10 indeed whenever there was a coordination meeting, the three commands came together
11 and the operation is conducted together. But in the field the police does not occupy the
12 same positions. It remains in the background. As I said in Abobo, the police were not
13 in the field of operations.

14 PRESIDING JUDGE TARFUSSER: [11:46:51] Okay. Now to a question related to
15 what the Defence mostly questioned. They asked you, the Defence asked you a lot of
16 names asking the ethnicity of normally co-workers, other police officers in Abidjan.
17 Now, when you answered to these giving the ethnicity, apart of the couple of times you
18 said you don't know, did you answer because you know the ethnicity or because you
19 derived the ethnicity from the name or from other sources? Because once you said "This
20 is a name from the north or the west" this morning.

21 THE WITNESS: [11:47:57] (Interpretation) Thank you, Mr President. There are
22 some people, my co-workers whom I know only too well whose ethnic origin I know.
23 There are others whom I know from afar. I know who they are, but I don't rub shoulders
24 with them.

25 But there are names that are not typically from a specific ethnic group. They can belong

1 to two or three ethnic groups. We say then the big group. So if you say Touré, for
2 example, Touré is not necessarily from Katiola. *The person could be from the south, the
3 person could be from the north. So it difficult to determine. If you don't know that
4 person personally, you can't say that that person is from such and such an ethnic group.

5 PRESIDING JUDGE TARFUSSER: [11:48:45] Yes, so sometimes you know, you say the
6 ethnic group because you know, and other times you say you believe or you guess it is on
7 the basis of the name or some other source of knowledge?

8 THE WITNESS: [11:49:03] (Interpretation) Well, as to guessing, that's not really the
9 term. As I said to you, we can't say exactly with regard to names that can be members of
10 different ethnic groups. I'm saying what I know.

11 PRESIDING JUDGE TARFUSSER: [11:49:30] Okay. The last thing I would like to
12 clarify is an issue related to the Prosecutor's document search at the general directorate.
13 On 15 February you said, and I now quote to you in French, and I quote: (Interpretation)
14 "So the Prosecutor during the interview asked me if I could include items of evidence."
15 French transcript is T-123, page 64, lines 6 and 7.

16 On Monday two days ago you said, on the request of the Defence, "No, they" -- and
17 intending the investigators -- "didn't tell me what they were looking for. They didn't say
18 exactly what they were looking for."

19 So I just want to ask you once again what did the investigators which came for the search
20 of documents tell you what they were looking for? Because I assume that there is, really,
21 that the general directorate of the police is a big place and the search is difficult if it's not
22 targeted. So I just would like to know what they said they were looking for.

23 THE WITNESS: [11:51:32] (Interpretation) Well, when they interviewed me, they
24 requested whether we could include those items of evidence, and this is what I gave them
25 when they came to my office. But there are also documents that they received that I did

1 not give to them.

2 PRESIDING JUDGE TARFUSSER: [11:51:53] Yes, but this was not the answer to my
3 question. When investigators come to your office they present themselves and say "We
4 are so and so. We are here in order to" and then they say what they are here in order to
5 look for, to search, to seize, to do. When it comes to the documents, what did they ask
6 you? What did they say and ask you?

7 THE WITNESS: [11:52:29] (Interpretation) I think I've already answered. I said that
8 they came to find exhibits, evidence. They requested that they take some exhibits away
9 so that they could lay this as a foundation for their case, in support of their case.

10 PRESIDING JUDGE TARFUSSER: [11:52:54] Okay. Those were my questions. I give
11 now the floor to the Office of the Prosecutor for the re-questioning.

12 Is it very much, just to have an idea?

13 MR MACDONALD: [11:53:12] I think it's going to be until tomorrow morning
14 mid-session? No, I'm just --

15 PRESIDING JUDGE TARFUSSER: [11:53:18] Yes, but --

16 MR MACDONALD: [11:53:20] I'm joking, your Honour. Not tomorrow morning.
17 It's going to be maximum half an hour, because I intend to show also a video, so the time
18 of calling the -- maximum half an hour.

19 PRESIDING JUDGE TARFUSSER: [11:53:33] I would just say also it's very dangerous
20 to make jokes because they are then on the record. And I remember a few days ago
21 when you said, when I asked is it a clean document you said no, no we have only -- there
22 is something in invisible ink. Then it comes up, "invisible ink" in five years and we don't
23 know anymore that it was a joke. So it's just to be aware of this.

24 Okay. Thank you.

25 MR MACDONALD: [11:54:05] All right.

1 QUESTIONED BY MR MACDONALD: (Interpretation)

2 Q. [11:54:17] Mr Witness, just a last point, all right? We're going to try to clarify
3 matters, if clarification is indeed possible.

4 I do not know whether we could maybe have the lectern, please, so that we could use it.

5 Mr Witness, I mentioned from the outset, and that is what I did, I used your prior

6 statement during my examination-in-chief and you gave the dates of between

7 23 November and I'm just going to look at the date between 23 November and

8 26 November 2011.

9 Do you remember having given a statement that was also recorded by the OTP and was
10 transcribed to which we have been referring throughout this hearing?

11 Do you understand my question? Because you're looking at me with a question mark on
12 your face, so I'm just wondering whether you have understood me?

13 A. [11:56:31] I didn't understand your question.

14 Q. [11:56:33] You remember that you gave a statement to the Office of the Prosecutor
15 between 23 and 26 November 2011 in Abidjan, do you not?

16 A. [11:56:46] I'll repeat the same thing again. I can't remember dates.

17 Q. [11:56:54] And this meeting was recorded and you reread the transcripts before
18 you came here to testify whilst you were under the responsibility of the VWU?

19 A. [11:57:11] I believe that, you know, if we're talking about dates here, I really don't
20 remember the dates, but I can tell you the contents that I gave. If you, you know, if you
21 ask me the hours and the minutes, I can't deal with that.

22 Q. [11:57:26] Now let the dates to one side. Do you remember having given a
23 statement to the Office of the Prosecutor in November 2011? I'm giving you the date.

24 Do you remember that?

25 A. [11:57:40] There's no problem there. I can remember quite well.

1 Q. [11:57:44] Okay. And you will remember that at that moment in time there are
2 annexes to your statement that you yourself signed and, if need be, I can show an example
3 to you once again, but we've already done this. You remember, do you not, having given
4 documents that became annexes to your statement that you initialised; is that right?

5 A. [11:58:20] That's not the issue here. I did not say that I do not recognize the
6 document.

7 Q. [11:58:28] Mr Witness, please just follow me and answer the question I put. I'm
8 getting there. Answer the question I'm putting to you. Did you give documents to the
9 Office of the Prosecutor when you provided them with a statement and these documents
10 became an annex and you initialed each of these documents?

11 A. [11:58:52] That is correct.

12 Q. [11:59:00] Now, in May 2012, I'm providing you with a date because I know you
13 don't remember dates, we're talking about documentation here from the DGPN, and I'm
14 following up on the questions put to you by the Presiding Judge.

15 I understand that the investigators did not say to you which documents they were looking
16 for, but did they situate in time, that is to say, did they say to you that they want
17 documents from such and such a date and not documents going back to 1990? Did they
18 give you any indications? That's the question that the Presiding Judge was putting to
19 you. Did they give you any indications without actually telling you that they were
20 looking for such and such a type of document? Were there any indications?

21 THE WITNESS: [12:00:00] (Interpretation) I did not hear any indications. They
22 asked to enter into contact with my documentation unit and I put them in contact with
23 those in charge of documentation.

24 MR MACDONALD: [12:00:32] I made a mistake, it's May 2013 and not May 2012.
25 Sorry.

1 Q. [12:00:48] If I could, Mr Witness, I'd like us to hark back to this meeting between,
2 just so that we can clear up a particular date, this meeting between the president and the
3 generals at which the generals attempted to convince the president to step down. If I
4 could I'd like to make reference to the register from the residence, 0088-0863, and I'd like
5 to call up in particular page 0257 of this document and we see a particular date, we see a
6 number of entries.

7 I no longer recall if this document is public or not, but I do believe it is public.

8 THE COURT OFFICER: [12:02:36] Confidential.

9 MR MACDONALD: [12:02:49] I'm sorry, I don't see the document.

10 PRESIDING JUDGE TARFUSSER: [12:02:51] It is confidential.

11 MR MACDONALD: [12:02:52] Yes, but I don't see the document.

12 PRESIDING JUDGE TARFUSSER: [12:02:55] I don't see it either.

13 THE COURT OFFICER: [12:02:58] Is it the page 867 instead of 257?

14 MR MACDONALD: [12:03:04] (Microphone not activated) I will repeat the page.

15 1257 of that document. And then we can show then the corresponding page in written
16 form, which is 1258, 1258.

17 If you can zoom in in the middle so that we can see clearly the handwritten date.

18 I will sit down.

19 PRESIDING JUDGE TARFUSSER: [12:03:59] Maître Altit.

20 MR ALTIT: [12:04:01] (Interpretation) Yes, thank you, your Honour. I apologise for
21 interrupting, but could we enquire exactly how this comes out of a previous examination
22 of the witness? This particular issue about the register and a date on the register, I do not
23 believe that this issue was dealt with during examination and I do not see at all how it
24 came to be that this issue is emerging in re-examination.

25 PRESIDING JUDGE TARFUSSER: [12:04:39] I think the issue on this meeting was part

1 of the examination, yes. So where is the problem? No, no, but it doesn't matter, it came
2 out during the examination this meeting. Yes, good. That's it.

3 Mr Prosecutor.

4 MR MACDONALD: [12:05:01] The examination of Mr Gbougnon. That is what is
5 meant.

6 PRESIDING JUDGE TARFUSSER: [12:05:10] (Microphone not activated) Here it is a
7 specification on the date.

8 MR MACDONALD: [12:05:15] Yeah, yeah.

9 PRESIDING JUDGE TARFUSSER: [12:05:16] Yes, well, that's it. I mean it's good also
10 for the Chamber to know this, the date.

11 MR MACDONALD: [12:05:24] If we can put a date. Again, the witness will tell us.

12 Can we now go to the next page, 1258. I think it's fine. We have it in split screen.

13 Great. Can we now move to 1259, please.

14 Q. [12:06:12] (Interpretation) Mr Witness, I think you will see if you look at entry
15 number 42, you will find your own name. Time of arrival 1805, departure 1948, right?

16 Are we agreed? So we see here on this visitors' log that you came there on 14 March --

17 PRESIDING JUDGE TARFUSSER: [12:06:48] Question. Question.

18 MR MACDONALD: [12:06:49] I'm coming, your Honour.

19 PRESIDING JUDGE TARFUSSER: Yes.

20 MR MACDONALD:

21 Q. [12:06:52] (Interpretation) Do you remember going to the residence on 14 March?
22 That's my first question to you.

23 A. [12:07:07] Once again I don't remember dates. For several times now you've put
24 me -- put the question to me and I've said I don't remember dates.

25 Q. [12:07:21] Allow me to rephrase my question. After that meeting at which the

1 generals who were there asked Mr Gbagbo to step down and relinquish power, did you
2 go back to the residence after that time to see Mr Gbagbo another time?

3 A. [12:07:50] Are you talking about the same day or two days later or a month later?

4 Q. [12:07:55] This is what we are trying to determine, Mr Witness.

5 A. [12:07:59] I don't think that we went back to the residence. I don't think so.

6 Q. [12:08:08] I put this question to you, sir, because after 14 March, you see, there was
7 no entry that would testify or attest to your returning to --

8 MR N'DRY: [12:08:33] (Interpretation) Your Honour, your Honour (Overlapping
9 speakers)

10 MR MACDONALD: [12:08:35] (Overlapping speakers) It's okay. I'm just explaining
11 to the witness.

12 PRESIDING JUDGE TARFUSSER: [12:08:38] No, but you don't need to explain to the
13 witness. The witness has to be put questions and answers, then what we do with the
14 answers then is a matter of assessment.

15 MR MACDONALD: [12:08:49] Totally correct, your Honour, and I'm sorry for that.
16 I'm moving on to the next point and last point.

17 Q. [12:09:05] (Interpretation) Now the Presiding Judge asked you a number of
18 questions about a document and I would like us to have another look at this document,
19 0045-0750.

20 Could that document please be displayed on the screen.

21 Could we please zoom in to the top of the page, in particular the title "Simplified report."

22 Thank you. "Compte rendu simplifie" in French.

23 Sir, you saw that document?

24 A. [12:10:01] *Yes, I am the one who wrote "seen" on it.

25 Q. [12:10:05] Very well. Thank you. Now this is the last point -- oh, I'm sorry, I had

1 another point.

2 MR MACDONALD: [12:10:24] With your leave, if I could have just a moment.

3 (Counsel confer)

4 MR MACDONALD: [12:10:39] (Interpretation)

5 Q. [12:10:42] I would like to show you -- well, the Chamber, you see, put a number of
6 questions to you about the instructions from Mr Mangou, the head of -- the chief of staff,
7 instructions he allegedly gave. And I would like to show you some video footage,
8 0064-0110, and this would be 349 to timestamp 511.

9 And the corresponding transcript, and the interpreters have the transcript, is 0086-1013,
10 lines 5 to 27.

11 And if we could have a look at this video footage and you will see Mr Mangou. Of
12 course this is video footage from 12 January 2011.

13 We cannot play it, so I will ask, if we cannot resolve, that the Court clerk play the same
14 excerpt.

15 (Playing of the video excerpt)

16 THE INTERPRETER: [12:12:56] Sight translation:

17 "Yesterday, Wednesday, the president of the republic, President Laurent Gbagbo, held
18 discussions with the leaders of the major commands within the national army. Together,
19 they reviewed the security situation of the country and then they took a number of
20 measures to ensure the safety of the country and of the people of Côte d'Ivoire. Report
21 from Laurent Séry."

22 Laurent Séry goes on to say the following:

23 "This meeting with the head of state, President Laurent Gbagbo, with the top military
24 chiefs was of major importance. In light of the extent of the attacks and the violence
25 perpetrated upon by armed individuals who have been targeting the Defence and

1 Security Forces and the people who do not support their cause. The president of the
2 republic, Laurent Gbagbo, the supreme leader of the army forces, received a report of the
3 meeting that the generals had well before at the army headquarters. The commands of
4 the national navy, the air force, the land forces, the CECOS, the gendarmerie and the
5 police, as well as army leader Philippe Mangou, they came to a number of measures to
6 ensure the safety of the country and to check any outbreak within a number of communes
7 within Abidjan."

8 THE INTERPRETER: [12:14:57] If the interpreter could have one more moment to
9 finish the sight translation, please.

10 PRESIDING JUDGE TARFUSSER: [12:15:03] I thought you had finished. Okay. No,
11 it's not finished.

12 THE INTERPRETER: [12:15:06] "The meeting was expanded to include government
13 members, in particular Gilbert Aké N'Gbo. The general of the army, Philippe Mangou,
14 leaving the meeting, spoke out against the bias seen in the film regarding the UN
15 peacekeepers."

16 PRESIDING JUDGE TARFUSSER: [12:15:37] Now we are through.

17 MR MACDONALD: [12:15:40] (Interpretation)

18 Q. [12:15:44] Mr Witness, so that was indeed the time of the meeting that you had
19 with President Gbagbo, 12 January, to discuss events that were unfolding at that time in
20 Abobo?

21 A. [12:16:08] We went to give a report to the president of the republic.

22 Q. [12:16:28] Now there is another item of video footage that I would like to show you,
23 once again from 12 January, and we see General Mangou speaking on RTI.
24 I'm trying to find the reference and I'm very sorry, your Honour, it will just take me one
25 moment, and I don't think that the video footage will be very long.

1 (Overlapping speakers) (Speaks English) Sorry, my colleague -- because my messenger is
2 not working.

3 MS SCHOETERS: It's video, just one moment, CIV-OTP-0047-0653, and the transcript is
4 CIV-OTP-0048-1567.

5 MR MACDONALD: [12:17:51] That we will show from the excerpt from beginning to
6 the end, if I'm not mistaken. I'm sorry, I took the wrong number and this is why at the
7 break, so now I'm mixing a video.

8 (Viewing of the video excerpt)

9 THE INTERPRETER: [12:18:18] Message from the interpreters: We do not have the
10 transcript.

11 PRESIDING JUDGE TARFUSSER: [12:18:24] The interpreters do not have the
12 transcript.

13 MR MACDONALD: [12:18:26] That's what I'm checking just to make sure. We're
14 sending it now.

15 PRESIDING JUDGE TARFUSSER: [12:18:38] It's lucky that we are not late, we are in
16 advance of the timing, so.

17 MR MACDONALD: [12:18:46] Maybe I wasn't joking after all.

18 And to be more precise, I'm being indicated it's from minute 1 --

19 PRESIDING JUDGE TARFUSSER: [12:19:29] 05.

20 MR MACDONALD: [12:19:31] 11.05 to 3.48.07. No, sorry. No, no. Let's -- sorry.

21 It's from the start to minute 1.11.05 and then it will be from 3.48 to 4.32, or about.

22 PRESIDING JUDGE TARFUSSER: [12:19:55] I'm asking the interpreters if they are
23 ready?

24 THE INTERPRETER: [12:19:59] Message from the interpreters: We have not yet
25 received the transcript. I'm sure the courtroom officer is doing her very best.

1 MR ALTIT: [12:20:10] *Your Honour... Yes, Your Honour, we are afraid that this
2 footage is not on the OTP's list of materials. This number is not on the list. We are
3 cross-checking once again.

4 MR MACDONALD: [12:20:33] (Interpretation) I believe that this same video is
5 contained within another video. 0047.

6 MR ALTIT: [12:20:44] (Interpretation) I beg over -- the video is well and good, but the
7 transcript. The video seems to be fine, but is the -- the transcript, I believe the number,
8 the French transcript is incorrect.

9 MR MACDONALD: [12:21:04] (Interpretation) 0048-1567. Is that okay?

10 PRESIDING JUDGE TARFUSSER: [12:21:29] (Interpretation) Is that all right? Away
11 we go.

12 (Viewing of the video excerpt)

13 THE INTERPRETER: [12:21:40] Sight translation:

14 "A curfew has been set as of this evening within the communes of Abobo and Anyama. I
15 will now turn over to my colleague and we will hear the statement given by the head of
16 the armed forces, General Philippe Mangou."

17 Mr Philippe Mangou goes on to say the following, "Declaration by the Defence and
18 Security Forces of Côte d'Ivoire. The recent demonstrations, the disturbances to public
19 order, the acts of vandalism and barbaric acts, the killings, the murders perpetrated by
20 supporters from the coalition of Houphouëtistes for democracy and peace, during a
21 number of marches organised by this opposition political group on 18 and 17 December
22 2010 have led to the death of 21 members of the Defence and Security Forces of Côte
23 d'Ivoire. Since that time, the country has known no calm, and dozens of deaths have
24 occurred owing to the attacks upon members of the Defence and Security Forces of Côte
25 d'Ivoire as well as attacks upon innocent members of the population. Not a day goes by

1 without the Defence and Security Forces of Côte d'Ivoire in the course of their missions to
2 ensure security and protect the people, not a day goes by without the members of the FDS
3 being the primary targets of armed attack by people who hide away and ambush them.
4 Responding to the nonstop calls for civil disobedience, the rising up and the murders of
5 all kinds launched by politicians who have holed up at the Gulf Hotel, on Tuesday,
6 11 January 2011, army forces came under fire. These forces were led by the Defence and
7 Security Forces of Côte d'Ivoire who were patrolling the Abobo Gare commune, more
8 specifically PK18 neighbourhood and, thus, two died, nine people were wounded, and
9 some of the transportation -- some of the vehicles of the army were damaged.

10 In light of this atmosphere of danger and the threats of war that the hard-working people
11 of this area have endured in light of the threats of armed attacks against the Defence and
12 Security Forces of Côte d'Ivoire, the following emergency measure is being taken: A
13 curfew is being set without the entire commune of Abobo Gare and Anyama as of today,
14 Wednesday, 12 January 2011 beginning at 1900 hours until Saturday, 15 January 2011,
15 6 a.m. This exceptional measure will allow the Defence and Security Forces of Côte
16 d'Ivoire to continue with determination and resolve their mission, to ensure the safety and
17 protection of the people. The Defence and Security Forces will also take advantage of the
18 curfew to track down all the people who are responsible for these armed attacks and other
19 attacks, track all these people down, find them wherever they may be hidden, these
20 people who have attacked the republic.

21 The Defence and Security Forces of Côte d'Ivoire are taking all the organisations, all the
22 human rights organisations from here and from abroad, international and national
23 opinion, taking them as witnesses that these armed attacks against the forces likened to
24 acts of war followed by heavy losses in human lives amongst their ranks place them in a
25 particular position, a position of legitimate defence.

1 Therefore, the forces reserve the right to retaliate. As of today any measure may be taken
2 to counter all the attacks no matter where they may come from. Thus, the Defence and
3 Security Forces of Côte d'Ivoire are issuing a warning to the other communes within the
4 district of Abidjan, a warning not to engage in any acts or anything else that is similar to
5 those mentioned before. If so, the communes who have been identified will be subject to
6 the same provisions and also will come under retaliation. Once again, following their
7 absurd logic of destabilising the Republic of Côte d'Ivoire, these politicians who have
8 holed up in the Golf hotel and who have engaged in campaigns of misinformation
9 targeting the people of Côte d'Ivoire, seeing the fact that officers have defected as well as
10 other military staff belonging to the Defence and Security Forces of Côte d'Ivoire and
11 apparently supporting a so-called government based at the Golf hotel, the Forces of
12 Defence and Security of Côte d'Ivoire hereby inform the worthy people of Côte d'Ivoire
13 that these officers who have been mentioned in these various releases of information that
14 are nothing more than misinformation no longer, these people no longer belong to the
15 armed forces, they have been relieved of their military responsibilities in relation to the
16 state of Côte d'Ivoire.

17 In this regard, these people may henceforth carry out their usual existence as they wish.
18 The Forces of Defence and Security of Côte d'Ivoire reaffirm that they have never been as
19 united and held together as this very moment within all their components and call upon
20 the people of Côte d'Ivoire to remain calm. Any combat corresponding to an objective
21 and has a specific context the major combat to which the Forces of Defence and Security of
22 Côte d'Ivoire have remained unequivocal during this so-called post-election crisis borne
23 out of the absurd wish on the part of certain individuals both internally and externally to
24 deny Côte d'Ivoire its total independence and decide upon its destiny, the Forces of
25 Defence and Security of Côte d'Ivoire are leading a unique fight in order to safeguard the

1 sovereignty of the Republic of Côte d'Ivoire in the scrupulous respect of the functioning of
2 its institutions and its constitution.

3 Also the Forces of Defence and Security of Côte d'Ivoire are inviting all of the population
4 to remain calm. They request that they go about their business calmly and undertake
5 and fulfil all their occupations with only guarantee on their part that the social well-being
6 of each is retained and to assist on another level for the economy to be re-boosted in our
7 dear country, the country of Côte d'Ivoire.

8 God bless the Côte d'Ivoire. Done in Abidjan on Wednesday 12 January 2011. Signed
9 by Lieutenant General Philippe Mangou, chief of staff of the army."

10 End of transcript.

11 PRESIDING JUDGE TARFUSSER: [12:31:44] Thank you very much to the translators,
12 to the interpreters.

13 Mr MacDonald.

14 MR MACDONALD: [12:31:53] Thank you, your Honour.

15 Q. [12:31:59] (Interpretation) You remember this communiqué, Witness, do you?

16 A. [12:32:08] Yes, I do.

17 Q. [12:32:11] And does it comprise the points that you raised amongst the other
18 members of the hierarchy at the HQ of the FDS?

19 A. [12:32:26] Yes, indeed.

20 Q. [12:32:31] And it was subsequently therefore that you went to see the president in
21 the company of those same generals as seen on the video at an earlier stage, is that correct,
22 in chronological order, that is?

23 A. [12:32:49] The message came out after the meeting with the president.

24 Q. [12:32:59] So you met the president and after -- after this communiqué was read
25 out; is that correct?

1 A. [12:33:09] That is correct.

2 MR MACDONALD: [12:33:11] (Interpretation) Thank you, Mr President, your
3 Honours. Those were the questions that I had to put. Thank you.

4 PRESIDING JUDGE TARFUSSER: [12:33:22] Thank you very much.

5 Now, before closing, I will ask the Defence if they have to put some questions in
6 re-re-examination?

7 MR ALTIT: [12:33:40] (Interpretation) We have no questions, Mr President.

8 PRESIDING JUDGE TARFUSSER: [12:33:48] Thank you very much.

9 Mr Knoops.

10 MR KNOOPS: [12:33:50] No question, Mr President.

11 PRESIDING JUDGE TARFUSSER: [12:33:52] Thank you very much. I'm happy that
12 I can tell you that your questioning, the examination as a testament to this trial is finished
13 and two days ahead of what I at least expected. You can go back home again. I thank
14 you for having been here, for having answered the questions of all the parties and of the
15 Chamber. And I wish you a safe trip back. Thank you very much.

16 Thank you also to Maître Laucci for his assistance as counsel to you under Rule 74.

17 I would ask now the court usher to accompany the witness outside. Thank you.

18 (The witness is excused)

19 PRESIDING JUDGE TARFUSSER: [12:35:27] Thank you very much. Now before
20 adjourning the hearing now to the 6 March, because next week we are not sitting, I would
21 like to read out the decision on the (Interpretation) additional observations with regard to
22 the immunity of the witness, Witness 46, and with regard to the confidentiality of his
23 testimony to the investigators of the OTP. (Speaks English) I'm referring to filing 815,
24 filed yesterday, 21 February 2017.

25 Requesting the Chamber, one, to confirm the agreement between the ICC and the Ivory

1 Coast -- that the agreement between to the ICC and the Ivory Coast is binding, first
2 request; to take note of the suspected violation of the several provisions of the
3 administrative instruction, ICC/AI/2007/001, second request; and, three, to order the
4 Prosecutor to appropriately mark documents relating to Witness P-46's testimony and to
5 destroy and replace any copies of them which are not adequately marked, third request.
6 Having heard this morning at the beginning of the hearing the oral submissions of the
7 parties, the Chamber at 1237 hours decides as follows, this is just for the timing:
8 As regards the first request, the Chamber notes that the observations submitted by Rule 74
9 counsel address issues and concerns related to the oral decision taken by the Chamber
10 before the opening of Witness P-46's testimony, that is as early as last Wednesday,
11 15 February. But I think it is last Tuesday, 14 February, it has to be said. It's
12 14 February.
13 Since then, P-46 gave his testimony, which is now concluded and was about to conclude
14 when the request was filed. Counsel fails to explain the reasons why he waited until
15 after the witness's questioning by the Prosecutor was completed and the first day of
16 questioning by the Defence before submitting his observations and related requests. The
17 Chamber, while confirming its oral decision issued on 15 February 2017, recalls also that
18 private sessions for the purposes of Rule 74 were ordered throughout P-46's testimony as
19 appropriate, and whenever requested by him or by counsel, Rule 74 counsel, and that
20 therefore no issue of self-incrimination should arise. Accordingly, the Chamber declines
21 to take a position as to the protocole d'accord entre République de Cote d'Ivoire et la Cour
22 Penale internationale and its binding nature.
23 As regard the second and the third requests, the Chamber notes that the documents
24 referred to by Rule 74 counsel have been handled and treated consistently with the
25 practice of the Court and that, also in accordance with the usual practice of the Court,

1 appropriate measures have been taken to preserve their confidentiality as applicable.

2 The observations submitted by Rule 74 counsel as to the degree of compliance of those
3 documents with relevant administrative instructions are now available to the Prosecutor
4 for the purposes of assessment within the context of information management
5 responsibilities vested in the Office, as appropriate.

6 Accordingly, there is no need for the Chamber to order any additional specific measure in
7 this regard.

8 Therefore, also the second and the third requests are rejected.

9 This concludes this -- no, it doesn't conclude because Maître Altit wants to say something.

10 MR ALTIT: [12:40:54] (Interpretation) I thank you, Mr President. And I would like
11 to apologise for my rapid intervention here and I had a very brief request to formulate,
12 with your leave.

13 As you know, Mr President, your Honours, after the break we will be calling very
14 important witnesses, or there will be very important witnesses that will be called that
15 require lengthy and complex preparation, so my request is really to the OTP, rather than
16 to the Chamber in reality. I would request that you ask the OTP if they are going to
17 indicate or disclose a great list of items of evidence, because they did for 46 give us more
18 than 300 items. We would like, if possible, receive a first list of documents that would
19 enable us to work in an efficient manner during the suspension. We'll be able to
20 commence our preparation.

21 And this might become, and this is what we are suggesting, a practice that in cases such as
22 this where the parties and participants have a few days and when there are only a few
23 documents, then each person who is going to be questioning sends as many documents as
24 they have available so that the other parties can prepare themselves and that they not be
25 submerged at the very last minute by a massive amount of documents. This could be

1 done on a rolling basis on an informal manner, if you like. It would be an efficient and
2 fraternal manner of moving forward.

3 That's what I had to say, your Honour.

4 PRESIDING JUDGE TARFUSSER: [12:42:51] Well, first thing I have to say, that all
5 witnesses are important, not only the one which are coming. All witnesses are important.
6 Well, I know that you agree, that it was just a --

7 MR ALTIT: [12:43:04] (Interpretation) Naturally, Mr President. It might be an issue
8 of translation. I was talking about the importance in terms of the number of documents.
9 I was not talking about the importance of the witnesses as such.

10 PRESIDING JUDGE TARFUSSER: [12:43:23] Of course.

11 Yes, Mr Prosecutor.

12 MR MACDONALD: [12:43:36] Certainly, but it's going to be very easy, the types of
13 documents that my colleague need to look at and he can look at them now. The next
14 witness, he knows his identity. And for the list I will refer him to when we sought
15 admissions for the chain of custody, all the batches of documents were identified by
16 places of searches. So take the position of the next witnesses, look at those documents
17 and you have the documents that we'll be referring to. So you already have the list with
18 you.

19 Thank you very much.

20 PRESIDING JUDGE TARFUSSER: [12:44:16] Yes, but still, I mean I think in any case it
21 is a matter of collegiality, of courtesy, that as soon as you have some --

22 MR MACDONALD: [12:44:31] That's what -- the list is made, your Honour. It's
23 available. It was provided a year ago for those.

24 PRESIDING JUDGE TARFUSSER: [12:44:36] Yes, but --

25 MR MACDONALD: [12:44:37] So those are the documents for sure that they can start

1 working on. That's what I'm saying.

2 PRESIDING JUDGE TARFUSSER: [12:44:43] I just see on the other side they say no, it's
3 not like this. So I don't know, I don't know what you are referring to. But I would like
4 also you to be calm. I mean we have another 14/15 minutes to discuss with this. Just be
5 calm and we will sort out this problem. I don't know what you are referring to.

6 MR MACDONALD: [12:45:05] Let me explain.

7 PRESIDING JUDGE TARFUSSER: [12:45:07] Maybe also the Defence does not know
8 what you're referring to.

9 MR MACDONALD: [12:45:09] Let me explain. For each location where we seize
10 documents, be it police, gendarmerie, army, be it la Garde Républicaine, anywhere where
11 we seize, there is a report. This report details all the documents that is seized in every
12 location. We are obviously -- and also we disclosed -- and their batch numbers. So it's
13 easy, like we saw, 0045, and there was a bit of 0046. It's all in the same ERNs, but the
14 system in Ringtail provides you all of that. And if you look at the mode of disclosure
15 where they disclosed as incriminating evidence, as Rule 77 evidence, potentially
16 exonerating, then that information is easily available.

17 I'm not done.

18 So the point is that if --

19 PRESIDING JUDGE TARFUSSER: [12:46:06] (Microphone not activated).

20 MR MACDONALD: [12:46:07] -- if my colleagues want to know the documents that
21 we'll be relying on for the next witnesses, they just -- I'm in a public session, I'm not going
22 to tell who these are -- they just need to look at their position and then go into the search
23 places.

24 And, yes, so immediately today, this afternoon they can do that without us sending
25 anything. That's number one.

1 But yes, we will send on a rolling basis documents with the -- lists, okay, with the very
2 clear understanding that these lists are nonbinding until the last list is sent. Until the
3 official full list is sent.

4 That being said, your Honour, the Defence can now do the same. Right. Thank you.

5 PRESIDING JUDGE TARFUSSER: [12:47:02] Yes, but may I say that I do not
6 understand this animosity. I don't understand why you are talking about this with this
7 animosity. I try to keep the atmosphere calm but then sometimes it goes beyond that
8 and I really don't understand.

9 But I take note of the fact, I take note of the fact that you will, on a rolling basis, make
10 available to the Defence lists. And of course we will see how it works and of course this
11 has to be done mutually also from the other side to vis-à-vis the Prosecutor.

12 MR ALTIT: [12:47:53] (Interpretation) Thank you, Mr President. Yes, I just wanted
13 to clarify. The representative of the OTP was saying to us, if I understood him correctly,
14 that we should go fishing in the entirety of his list of exhibits to find the elements that
15 could be linked with this witness. My question was not that. But I wanted to obtain, as
16 soon as possible, the list of exhibits that he was going to disclose to us or notify to us as
17 early as possible. There were 333, if I'm not mistaken, for P-46. That's the list I was
18 talking about. I know that you understood this correctly and the Chamber understood it
19 correctly.

20 That's all I was asking.

21 PRESIDING JUDGE TARFUSSER: [12:48:47] You wanted the list which the Prosecutor
22 should make available five days before possibly ten days before, as simple as that; is that
23 right? Okay.

24 Please try to do as much as possible, to anticipate as much as possible the deposit of that
25 list, not having in mind the five days, but try to start. Well, say, now you have two full

1 days to work on this and to allow the Defence to have knowledge of the list of documents.

2 By the way, I would like to say that after so many times I would think that the Defence
3 could really imagine what is coming up, but okay. That's it.

4 MR MACDONALD: [12:49:41] We will do so, your Honour. We will do so, your
5 Honour. And that's all I'm going to say here now. And I didn't mean my intervention
6 to be of animosity. It's just of surprise. That's all.

7 PRESIDING JUDGE TARFUSSER: [12:50:04] And the last thing is that I have been
8 informed that "important" in French means also not only important but also heavy from
9 the amount of work to do. Okay. Therefore I apologise on that.

10 Okay. Thank you very much. And now the hearing is adjourned to Monday, 6 March,
11 if I'm not mistaken, at 9.30 with the next witness.

12 Thank you very much.

13 THE COURT USHER: [12:50:35] All rise.

14 (The hearing ends in open session at 12.50 p.m.)

15 CORRECTIONS REPORT

16 The Language Services Section has made the following corrections in the transcript:

17 *Page 9, line 10: "west" is corrected to "east"

18 *Page 9, line 14:

19 "Well, I thought it was the west, but I must say I'm not sure, I don't know." is corrected to

20 "Well, I must admit I don't know. I saw 'Ossohou' so I thought it was the west. I don't
21 know."

22 *Page 9, lines 18-21:

23 "You said you didn't remember some names, and I'm going to suggest a couple of names
24 to see whether or not you remember." is corrected to "No problem. We shall continue.

25 One last thing: The commanders of the CRS3 and the CRS4, you said you didn't remember

1 the names. I'm going to suggest a couple of names to see whether or not you remember."

2 *Page 9, line 23:

3 "CRS4, Gagnoa, Niamkey Fernand, does that name ring a bell?" is corrected to "CRS4
4 Gagnoa, Police commissioner Second Class Niamkey Fernand, does that name ring a
5 bell?"

6 *Page 10, line 25: "page 0101" is corrected to: "page 01101"

7 *Page 17, lines 4-6:

8 "what the secretary general said is true or not, or whether what the plaintiff who came to
9 the police station said is true or not, and then in the record or the report this can be
10 stated." is corrected to "what the secretary general said is true, or whether what the
11 plaintiff who came to the police station said is true. On the basis of this, the police can
12 take a particular position and then write a report or draw up a statement."

13 *Page 19, lines 19-20:

14 "Unfortunately we were not informed and therefore when they were taken aside we had
15 to protect them." is corrected to "Unfortunately they did not inform us and therefore
16 when they were attacked we had to get them out of there so as to protect them. They
17 were not the attackers.' End of quote."

18 *Page 20, lines 1-5:

19 "and the deceased Kamal Ghosal of French nationality,' and I continue a bit further along,
20 'two individuals wearing armed with Kalashnikov, wearing uniforms arrived in front
21 of the headquarters of the RHDP in Cocody where they were filming for the France 3
22 television channel on a four by four beige vehicle" is corrected to "the late Kamal
23 Ghosal –' and I continue a bit further along, 'on the day of the march, these two
24 individuals wearing combats uniforms and armed with Kalashnikovs arrived in front of
25 the headquarters of the RHDP in Cocody where they were filming for the France 3

1 television channel in two four by four beige vehicles."

2 *Page 22, lines 10-11:

3 "Commissioner Loba, the commander of the BAE who called me." is corrected to "the
4 BAE Commander, Commissioner Loba Patrice Emmanuel himself, who called me."

5 *Page 23, line 9: "Congratulations." is corrected to "End of quote."

6 *Page 30, lines 20-21:

7 "But generally speaking the person, you can see the person who sent it and the person
8 who received it." is corrected to "But generally speaking, when you fax a document, you
9 have the person who is sending the document, and you can see the number of the person
10 who is receiving it."

11 *Page 31, lines 1-2:

12 "I do not know that number from memory, 2030." is corrected to "I don't know that
13 number. I do not know that number from memory, 2038."

14 *Page 31, lines 10-12:

15 "Well, he took measures, that is to say that the instructions were given from the chief of
16 staff with regard to patrols, and they were the ones who were to be upfront using their
17 measures, that is to say the soldiers." is corrected to "Well, he took various measures, that
18 is to say, the patrols from then on, it was the chief of staff who gave the instructions, and it
19 was the soldiers who took action first, with the resources they had."

20 *Page 32, lines 4-5:

21 "But the army was supported by the gendarmerie and the positions held by the police
22 were really far removed in the distance." is corrected to "The army was supported by the
23 gendarmerie, and in terms of the positions, the police were really behind."

24 *Page 33, lines 2-3:

25 "It can be from the south, can be from the north." is corrected to: "The person could be

1 from the south, the person could be from the north. So it is difficult to determine.”

2 *Page 39, line 24:

3 “Yes, yes, I did.” is corrected to “Yes, I am the one who wrote ‘seen’ on it.”

4 *Page 43, lines 1-2:

5 “(No interpretation) This item is not on the list.” is corrected to “Your Honour... Yes,
6 Your Honour, we are afraid that this footage is not on the OTP’s list of materials. This
7 number is not on the list.”

8 The Court Management Section has made the following corrections in the transcript:

9 *Page 3, lines 22-24:

10 “It may have this effect, given the confidentiality rule in 73(3)(c)(i), because it could
11 prevent national courts informed” is corrected to “It may have this effect, given the
12 confidentiality rule in 74(3)(c)(i), because it could prevent national courts for being
13 informed”

14 *Page 6, lines 23-24:

15 “Therefore, these instructions not directed to witnesses” is corrected to “Therefore, this
16 instruction is not directed to witnesses”

17 *Page 31, line 17:

18 “in Abobo and the leadership” is corrected to “in Abobo under the leadership”