

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Geoffrey Henderson and
7 Judge Olga Herrera Carbuccion
8 Trial Hearing - Courtroom 1
9 Monday, 11 September 2017
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:09] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:31:27] Good morning. Good morning to
15 everybody in the courtroom. There is nobody there in the courtroom.
16 Before calling the witness in, I've just to read out a decision, and this is the Chamber's
17 oral ruling on the urgent Defence request for an extension of time for its responses to
18 the Prosecutor's application for the introduction of video evidence under paragraph
19 43, 44 on the directions of conduct of the proceedings and notice that it will not call
20 Witness P-541 to testify. The Prosecutor's application is filing number 998, dated 31
21 July 2017, with confidential annexes.
22 On 4 August 2017, the Defence for Mr Blé Goudé requested that the time limit for
23 responses to this application be extended until 5 February 2017, and I'm referring to
24 filing number 1000. On the same day the Defence for Mr Gbagbo submitted filing
25 number 1001 supporting the request.

1 On 7 August 2017, by email, the Prosecutor requested the Chamber to discuss the
2 request orally in the courtroom, in particular in light of its impact on the schedule for
3 the remainder of the trial.

4 On the same day, also by email, the LRV supported the Prosecutor's request and
5 asked that any extension of the time limit to respond to the Prosecutor's submission of
6 video evidence be also granted to her benefit.

7 The Chamber by email decided to postpone the decision on the request and to hear
8 further submissions after the summer recess.

9 On 28 August 2017, the Prosecutor submitted that any extension of the time limit
10 should take into account her need to be aware of any challenges to the videos before
11 the closing of the presentation of her evidence. Both Defence teams responded
12 reiterating their request, highlighting the exceptional amount of material covered by
13 the Prosecutor's application. And I refer to transcript T-181, page 6, line 4, to page 9,
14 line 8 of the English version.

15 The Chamber notes the nature and content of filing 998, in particular the amount of
16 material referred to and recalls that the Prosecutor benefited twice from an extension
17 of the time limit originally set for the submission of the application.

18 In line with its previous decision number 951, dated 7 June 2017, extended for the
19 second time the time limit for the Prosecutor's submission, the Chamber finds good
20 cause has been shown for a similar extension of the limit, of the time limit to be
21 granted to the benefit of all responding parties.

22 In light of the submissions, of the Prosecutor's submissions as to the impact of the
23 deadline for responses in the schedule of the proceedings and of the calendar as it
24 currently stands, the Chamber decides that the time limit for responses to filing 998 is
25 extended till 15 January 2018, which is also the date where we presumably resume the

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 trial after the Christmas recess.

2 This is the oral ruling on the request by the Defence for an extension of time limit, of
3 time.

4 And now I ask the court usher to introduce Witness 585 so that we can start the
5 questioning.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE TARFUSSER: [9:37:03] Good morning, Dr Clark.

8 WITNESS: CIV-OTP-P-0585

9 THE WITNESS: [9:37:08] Good morning.

10 PRESIDING JUDGE TARFUSSER: [9:37:10] Good morning. Before starting the
11 questioning by the parties, first the Office of the Prosecutor and then the two Defence
12 teams, I would ask you first to identify yourself completely.

13 THE WITNESS: [9:37:26] My name is John Clark. I'm a forensic pathologist from
14 the United Kingdom.

15 PRESIDING JUDGE TARFUSSER: [9:37:32] And when and where were you born?

16 THE WITNESS: [9:37:34] I was born in the United Kingdom in September 1951.

17 PRESIDING JUDGE TARFUSSER: [9:37:40] And so you're a British national?

18 THE WITNESS: [9:37:44] Yes.

19 PRESIDING JUDGE TARFUSSER: [9:37:45] Okay. Mr Clark, I hear that you are
20 quite a speedy speaker, so I would ask you to speak slower.

21 THE WITNESS: [9:37:56] Okay.

22 PRESIDING JUDGE TARFUSSER: [9:37:57] Because we have translation issues --

23 THE WITNESS: [9:37:59] Yes.

24 PRESIDING JUDGE TARFUSSER: [9:37:59] -- in French and we have interpreters
25 and court reporters who have to interpret and to write down, so there will be a

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 continuous issue of trying to slow down. So if I give you a sign to slow down, it's
2 because I hear in my ears that from the booths there is some problem, okay.

3 So you know that this Chamber has been established to try the case of the Prosecutor
4 against Mr Gbagbo and Mr Blé Goudé.

5 THE WITNESS: [9:38:40] Yes.

6 PRESIDING JUDGE TARFUSSER: [9:38:42] And you are called to assist us in our
7 search for the truth. And this in your case refers to your expertise in the area you're
8 an expert.

9 You will be obviously asked questions by the lawyers, by the Office of the Prosecutor
10 first and then by the two Defence teams. And before doing so, obviously, your only
11 duty is to respond and to respond truthfully. And to that effect I would ask you to
12 read out the formula you have in front of you.

13 THE WITNESS: [9:39:27] I solemnly declare that I will speak the truth, the whole
14 truth and nothing but truth.

15 PRESIDING JUDGE TARFUSSER: [9:39:33] Thank you very much. Obviously just
16 a duty of mine to inform you what you surely know is that giving false testimony is
17 an offence against the Court. And having said that, I give immediately the floor to
18 the Office of the Prosecutor for his questions, Mr Demirdjian.

19 MR DEMIRDJIAN: [9:39:55] Thank you. Good morning, Mr President. Good
20 morning, your Honours.

21 QUESTIONED BY MR DEMIRDJIAN:

22 Q. [9:40:00] And good morning to you, Dr Clark.

23 A. [9:40:03] Good morning.

24 Q. [9:40:05] Dr Clark, you told us a moment ago you were a forensic pathologist?

25 A. [9:40:10] Yes.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 Q. [9:40:10] How many years have you been a forensic pathologist?

2 A. [9:40:13] About 32, 33 years.

3 Q. [9:40:14] I'm pausing for the interpreters.

4 Can you recall approximately how many times you've given expert testimony as a
5 forensic pathologist?

6 A. [9:40:28] Well over a hundred times, if not more.

7 Q. [9:40:33] And you've given testimony, I believe I can see this from your resume,
8 at the international level as well?

9 A. [9:40:39] Yes. This is at the ICTY, former Yugoslavia tribunal. I've given
10 evidence there at least eight times, I think, and a couple of times in Bosnia as well at
11 the state court.

12 PRESIDING JUDGE TARFUSSER: [9:40:55] Excuse me, Mr Demirdjian, may I
13 suggest to keep this part very, very short.

14 MR DEMIRDJIAN: [9:41:01] Absolutely, your Honour.

15 PRESIDING JUDGE TARFUSSER: [9:41:03] Because I think it's not challenged, it's
16 all well-known, it's written down. So we have it in the record. I mean, there is no
17 need to go through it in detail.

18 MR DEMIRDJIAN: [9:41:13] Not at all, your Honours, not at all.

19 PRESIDING JUDGE TARFUSSER: [9:41:15] It's not challenged, right? This is not
20 challenged? Okay.

21 MR DEMIRDJIAN: [9:41:20] We actually have the resume which can be displayed,
22 it's 0100-0665 at tab 2 of our list.

23 Q. [9:41:29] Just a couple of things that are not in great detail in your CV, Dr Clark.
24 Which incidents were you involved in when testifying at the ICTY?

25 A. [9:41:39] Mainly translated to Srebrenica, but also the north, the north of Bosnia

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 and the Tomasica, partly, partly, the part of the Mladic trial, but also trials around
2 Visegrad and in Knin in Croatia. So quite a widespread area involvement.

3 Q. [9:42:13] Very well. And with respect to Srebrenica, can you tell us
4 approximately how many autopsy reports you performed or what was your role or
5 involvement in that case?

6 A. [9:42:23] Well, really for the whole of the Bosnia work, it involved, I was in
7 charge with the mortuary operations, so I coordinated that. I participated in the
8 autopsies obviously. I gathered all the autopsy reports together from all of my
9 colleagues and produced final reports. So I would have been looking at about at
10 least 3,000 autopsy reports.

11 Q. [9:42:52] Very well. It is quite right that you are currently involved in
12 exhumations in the Falkland Islands?

13 A. [9:43:04] I have just finished there. That was work for the ICRC. That was for
14 identification purposes related to the conflict there in 1982.

15 Q. [9:43:20] Again, how many bodies did you find in this incident?

16 A. [9:43:22] We looked at 120 bodies.

17 Q. [9:43:24] And were you able to establish cause of death in those cases?

18 A. [9:43:29] We were. That was not our prime purpose. But we obviously noted,
19 noted injuries and were able to consider certainly cause of death.

20 Q. [9:43:42] Very well. So you're still very active at the moment?

21 A. [9:43:46] Yes.

22 Q. [9:43:46] With this, that work?

23 A. [9:43:48] Yes.

24 Q. [9:43:48] Okay. I'd like to talk about some basic principles of forensic
25 pathology before we look at the autopsy reports you prepared here. First if you can

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 maybe tell the judges in your line of work what is the scope of forensic pathology,
2 what does your work entail?

3 PRESIDING JUDGE TARFUSSER: [9:44:06] Well, Mr Demirdjian, yes, please go
4 ahead.

5 THE WITNESS: [9:44:16] As a forensic pathologist, I'm a medical doctor. I
6 specialized in an area which tries to determine why people have died, and in
7 particular why people have died in perhaps suspicious circumstances or suffering
8 injuries. So my main expertise is interpretation of injuries and cause of death.

9 MR DEMIRDJIAN: [9:44:48]

10 Q. [9:44:50] And does the forensic pathologist get involved in establishing the
11 identity of victims?

12 A. [9:44:57] Yes, we do. We certainly assist in that process. We will provide
13 material for others to make the definitive diagnosis, either by documentation or DNA
14 samples or dental identification. So we sort of, we assist in that, although we don't
15 usually do the final process.

16 Q. [9:45:29] What would you consider to be optimal conditions to perform your
17 work?

18 A. [9:45:38] Well, obviously good mortuary facilities; dealing with a case that a
19 person has not -- has just recently died, so the body is in good condition; a bit of
20 background information, general information about the case. So these are the sort of
21 main things that we would -- would be the optimum position.

22 Q. [9:46:11] And when producing the results of an autopsy, can you tell us what
23 kind of limitations you face?

24 A. [9:46:19] Well, depends on the circumstances. If we're speaking about these
25 specific cases, clearly the fact that the bodies had been dead for a number of years is

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 quite a significant limitation.

2 In these cases, again, we did not have all the ideal facilities to carry out the autopsies,
3 but we certainly did our best and did what we could, but very conscious in coming to
4 the conclusions about these cases of the limitations that we had to bear in mind.

5 PRESIDING JUDGE TARFUSSER: [9:47:07] Can we go to the merits now?

6 MR DEMIRDJIAN: [9:47:09] Yes, your Honours.

7 PRESIDING JUDGE TARFUSSER: [9:47:12] Thank you.

8 MR DEMIRDJIAN: [9:47:13]

9 Q. [9:47:13] Now, in your reports, Dr Clark, there is some terminology I'd like you
10 to explain to us. The first one is the term "bevelling" which we've seen in some of the
11 reports. Can you tell us what that refers to?

12 A. [9:47:24] "Bevelling" is a term in respect of bone, and it refers, we use it when
13 talking about a bullet, generally a bullet going through a bone. When a bullet hits
14 the outer surface of a bone, it will create a hole. And when it goes through and
15 comes out the other side of the bone, not the other side of the skull, the other side of
16 the bone, it produces a hole on the inside, and that hole on the inside tends to be
17 bigger, it's sort of wedge shaped, that's what we call bevelling.
18 Similarly, if, say, a bullet was coming one side of the skull and coming out of the
19 other, where it comes out the other side, the outer surface will be widened, wider
20 than the inner surface and, again, that's bevelling. So that's internal bevelling on that
21 side and external bevelling on the other side.

22 And it happens in other bones as well, but particularly the skull. And the reasons
23 why we look at it, it assists us in determining the direction of a bullet going through a
24 bone.

25 Q. [9:48:44] Very well. In the reports you also see that clothes have been washed.

1 Could you tell us what is meant by washing? What does that process exactly
2 involve?

3 A. [9:48:58] Well, it is as simple as that, these clothes on the bodies were dirty and
4 stained. They're just washed in water and detergent probably, and then we could
5 see the colour, the original garment a lot clearer, that's simply as simple as that.

6 Q. [9:49:20] In this process, is there any concern that you may lose some items of
7 evidential value in the washing process or are there some procedures in place to
8 avoid that?

9 A. [9:49:36] Well, as we took the clothing off the body, we had a look at it in its
10 dirty state. And anything that happened to be on the surface we'd know it. So
11 when we gave it over to washing, we were reasonably happy that we'd seen
12 everything and that things would not be lost.

13 Q. [9:50:01] Okay. And the last term that I'd like to cover, you talk about formalin
14 in the report. What is it used for?

15 A. [9:50:10] Formalin is a fluid which is used to preserve body tissues. This could
16 be either small bits of tissue, a bit of heart, a bit of lung, et cetera, and it preserves the
17 tissue for a long time, or sometimes it is used to preserve the whole body. That's a
18 process called embalming.

19 And this can take the form of either injecting formalin inside the body into the
20 bloodstream or inserting it into cavities or, alternatively, just putting the body into a
21 bucket or a bath of formalin. Whatever, the formalin gets into the tissues and
22 preserves them, makes them hard and preserves them.

23 Q. [9:51:07] Does it also preserve organs?

24 A. [9:51:11] Yes.

25 Q. [9:51:12] And when exhuming a body and conducting an autopsy, how do you

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 know or what leads you to conclude that the body was preserved using formalin?

2 A. [9:51:22] Usually the smell that's -- formalin has a very distinctive smell. And it
3 sort of irritates the eyes as well. So we would know immediately the body has been
4 in formalin. Also the fact that the body is, the colouration and the preservation of it
5 would lead us to believe that.

6 Q. [9:51:44] So you came to work on this case in January 2015. And I believe in
7 early January you received a letter of instruction. For the record we don't need to
8 display it, but it's 0077-0049 at tab 213.

9 In fact, Dr Clark, before we go any further, do you have everything with you, your
10 reports, all the documentation?

11 A. [9:52:14] Yes.

12 Q. [9:52:14] You have it before you? Very well.

13 Now, the letter of instruction for January 2015, actually, we could display it just for
14 the sake of completeness, so 0077-0049.

15 Very well. We don't have to broadcast it. I believe it might be confidential.

16 Okay. So this letter is addressed to you and to Professor Yapo Etté. You may have
17 an English translation yourself. This is the French version.

18 A. [9:53:07] Right.

19 Q. [9:53:08] We see a number of points here. And more specifically, if we turn to
20 the second page, we see up to nine points, which include among others to carry out
21 external examination of bodies, to take relevant photographs, collect samples.

22 MR JACOBS: [9:53:35] Monsieur le Président.

23 PRESIDING JUDGE TARFUSSER: [9:53:38] Yes.

24 MR JACOBS: [9:53:40] (Interpretation) Can we know whether the document is
25 confidential?

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 PRESIDING JUDGE TARFUSSER: [9:53:46] Yes. I don't know why the document is
2 confidential, and I don't know why we don't go to the autopsies themselves, because
3 we all know these things. We are not a jury. Again, I want to emphasise this.

4 MR DEMIRDJIAN: [9:54:07] Yes, your Honours.

5 PRESIDING JUDGE TARFUSSER: [9:54:08] It's not the first time that we see or we
6 have in front of us a forensic pathologist.

7 MR DEMIRDJIAN: [9:54:16] Right. No, no, I know. In terms of the terms he was
8 given --

9 PRESIDING JUDGE TARFUSSER: [9:54:18] Yes, but --

10 MR DEMIRDJIAN: [9:54:20] -- before we get to the reports, I think we have to put it
11 on the record.

12 PRESIDING JUDGE TARFUSSER: [9:54:23] We also know what formalin is.
13 Otherwise I think that Dr Clark will explain it in the context of the questions on the
14 work he did.

15 MR DEMIRDJIAN: [9:54:35] Sure. Your Honours, I'm getting to it. I just didn't
16 want to assume --

17 PRESIDING JUDGE TARFUSSER: [9:54:39] Yes.

18 MR DEMIRDJIAN: [9:54:40] -- that all the terms were understood.

19 PRESIDING JUDGE TARFUSSER: [9:54:42] All the terms are understood.

20 MR DEMIRDJIAN: [9:54:44] Very well.

21 Q. [9:54:45] Okay. Now, on this first mission, Dr Clark, can you tell us who you
22 worked with?

23 A. [9:54:55] I worked with -- well, I was asked, approached initially by Dr Baccard,
24 the forensic coordinator at the ICC.

25 PRESIDING JUDGE TARFUSSER: [9:55:04] Yes, yes, excuse me. Why is it

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 confidential? This was the request of the Defence. And I would agree that there is
2 no --

3 MR DEMIRDJIAN: [9:55:26] At this stage, your Honours, it doesn't have to be
4 confidential anymore, yes.

5 PRESIDING JUDGE TARFUSSER: [9:55:29] Okay. So we can broadcast it.

6 MR DEMIRDJIAN: [9:55:31] Yes.

7 PRESIDING JUDGE TARFUSSER: Thank you.

8 MR DEMIRDJIAN:

9 Q. [9:55:33] Apologies, Dr Clark, if you may continue on that, the issue of who you
10 worked with on this mission.

11 A. [9:55:39] Yes. I worked with a pathologist from Abidjan, Professor Yapo Etté; a
12 colleague of hers, Dr Djodjo; with Dr Baccard, who is the forensic coordinator of the
13 ICC; and Sabina Zanetta, who was the forensic officer with the ICC; along with a local
14 technician. So that was the team.

15 Q. [9:56:10] Okay. And for this first mission, you did draft an overall report on
16 autopsies. If we can display it, it's CIV-OTP-0077-0002. It's at tab 202 of our list.
17 Thank you. Now we see the overall report before us, Dr Clark. Do you have it in
18 front of you?

19 A. [9:56:46] Yes.

20 Q. [9:56:46] Very well. Now, in the first paragraph you indicate that this mission
21 related to alleged victims of the shelling of a market in Abidjan on 17 March 2011.
22 So could you tell us first how were you informed of this?

23 A. [9:57:06] I was informed by Dr Baccard when he initially approached me.

24 Q. [9:57:15] Very well. In the last paragraph of this page, you explain you took
25 part in the exhumation of bodies on January 14th. So can you tell us in general what

1 was your role on this occasion?

2 A. [9:57:35] This was when we were all at the cemetery, and the bodies were being
3 exhumed from the graves. Most of the physical work was done by IVOSEP staff and
4 we just observed largely.

5 At times when the body was actually removed from the grave, we would open the
6 body bag initially to confirm there was a body there or perhaps to see, if we could,
7 male or female, basic things like that, did no more, and then we sealed the body, body
8 bag, and it went to the mortuary. So my own role was very much as an observer at
9 that stage. Others were taking photographs and doing formal records.

10 Q. [9:58:40] And following this you say that the bodies were taken to the mortuary?

11 A. [9:58:45] Yes.

12 Q. [9:58:46] And you took part in autopsies at the mortuary; is that correct?

13 A. [9:58:50] Yes. The main role of the forensic pathologist is in the mortuary. So
14 that's when we kind of took over the process.

15 Q. [9:58:57] So that's on the next page. At page 2 you indicate that the
16 post-mortem examinations took place on 10 bodies and were carried out at a
17 mortuary at the Institute of Legal Medicine at the University of Félix
18 Houphouët-Boigny. Could you tell us a little bit about the conditions at this
19 mortuary?

20 A. [9:59:23] It's quite a good mortuary. It had clean, good fridges, good tables,
21 instruments. So it was a comfortable place to work in.

22 Q. [9:59:39] How do you compare conducting the examination of a body at a
23 mortuary as opposed to conducting it at the grave site?

24 A. [9:59:50] Well, by far the best place to examine a body properly is in the
25 mortuary where you have proper facilities, lighting, a table. Yes, so a mortuary is

1 certainly by far the best.

2 Q. [10:00:12] At the next page, page 3, you describe the autopsy procedure with
3 several bullet points. Now, before going into the specifics, is the procedure always
4 the same when you are conducting an autopsy in a mortuary?

5 A. [10:00:36] Not always the same. Depends on the case. For instance, in routine
6 practice you do not tend to have a sealed body bag. You probably would not take
7 photographs of the body bag itself or seals. But in general, the process is that a body
8 is removed from a refrigerator, then examined with the clothing on, then examined
9 externally with the clothing off, and finally an internal examination carried out. So
10 it's sort of standard procedure for any autopsy.

11 Q. [10:01:18] At the bottom of this page you explain that for each case an autopsy
12 report was prepared in English by yourself and sent to Professor Yapo Etté for
13 approval.

14 So in terms of preparing these reports, is this the process you always followed when
15 performing autopsies with Professor Yapo Etté?

16 A. [10:01:40] Yes. I mean, most autopsies are done by just the one pathologist.
17 Here we were doubling up. It wasn't just sent for approval. I mean, it was sent for
18 her comments as well, if she wanted to make any. And I would certainly be happy
19 with that. So I prepared the reports. She looked at them, we changed anything that
20 she suggested and then printed out finalised versions, signed them and that was that.

21 Q. [10:02:20] In this specific mission, had the bodies been previously identified?

22 A. [10:02:29] Not specifically, other than -- well, they had not been identified
23 scientifically, in other words, by DNA or dental records. They had been, as I
24 understood it, identified in terms of what graves they were in. So that was the
25 extent of the examination.

1 But this is why all these reports that we produced are just a number rather than a
2 specific name. And in these cases we took samples to try and scientifically identify
3 them.

4 Q. [10:03:10] Thank you for that, Dr Clark.

5 So, in fact, if we turn back to page 2, and we look at the third paragraph, you state
6 here, and this is the paragraph that begins with "The second group of bodies
7 exhumed," you state here that it became obvious that there was a disparity between
8 names on grave markers on the surface and the names on plaques on the unearthed
9 coffins and even on the body bags. You say that later in the report.
10 So how did this issue affect the work conducted by the team?

11 A. [10:03:52] Well, it made it slightly confusing. So we thought the answer to this
12 would be to exhume all the bodies, there were four bodies in that particular area, and
13 in the hope that at least two out of the four might have the correct identification.
14 That was our approach there. There were in fact five, five graves. But one of them
15 was empty. So the four bodies out of five graves, and so we decided to look at all
16 four.

17 Q. [10:04:38] So with respect to this group of ten bodies, you were, however, able to
18 establish the cause of death; is that right?

19 A. [10:04:47] Yes. Some of them we gave a cause of death as unascertained. And
20 there are reasons explained for that. But generally we came to a conclusion about
21 each case usually with a fairly specific cause of death.

22 Q. [10:05:09] Very well. So I'd like to move to another mission.

23 Your Honours, before I move to it, we do have ten autopsy reports for this
24 exhumation in January. However, given that the bodies have not been identified, we
25 will not submit them. So I will move to the 3 March incident, your Honours.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 So you did return to Abidjan for autopsies four months later I believe in May 2015?

2 A. [10:05:40] Yes.

3 Q. [10:05:40] Very well. Could you tell us how you came about to take part in this
4 mission?

5 A. [10:05:46] Well, again, I was approached by Dr Baccard, I think in about March
6 2015, asking if I would be available to go back to Abidjan and carry out a further
7 mission again with Professor Yapo Etté.

8 Q. [10:06:08] Now, in the case of the January mission, we saw an overall report, but
9 I understand that for the second mission we have four autopsy reports, and three of
10 which are of relevance to the incident. But you did not prepare an overall report for
11 this?

12 A. [10:06:25] No. I thought with three cases there was enough explanation in the
13 reports themselves.

14 Q. [10:06:34] Very well. So let's look at these reports, if we could look at the first
15 one, which is CIV-OTP-0081-0518. It is at tab 3 of our list.

16 Now, I see that the format appears to be the same throughout these reports. I will
17 take a bit more time with the first one and we'll move through the following two a
18 little bit quickly. So at the top we see a number, top right, DZF1C5. What does this
19 number refer to, Dr Clark?

20 A. [10:07:18] That was a number which had been put on the body bag in January
21 2015 when these bodies, when efforts were made to positively identify these bodies.
22 So just to put it in time context, this was the day after we had finished the initial
23 mission of the ten bodies.

24 We went to Treichville hospital and took teeth and bone samples from a number of
25 other bodies. And out of these samples, these three bodies were positively

1 identified.

2 Although I was present in the mortuary, I took no active part in that process and
3 wasn't aware of what particular cases were being looked at. I just knew that it was
4 going on. And so when we came back in May -- sorry, as these samples were taken,
5 then the body bag was closed and this number was put on it, onto the body bag, and
6 that's what this number is on the report.

7 Q. [10:08:47] Very well. We see a name here "Sylla Malon" as the name of the
8 victim. How did you come to learn the identity of the victim?

9 A. [10:08:58] I was just told. I mean, clearly in that space of time between January
10 and in May, identification had been achieved by DNA results. So as we started the
11 autopsy, I was informed by Dr Baccard, I think, that this was the name of this
12 particular body, the person in this body bag. And so I just assumed that was the
13 identification and worked on that basis.

14 Q. [10:09:34] Very well. The place of autopsy is the same mortuary as the one in
15 January?

16 A. [10:09:40] Yes.

17 Q. [10:09:42] And below the first box we see "Cause of death: Gunshot injury of
18 neck and left shoulder."

19 A. [10:09:50] Yes.

20 Q. [10:09:51] Now, this information is provided by whom?

21 A. [10:09:54] Myself.

22 Q. [10:09:54] In the middle of that first page we also see those who were present.
23 Could you briefly tell us the role of each member of this autopsy?

24 A. [10:10:09] Well, the first two, as I said previously, myself and Professor Yapo
25 Etté, we were the forensic pathologists. We worked together, and I mean together

1 on each body. There was a further pathologist there trainee, Dr Djodjo, who assisted,
2 took photographs and notes for Professor Yapo Etté. There was the technician called,
3 I think called Alfred, but that's not his full name. He assisted, he did the washing of
4 the clothing and general mortuary duties.

5 And then Dr Baccard was in overall charge of the operation taking notes for myself,
6 coordinating the DNA sampling or any sampling needing to be done at that stage.

7 And Sabina Zanetta again with the ICC taking photographs and looking after all the
8 exhibits and samples.

9 Q. [10:11:21] Very well. So here we see a section called "Wrappings around the
10 body" and below that "Clothing and other items." So you indicate here that you
11 found black long shorts and white underpants?

12 A. [10:11:38] Yes.

13 Q. [10:11:38] So does that mean that when you opened the body you found no
14 clothing for the upper part of the body?

15 A. [10:11:45] That's correct, yes.

16 Q. [10:11:49] Can we turn to page 2. The top part of the page, identification labels,
17 you indicate that you found around the right wrist of the victim this label with the
18 indication madam X, et cetera, et cetera. Do you actually know the origin of this
19 label?

20 A. [10:12:15] No.

21 Q. [10:12:18] And a little bit lower you indicate that, this is under "Examination of
22 the remains," and that first paragraph at the very end you indicate that you found the
23 site of bone sampling from the right femur for DNA analysis?

24 A. [10:12:39] Yes.

25 Q. [10:12:40] So just very briefly, how are you able to identify the site of a bone

1 sampling?

2 A. [10:12:46] When we take a bit of femur for DNA analysis, we saw a portion of
3 bone from it. It clearly, clearly is a new sawed portion of bone that's been taken
4 away, it's very, very distinctive.

5 Q. [10:13:05] Now, in this examination you indicate that the remains were largely
6 complete and that the skull was completely detached. What is that due to, the fact
7 that the skull was completely detached, what is it due to?

8 A. [10:13:28] Well, self-evidently it means that the head is apart from the body. I
9 assumed, I assumed that they were one and the same body. Having assumed that,
10 then we can still do a fairly standard autopsy.
11 You may question why the head was detached. And this was actually a feature of all
12 three cases. I'm not sure if I entirely have the answer, but when bodies break down,
13 they don't always break down in a standard way and some parts will be preserved
14 more than others. Particularly if there is no clothing on the body, these parts tend to
15 break down more easily.

16 Additionally, if there is any injuries in that part of the body, so at the time of death if a
17 part of the body has been injured and they have an open wound, these tissues tend to
18 break down more quickly than the others.

19 But the fact is that in each of these cases the head was actually separated from the rest
20 of the body. I'm not saying it had been chopped off or anything. It's actually
21 natural breaking down. When the tissues around the bones come away, then the
22 bones just begin to separate and the skull will come off.

23 Q. [10:15:19] Very well. Under physical identification, you indicate a number of
24 elements here. I'll focus just on one of them, the fact that you identified the victim to
25 be female according to the feature of the skull and pelvis. Is this the standard

1 method to identify gender?

2 A. [10:15:40] Depending on how much tissue there is in the body. It can be
3 obvious externally it's a male or female. But in skeletonised or decomposed remains,
4 yes, looking at the shape of the skull in the male tends to be different to the female
5 and particularly in the pelvis. There is clear differences between male and female in
6 the pelvis. And we felt confident in saying this was female.

7 Q. [10:16:14] If we turn now to the section entitled "Injuries," we have three points
8 here. First, a vertical fracture in the posterior parietal region and then a gunshot
9 injury of the neck and a gunshot injury of the left shoulder.
10 First of all, when you talk about gunshot injury of the neck at item number 2, you add
11 that with fractures of the posterior arches and left lateral processes of C4, 5 and 6."
12 So processes, are these -- what are they exactly?

13 A. [10:16:56] Yes. I mean, this is a post-mortem document, so we have to use
14 scientific terms. The bones of the neck, there are seven bones of the neck called
15 cervical vertebrae, we call them C1, C2 down to C7. And these are roughly oval or
16 circular bones with a kind of a hole in the middle. And they have different parts of
17 them. So when I talk about posterior arches, it's the bit towards the back of the bone,
18 and the lateral processes is the bits towards the sides of the bone.
19 So they are just parts of the bone which are fractured. And this is the three of them,
20 C4, C5 and 6. To me, this was very typical gunshot damage shattering, shattering
21 the bones. So I was, although, although we just had these bones with no tissues
22 roundabout, I was confident that this was a gunshot injury.

23 Q. [10:18:04] So do I understand from what you just said that it is the shattering of
24 the bones that is indicative of a gunshot injury or are there other factors?

25 A. [10:18:17] No, that was the main, because it was only -- we could only see the

1 bones. We didn't have the tissues roundabout. But if it's from the bones alone, that
2 was a typical gunshot injury. It's difficult to think of anything else which would
3 shatter the bones in that way.

4 Q. [10:18:38] You mentioned earlier that photographs were being taken. Was this
5 throughout the entire autopsy --

6 A. [10:18:46] Yes.

7 Q. [10:18:47] -- or was this specific periods?

8 A. [10:18:48] No, throughout the entire autopsy, including these, damage to the
9 bones is well documented in the photographs.

10 Q. [10:18:57] Very well.

11 A. [10:18:58] And also in diagrams which I prepared on the reports.

12 Q. [10:19:05] So the numbers that we see here, 1, 2, 3, you just mentioned the
13 diagram, we do see them at the end of this report; is that right?

14 A. [10:19:13] Yes.

15 Q. [10:19:13] So if we go to page 5 just to illustrate it for this one, your Honours, so
16 it's the page ending with 0522, so the numbers as we see here, 1, 2 and 3, they refer
17 back to the injuries you listed at page 2 of the report?

18 A. [10:19:37] Yes.

19 Q. [10:19:37] Okay. And the colouring here in red, who placed those colouring
20 here?

21 A. [10:19:43] I did.

22 Q. [10:19:46] Okay. That's just an illustration of what's in the report itself?

23 A. [10:19:51] Yes.

24 Q. [10:19:52] Okay. If we go back to page 3, please, the page ending with 0520, in
25 the first part you explain the issue of commingled bones. I will not delve into it, it's

1 pretty self-explanatory. But I'd like to go to "Items remained" -- sorry, "retained,
2 Retained." What does that refer to, "Items retained"?

3 A. [10:20:20] Well, because we had this additional skull in the body or pieces of
4 skull, in an attempt to try and identify that, we took a piece of the bone and one of the
5 teeth from that skull and to duplicate samples of it, and for comparison, we also did
6 the same with the main skull, if you like.

7 These were taken for the purposes of doing further DNA analysis to achieve even
8 more specific identification.

9 Q. [10:21:04] Okay. But you yourself did not take part in the DNA aspect of it?

10 A. [10:21:08] No.

11 Q. [10:21:09] No.

12 A. [10:21:10] I saw it being done, but I didn't do the analysis or nor did I see the
13 results afterwards.

14 Q. [10:21:17] Very well. In the last segment of this page, "Conclusions," I will not
15 read them all, but if we go to the third paragraph of your conclusions, which begins
16 with "She died from gunshot injuries," here you explain that the victim died from
17 gunshot injuries to the neck and left shoulder, and you add the last sentence,
18 "Damage to surrounding vital structures in the neck are likely to have led rapidly to
19 her death."

20 So how do you reach this conclusion about the vital structures?

21 A. [10:21:54] Yes, that's a good point, because all we're dealing with here really is a
22 skeleton and decomposed tissues. But in my practice as a forensic pathologist
23 dealing largely with complete bodies, I know what tissues surround bones. I know
24 that there are major blood vessels very close to the bones in the skull, the bones in the
25 neck and to some extent in the shoulder, and that without question damage sufficient

1 to fracture three of the bones in the neck are bound to have caused major damage to
2 blood vessels in the neck and other structures there.

3 And I think I'm entitled to do that because of experience as a forensic pathologist and
4 just knowing normal patterns of injuries and what is likely to be the cause of death
5 there. Otherwise we just have to say unascertained in all these cases, which is not
6 particularly helpful. So that's why I felt, you know, because of experience, I was
7 entitled to draw these, that opinion.

8 And just on a more specific point, particularly damage to blood vessels in the neck
9 where there is a huge amount of blood present, if they're damaged, then the person
10 will die very quickly because they're losing all the blood going to the brain.

11 Q. [10:23:47] Thank you, Dr Clark.

12 At the next paragraph, you express the following conclusion, "The nature of the
13 damage was suggestive of the use of high velocity ammunition."

14 Again, how do you come to that conclusion? Perhaps you could specify if there is a
15 difference between high and low velocity ammunition?

16 A. [10:24:11] Yes. Generally low velocity ammunition, say from a pistol or
17 revolver, it's just a bullet, and it will just physically, as it goes through the tissues it
18 produces just the physical hole. So it goes in one, might strike something in the
19 middle and comes out the other side.

20 High velocity ammunition from a rifle, assault rifle or something like that, is a much
21 more powerful missile. It's going at greater speed, intensity and high velocity. It's
22 got a lot of energy. And when it strikes the body, not only does it produce that just
23 simple hole going through the body, but it loses all that energy to the surrounding
24 tissues called cavitation effect. And this causes the shattering of the bones.

25 So you see this particularly in the skull. A pistol bullet would just cause a little,

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 would cause a hole, one going in one side and coming out the other. A high velocity
2 would cause a hole, but also extensive shattering of the skull around about it. So
3 that's how we can say that.

4 Q. [10:25:39] Thank you. And if you can go to the next page. So we see the
5 signature block, that is your signature on the left side?

6 A. [10:25:56] Yes.

7 Q. [10:25:56] So was the procedure followed in a similar fashion as with respect to
8 the autopsy reports in January? Were you the one who drafted the reports first and
9 sent it for comments or --

10 A. [10:26:10] Yes. In fact, we had the opportunity to, I prepared them before I left
11 Abidjan, so I had the chance to discuss them personally with Professor Yapo Etté.
12 And we discussed them and she signed them at that stage.

13 Q. [10:26:25] Very well.

14 Your Honours, with respect to this autopsy report, there are approximately 70
15 photographs that are related to it. I do not intend to show them. If I could just ask
16 them to be submitted. The ERN range is 0080-1885 to 0080-1954.

17 If we could move, Dr Clark, to the next autopsy report, which is that for victim
18 DZF1C6, the ERN is CIV-OTP-0081-0523. And that is number 4 on our list. For this
19 one we will go slightly faster since we saw the features in the first report, Dr Clark.
20 Do you have the report in front of your eyes?

21 A. [10:27:38] Yes.

22 Q. [10:27:38] Very well. So this report relates to victim Ouattara Gnon Rokia.
23 Again, is it the same process in terms of her identity and the numbering on the
24 report?

25 A. [10:27:51] Yes.

1 Q. [10:27:52] And for this victim the cause of death is gunshot injuries of neck,
2 shoulder and chest. So I'm not going to dwell on the details. Could we go to the
3 second page to look at the injuries section. Okay. So it's at the bottom of the page.
4 For this victim, first you identify two fractures of the skull at item 1 and 2. So that's
5 at the bottom of page 2. And if we turn to the top of page 3, we see three gunshot
6 injuries to the neck and cervical vertebrae as well as the chest and the left shoulder.
7 Again, these are all drawn on the illustration on the last page; is that right?

8 A. [10:29:05] Yes.

9 Q. [10:29:06] So can you tell us for this victim how you conclude a little bit below,
10 it's actually in your conclusions, that she died of two shots. So this is at the third
11 paragraph of your conclusions, you explained she died from probably at least two
12 gunshot injuries. How did you reach this conclusion?

13 A. [10:29:26] Yes, I think it could well have been more than two, but I've said a
14 minimum of two. It's just that she had a shot clearly to her neck and there was also
15 one lower down. We actually in this case could actually see a hole in the skin.
16 There was still some skin on the shoulder. So on the left shoulder there was clearly
17 an entrance there.
18 So that was at that level. The neck was a higher level. So at least two. I suspect
19 there may have been more than two to cause the extent of damage. But a minimum
20 of two gunshot, two shots to the body.

21 Q. [10:30:13] In that same section, Conclusions, at paragraph 2, you indicate that
22 the body was well preserved for someone who had been dead for four years.
23 So is this something you would expect or did it surprise you?

24 A. [10:30:30] I have to say nothing is surprising me now about preservation of
25 bodies. In work I've done in the past three or four years, I've been astonished at how

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 well preserved bodies can be after 35 years, for instance, in the Falklands. And there
2 is a lot we don't know about why some bodies decompose more rapidly than others.
3 There are factors, the fact that if your body is preserved in a body bag, it will preserve
4 the tissues a lot more than if it's not.

5 The clothing, as I've suggested; open wounds, they can have a factor. So in general it
6 surprised me a little, the degree of preservation, but I can I think less so now.

7 Nothing surprises me.

8 Q. [10:31:33] Thank you, Dr Clark.

9 Your Honours, just for the same report, we can have a set of photos which we would
10 like to submit on the record. The ERNs are 0080-1955 to 0080-2031. These are items
11 125 to 201 on our list.

12 So we now come to the third and last report, Dr Clark. This is for victim DZF1C11,
13 Koné Moyamou. The ERN of the report is CIV-OTP-0081-0528. And this is number
14 5 on our list.

15 So again we have the same format. For this victim you indicate that the cause of
16 death is gunshot injury of right shoulder.

17 I would like to take you to the second page in the segment entitled "Examination of
18 the Remains." In the second line here you indicate that the body had been preserved
19 in formalin. So out of the three this is the only one where I've seen this method; is
20 that right?

21 A. [10:33:19] Yes.

22 Q. [10:33:20] Now, under item -- well, and for this specific case again, can you tell
23 us how you were able to tell that formalin was used?

24 A. [10:33:29] Again primarily the smell of the formalin, it's a very distinctive odour,
25 and the colouration and the hardness of the tissues indicated that to us.

1 Now, how much formalin had been used and what process had been used, I'm not
2 sure. I suspect that the body had just been simply placed into a vat of formalin. I
3 may be wrong, but that would be my impression.

4 Q. [10:34:10] So it wouldn't have been injected internally?

5 A. [10:34:14] I don't know what the facilities or the normal procedure in Côte
6 d'Ivoire is. I saw no obvious injection holes. And there was no obvious needles
7 going into the chest cavity, for instance. So I think it's more likely it was just doused
8 in formalin.

9 Q. [10:34:49] On this point if I could take you to the top of page 3. Under "Internal
10 Issues," you note here that no internal organs remained?

11 A. [10:35:02] Yes. That again suggests to me that the formalin had only been
12 applied fairly superficially and not internally.

13 Q. [10:35:18] Very well. If we can go back to page 2, at the bottom of that page
14 and focus on the section entitled "Injuries," so the first injury to the head and neck,
15 you indicate that this is a fracture of the left side of the face, and under item 2, a
16 fracture of the base of the coracoid process with a vertical fracture running down
17 from here through the idle part of the blade through the lower part of the medial
18 border.

19 So, again, we'll see this illustrated at the end of your report, but in terms of
20 terminology, "coracoid process," what does that refer to?

21 A. [10:36:09] It's part of the shoulder blade. The shoulder blade is just the back of
22 your shoulder. And the upper part of it where it joins onto the upper arm bone and
23 to the collar bone, there are two processes of bone, sort of pieces of bone which stick
24 out, project out. One of them is called the coracoid process. So that was damaged.
25 And there is a fracture of the rest, rest of the shoulder blade as well.

1 Again, to me, that looked fairly typical gunshot injury, the part that I've seen before.

2 Q. [10:37:02] So this vertical fracture that you explain here, can you tell us exactly,
3 because the terms "medial border" and "blade," can you explain to us what that is, the
4 vertical fracture?

5 A. [10:37:15] Well, just when a bullet damages a bone, as I say, it causes the, when
6 it actually physically strikes the bone, will cause damage, but it also produces
7 fractures which run from that. So it's just a line running down from where that
8 fracture is, where the fracture started.

9 Q. [10:37:34] And just so we understand well, when you talk about fracture, is this
10 just a line on the bone or is it that the bone is cracked?

11 A. [10:37:46] No. The bone is split, split, yes.

12 Q. [10:37:52] Very well. So in comparison to the first two victims, how would you
13 compare the injuries of this one in terms of --

14 A. [10:38:00] Yes. I had to think, we had to think quite a lot about this case,
15 because the only injuries we saw were these fractures on the left side of the face and
16 this fracture of the scapula.
17 The bones round about these, for instance, the collar bone and the upper arm bone
18 were all intact. But I still felt confident that, particularly on the shoulder blade, this
19 was a gunshot injury. And we had the opportunity -- well, fortunately the clothing
20 also showed what looked to me like an exit hole in the clothing at the back of the right
21 shoulder. And it was remarkably similar, the hole we had seen in the first case we
22 discussed.
23 Also in this case none of the neck bones were present. They were all missing. And
24 it would be entirely possible that it was a gunshot injury coming through the neck
25 and coming out at the left shoulder.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 As I say, I felt all in all that I could give a cause of death here. I didn't do that lightly.
2 And as you'll see from a number of other cases, I ended up giving unascertained as
3 the cause of death. So I don't rush into giving causes of death. But in this case I felt
4 that this was, the cause of death was an injury in the region of the neck and shoulder,
5 and I gave actually cause of death as the shoulder because I could physically see that.
6 So I accept the evidence here is less than in the other two, but just taking everything
7 into consideration I felt justified in saying that.

8 MR DEMIRDJIAN: [10:40:15] Your Honours, just to illustrate what Dr Clark has just
9 told you about, the fact that he's concluded that some of them have been
10 unascertained, you will find this in the overall report we discussed this morning,
11 which is CIV-OTP-0077-0002. At the end there is a summary of findings, some of
12 them are unascertained there.

13 Q. [10:40:41] Very well. Well, you've answered a question that I was going to ask
14 you about the missing neck bones.

15 Again, when we look at the conclusion, which is on page 3, if we can enlarge that big
16 paragraph starting with "Only two obvious injuries are present," here again you
17 conclude that a number of vital structures lie in the general region.

18 So is that the same explanation you gave us earlier?

19 A. [10:41:22] Yes.

20 Q. [10:41:24] And with respect to these three autopsies you conducted on these
21 victims, what can you tell us about the location, the general location of the injuries
22 suffered?

23 A. [10:41:36] Well, they're all remarkably similar. All the injuries on all three
24 bodies are at about the same level, the neck and the shoulder area. They all appear
25 to be injuries with bullets coming from left to right. So there is a pattern within them.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 There was no bullet injuries save for lower down on the chest or in the legs, in the
2 pelvis, arm. Everything was around about the neck and shoulder level.
3 I've seen photographs of the scene where the death is, and there are other bodies there
4 with clearly damage to the head. So again, again, all around about the same, same
5 level.

6 MR DEMIRDJIAN: [10:42:41] Very well, your Honours. That does conclude my
7 questions for Dr Clark. Similar to the other autopsies reports, the photographs again
8 which we would like to submit are 0080-1793 to 0080-1841, items 6 to 54 on our list.
9 Dr Clark, thank you for answering my questions.

10 THE WITNESS: [10:43:12] Thank you.

11 PRESIDING JUDGE TARFUSSER: [10:43:13] Thank you very much to the
12 Prosecutor.

13 Thank you, Dr Clark.

14 Before giving the floor to the Defence for Mr Gbagbo, I'm just reading your report,
15 among other things, I would like to ask you a question.

16 When you say, and I'm referring to this last case --

17 THE WITNESS: [10:43:32] Yes.

18 PRESIDING JUDGE TARFUSSER: [10:43:33] -- where your conclusion is that you, as
19 you say, you felt confident in indicating the cause of death as a gunshot injury, in the
20 conclusions you say, "Well, the defect in the clothing lay" -- I read the whole sentence
21 otherwise: "The defect in the clothing lay over the right scapula, and so it seemed
22 entirely reasonable to conclude that the damage seen in the bone did represent a
23 gunshot injury, presumably one passing largely through the top of the shoulder
24 towards the end of its trajectory through the body."

25 Then it comes, "A number of vital structures lie in the general region and such an

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 injury could ultimately have proved fatal."

2 I wonder how you define, in terms of how, well, how do you define the region and
3 which are these, it depends very much on how you define the region to find vital
4 structures, because I'm a lawyer, but I don't think in the scapula there are lots of vital
5 structures.

6 THE WITNESS: [10:44:48] Well, there are. There is a major blood vessel going
7 down the arm, it does come very close to that sort of region. It's not very far away
8 from the side of the neck, which could be injured in that track.

9 So the aorta, which takes the blood from the heart, comes and splits at the top of the
10 chest and branches go just below the collar bone around the shoulder region and then
11 down the arms.

12 PRESIDING JUDGE TARFUSSER: [10:45:28] So it's the aorta you are meaning, you
13 are referring to the aorta essentially?

14 THE WITNESS: [10:45:34] Or the branches, the major branches of that. But the
15 aorta finishes sort of upper chest, but there are major branches come off it going to the
16 arms, going to the brain and veins as well. So there are quite a number of major
17 blood vessels in that quite close region.

18 PRESIDING JUDGE TARFUSSER: [10:45:56] Okay. Thank you very much.

19 Just one other thing. You referred always to gunshot of a high speed ammunition.
20 And in this case you don't talk about -- you just stop at gunshot, is there a reason for
21 this, of high velocity ammunition and here you say gunshot injury?

22 THE WITNESS: [10:46:22] Yes, that's a good point. Well, I suppose I could not
23 entirely say it was high velocity, because the fracturing was relatively, was relatively
24 limited. So I think I've just, yes, just told a gunshot.

25 PRESIDING JUDGE TARFUSSER: [10:46:43] Okay.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

- 1 THE WITNESS: [10:46:44] There conceivably could be another weapon.
- 2 PRESIDING JUDGE TARFUSSER: [10:46:45] Thank you very much.
- 3 Now I give the floor to the Defence for Mr Gbagbo, Maître Altit.
- 4 MR ALTIT: [10:46:50] (Interpretation) Thank you, Mr President. Mr President,
- 5 your Honours, the questioning for the Defence team of Laurent Gbagbo will be
- 6 conducted by Professor Jacobs.
- 7 PRESIDING JUDGE TARFUSSER: [10:47:08] Maître Jacobs.
- 8 MR JACOBS: [10:47:11] (Interpretation) Thank you, Mr President, your Honours.
- 9 QUESTIONED BY MR JACOBS: (Interpretation)
- 10 Q. [10:47:29] Good morning, Mr Witness.
- 11 A. [10:47:30] Good morning.
- 12 MR JACOBS: [10:47:31] Mr President, before we begin the questioning, I would like
- 13 to talk about a procedural issue about the admissibility of materials. I don't know
- 14 whether it is appropriate to talk about this in the presence of the witness?
- 15 PRESIDING JUDGE TARFUSSER: [10:47:54] Which materials are you referring to?
- 16 MR JACOBS: [10:47:57] (Interpretation) The Prosecutor explained to us that he was
- 17 not going to tender the ten autopsy reports.
- 18 Let me explain. He discussed in detail the general report of the witness which deals
- 19 with those autopsy reports. So I really need to have clarification on that. I can
- 20 explain further, but --
- 21 PRESIDING JUDGE TARFUSSER: [10:48:33] Well, you mean that there is a report
- 22 which obviously contemplates all and it cannot be split somehow? Yes, but it can be
- 23 read split, it can be read split. If the other autopsies are not submitted, of course, the
- 24 report referring to those is not submitted.
- 25 MR JACOBS: [10:48:57] (Interpretation) Very well. That was my question. So

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 the general report on the ten autopsies is not to be admitted in the record, because
2 that would change our questioning if those other reports were not admitted.

3 PRESIDING JUDGE TARFUSSER: [10:49:19] I would like you to further go into it,
4 because then I have to give the floor, but I don't want to anticipate, I don't want to
5 give the floor to the other parties without anticipating what I already did out of, yes,
6 immediacy. But I don't think it's a matter of the witness being in or out. I mean the
7 witness, there is no, there is no problem. If the witness doesn't want to hear because
8 he wants to relax, I'm happy if he goes out, but I don't think this influences anyhow
9 the witness.

10 I understood the problem, but you have debriefed me.

11 MR JACOBS: [10:50:04] (Interpretation) Let me explain. During the questioning
12 by the OTP, let me repeat the number, 0077-0002, which is the overall report on the
13 ten autopsies that were carried out in January *2015, this general report includes
14 explanations on the methodology used by the witness in the way the autopsies were
15 carried out and also includes conclusions on a certain number, on a certain number of
16 the autopsies as well as a summary of findings which deals, amongst other things,
17 with the injuries and the causes of death.

18 So obviously if we have to discuss whether this report is to be admitted, then we
19 should be able to discuss the conclusions, and we cannot deal with those conclusions
20 without discussing the reports of the autopsies. So either everything is admitted or
21 nothing is admitted in our opinion.

22 PRESIDING JUDGE TARFUSSER: [10:51:40] Mr Knoops.

23 MR KNOOPS: [10:51:41] Mr President, I would have saved this argument for my
24 closing arguments, but now the issue is raised. The Court might question the issue
25 whether the observation of the Prosecution in transcript page 19, line 10, saying,

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 "Given that the bodies have not been identified, we will not submit them," whether
2 this is part of the exculpatory evidence. And the Court should take notice of this
3 issue because, apparently, the Prosecution intended to relate those bodies to the 17
4 March incident, and now there is no identification that might lead to exculpatory
5 evidence for the Defence and, therefore, it's really a question whether these reports
6 should on that basis be submitted to the Chamber.

7 PRESIDING JUDGE TARFUSSER: [10:52:49] I think if it's not identified it's quite
8 neutral, I would say.

9 Mr Demirdjian.

10 MR DEMIRDJIAN: [10:52:55] Your Honour, we were simply trying to not overload
11 you with material that is not relevant and probative, because there is no identification
12 of the body, we didn't wish to put them on the record. We can submit them all. It's
13 not a problem. And counsel have them, they can use them in cross-examination.
14 We don't have any problem with them being on the record. But as such, because
15 there is no identity, we don't know who these bodies belong to.

16 So if the Defence wants to use them, they've been disclosed, it's in their court, but
17 again we have no objection to putting them on the record.

18 PRESIDING JUDGE TARFUSSER: [10:53:26] Well, I would say that the general
19 report in the part where the general report refers to these ten autopsy reports which
20 are not submitted, I think it is as if it is not submitted, the part of the report. So we
21 can just leave that part which regards, which refers to these ten reports not submitted.
22 They are not submitted, it is considered not to be submitted. I hope I was clear.

23 MR JACOBS: [10:54:10] (Interpretation) Mr President, just to clarify, the parts on
24 the methodology, the procedures used during the autopsies, will those parts be also
25 excluded so that we should know how to conduct our questioning? Because the

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 parts of the reports dealing with the autopsies themselves would not be admitted.

2 PRESIDING JUDGE TARFUSSER: [10:54:42] I will just say that all the parts of the
3 general report which somehow refers to these ten reports which are not submitted,
4 these parts of the general report are not submitted and not considered by the
5 Chamber, okay?

6 MR DEMIRDJIAN: [10:55:02] Mr President, just on the methodology, I think that's
7 the part I focused on.

8 PRESIDING JUDGE TARFUSSER: [10:55:06] Yes.

9 MR DEMIRDJIAN: [10:55:07] I wanted to make sure that's on the record.

10 PRESIDING JUDGE TARFUSSER: [10:55:10] I know, of course. I mean, if the
11 methodology, it's a general methodology, but this is it. I mean, it's difficult, I know
12 it's difficult to split completely, but try to be -- we will not refer to this report in the
13 part which refers to the ten autopsies not submitted.

14 MR JACOBS: [10:55:49] (Interpretation) Mr President, I can see the time. I do not
15 know whether --

16 PRESIDING JUDGE TARFUSSER: [10:56:03] Well, I see the time as well. I've seen
17 the time as well. I just waited that your dialogue with Maître Altit is finished and
18 maybe to hear the outcome of it.

19 MR JACOBS: [10:56:13] (Interpretation) Everything is fine, Mr President.

20 PRESIDING JUDGE TARFUSSER: [10:56:16] Okay. Now it's close to 11. Before
21 starting, we will not start now, but we will have the break until 11.30. Then we start
22 with the questioning by the Defence for Mr Gbagbo. Thank you very much.

23 THE COURT USHER: [10:56:42] All rise.

24 (Recess taken at 10.56 a.m.)

25 (Upon resuming in open session at 11.34 a.m.)

1 THE COURT USHER: [11:34:46] All rise.

2 Please be seated.

3 PRESIDING JUDGE TARFUSSER: [11:35:05] Good morning once again.

4 The floor is immediately to Maître Jacobs.

5 MR DEMIRDJIAN: [11:35:13] Mr President.

6 PRESIDING JUDGE TARFUSSER: [11:35:13] Yes.

7 MR DEMIRDJIAN: [11:35:14] If I may just briefly?

8 PRESIDING JUDGE TARFUSSER: [11:35:16] It's not. Yes, please.

9 MR DEMIRDJIAN: [11:35:18] Your Honours, I just want to, as I discussed with my
10 learned friend during the break, just to recall in our filing number 262 we explained
11 the reason why this overall report was being submitted to explain the process that
12 took place in Abidjan during the exhumation of these bodies and to anticipate any
13 allegations of wrongdoing.

14 So the purpose of this report, just to be absolutely clear, is not to establish that 17
15 March victims listed here at the back --

16 PRESIDING JUDGE TARFUSSER: [11:35:46] Yes.

17 MR DEMIRDJIAN: [11:35:47] -- were the ones who were found in this grave. So it
18 does not relate -- we cannot rely on it to support that.

19 PRESIDING JUDGE TARFUSSER: [11:35:53] I have understood it. I have
20 understood it this way.

21 MR DEMIRDJIAN: [11:35:56] Absolutely. So what we do want to rely on, however,
22 your Honours, is the first three pages which discuss the methodology, because you
23 don't have an overall report for 3 March. And on the last page you'll remember
24 Dr Clark talked about some bodies being unascertained, just that word, to
25 demonstrate again the methodology, that is all.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 PRESIDING JUDGE TARFUSSER: [11:36:14] Okay.

2 MR DEMIRDJIAN: [11:36:15] Thank you.

3 PRESIDING JUDGE TARFUSSER: [11:36:23] Maître Jacobs.

4 MR JACOBS: [11:36:33] (Interpretation) Thank you, your Honour.

5 QUESTIONED BY MR JACOBS: (Interpretation)

6 Q. [11:36:35] Good morning, Witness. My name is Dov Jacobs and I'll be putting
7 questions to you on behalf of the team representing Laurent Gbagbo this morning.

8 Could you specify since when have you been working or cooperating with the Office
9 of the Prosecutor of the International Criminal Court?

10 A. [11:37:06] I was first approached in I think December 2014.

11 Q. [11:37:15] If I'm not mistaken, this morning you said that it was Mr Eric Baccard
12 who had approached you, I don't have the reference in front of me; is that correct?

13 A. [11:37:33] That's correct, yes. He is the forensic coordinator, who I've known
14 for a number of years, and he approached me to see if I would be willing to carry out
15 this work.

16 Q. [11:37:52] When you say that you have known him, do you mean that you have
17 previously worked with him?

18 A. [11:37:59] Yes. In my time in working in Bosnia, he was one of the pathologists
19 who I employed in our team. And we've kept up the friendship ever since.

20 Q. [11:38:20] Thank you, Witness.

21 So if I understand correctly, you conducted two missions for the Office of the
22 Prosecutor in the present case; is that correct?

23 A. [11:38:37] Yes, yes.

24 Q. [11:38:37] As regards the first mission, you received an instruction letter on 9

25 January 2015. Did you discuss the nature of the mission prior to receipt of that letter,

1 discuss it with the OTP?

2 A. [11:39:05] Not with the OTP itself, no. Only with Dr Baccard.

3 Q. [11:39:15] And what did he say to you at that juncture?

4 A. [11:39:23] I can't remember in detail, but he informed me that there was a
5 mission in Abidjan, told me the background, general background circumstances of it
6 and asked if I would be willing to be part of the team to look at the bodies.

7 Q. [11:39:48] So as I said before, the instruction letter was addressed to yourself
8 and Ms Yapo Etté. Were you in contact with her prior to accepting this mission?

9 A. [11:40:11] No.

10 Q. [11:40:14] So you each separately agreed to take part in this mission without
11 discussing the matter between you?

12 A. [11:40:32] Yes.

13 Q. [11:40:35] Witness, do you speak French?

14 A. [11:40:43] En peu.

15 Q. [11:40:47] Well, then I'll be more explicit. Is your French of a specific level to
16 discuss forensic matters?

17 A. [11:41:02] I would say not, no. However, we had a number of other people on
18 the team who were fluent in both English and French. There are certain medical
19 terms which are easy to understand between the two languages, so we, between us,
20 we felt reasonably at ease in doing the work.

21 Q. [11:41:37] Did Ms Yapo Etté speak English?

22 A. [11:41:45] She speaks a little. I think she understands more than she speaks.
23 But Dr Djodjo, who was with us at all times, is very fluent in both English and French
24 and was able to translate easily.

25 Q. [11:42:09] So just to be clear, when you speak of your team, you're referring to

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 yourself, Ms Yapo Etté, the person you've just referred to, and the members of the
2 Office of the Prosecutor; is that correct?

3 A. [11:42:31] The forensic team in the OTP, yes, yes.

4 Q. [11:42:38] So if I understand correctly, to speak with Ms Yapo Etté, you needed
5 interpretation to be provided either by members of the Office of the Prosecutor or by
6 technicians who were present?

7 A. [11:42:57] In general, yes. I mean, demonstrating post-mortem findings are
8 self-evident. Both of us can see that no matter what the language. But when we
9 were discussing matters, yes, we were dependent on translation.

10 Q. [11:43:21] In principle, is it a problem for the two forensic scientists on such a
11 mission not to share a language?

12 A. [11:43:43] It's not a problem. It's something I've become used to.

13 PRESIDING JUDGE TARFUSSER: [11:43:57] Mr Clark, Professor Clark, just go
14 ahead.

15 THE WITNESS: [11:43:59] Sorry. I was waiting on -- yes. Well, for instance, I've
16 just been working with Spanish speakers. Previously in Bosnia I was working with
17 Bosnian speakers. And we -- the work went ahead successfully. There are actually
18 medical terminology that are very -- the words are very much in common. So it's a
19 difficulty, but it's not a problem that can't be dealt with.

20 MR JACOBS: [11:44:36] (Interpretation)

21 Q. [11:44:38] Thank you, Witness.

22 I'm just going to return to the autopsies which you carried out in January 2015 and
23 some general matters regarding the procedure. As you know, we won't be going
24 into the detail of your reports.

25 First of all, I'd like to know how you received information on the substance of the case

1 prior to your mission?

2 A. [11:45:26] I was informed by Dr Baccard and then the letter of instruction, it
3 certainly gave the names of the individuals who they were looking, looking for. I
4 can't remember it gave many details about the incident, but we knew that we were -- I
5 knew in general terms that we were looking for people who had been allegedly killed
6 in a shelling attack.

7 Q. [11:46:05] Were you provided with the medical files of those persons?

8 A. [11:46:09] No.

9 Q. [11:46:13] And other documents such as their death certificates or exhumation
10 permits?

11 A. [11:46:29] I didn't see them, no.

12 Q. [11:46:33] Do you know if Ms Yapo Etté had such documents available to her?

13 A. [11:46:44] I think she probably did. I was aware that there was discussions
14 going on about the receipt of these bodies in the mortuary initially at the time of
15 death and various documentation. But I was, as I say, I was just aware that there
16 was discussions about that between her and Dr Baccard, but I don't know the details
17 of it. Certainly, certainly I did not see any prior documentation. But I believe it did
18 exist or some of it.

19 Q. [11:47:24] So just to be clear, you knew that those documents had previously
20 been examined by Ms Yapo Etté and that in 2011?

21 A. [11:47:39] I didn't know it, but in retrospect that's probably what the discussions
22 were about. I didn't see the documents in detail, nor do I, you know, know their
23 specific contents. But it's my understanding that there were some documentation
24 related to the initial receipt of these people shortly after their death.

25 Q. [11:48:08] Would it not have been useful for you to consult those documents in

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 conducting your work as a forensic expert?

2 A. [11:48:25] Not necessarily. I mean, you could argue that we should not have
3 been shown them, because it made our examinations all the more objective not
4 knowing the background and what was allegedly the cause of death at the beginning.
5 So I think that there is a balance between how much we should know and too much
6 detail. So I didn't think it was a problem.

7 Q. [11:48:55] Thank you, Witness.

8 I shall now quickly go back to the matter of the exhumation of the bodies, a matter
9 which you discussed this morning with the representative of the Office of the
10 Prosecutor.

11 Can you tell us was exhumation planned as part of the mission right from the outset?

12 A. [11:49:48] Yes.

13 Q. [11:49:50] And your presence there?

14 A. [11:49:54] Sorry, was it planned? Well, I expect it was. I was certainly present
15 at the exhumations, yes.

16 Q. [11:50:06] Thank you. And when the exhumation took place, were members of
17 the family or those who were close to the persons present, for instance, to indicate the
18 location of the graves?

19 A. [11:50:36] I think certainly the day before, on the 13th, we visited the cemetery,
20 and I was aware that for at least one of the grave areas, I think a member of the family
21 pointed out the grave area.

22 There was no exhumations done at that day, but, and I think, I mean, there were so
23 many people around during the exhumation on the 14th, but I recall that there might
24 have been some family members amongst them.

25 Q. [11:51:18] When you say that there were a lot of people present on the day of the

1 exhumation, can you tell us more about that? Were there members of the Office of
2 the Prosecutor, members of the Ivorian police?

3 A. [11:51:40] Yes, I think all of these, police, the IVOSEP workers and staff, police,
4 as I say, members of our team, members of the ministry of justice I think. There
5 seemed to be a lot of people around.

6 Q. [11:52:11] When you refer to members of your team, can you indicate who was
7 present? Which members of the Office of the Prosecutor were present?

8 A. [11:52:26] There were, well, myself, Dr Baccard and Ms Zanetta, Professor Yapo
9 Etté, OTP, and Dr Djodjo. There were a number of, at least one or two investigators,
10 OTP investigators there as well.

11 Q. [11:52:55] I believe that you said this morning, and I think it is also in your
12 report, you said that you carried out an initial examination of the bodies. Can you
13 explain what that initial examination consisted of?

14 A. [11:53:18] This was only on occasional cases I think, particularly with the second
15 grave site in which there was some confusion over the numbers and who the people
16 were, I think we opened up or, rather, Professor Yapo Etté opened some of the bags at
17 that stage just to see if this was male, female, any obvious clothing, et cetera. That
18 was the extent of it, just opened the bag.

19 But we didn't do that for all the cases. Mostly I think they were the body was
20 removed from the grave and put straight into a new body bag.

21 Q. [11:54:09] Regarding the objects found in the graves, do you know if everything
22 was placed in the body bags or whether a selection was made?

23 A. [11:54:30] Everything that was in the -- most of the bodies were in a shroud
24 which was covering a body bag. So entire shroud and body bag were then taken out
25 and placed into a new body bag.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 There were parts of the coffin, the handles, some nameplates, I'm not sure what
2 happened to them. They were photographed
3 I don't think they came to -- they didn't come to the mortuary. Whether they were
4 kept or whether they were placed back in the grave, I don't recall. But everything
5 pertaining to the actual body remained, was kept.

6 Q. [11:55:28] Thank you, Witness. I now just have some general questions
7 regarding the methodology and the conduct of the autopsies themselves.

8 So at the autopsies themselves yourself, Ms Yapo Etté were present, who else?

9 A. [11:56:07] Well, as I've already said, Dr Djodjo, another pathologist, a technician,
10 and Dr Baccard and Ms Zanetta. On the first day there was a second autopsy
11 technician, but he wasn't there for the rest of the days. But nobody else appeared.
12 Nobody from the -- no investigators, nobody from the ministry of justice or any police.
13 It was entirely a sort of scientific staff, if you like.

14 Q. [11:56:44] And so all members of the scientific team contributed to the autopsy
15 including Dr Baccard?

16 A. [11:57:07] They contributed, everyone contributed in various, in various ways,
17 yes. Professor Yapo Etté and myself were actually physically handling the body.
18 Dr Baccard was doing sort of clean areas, if you like. But we all had a contribution,
19 and we were all actively discussing matters with each other, all aware of what was
20 going on. So it was very much a team effort.

21 Q. [11:57:44] So if I understand correctly, you discussed the autopsy including the
22 interpretations and regarding the injuries with all those present?

23 A. [11:58:04] Yes. I mean, that was natural, we're all looking at the body together,
24 we all point out various features and make suggestions.

25 Q. [11:58:20] Mr Witness, in your experience, is it usual that members of the Office

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 of the Prosecutor be present and participate in the elaboration of an expert report?

2 A. [11:59:02] They didn't participate in the report, no. The report was entirely
3 mine and Professor Yapo Etté's. They did not influence the report in any way.
4 They may have been present at the autopsy, but they played no part in the actual
5 report, producing of the reports.

6 Q. [11:59:32] Thank you. You mentioned to the representative of the OTP this
7 morning as follows, and I quote from the French transcript at page 8, line 15: "In that
8 case we did not have facilities or equipment that enabled us to do our job in the best
9 possible conditions. We did what was possible within the context of those
10 limitations." Now, these are realtime transcripts. "And what I can see here is that
11 specifically in relation to this case, we needed to pay attention to the limitations that
12 we had to face." End of quote.

13 MR DEMIRDJIAN: [12:00:57] Your Honours, just an intervention. There seems to
14 be an error in the translation into French, because in English, at page 10, line 2, the
15 witness said, "In these cases again we did not have all the ideal facilities."
16 It seems that in French what my learned friend just read indicates that "we did not
17 have the facilities or equipment that would allow us to work in the best conditions."
18 So the word "all" seemed to have been missed in the French version and that makes
19 the world of a difference.

20 PRESIDING JUDGE TARFUSSER: [12:01:32] Thank you.

21 MR JACOBS: [12:01:38] (Interpretation) Thank you.

22 Q. [12:01:43] Now, whether it be in the French or the English versions, what I
23 understand is that you did not have all the requisite equipment to conduct proper
24 expertise the way you would have wanted to; is that correct?

25 A. [12:01:57] Yes. I think this boils down to particularly having radiology imaging

1 equipment. It would have been ideal to have been able to x-ray the bodies to look
2 for bullets, shrapnel, things like that. We didn't have that. That's not uncommon.
3 I mean, most mortuaries in the world will not have these facilities. And I've worked
4 in other circumstances in which that was not available. So we had to work without
5 that.

6 The second best was a metal detector, which is not nearly as good. So we used that.
7 But apart from that, as I say, the actual environment for working in, the tables,
8 instruments, et cetera, were all fine, no problem. It was just really the x-ray.

9 Q. [12:02:50] Did you make any requests for an x-ray machine to be provided?

10 A. [12:03:14] I don't know if I specifically said that. But, I mean, it's not an easy
11 thing to provide, x-ray facilities. If one had been easily available, I'm sure it would
12 have been there. And I'm sure Dr Baccard had made inquiries before this if there
13 was one available. As I say, I mean, a lot of mortuaries around the world, the
14 majority probably do not have x-ray facilities. But you can, you can cope. You can
15 work, you can work roundabout that.

16 Q. [12:03:54] Thank you. One last question on the general methodology. When
17 dealing with an autopsy of this nature, is it possible to determine the date of death?

18 A. [12:04:27] When you say "of this nature," I'm presuming you mean decomposed
19 bodies. No, not in any precision. I mean, clearly if somebody has just died the
20 previous day or so, we can tell that. I could probably tell that somebody has died in
21 the previous two or three weeks.

22 But once the body starts to decompose and break up, I can't tell if it's one year, two
23 year, three years, longer. It's very -- it becomes very difficult.

24 But perhaps if I just follow that up, in my work in different parts of the world, I've
25 realised that bodies can be dead for 20, 30 years and actually be better preserved than

1 some that have been only dead for one year. There is a huge variability, but because
2 of various reasons. I would never get into the position of saying that somebody had
3 been dead for three years or four years or whatever.

4 Q. [12:05:45] So there is no scientific method by which you can determine the speed
5 of decomposition; is that correct?

6 A. [12:05:56] There are, there are studies. But we have so many variables in this
7 sort of situation that it's very difficult. I mean, I can clearly see that these people
8 hadn't died the week before. If somebody said that they had been dead for four
9 years, I said, well, that's fine, yes, I'm happy to believe that. But there are general,
10 general principles, but increasingly I realised that they don't always apply.

11 Q. [12:06:48] I just have a few more questions about the final drafting of the report.
12 In your general report, the ERN number for the record is CIV-OTP-0077-0002, at page
13 0004. I will quote in English:

14 (Speaks English) "An autopsy report for each case was subsequently prepared in
15 English by Dr Clark, based on the notes and photographs, and the reports then sent to
16 Prof Yapo Etté for checking and approval. Finalised versions were then printed out,
17 body diagrams attached, and the reports signed by both pathologists." (Interpretation)
18 End of quote.

19 You discussed this briefly with the representative of the OTP a short while ago, but let
20 me just come back, hark back a little bit to this final version. Now, if I understand
21 properly, you are the one who provided the first draft of the report in English based
22 on your personal notes; is that correct?

23 A. [12:08:49] Yes.

24 Q. [12:08:53] You would then send that preliminary draft to Madam Yapo Etté,
25 correct?

1 A. [12:09:13] Yes. That would be sent by email to her, yes.

2 Q. [12:09:19] So as far as you know, how was Madam Yapo Etté able to check the
3 report since she didn't speak English in order to approve it?

4 A. [12:09:42] She would ask her colleagues who do speak English and who,
5 particularly Dr Djodjo, who was present at the autopsies, she would have her own
6 notes. And as I say, like many people, it's probably easier to understand a language
7 rather than speak it, so, well, she felt comfortable in accepting that report.

8 Q. [12:10:05] This morning you stated to the OTP as follows, and I'm quoting from
9 the English transcript for purposes of clarity, from page 17, at line 20, in English:
10 (Speaks English) "So I prepared the reports. She looked at them. We changed
11 anything that she suggested and printed out finalised versions, signed them, and that
12 was that." End of quote.

13 (Interpretation) So if I understand properly, Madam Yapo Etté *would make
14 suggestions to the draft on the basis of her notes and her observation of the bodies,
15 correct?

16 A. [12:11:32] I can't remember the details, but she would have made some
17 observations perhaps or asked me further questions. I think there were very few. I
18 think she very largely agreed with these reports. So there were certainly no major
19 changes. She might have corrected my spelling for some certain terms, French terms,
20 and reminded me of a bit of clothing or something like that, but nothing substantial.
21 So when that was -- we'd adopted that, then I printed these documents out, and we
22 actually posted them to her in Côte d'Ivoire. And she then -- I'd already signed them,
23 she signed them, and they were either posted to The Hague or taken by courier,
24 whatever.

25 Q. [12:12:46] To understand you properly, therefore, what you are saying is that it

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 didn't happen at any time that you and Madam Yapo would have different
2 interpretations of the observations that you made in relation to the fractures or to any
3 other aspects of the bodies that you examined; is that correct?

4 A. [12:13:14] Nothing of any -- I mean, anything we questioned, I mean, if we
5 *looked at a particular injury, for instance, and I said well, that looks like gunshot,
6 and she said, well, could it be blunt force or a blast or something like that, we would
7 discuss it and come to an agreement. But, I mean, there was certainly no major
8 disagreement, no falling out or anything like this. We worked together and came to
9 these conclusions.

10 PRESIDING JUDGE TARFUSSER: [12:14:00] And at the end, we have a report
11 signed by both, so.

12 MR JACOBS: [12:14:05] (Interpretation)

13 Q. Thank you, Mr Witness.

14 Let me now turn to the autopsies of May 2015 relating to the alleged victims of 3
15 March 2011, which you discussed with the Prosecutor this morning.

16 Who contacted you in relation to this second mission?

17 A. [12:14:49] This was again Dr Baccard. I think, sometime in March 2015, he
18 contacted me by email and asked if I would be available for a further mission. He
19 was keen to keep the same team of people with Professor Yapo Etté, and I was able to
20 oblige.

21 Q. [12:15:26] Did you receive a mission order or letter of mission in relation to
22 those autopsies?

23 A. [12:15:36] I didn't. I didn't receive a letter like the first one in January. I
24 received what I think is called an ordre de mission. I just got a brief statement in
25 very general terms. But I don't think I -- I don't, I don't -- I've looked for this, and I

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 never actually received an order of specific instruction.

2 Q. [12:16:10] Do you have a copy of the ordre de mission which you have just
3 referred, to for the record?

4 A. [12:16:27] I've certainly provided it to -- perhaps I don't have it with me. I've
5 certainly provided it in the past. I thought I had it, but clearly not. Yes, I do have it.
6 Sorry.

7 MR DEMIRDJIAN: [12:17:08] Does counsel not have a copy? Because this was
8 disclosed.

9 THE WITNESS: [12:17:13] It's signed 23 April 2015.

10 MR JACOBS: [12:17:26] (Interpretation) Maybe my learned colleague can provide
11 an ERN number. I would appreciate that.

12 MR DEMIRDJIAN: [12:17:37] Certainly, your Honours. This is a document with
13 the ERN CIV-OTP-0100-0675.

14 MR JACOBS: [12:17:43] (Interpretation) Thank you.

15 Q. [12:18:06] Thank you, Mr Witness.

16 Is it usual for this type of exercise to not receive an instruction letter?

17 A. [12:18:16] Well, I'm not sure what is usual when these things don't happen very
18 often. I've done other work in Bosnia without a specific letter of instruction. If I'm
19 happy with who's asking me and the general circumstance, I'm happy to go ahead.

20 Q. [12:19:03] Did you maintain contact with members of the OTP, specifically
21 Baccard, between the time of your first mission and when he contacted you again in
22 March?

23 A. [12:19:12] Yes, I'm sure we were in contact, yes.

24 Q. [12:19:16] Were those contacts related to this case?

25 A. [12:19:35] The first contact for this case was, I think, in March 2015.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 Q. [12:19:48] Can you specify to the Court which information you received in
2 relation to the events of March 2011 were disclosed to you before you conducted your
3 investigations, your inquiries?

4 A. [12:20:19] I cannot give you it word for word, but my understanding, as largely
5 as I've written on each of the reports, that these were three bodies which had been
6 allegedly in the women's demonstration, three bodies which had been -- said to have
7 been identified, and it was our job to examine the bodies and try and find the cause of
8 death.

9 I understood that they had been positively identified by DNA analysis. And that
10 was about the extent of the knowledge I had.

11 PRESIDING JUDGE TARFUSSER: [12:21:11] So you took as granted that these three
12 bodies have been identified and that they were victims of the 3 March march.

13 THE WITNESS: [12:21:27] Yes. I understood that, yes.

14 PRESIDING JUDGE TARFUSSER: [12:21:28] Yes, yes.

15 THE WITNESS: [12:21:29] You know, if somebody tells me that from an acceptable
16 source, I accept that.

17 PRESIDING JUDGE TARFUSSER: [12:21:37] Yes, yes. Of course.

18 Yes, please.

19 MR JACOBS: [12:21:40] (Interpretation)

20 Q. [12:21:44] Thank you. This morning -- or, rather, one more question.

21 This information was given to you by Dr Baccard, I assume, just as was the case with
22 the first mission; is that correct?

23 A. [12:22:05] Yes. Additionally, when we reached Abidjan, there were
24 investigators with us as well, and they obviously briefed us a little more or gave it a
25 bit more -- gave me a bit more background of it.

1 Q. [12:22:24] This morning you mentioned to the representatives of the OTP that
2 you had seen photographs of the location where these people are alleged to have died.

3 And I'm referring to the French transcript page 34, line 3. In what context were you
4 provided with those pictures? In what context did you get to see those pictures?

5 A. [12:22:57] It was during, in the course of the mission in May, that one of the
6 other OTP people, either the investigator or Ms Zanetta showed me photographs
7 taken from a video, as I understood it, of the march and the bodies on the ground.

8 Q. [12:23:30] Did you view this video?

9 A. [12:23:44] I've seen the video, not in its entirety, but I have seen, seen the video,
10 again, shown me at that time by the investigator.

11 Q. [12:23:59] Those photographs and videos, were they part of the background
12 material that you were provided which helped you to come to your findings in
13 relation to those autopsies?

14 A. [12:24:21] Yes, I think it would be fair to say that some of the photographs that I
15 saw convinced me about certain of the injuries that we saw on some of the bodies.
16 In the photographs I could see a lot of blood. I could see what I interpreted as
17 certain injuries on the body. And that did help me to come to my conclusions.

18 Q. [12:24:57] In your report you do not mention using the photographs and the
19 video in coming to your conclusions. Why not?

20 A. [12:25:18] That's fair. I don't actually mention them. It wasn't a strong
21 influence in preparing my report. In fact, in truth, it is only subsequently when I've
22 looked at the photographs again that they back up my original opinions.

23 So at the time of doing the autopsies and preparing the reports, I had not -- I did not
24 study these photographs in any detail. We only have two, three days to prepare
25 these reports as circumstances turned out. And I certainly did not have time to go

1 through all the photographs.

2 Q. [12:26:12] You have just told us, and I quote from the French transcripts, page 60,
3 line 10, that you had only two, two, three days for preparing the report in the
4 circumstances.

5 A. [12:26:52] Yes.

6 Q. [12:26:54] Could you elaborate? Was it a matter of urgency? Did you work
7 under those circumstances?

8 A. [12:27:02] No. The factor that was we, for these four cases that we did, because
9 we did four cases, we carried them out all in one day. I then had two or three days
10 still in Abidjan in which I worked on the reports. These, and I think Professor Yapo
11 Etté was about to leave the country for extended holiday, I think. So we were keen
12 that we could complete the reports and get them signed physically by her, discuss
13 them, and get them signed by her before she went.

14 So I had that, I think it was two or three days, which I spent working on these reports.
15 And, you know, they do take time. Although they're just single reports, they do
16 necessarily take time to compile, looking at all the sources.

17 So I certainly did not spend a lot of time looking at photographs at that stage. It's
18 only subsequently, I'd say prior to coming here, that I've had a chance to look at the
19 photographs in some detail. And they don't go against anything I've said in my
20 reports. In fact, I think they back them up, in some ways anyway.

21 Q. [12:28:25] Were you given the medical files or the persons on whose bodies you
22 were conducting the autopsies?

23 A. [12:28:45] No.

24 Q. [12:28:48] Were you given their death certificates or any certificates to intern or
25 to bury?

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 A. [12:29:06] No. No.

2 Q. [12:29:07] During your mission in Abidjan, did you have any contacts with
3 persons from the investigation units of the police force in Abidjan?

4 A. [12:29:29] I know we met with various people. I can't remember all their
5 positions. If I did meet them, I was certainly part of no discussion with them. They
6 did not provide me with any information.

7 Q. [12:30:01] Could you tell us something more about these meetings which you
8 had in 2015 with the Ivorian authorities, if I've understood correctly?

9 A. [12:30:29] All I can recall is -- I think it was that mission -- going to the office of
10 an official, presumably in the ministry of justice. I think it was more a courtesy
11 meeting than anything. And in retrospect, now I do recall a meeting in January with
12 a larger group of people in which the January mission was discussed. That was just
13 before the exhumations. Again, I took no part in it. The proceedings were
14 conducted largely in French. So I was not fully aware of what was going on.

15 Q. [12:31:25] Thank you, Witness.

16 Now, before turning to the autopsies themselves, I have a few other questions. Do
17 you have any information regarding the preservation of the bodies of those three
18 women prior to them being buried?

19 A. [12:31:58] In other words, do I know what happened to them after, after the
20 incident? I do not know. I was -- well, I was told that these bodies were taken to a
21 mortuary somewhere, that they were in amongst a large number of other bodies in or
22 within a fridge or whatever, I do not know.

23 I was told that there was a power cut, a major power cut on one occasion, and that the
24 decision was taken to bury all the bodies in a mass grave in Abobo cemetery, and that
25 subsequently in a search for these particular women, many bodies were exhumed and

1 samples taken for identification, as a result of which these three bodies were
2 identified.

3 I don't know the dates of these things, these matters. I don't know what state the
4 bodies were in prior to going into the mass grave or any more than that, but I'm
5 aware that they had been in various places. I suspect a reason why some of them
6 were in formalin may have been because the fridges were full. And another way of
7 preserving a body, we would put them in formalin.

8 Q. [12:33:43] I have a general question on this matter. Does the way in which a
9 body is preserved before its burial, you referred there to a power cut, does that have
10 repercussions when it comes to an autopsy carried out several years later?

11 A. [12:34:13] If the body is well preserved prior to being buried, for instance, then it
12 may still have many tissues on it. If the body is not well preserved, then it will
13 decompose and so it's already decomposed by the time it's buried.

14 Q. [12:34:31] Were you given information regarding the conditions under which
15 the exhumation of the bodies took place beyond what you just said to us here? For
16 instance, were you aware of whether the Office of the Prosecutor had been present at
17 the exhumation or, rather, whether the exhumation was at the request of the Office of
18 the Prosecutor?

19 A. [12:35:04] This is the exhumation of the mass grave in Abobo cemetery? No, I
20 don't know any of the details of that at all. I don't even know when it was.

21 Q. [12:35:20] From our information, it took place in the course of 2014. Do you
22 have any information regarding the conditions under which the bodies were
23 preserved following the exhumation until you autopsied them in 2015, in May 2015?

24 A. [12:35:51] Not really, although I presume they were taken to Treichville hospital,
25 which is where we examined -- well, they were examined in January 2015. So I

1 presume they were taken from the cemetery to Treichville. So they'd presumably
2 been in a fridge since that time.

3 Q. [12:36:23] Regarding the samples which were taken in January 2015 to which
4 you referred, did you play any role in that taking of samples?

5 A. [12:36:34] No. I was present in the mortuary really just to see what was going
6 on. I remember it was a cramped facility. It was extremely hot, and the work was
7 carried out by Professor Yapo Etté and Dr Baccard with Ms Zanetta taking
8 photographs and making sure that the samples went into the correct bottles. But I
9 kind of stayed in the background and didn't take any notes or anything.

10 Q. [12:37:10] Do you know if these bodies were autopsied in 2011, for instance, or
11 forensically examined?

12 A. [12:37:33] They may have been examined externally. There was no indication
13 at all that there had been -- an internal examination had been carried out. Yes, they
14 may have been inspected externally, but I don't know.

15 Q. [12:37:48] Well, I'll turn now to the three autopsy reports and I'll start with the
16 one which deals with Ouattara Gnon Rokia. That is document CIV-OTP-0081-0523.
17 So in short, on the first page of the report, which you can see on the screen, you list
18 those who were present at the autopsy, and I imagine that those are the same as in
19 January 2015?

20 A. [12:39:27] Yes. I note that there is one other additional person there for this,
21 just this first post mortem, this was Xavier Laroche from the ICC. This was the very
22 first autopsy we did that day, and I think he came for that and then went off to do
23 something else. So if you look at the detail, he's listed in this one, but not in any of
24 the others. But he didn't really play any part in the autopsy.

25 Q. [12:39:56] So to be specific, he was merely an observer?

1 A. [12:40:06] He was indeed, yes. I think he was, he came over and was collected,
2 picked up by somebody else to go elsewhere. So he was merely an observer, yes.

3 Q. [12:40:20] Thank you. Now, in this report you note that there was a seal or at
4 least an identification tag. Do you know who placed that identification tag?

5 A. [12:40:52] I don't actually. I know there were the labels on the bags. I don't
6 know when, who, or when that was placed there. I don't know if it was in January
7 when the bodies were sampled or whether it was prior to this. I really don't know.

8 Q. [12:41:13] And on the first page, and I'll quote this in English, you state the
9 following, "The body was within a zipped but unsealed black plastic body bag." End
10 of quote.

11 (Interpretation) So if I understand correctly, when you opened the body bag, there
12 were no seals on that bag?

13 A. [12:42:04] That's right. It was zipped up, but the plastic identification labels,
14 which are normally a seal, were not, were not secure. They were on the body bag. I
15 suspect that there may have been at the time in January, they may have kind of sealed
16 the body bag. When the body bag was opened at the time to take samples, they
17 were cut or opened and then the body bag was zipped up without resealing. I
18 suspect that's what's happened, but I may be wrong. But these labels were still
19 clearly attached to the body bag. So it's still the same body and body bag which it
20 was before.

21 Q. [12:43:06] In your experience as a forensic pathologist, is the procedure which
22 you have just described the usual one? Or let me rephrase that. If a seal has been
23 broken, would the correct procedure not have been to reseal and to ensure the chain
24 of custody?

25 A. [12:43:41] Yes, ideally it would be, yes.

1 Q. [12:43:47] I refer once again to the first page. You refer to identifying a T-shirt
2 there which was on or around the body. (Speaks English) On or around the body?

3 A. [12:44:23] Yes, the on or around the body is referring to all of the items of
4 clothing. I can tell you the T-shirt was actually on the body.

5 Q. [12:44:37] (Interpretation) Was there any way for you to know whether the
6 person was wearing that T-shirt at their time of death?

7 A. [12:44:56] I assumed that they were and the fact that, because it was on the body,
8 if she hadn't been wearing it, then somebody has put it on her after death. So there
9 is a possibility, but I assumed that that was what she was wearing at the time of
10 death.

11 Q. [12:45:23] Now, there is a matter which you, there is a matter which you
12 discussed this morning with my colleague from the Office of the Prosecutor, and it's
13 also addressed at page 0525 of your report. And I'll cite, or quote, rather, in English.
14 (Speaks English) "The body was well preserved for someone who had been dead for
15 four years." End of quote.

16 (Interpretation) Now, I note that you have explained to us that it is very difficult to
17 establish the date of death based on a skeletal corpse, but the turn of phrase here
18 seems to indicate that you were surprised.

19 I've understood from the sentence that you, that one might have thought that *the
20 person had died less than four years ago?

21 A. [12:46:54] Yes, I suppose it does read that way. I think what I had forgotten to
22 be reminded perhaps that this body may well have been in a fridge for substantial
23 part of that time. Now, when we talk about decomposition of bodies, we're usually
24 thinking about bodies in a grave or elsewhere, and that it's unusual, unusual for
25 bodies to be in a fridge for substantial time. So I think that was what the -- I should

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 have borne that in mind and perhaps I could have worded that slightly better.

2 Q. [12:47:36] So if I understand your testimony on this point and also bearing in
3 mind your earlier comments, it is *impossible to establish from a skeleton whether the
4 death took place two years, four years, six years earlier based on the decomposition
5 thereof?

6 A. [12:48:17] Yes. It is very difficult, yes, to be precise.

7 Q. [12:48:20] Now, when you state in your report that, and I'll quote in English, and
8 still from page 0525:

9 (Speaks English) "The nature of the damage was very suggestive of high velocity
10 ammunition."

11 (Interpretation) Are your observations compatible with other causes of death?

12 A. [12:49:39] Do you mean causes of death or causes of the injury? It's, in my
13 mind, it's was very suggestive or suggestive of that high velocity missile. I suppose
14 an explosive injury is just a possibility from a bit of shell splinter. It's just a
15 possibility. It certainly did not look to me like an injury caused by a knife or some
16 solid weapon. And as I say, very clearly pointed to me that it was a bullet injury and
17 typically from a bullet with a lot of energy.

18 Q. [12:50:32] But it could have been any kind of bullet, if I've understood your
19 testimony correctly?

20 A. [12:50:53] Well, I mean, I have to say the amount of damage there was, the
21 fragmentation was very typical of a high velocity bullet. I could not completely
22 exclude a lower velocity bullet, but I think that's a lot less likely.

23 Q. [12:51:16] I'd like to show you a document which is numbered

24 CIV-OTP-0039-0055. It is the death certificate of Gnon Rokia Ouattara.

25 It is classed as confidential by the Office of the Prosecutor, but now that we have

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 named the person in public, I'm not sure whether I may display that in public or not.

2 MR DEMIRDJIAN: [12:52:10] Your Honours, I think it's fine.

3 PRESIDING JUDGE TARFUSSER: [12:52:13] I think too. Yes, let's display this in
4 public. In any case, it's a death certificate.

5 MR JACOBS: [12:52:33] (Interpretation) Court officer, could you zoom in to the
6 document towards the end. Thank you.

7 Q. [12:52:44] Now, as I said, this is the death certificate of the person who you
8 autopsied, and it is stated that the person apparently died from a gunshot trauma to
9 the skull at the women's march in Abobo. End of quotation.

10 Now, this conclusion of a gunshot trauma to the skull, is that consistent with your
11 own findings and your report?

12 A. [12:53:28] No, it's not, because we found no bullet injury to the skull.

13 Q. [12:53:35] Now, in your experience as a forensic pathologist, is it usual for a
14 death certificate to state that a death took place during a political demonstration?

15 A. [12:53:59] No. I certainly would not have phrased it like that. I would have
16 put more the place of death rather than what it was. It's not -- I would not have
17 worded it this way, no.

18 Q. [12:54:21] Thank you, Witness.

19 I'm now going to move on to the next autopsy report. So for the purposes of the
20 record, I will state the number. That's CIV-OTP-0081-0528. And this is the autopsy
21 report of Moyamou Koné. Now, my questions regarding this report are the same as
22 those regarding the previous report. Do you have any additional information to
23 provide to us regarding the role of the various persons present at the autopsy? Do
24 you confirm that they all participated in the autopsy?

25 A. [12:55:38] Yes, yes, they did participate.

1 Q. [12:55:44] Thank you. And the same question regarding the seals, you don't
2 know who placed those seals and you don't know who broke them?

3 A. [12:56:03] No. Or yes, I don't know. Grammatically, I should have said yes.

4 Q. [12:56:16] Thank you. Regarding the black T-shirt which you found, could you
5 tell us whether you found it on the body or around the body?

6 A. [12:56:40] This was on the body.

7 Q. [12:56:44] And as in the previous case, you are not in a position to know
8 whether the person was wearing that T-shirt at the time of death; is that right?

9 A. [12:57:02] No. I assumed she was because she was wearing it, but I can't be a
10 hundred per cent certain on that.

11 Q. [12:57:13] Now, reading your report at page 0530, we learned that bodies of
12 other persons were found or, rather, bones of other persons were found with the body.
13 Did you take any steps to ascertain the origin of those bones?

14 A. [12:58:05] No, no, we didn't. In this case, we didn't take any samples from any
15 of these pieces of bone.

16 Q. [12:58:21] Why?

17 A. [12:58:24] I was not asked to, as simple as that. It wasn't my job to identify all
18 the material, but it certainly would have been interesting to have sampled these
19 pieces. But the fact is we didn't.

20 Q. [12:58:56] Do you know whether the investigators of the Office of the Prosecutor
21 took steps to identify the origin of those bones?

22 A. [12:59:14] I would doubt very much because I, you know, if it wasn't done at the
23 time of this examination, I don't think it would have been done at all. But I think it's
24 an important question.

25 Q. [12:59:44] So the body that we're talking about now is the one that we discussed

1 earlier, the one that had been preserved by formalin. But I'd like us to be absolutely
2 clear, was it preserved in formalin before it was buried or after it was exhumed?

3 A. [13:00:03] I don't, I don't know. I suspect it was before the body was buried
4 because the body was in the fridge when we sampled it in January and went back into
5 the fridge. So there would be really no reason to put it into formalin after that.

6 MR JACOBS: [13:00:48] (Interpretation) Your Honour, I see the time. I don't need
7 much more time after the break.

8 PRESIDING JUDGE TARFUSSER: [13:00:57] I would invite you to continue because
9 I think you have to finish this and the next report, and if I make an average timing, it's
10 about 10 minutes, so should be, 15, 12, okay. So I would say please go ahead so we
11 continue until the end of your questioning.

12 MR JACOBS: [13:01:37] (Interpretation)

13 Q. [13:01:38] So just to be clear, you weren't told why this body was conserved and
14 not the others in formalin?

15 A. [13:01:49] No. As I say, my suggestion would be that the fridges were full and
16 that the bodies were put in formalin as an alternative way of trying to preserve them.

17 Q. [13:02:05] Can you explain to us how you came to the conclusion that the injury
18 was a bullet injury?

19 A. [13:02:29] Again, this is the shoulder one. Again, the damage on the bone was
20 of a type I've seen in bullet injuries and the fact that there was a fracture running
21 down from it as well. Additionally, I had to take note of the hole in the clothing
22 which was overlying that, which to me was very suggestive of an exit of a gunshot
23 injury through the clothing. So putting these two together, I concluded that this was
24 a gunshot injury.

25 Q. [13:03:23] So if I understand you correctly, without the T-shirt and based only

1 on observing this skeleton, you would not have come to the conclusion that it was a
2 gunshot injury?

3 A. [13:03:40] I think I may have been more cautious and I suspect I might well have
4 put "unascertained" in this case.

5 Q. [13:03:53] *So, consequently, you would not have been able to determine that it
6 was the gunshot that caused the death?

7 A. [13:04:15] I'm not sure I follow that question, sorry. I would have said, had I
8 not had the T-shirt there, I think I probably would have not given a cause of death. I
9 would have said "unascertained" in this. So what I found on the T-shirt strongly
10 suggested to me that a bullet was coming out of the body at that point, at which case
11 it had probably gone through the neck and out through the back of the shoulder.
12 And the T-shirt pointed, you know, was a strong pointer to that. If the T-shirt hasn't
13 been there, I think I probably would not have -- I would have said "unascertained" as
14 the cause of death.

15 Q. [13:05:10] In your report you describe the T-shirt and indicate as follows from
16 page 0530 in English, (Speaks English) "Very similar to damage seen in the clothing of
17 another person dying in the same incident." End of quote.

18 (Interpretation) If I understand you correctly then, the hypothesis you were
19 provided was that these persons died during the same incident and that is what led
20 you to your conclusion; is that correct?

21 A. [13:06:19] That's fair to say, yes. Just for the record, the T-shirt I'm speaking
22 about, as in Ouattara, are a very similar injury. Yes, I was led to believe that these
23 three women and others were together, were found all together, and it was natural to
24 be thinking about a gunshot injury as the cause of death there.

25 Q. [13:06:57] Last question on this report. Still on page 0530 you indicate as

1 follows in relation to damage or injury to the face, and I'm going to quote in English.
2 (Speaks English) "It could also have represented blunt force trauma including impact
3 with the ground." End of quote.

4 (Interpretation) Can you exclude the possibility of the person having been struck by
5 an object?

6 A. [13:07:47] No, because blunt force injury means either the person hitting
7 something solid or something solid hitting the person. In the context that this
8 woman had been, I was informed -- well, if she had been shot and fallen to the
9 ground, then it's just a possibility if she fell very heavily that she could have fractured
10 the face. But yes, she could have been struck by something else.

11 Q. [13:08:19] Let me now turn to the third autopsy report, number
12 CIV-OTP-0081-0518. This is the autopsy report for Sylla Malon. For the record,
13 please confirm that you do not know who placed the seals and who broke them.

14 A. [13:09:13] That's correct, yes; I don't know.

15 Q. [13:09:19] You found in the body bag fragments of the cranium of someone or
16 the skull of someone else. Were you given any explanations as to how those
17 fragments ended up in that bag?

18 A. [13:09:42] No.

19 Q. [13:09:46] Upon reading your report it would appear that you were not certain
20 at the time that the skull actually belonged to the rest of the body. Were you able to
21 subsequently establish that connection?

22 A. [13:10:21] Yes. We thought the initial intact skull did belong to the body just
23 because of the way the bones matched up. But I couldn't be entirely certain of that.
24 So samples were taken from both the skulls for further DNA testing.

25 Now, I have no -- I have no knowledge of the results of that. But I think if you see in

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 my report, I've worded my report in the assumption, the assumption that it was the
2 first skull.

3 Now, if that has not been positively, the second skull has not been -- well, sorry. If
4 the source of both skulls has not been fully established yet, then there must be still
5 some doubt.

6 But I don't know the results of these tests. I would assume that somebody would
7 have subsequently looked at the results and thought about this. But I've heard no
8 more.

9 Q. [13:11:30] In your report you indicate at page 0520, the penultimate paragraph
10 on that page, and I'll quote that excerpt in English:

11 (Speaks English) "A large bullet was found within the body bag, but as it was lying
12 free from the body its significance is somewhat uncertain." End of quote.

13 (Interpretation) Were any explanations given to you as to how that object found
14 itself in the body bag?

15 A. [13:12:42] No.

16 Q. [13:12:47] If I understand your report properly, there is nothing in it to point to
17 the fact that this bullet came from the body which was being autopsied?

18 A. [13:13:08] That's correct, within the same way that we had commingled skull
19 fragments, potentially we had an extraneous bullet. So I don't know, that's why I've
20 based nothing on it, I just observed it.

21 Q. [13:13:28] For the record and for purposes of clarity, for this body, like for other
22 bodies, you are not able to provide a date of death, correct?

23 A. [13:14:08] That's correct, yes.

24 Q. [13:14:11] I would now like to show you a document, number

25 CIV-OTP-0028-0575. This is the death certificate of the person you autopsied. And

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 I believe this document can be displayed publicly; is that the case? I think so. And
2 we could zoom in. And here we see that this person died from a ballistic trauma to
3 the skull during the women's march.

4 Does that type of conclusion match the conclusion of your autopsy?

5 A. [13:15:26] If you're assuming that the intact skull was the one that belonged to
6 Sylla Malon, then this death *certificate contradicts, what I *found contradicts this
7 death certificate. If however it was the additional skull which actually belonged to
8 Sylla Malon, then this could apply, this could be correct.

9 Q. [13:16:02] As for the previous death certificate, you would also confirm that it is
10 unusual for the political circumstances of the death to be mentioned on the certificate;
11 is that correct?

12 MR DEMIRDJIAN: [13:16:24] Your Honours, I think this is the first time is a bit
13 argumentative.

14 PRESIDING JUDGE TARFUSSER: [13:16:29] No. But, I mean, he has already
15 responded. He could not respond something else now, I mean.

16 THE WITNESS: [13:16:33] Yeah, well, perhaps it's not what I would have worded.

17 PRESIDING JUDGE TARFUSSER: [13:16:36] Yes, yes. That's what you said.

18 THE WITNESS: [13:16:38] Other people, it may be the practice in other countries to
19 do that. But it's not what I would have worded.

20 PRESIDING JUDGE TARFUSSER: [13:16:44] And that is exactly what you said.

21 THE WITNESS: [13:16:47] Exactly.

22 PRESIDING JUDGE TARFUSSER: [13:16:48] Yes, okay.

23 MR JACOBS: [13:16:56] (Interpretation) That was simply for the record, your
24 Honour. But I'll move on to something else. I have a last question.

25 PRESIDING JUDGE TARFUSSER: [13:17:06] I know it's for the record, but okay.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 MR JACOBS: [13:17:10] (Interpretation)

2 Q. [13:17:11] Now, Mr Witness, a short while ago you told us that you drafted and
3 finalised your report on the spot in Abidjan; is that correct?

4 A. Yes, yes.

5 Q. The process you followed for the 2015 autopsy reports was it followed, that is,
6 namely, you did a first report which was reviewed *by Mrs Etté to be finalized, was it
7 the same procedure?

8 A. Yes.

9 MR JACOBS: (Interpretation) Thank you, Mr Witness.

10 MR ALTIT: [13:18:09] (Interpretation) Mr President, your Honours, that puts an
11 end to the cross-examination of this witness by the Laurent Gbagbo Defence team.
12 Thank you.

13 PRESIDING JUDGE TARFUSSER: [13:18:20] Thank you very much.

14 I will now suspend and I'm waiting for the court officer, okay, I will now suspend
15 until 15 hours, 3 o'clock, when we start with the questioning by the Defence team for
16 Mr Blé Goudé.

17 Thank you very much. The hearing is adjourned to 3 o'clock. Thank you.

18 THE COURT USHER: [13:18:44] All rise.

19 (Recess taken at 1.18 p.m.)

20 (Upon resuming in open session at 3.01 p.m.)

21 THE COURT USHER: [15:01:31] All rise.

22 Please be seated.

23 PRESIDING JUDGE TARFUSSER: [15:01:53] Good afternoon. Good afternoon,
24 Dr Clark.

25 THE WITNESS: [15:02:03] Good afternoon.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 PRESIDING JUDGE TARFUSSER: [15:02:05] So now final rush, I will give
2 immediately the floor to the Defence for Mr Blé Goudé for his questioning. Thank
3 you. Maître Knoops.

4 MR KNOOPS: [15:02:20] Thank you very much.

5 QUESTIONED BY MR KNOOPS:

6 Q. [15:02:22] Good afternoon, Dr Clark.

7 A. [15:02:25] Good afternoon.

8 Q. [15:02:28] My name is Alexander Knoops. I'm an attorney at the bar of the
9 Kingdom of The Netherlands, and I am counsel for Mr Blé Goudé in this trial. Good
10 afternoon, sir.

11 A. [15:02:38] Good afternoon.

12 Q. [15:02:39] Dr Clark, you informed us this morning about certain limitations your
13 inquiry faced, and I refer for the Court to transcript page 9 of the English transcript,
14 line 21 till 25, where you explained to us that those limitations related to, among
15 others potentially, the number of years since the alleged incident.

16 My first topic I would like to discuss with you, Dr Clark, is potential other limitations
17 in your inquiry. And this led me to your observation on page 56 of the English
18 transcript, where you said this morning, "We did not have x-ray facilities to look for
19 bullets, shrapnel, et cetera."

20 A. [15:04:00] Yes.

21 Q. [15:04:01] Yet, Dr Clark, in your report of 17 March, and that's
22 CIV-OTP-0077-0002, page 0006, at paragraph 8, you note as to the methodology of the
23 inquiry of 17 March, well, relating to 17 March, you say the following, "Given that
24 these were said to have been victims of a shelling attack, it was anticipated that most
25 or all might have blast injuries from an explosive device and that residual shrapnel

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 might be found in their remains. No shrapnel was found in any of them, however,
2 albeit the only available means of detection was a metal detector." End of quote.

3 So from this observation in your overall report on the autopsies of the eight bodies, I
4 take it that with respect to those bodies apparently a metal detector was used; is that a
5 correct reading of your --

6 A. [15:06:15] Yes, we did have a metal detector in the mortuary. I don't know
7 much about metal detectors, how sensitive they are, but we used it and we didn't find
8 any metal objects.

9 Q. [15:06:29] Right. And did you yourself use the metal detector or was it
10 somebody of your team?

11 A. [15:06:37] It was one of the others, other members of the team, I think it was Dr
12 Djodjo, yeah, at the start of each case, just laid the detector over the body and we
13 found nothing.

14 Q. [15:06:55] You apparently witnessed this method?

15 A. [15:06:58] Yes.

16 Q. [15:06:59] You were there?

17 A. [15:07:00] I was there, yes.

18 Q. [15:07:01] Can you remember whether any special body parts were specifically
19 searched for by the metal detector?

20 A. [15:07:12] Not specifically, no, no.

21 Q. [15:07:15] Just overall body?

22 A. [15:07:16] Overall body.

23 Q. [15:07:18] Thank you. Can you recall, Dr Clark, whether you used the same
24 technique or metal detector when it concerns the three women which were examined
25 by you in relation to the alleged incidents on 3 March, so Miss Malon and the other

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 two?

2 A. [15:07:45] Yes. I don't really know whether we used it or not. I mean, we may
3 well have done. In fact, I would think we probably did, because again we were
4 looking for bullets. So we didn't find any, just to say the bullet -- a metal detector is
5 not as good as an x-ray. It won't detect tiny little fragments, I wouldn't have thought,
6 whereas on an x-ray you will see these very small fragments of bullet jacket
7 particularly.

8 Q. [15:08:25] Yes.

9 A. [15:08:26] Well, all I can say is that we didn't find anything.

10 Q. [15:08:29] Right. Now, with respect to this inquiry, in relation to the report on
11 Ms Sylla Malon, you were being asked this morning about the potential origin of the
12 large bullet you described in that report?

13 A. [15:09:00] Yes.

14 Q. [15:09:00] You already answered the question whether this bullet pointed to the
15 fact that it came from the body being autopsied.

16 My question is a different one, Dr Clark. Can you recall whether this bullet, this
17 large bullet, you describe it as a bullet of 55 millimetre in lengths --

18 A. [15:09:31] Yes, it's a large bullet, yes.

19 Q. [15:09:33] -- large bullet was examined at that time or later to your recollection
20 on the existence of human tissue on this bullet?

21 A. [15:09:49] I'm not aware that it was. We took the bullet, we photographed it
22 with a scale, et cetera. It was kept. I don't know what happened to or what was
23 done to it after that. I don't know.

24 Q. [15:10:04] No. In your professional opinion, would it have been reasonable
25 when it was examined on the existence of human tissue?

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 A. [15:10:20] It's not a common thing to be done, looking for tissue. And in the
2 context of lots of bodies, even if you found some tissue, again, it doesn't necessarily
3 point to it injuring a particular person, it just means there was a contact there. So it's
4 not, it's not a common investigation.

5 Q. [15:10:44] Right.

6 A. [15:10:45] I would be surprised if it was done here.

7 Q. [15:10:49] All right. Now, with respect to this bullet, Dr Clark, I refer you to
8 your report, CIV-OTP-0081-0581. Sorry, 0518, page 0520.

9 You have described that bullet as a projectile largely intact with -- but with some
10 roughening on its surface.

11 What do you mean with roughening on its surface?

12 A. [15:11:42] Well, the actual surface of it was not smooth. Now, that may be
13 because some of the surface had eroded off over the period of time or as it was fired
14 causing any injury, it may be that there was other material adhering to it. But it was
15 a largely intact bullet, not completely smooth surface, but largely intact bullet.

16 Q. [15:12:17] You also described, Dr Clark, the nose of the bullet as being pointed?

17 A. [15:12:23] Yes.

18 Q. [15:12:25] I take it that the nose was not damaged?

19 A. [15:12:28] It didn't seem to be, no, no.

20 Q. [15:12:30] Right. And lastly, with respect to this bullet, at the rear end of this
21 page 0520, you say a large calibre bullet was found within the body bag, but it was
22 lying free from the body. Its significance is somewhat uncertain.

23 A. [15:13:01] Yes.

24 Q. [15:13:03] What did you mean with these words, "the significance is somewhat
25 uncertain"?

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 A. [15:13:11] Well, I was not necessarily associating it with this body. It may well
2 have been, but I could not definitely link the two. Even if I could, I'm not sure what
3 linkage I would get. If it was inside the body, then I would be really, well, obviously
4 closely linking it.

5 Q. [15:13:38] Yes.

6 A. [15:13:38] But as I said this morning, in the presence of either some other body
7 in the same body bag, even more so I would be -- I couldn't see anything. I couldn't
8 connect the two.

9 Q. [15:13:52] So it could have been that this bullet had any relation with the other
10 body parts in the body bag?

11 A. [15:14:00] It could be -- well, what I'm saying is the fact that there were already
12 extraneous material in the bag means that you cannot be very certain about the bullet,
13 which may be equally extraneous to that particular body.

14 Q. [15:14:19] Thank you, Dr Clark.

15 Now, you already referred to the x-ray and its advantages, disadvantages. Could
16 you say that within the modern graphical methods within contemporary forensic
17 sciences, i.e., forensic pathology, the use of an x-ray does not fit any more in these
18 modern graphical methods to ascertain the origin and the cause of bullet wounds?

19 A. [15:15:10] So you're saying --

20 Q. [15:15:11] In other words, is it an *outdated methodology, the x-ray, in your
21 professional opinion?

22 A. [15:15:17] Oh, far from it, far from it. You may be thinking of *scintigraphy, et
23 cetera.

24 Q. [15:15:24] Uh-huh.

25 A. [15:15:24] No. X-ray is still by far the easiest to use. For instance, as I referred

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 to, I'd be working in the Falkland Islands and we had an x-ray facility there which
2 was excellent, portable x-ray, and it gave us a great deal of information.

3 Q. [15:15:45] Right.

4 A. [15:15:45] We didn't even think about having CT scanners or the like.

5 Q. [15:15:49] Right.

6 A. [15:15:50] Portable x-ray is ideal.

7 Q. [15:15:54] May I confront you with a publication of Professor Michael Thali,
8 Professor Michael Thali --

9 A. [15:16:02] Yes.

10 Q. [15:16:03] -- from the Forensic Institute in Switzerland.

11 A. [15:16:06] I know him well, yes.

12 Q. [15:16:07] I will please call up document, it's Defence document
13 CIV-D25-0049-0001, and we call up first page 0001 and 0002. Just to show you the
14 origin of the publication, it's a book written by Dr Kneubuehl from Switzerland.

15 A. [15:16:47] I have this book, yes.

16 Q. [15:16:48] You have the book, right.

17 A. [15:16:50] I have the book.

18 Q. [15:16:55] It makes it quite easy for me to look with you to page 286. And that's
19 CIV-D25-0049-0038 running to 0041. But I will start with, Dr Clark, with page 0038.
20 What you will see, Dr Clark, you read the book, is a publication of 2011 in this book
21 by Professor Michael Thali on modern graphical methods to document wounds.
22 And this indeed touches upon your evidence concerning the advantages and
23 disadvantages of x-ray methodology within forensic pathology.

24 A. [15:17:56] Well, I don't think I ever said or talked about the disadvantages to be
25 fair.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 Q. [15:17:59] All right.

2 A. [15:18:01] I said I talked about the advantages.

3 Q. [15:18:04] Yes.

4 A. [15:18:05] But I haven't really said anything about disadvantages.

5 Q. [15:18:09] Could you agree with the assessment of Professor Thali saying, in
6 sum, that the 3D dimensional techniques documentation such as the virtopsy system
7 described in paragraph 5.2.1 of his book chapter has a more high degree of spatial
8 accuracy, as he calls it at the end of this paragraph 5.2.1, and it has a precision of less
9 than 1 millimetre directly to the surface of a shooting victim and the instruments that
10 caused the injury, such as weapons.

11 So he portrays the x-ray methodology against the more modern 3D documentation,
12 also the MRI scans which he describes on page 288 of this book.

13 Now, my question to you is, could you agree that these methodology is more far
14 accurate to establish the origin and the cause of bullet wounds?

15 PRESIDING JUDGE TARFUSSER: [15:19:30] Mr Demirdjian, yes.

16 MR DEMIRDJIAN: [15:19:33] Your Honours, I question the relevance of this line of
17 questioning. Dr Clark indicated that no x-ray machines were used to produce these
18 autopsy reports. So can we find out from the Defence counsel where is this going?

19 PRESIDING JUDGE TARFUSSER: [15:19:45] Yes. You might be right, but I think
20 Dr Clark is absolutely able to respond to this question.

21 So please go ahead.

22 THE WITNESS: [15:19:57] Yes. I'm not denying that CT scanning is the way
23 forward in forensic imaging. I'll fully accept that. I've heard Professor Thali speak.
24 I've chatted to him about it.

25 This is the ideal facility. But it's very expensive to have a full CT scanner. It's bulky,

1 requires special operators.

2 In the sort of work that I've been doing, that's just not practical, neither it is not
3 available, it's very expensive, and the housing, you know, physical housing of it.

4 I fully agree, I mean, CT scanning is wonderful and it shows you permanent,
5 permanent images of bullet tracks and what have you, but we don't always have that.

6 Q. [15:20:52] Right. Now, that brings me to my last question on this topic and
7 exactly the answer on the Prosecution's question as to the relevance:

8 Dr Clark, the absence of these, let's name it this way, modern graphical methods as
9 described by Professor Thali, were these one of the limitations you referred to in your
10 evidence given this morning on page 9 when you were asked by the Prosecution:

11 What limitations did you face when you conducted these autopsies?

12 A. [15:21:38] Yes. It would have been ideal to have an imaging technique of some
13 sort that would have found bullets or bullet fragments, well, particularly small bullet
14 fragments perhaps within soft tissues, which are not easy to find. That would have
15 been fine.

16 But it doesn't go away from the fact that our main record or identification of bullet
17 injuries, gunshot injuries, was on the skeleton and we could still see these even
18 without x-rays. So what the x-ray would have done, it would have perhaps found
19 small fragments of bullet perhaps in soft tissues roundabout.

20 Q. [15:22:21] Thank you.

21 A. [15:22:22] But, yes, it would have been nice to have that, but it didn't stop us, I
22 think, achieving a lot of information still from the autopsy.

23 Q. [15:22:31] Thank you.

24 I hope that illustrates relevance of the question. Thank you.

25 My second topic, Dr Clark, relates to your evidence given as to the nature of the

1 projectile you qualified with respect to the first report regarding Ms Malon as being of
2 a high velocity type of ammunition.

3 Now, in your evidence given to the Court on page 29 of the English transcript this
4 morning, lines 13 till 19, you were asked by the Prosecution:

5 How did you come to that conclusion that the nature of the damage was suggestive of
6 the use of high velocity ammunition?

7 You explained it, and one of your answers was when a high velocity type of
8 ammunition strikes a body, not only does it produce just that simple hole going
9 through the body, but it loses all that energy to the surrounding tissues called the
10 cavitation effect. That's on lines 16 till 19 of the transcript page 29.

11 Now, my question to you, Dr Clark, is the following, with respect to the first report
12 written on Ms Sylla Malon, no tissue surrounding the head of the neck was detected.
13 There was some tissue found, soft tissue found on the trunk, the arms and the legs,
14 but there was no, there were no internal organs remained and you discerned in the
15 report that no brain tissue remained, et cetera.

16 So my question to you is, how were you able to establish without having tissue,
17 because you say one of the elements to detect whether a bullet is of a high velocity
18 calibre is that its energy affects the surrounding tissues, so how were you able to
19 come to this conclusion without having the tissue in these specific body parts where
20 in your estimation the bullet hit the specific person, i.e., the head of the neck?

21 A. [15:25:55] Well, tissue refers to more than just soft tissue. Tissue also refers to
22 bone. So the bone is part of that tissue.

23 So as the bullet strikes the body, it loses this energy into the surrounding tissues, be
24 that soft tissues, blood vessels, organs or bone.

25 All we've got here is the bone. And in my experience, that fragmentation that we

1 saw is very typical of damage caused by a high velocity weapon. And I've seen
2 hundreds and hundreds of these in Bosnia. That was all high velocity weapons,
3 from assault rifles. And this damage was very similar to that. So that's what I felt.
4 And I mean, I've discussed this previously, not necessarily here, but at length I go into
5 the limitations of this exercise and that we are just left to base a lot on the bones,
6 because that's what we can see.

7 But I think it's reasonable enough to extrapolate from what we see there as to what
8 injuries will be around roundabout.

9 Q. [15:27:21] Still my question is, could you consider the absence of soft tissue in
10 these specific body parts as a limitation to your inquiry as you set forth at the
11 beginning of your evidence when asked by the Prosecution on page 9 of the
12 transcripts?

13 A. [15:27:44] Yes. It is an obvious limitation. It limits us to definitely confirming
14 that it's a bullet wound; it limits us to assessing what kind of time scale, what distance
15 of fire. So yes, this certainly is limited, but it still doesn't get away from the fact that
16 we have typical damage to the bone and that I think we are allowed to extrapolate
17 from that.

18 Q. [15:28:14] Thank you, Dr Clark.

19 My last topic relates to the report you wrote with your colleague, Ms Moyamou Koné.
20 You were questioned on this report, and this is to be found on transcript page 35 of
21 the English transcript, page 35, lines 18 till 21.

22 There you say that the only injury you saw were these fractures on the left side of the
23 face and this fracture of the scapula.

24 A. [15:29:18] Yes.

25 Q. [15:29:18] Right. Now, we already observed this morning that in your report,

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 that's CIV-OTP-0081-0528, page 0530, you also observed the existence of commingled
2 bones, among which an occipital bone from a skull. That's to be found at the top of
3 page 0530.

4 Your evidence was that no one undertook steps to ascertain the origin of those bones;
5 transcript page 76, line 5.

6 Now, my question to you, Dr Clark, is could the fracture or the damage on the right
7 scapula belong to another person than Ms Moyamou Koné?

8 A. [15:30:46] No. That was within the bodies, the body. I mean, we felt
9 confident that that was attached to the rest of the body. So I'm happy that
10 the -- what we saw on the scapula belongs to the person whose, the rest of that body
11 was identified as this woman from the femur.

12 You're quite right to point out about the bones in the skull. It's a possibility,
13 reasonable possibility, that that occipital bone and even part of the face didn't actually
14 belong to her and that the skull which we initially assumed belonged to someone else.
15 I think that's a possibility.

16 But from the neck down, I am satisfied that this was all the one body.

17 Of the number of bones that we found, some of them could not have come from the
18 lower part of the body because we already had bones there. But the skull, the two
19 parts of the skull could.

20 Q. [15:32:08] Right.

21 A. [15:32:09] So yes, there is doubt there still.

22 Q. [15:32:14] Thank you, Dr Clark.

23 Those were our questions, Mr President, for Dr Clark on behalf of our team. Thank
24 you.

25 PRESIDING JUDGE TARFUSSER: [15:32:21] Thank you very much.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 Now I revert to the Office of the Prosecutor, asking if there is a need for
2 re-questioning.

3 MR DEMIRDJIAN: [15:32:29] Your Honours, just one question or two.

4 PRESIDING JUDGE TARFUSSER: [15:32:32] Please go ahead.

5 MR DEMIRDJIAN: [15:32:33] Thank you.

6 QUESTIONED BY MR DEMIRDJIAN:

7 Q. [15:32:37] Good afternoon again, Dr Clark.

8 A. [15:32:39] Good afternoon.

9 Q. [15:32:40] This morning when my learned friend Mr Jacobs was asking you
10 questions relating to this victim, Koné Moyamou, you answered, I'll quote the
11 question and answer here at page 77, line 18. Counsel asks you, "Can you explain to
12 us how you came to the conclusion that the injury was a bullet injury?"
13 Your answer, and I cite, was, "Again, this was a shoulder one. Again, the damage on
14 the bone was a type I've seen in bullet injuries on the fact that there was a fracture
15 running down from it as well."
16 Then you note also the T-shirt afterwards.
17 So putting aside the T-shirt, and on your answer here, this is a type of bullet injury
18 you've seen before, I'd like us to display the image on the screen for a moment just to
19 look at it.

20 If we could display on the screen, please, CIV-OTP-0080-1810.

21 Thank you.

22 Now, in your report, Dr Clark, you talk about a vertical fracture running down from
23 through the middle part of the blade to the lower part of the medial border.

24 First of all, is this the bone we're talking about?

25 A. [15:34:35] Yes. It's lying on its side. So I don't know if there is any way of

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 turning the image clockwise.

2 Q. [15:34:45] We certainly can, yes.

3 A. [15:34:52] It's probably -- no, no.

4 Q. [15:34:57] One more.

5 A. [15:34:57] That's it. That's fine, that's fine.

6 Q. [15:34:59] Okay.

7 A. [15:34:59] So that this is how it lies in the body. So to the left-hand side of the
8 screen is towards the arm, the right arm. And the very top right of the screen, that
9 sort of curved area, it's where the shoulder blade connects with your upper arm bone.
10 So just along from that, and the top you see an area of fracturing or actually part of
11 bone missing, and from that, a fracture line continues all the way down to the lower
12 part. There is a big hole in the middle, which is probably not as significant as it
13 perhaps looks; it's just part of the fracturing. So that's what that shows.
14 The main -- the bullet primarily would have struck the upper border.

15 Q. [15:36:04] So, and this is my question to you, Dr Clark, in your experience, what
16 could have caused this injury?

17 A. [15:36:14] Well, it looks to me like -- my first instinct would be a bullet injury.
18 It, secondly, could be potentially a bit of shrapnel; a shell splinter from an exploding
19 shell could do the same. As a last possibility, a blow from a heavy object might just
20 do that, but the lack of any fractures roundabout makes that less likely.
21 So my feeling is this, this struck me right away that this is a bullet injury.

22 Q. [15:36:58] Thank you, Dr Clark.

23 I have no further questions, your Honours.

24 PRESIDING JUDGE TARFUSSER: [15:37:02] Thank you very much.

25 The Defence for Mr Gbagbo?

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 MR JACOBS: [15:37:21] (Interpretation) Mr President, just one question.

2 QUESTIONED BY MR JACOBS: (Interpretation)

3 Q. [15:37:32] Good afternoon, Mr Witness.

4 To continue on the question of the fracture that you observed, if you look at the three
5 autopsy reports, and I will start with *Sylla Malon, that is 0081-0518, page 0519, you
6 state on the third paragraph, gunshot injury, third paragraph, when talking about
7 injuries.

8 When I look at the report, Ouattara Gnon Rokia, which is number 0081-0523, on page
9 0525, at the top of the page, *paragraphs 3, 4 and 5, you also indicate that there is a
10 gunshot injury.

11 And finally, if I look at the report of Koné Moyamou, and it is number 0081-0528, on
12 page 0529, in the description of the injuries, you indicate the fractures but you do not
13 mention gunshot injury.

14 So would it be reasonable to conclude that contrary to the two other reports, when it
15 comes to this particular body, the observation of the skeleton, the main observation
16 would not have allowed you to conclude that it was a gunshot injury?

17 A. [15:40:37] I think it's fair to say that I had a little more doubt in this case than in
18 the other two. That's a fair point. But because of, and we discussed it this morning,
19 the hole in the T-shirt, that led me to believe that this was a gunshot injury. And I've
20 argued that in the conclusions precisely that way.

21 So yes, it would be correct in saying that there was -- I had a little doubt in this,
22 whether it was exactly a gunshot injury, but it's more like a gunshot injury than
23 anything else; put it that way.

24 Q. [15:41:25] Thank you, Mr Witness.

25 PRESIDING JUDGE TARFUSSER: [15:41:30] Mr Knoops.

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

- 1 MR KNOOPS: [15:41:31] Thank you, Mr President. No questions. Thank you.
- 2 PRESIDING JUDGE TARFUSSER: [15:41:34] Thank you very much, Dr Clark.
- 3 THE WITNESS: [15:41:37] Thank you, your Honour.
- 4 PRESIDING JUDGE TARFUSSER: [15:41:37] I can tell you that your testimony here
- 5 is over.
- 6 THE WITNESS: [15:41:42] Thank you.
- 7 PRESIDING JUDGE TARFUSSER: [15:41:42] Thank you for having been here, for
- 8 having answered all the questions put to you by parties and by the Bench and wish
- 9 you a safe trip back home. You're not so far as other witnesses.
- 10 THE WITNESS: [15:42:00] No.
- 11 PRESIDING JUDGE TARFUSSER: [15:42:00] Thank you very much. You can leave
- 12 the courtroom with the help of the court usher. Thank you very much.
- 13 THE WITNESS: [15:42:08] Thank you very much.
- 14 (The witness is excused)
- 15 PRESIDING JUDGE TARFUSSER: [15:42:17] Before adjourning to tomorrow
- 16 morning, because the next witness has only arrived today, so is not ready, I have just
- 17 to make an oral ruling on the ICPM, in-court protective measures, and this is the oral
- 18 ruling of the Chamber on the in-court protective measures for the next witness to take
- 19 the stand, and I'm referring to Witness P-364.
- 20 The Chamber has noted the request by the Defence for Mr Gbagbo and the response
- 21 by the Prosecutor, both submitted earlier today by email, as well as the security
- 22 assessment submitted by the VWU also today.
- 23 The Chamber in the revision of its previous oral decision dated 14 January 2016, and
- 24 I'm referring to T-8, line 20 -- no, T-8, page 7, line 20, to page 8, line 11, pursuant to
- 25 Rule 87 of the rules of the procedure and evidence and Regulation 42 of the

Trial Hearing
WITNESS: CIV-OTP-P-0585

(Open Session)

ICC-02/11-01/15

1 regulations of the Court, having considered the assessment by the VWU, the personal
2 circumstances and views of the witness and in light of its practice as consolidated
3 during this trial decides that in-court protective measures are not warranted for
4 Witness P-364 and, therefore, be rescinded.

5 This concludes the Chamber's oral ruling on this issue. And now I have the only
6 thing to do to adjourn the hearing to tomorrow morning, 9.30, with the witness I just
7 mentioned. Thank you very much. The hearing is adjourned.

8 THE COURT OFFICER: [15:44:22] All rise.

9 (The hearing ends in open session at 3.44 p.m.)

10 CORRECTIONS REPORT

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

12 *Page 33, line 13: "2010" is corrected to "2015".

13 *Page 47, line 13: "made some" is corrected to "would make".

14 *Page 57, lines 19-20: "the body would have been older than four years?" is corrected
15 to "the person had died less than four years ago?"

16 *Page 62, lines 5-6:

17 "Therefore, you would only have come to the conclusion that it was only the gunshot
18 that caused the death?" is corrected to "So, consequently, you would not have been
19 able to determine that it was the gunshot that caused the death?"

20 *Page 66, line 6: "and then finalized" is corrected to "by Mrs Etté to be finalized".

21 *Page 71, line 22: "CT scanning" is corrected to "scintigraphy".

22 *Page 80, line 9: "paragraph 3" is corrected to "paragraphs 3, 4 and 5".

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

24 *Page 48, line 5: "looked at any particular difference" is corrected to "looked at a
25 particular injury, for instance".

- 1 *Page 58, line 3: "possible" is corrected to "impossible".
- 2 *Page 65, line 6: "certificates" is corrected to "certificate".
- 3 *Page 65, line 6: "find" is corrected to "found".
- 4 *Page 71, line 20: "ou dated" is corrected to "outdated".
- 5 *Page 80, line 5: "Sylla Malon; that is" is corrected to "Sylla Malon, that is".