

Trial Hearing
WITNESS: CIV-OTP-P-0048

(Open Session)

ICC-02/11-01/15

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Trial Hearing
9 Friday, 1 July 2016
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: [9:34:36] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:34:55] Good morning to everybody.
15 Good morning, Mr Witness.
16 WITNESS: CIV-OTP-P-0048 (On former oath)
17 (The witness speaks French)
18 THE WITNESS: [9:35:21] (Interpretation) Good morning.
19 PRESIDING JUDGE TARFUSSER: [9:35:23] Good morning. I will
20 immediately give the floor to Maître N'Dry for the continuing of the
21 questioning of the witness. Thank you.
22 QUESTIONED BY MR N'DRY: (Continuing)
23 Q. [9:35:53] (Interpretation) Good morning, Mr Witness.
24 A. [9:35:54] Good morning.
25 Q. [9:35:56] Yesterday we stopped at the end of the day. We were having

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1 technical problems in order to show a video, and I'd like to give the references
2 now of that video. It's -- well, there's two videos, CIV, and this is number
3 167 on our list, CIV-D25-0011-0028.

4 (Viewing of the video excerpt)

5 MR N'DRY:

6 Q. [9:40:01] (Interpretation) I would like to ask that we see the following
7 video, and we'll be finishing off the questions on Marcoussis this morning.
8 This is video CIV -- sorry, it's number 165 on our list, CIV-D25-0011-0026.

9 (Viewing of the video excerpt)

10 MR N'DRY:

11 Q. [9:42:44] (Interpretation) Mr Witness, you have been able to watch
12 these two videos.

13 A. [9:42:51] Yes.

14 Q. [9:42:52] I'd like to briefly go back over what Mr Louis Dacoury Tabley
15 has stated. You recognized him, didn't you?

16 A. [9:43:10] Yes, indeed.

17 Q. [9:43:12] He referred to satisfaction. He said 80 to 85 per cent. That
18 is, I imagine he meant in terms of the demands made by the Forces Nouvelles.
19 You yourself were in Marcoussis. Can you confirm that or not?

20 A. [9:43:39] All those who signed the Marcoussis Agreement were
21 satisfied, I can say, 100 per cent.

22 Q. [9:43:44] Okay. He spoke about monitoring the -- President Gbagbo.
23 Did you hear that?

24 A. [9:43:59] Yes, I heard that.

25 Q. [9:44:04] You referred to the setting up of the group of seven?

1 A. [9:44:08] Yes.

2 Q. [9:44:09] Was that the purpose?

3 A. [9:44:11] The purpose, and I can confirm that, was when we arrived in
4 Abidjan, *the instigator of those who were to provide the follow-up of the
5 implementation of the Marcoussis Agreement was Dacoury Tabley. At the
6 first meeting, all those who participated in the Linas-Marcoussis round table
7 discussion were invited to say, okay, on the one hand, the UN set up a
8 monitoring mechanism, but at the same time we --

9 Q. [9:44:59] Well, we'll come to the UN later. My question, my question
10 was a simple one.

11 A. [9:45:06] Yes.

12 Q. [9:45:07] When he refers to monitoring, in one of your statements you
13 said that you had set up the group of seven, in order to monitor the
14 application of the Marcoussis agreements. And here we heard Mr Louis
15 Dacoury Tabley say that "we are going to monitor President Gbagbo." Was
16 that the same thing? Was that the same purpose? That's my question.

17 A. [9:45:36] No, no, it wasn't. The mission was to monitor the application
18 of the Linas-Marcoussis agreement and not to monitor President Gbagbo.

19 Q. [9:45:47] Fine. Thank you.

20 Well, I have one last question about Marcoussis. On 27 August, it was a
21 Monday, this year, 2016 -- sorry, I correct myself. It was 27 June of this year.

22 Let me start again.

23 Monday, June 27, 2016, on page 59, starting line 19, you stated the following:

24 "Well, yes, we went back to Côte d'Ivoire. But after a few days of waiting,
25 because right after the signing of the Linas-Marcoussis Agreement, especially

1 after the Kléber meeting where there had been, indeed, a beginning of the
2 sharing out of power, the Ivorian people, in particular in the southern areas
3 of Côte d'Ivoire, were demonstrating because they felt that we had sold off
4 cheap the authority of Côte d'Ivoire in favour of a political agreement."

5 Can you confirm that statement, yes or no?

6 A. [9:47:34] Yes, I confirm.

7 Q. [9:47:35] Okay. Well, what do you mean when you refer to the
8 beginning of the sharing out of power?

9 A. [9:47:49] The reconciliation agreement, in keeping with the
10 Linas-Marcoussis Agreement, was to share out the various ministerial
11 portfolios, and that's what I was referring to when I said the sharing of
12 power, that is the executive power through the members of the government.

13 Q. [9:48:11] You also referred to a transfer of power from the president at
14 the time to the prime minister. Wasn't that what you were referring to when
15 you said the beginning of the sharing of power?

16 A. [9:48:34] It's written in black and white in the Linas-Marcoussis
17 Agreement.

18 Q. [9:48:39] What exactly is stated in black and white?

19 A. [9:48:44] The transfer is written in black and white in the
20 Linas-Marcoussis Agreement.

21 Q. [9:48:49] The transfer of power from the president to the prime
22 minister; is that what you mean?

23 A. [9:48:54] Yes.

24 Q. [9:48:56] All right. We can now close the chapter of my questions on
25 Linas-Marcoussis.

1 This leads me to the issue of mobile courts.

2 In fact, your Honour, I may finish earlier, I just want to warn my colleague
3 that he may need to start before the break, before the morning break. I just
4 want to avoid there being any surprise in the courtroom.

5 PRESIDING JUDGE TARFUSSER: [9:49:51] Thank you.

6 MR N'DRY:

7 Q. [9:49:58] (Interpretation) I'd like to refer to the June 27, 2016 transcript
8 starting on page 83, and I'm going to talk about these mobile courts and then
9 we will have finished once I've discussed this issue of the mobile courts.

10 In the French transcript, that is again the June 27 transcript starting at line 14,
11 you say the following, and I quote:

12 "The mobile courts corresponded to a practice that was necessary in order to
13 grant ID cards to individuals who had not been able to be enrolled in the
14 official registers. Indeed, the birth certificates and registration of births, et
15 cetera, had not been completed as it should have been during several years.
16 And what that meant was that you could have people in the villages, and in
17 the sous-préfecture, who were born there but that had never been officially
18 declared to the authorities. Therefore, that needed to be corrected, and
19 that's what we called the audiences foraines, these mobile courts, where
20 people who were especially trained for that purpose would go to the distant
21 villages to record the births of those who didn't have any official papers."

22 I'm reading the transcript. That was what we referred to as these mobile
23 courts. This is line 28.

24 So on this matter of these mobile courts could you perhaps explain in further
25 detail, because this is fundamental, who exactly participated in this

1 procedure? Who was involved? I mean from the point of view of the
2 administration.

3 A. [9:53:15] I'm not -- I don't believe I remember exactly how the teams
4 were set up in these mobile courts.

5 Q. [9:53:27] Were there judges or magistrates involved?

6 A. [9:53:32] Yes, indeed.

7 Q. [9:53:33] What about the sous-préfets, were they involved in this
8 procedure?

9 A. [9:53:46] I'm not able to say.

10 Q. [9:53:50] In 2005, because that's the period we're talking about, you
11 already referred to the period, did the administration -- or, rather, was the
12 administration in Côte d'Ivoire represented throughout the national territory?

13 A. [9:54:11] I'm not exactly certain when the zone of confidence was
14 dismantled, otherwise I could answer yes.

15 Q. [9:54:35] You were in the government in 2006 and 2007?

16 A. [9:54:39] Yes, indeed.

17 Q. [9:54:42] At that point in time, as far as you remember, was the
18 administration represented throughout the territory?

19 A. [9:54:49] No.

20 Q. [9:54:49] Okay, no. We're referring to 2006-2007?

21 A. [9:54:56] Yes, indeed.

22 Q. [9:54:57] But those mobile courts were before, right?

23 A. [9:55:00] Yes, before.

24 Q. [9:55:01] The administrations -- or, rather, the administration that
25 participated in these mobile courts, the fact that the administration was not

1 represented throughout the territory, did this really make it possible for that
2 operation to begin?

3 A. [9:55:25] Yes. It was possible *to the extent that there was free movement
4 across the territory. I didn't say that the sous-préfets and préfets participated. I
5 said the 'magistrates'. But the magistrates moved about. The principle of the
6 mobile courts is that we approach the... the magistrates and those who were in
7 charge of those mobile courts approach the population, in other words they
8 might leave Abidjan and go to Odienné to carry out a census of sorts.

9 Q. [9:56:09] In other words, people from the south had to go to the north
10 to the villages and everywhere, not just the north, the west and elsewhere
11 where these mobile courts were organised?

12 A. [9:56:21] Yes.

13 Q. [9:56:22] In order to participate in these mobile courts. We're talking
14 about 2005-2006. In fact, you said in 2007 they still existed, the CNO zone.

15 A. [9:56:37] You said the word "problem." What did you mean,
16 "problem"?

17 Q. [9:56:45] Let's try not to overlap.

18 PRESIDING JUDGE TARFUSSER: [9:56:53] Yes, a little bit of discipline.

19 Thank you.

20 MR N'DRY:

21 Q. [9:57:08] (Interpretation) When I use the word "problem" I meant the
22 redeployment of the administration. You confirm that in 2007 when you
23 were in the government that was not completed?

24 A. [9:57:21] Yes, that's correct.

25 Q. [9:57:23] So the zone, I believe we agree on the concept of CNO, that is

1 the zone where, which was under the authority of the Forces Nouvelles, did
2 that zone still exist?

3 A. [9:57:40] Yes, it still existed.

4 Q. [9:57:43] As far as you remember, what were the official demands
5 made by those who felt that given the present state of affairs, those mobile
6 courts should be postponed?

7 A. [9:58:20] I don't know their reasons.

8 Q. [9:58:24] All right. Well, we're going to -- we've completed that issue
9 on mobile courts.

10 And now I would like to jump forward to 2010. Well, just one more point
11 on those mobile courts. You referred to a grey list or a white list? I'm not
12 sure of the colours. Can you say anything else about that? Was that in
13 relationship to the mobile courts?

14 A. [9:59:01] No. That was in reference to the voting list, the electoral lists
15 -- or, rather, voting registration lists.

16 Q. [9:59:10] Well, Monday, June 27, 2016, lines 23 to 26 of the transcript on
17 page 25, you stated the following, and I quote: "Yes, thereafter" -- we were
18 talking about the events in October of 2000 at that point. So you said: "Yes,
19 thereafter, officially and in keeping with our fundamental law, President
20 Laurent Gbagbo took the oath of office during a ceremony in the Palace of the
21 Presidency of the Republic in the Plateau in Abidjan. Congratulations."
22 End of quote.

23 What did you mean by that when you say that President Laurent Gbagbo
24 took an oath in keeping with our fundamental law? This is 2000, the year
25 2000, not 2010.

- 1 A. [10:00:40] According to our constitution, he has to take an oath. It is
2 not the location of the swearing in that mattered, but he took an oath.
3 Because if you reread our constitution, it is not stated where the swearing in
4 would take place, because I can see where you are driving at in your
5 questions.
- 6 Q. [10:01:07] Mr Witness, let us not go back to certain things that are
7 already well known by this Court. But since you can see where I am driving
8 at, I would like us to go back to certain topics, specifically the second round of
9 the elections of 2010. In 2010, the constitution of Côte d'Ivoire which had
10 been adopted in 2000, had it been amended or not?
- 11 A. [10:02:28] Our constitution had not been amended.
- 12 Q. [10:02:33] Very well. We know that. Very well, we are not going to
13 come back to it.
- 14 Mr Youssouf Bakayoko the Chamber is aware, we are not going to go back
15 there. We have seen video footage. Mr Youssouf Bakayoko went to
16 Mr Alassane Ouattara's campaign headquarters and proclaimed the results
17 and then the constitutional council declared Mr Laurent Gbagbo as the
18 winner. We are not going to go back to that.
- 19 But as far as you know, where and when did Mr Alassane Ouattara take the
20 oath of office?
- 21 A. [10:03:36] You just said a short while ago that we should not go back to
22 some of these issues. But with your permission, even though the Chamber is
23 aware of many of these things, allow me to go back to certain issues.
- 24 Q. [10:03:58] Let us understand ourselves, Mr Witness. We have rules
25 here.

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1 A. [10:04:01] I know that there are rules.

2 Q. [10:04:04] The Prosecutor put questions to you, you answer. Then
3 after that you can even say you don't wish to answer. It is your right. But
4 we are the ones listening -- or, rather, leading the questioning. The witness
5 should not improvise questions in order to provide answers to them. It is
6 counsel that puts the questions.

7 If you don't know, you can simply say you don't know without commenting.

8 So I'm asking you: where and when did Mr Ouattara take the oath of office?

9 A. [10:04:49] I will not answer your question.

10 Q. [10:04:55] Very well. Where and when did Mr Laurent Gbagbo take
11 the oath of office?

12 A. [10:05:05] I will not answer your question.

13 Q. [10:05:07] Perfect.

14 PRESIDING JUDGE TARFUSSER: [10:05:30] Excuse me, Mr Witness. In
15 this case, we know, but it's not at your disposal if to answer or not answer the
16 questions. You can -- or not know the questions or say you don't remember,
17 but just you can't just refuse to answer questions. So I would really ask you
18 to because these are factual questions you know, we know, but I think there is
19 no big problem to answer these questions.

20 THE WITNESS: [10:06:05] (Interpretation) Mr President, I have fully
21 understood you. It is counsel himself who said that I have the choice to say
22 that I do not know or that I will not answer. That is what he told me.
23 But now that you say you would like me to answer, I will answer.

24 PRESIDING JUDGE TARFUSSER: [10:06:29] Counsel is wrong, may I say.
25 You have not the right not to respond. You are a witness and you have to

1 respond, but obviously in responding you could also say if you don't know
2 that you don't know, and in that not respond. But it's not your choice not to
3 respond or to respond.

4 So I would really ask you to respond to the question. Thank you.

5 THE WITNESS: [10:06:57] (Interpretation) In relation to the first question,
6 President Alassane Ouattara was sworn in at the Golf Hotel.

7 President Laurent Gbagbo took the oath of office at the presidential palace.

8 PRESIDING JUDGE TARFUSSER: [10:07:30] Thank you very much.

9 Please go ahead.

10 MR N'DRY: [10:07:33] (Interpretation) Thank you, Mr President.

11 Q. [10:07:38] Mr Witness, during your testimony on the 27 of June 2016, I
12 just have two or three more questions, and I would be done. From line 16,
13 this is what you said, and I quote:

14 MR DEMIRDJIAN: [10:08:05] (Interpretation) Which page, please?

15 MR N'DRY: [10:08:09] (Interpretation) I will give you the page number.

16 I'm sorry, I've forgotten. I will try to look for it. Well, let me simply ask him
17 the question so we can see whether he remembers.

18 Q. [10:08:39] You said that, normally, a republican army supports legality.

19 After an election has been organised and the candidate is quite obviously
20 there, automatically the army is subordinate to the president that has been
21 elected.

22 Do you remember that?

23 A. [10:09:12] Yes, I remember having said that.

24 Q. [10:09:15] We will now call up a video excerpt. It is document number
25 108 on our list and it is CIV-OTP-0026-0016. And the time codes from

1 minute 6 to 9.06.

2 (Viewing of the video excerpt)

3 MR N'DRY:

4 Q. [10:13:38] (Interpretation) Mr Witness, do you recognize the person
5 who was speaking?

6 A. [10:13:42] Mr Bredou M'bia, who is the current director general for
7 security in Côte d'Ivoire and who put himself at the disposal of President
8 Alassane Ouattara when he recognized that legality was on the side of the
9 elected president, President Alassane Ouattara.

10 Q. [10:14:07] Now, without talking about specific people, when you talked
11 about the republican army that has to support legality, is that what he meant?

12 I'm not -- I don't want to talk about President Gbagbo or Ouattara, no.

13 When talking about being on the side of constitutional legality, that is the
14 republican army, what Mr M'bia said, is that what you meant?

15 A. [10:14:45] I do not wish to interpret Mr M'bia's statement.

16 Q. [10:14:51] That's very well. That's perfect. It is what he said, so it is
17 his statement.

18 Now, Mr Witness, on behalf of the Defence team of Mr Charles Blé Goudé
19 and Mr Charles Blé Goudé himself, we would like to say thank you for
20 having tried to shed light for the Chamber, and we wish you a safe return to
21 this country which we all love.

22 Mr President, I have no further questions.

23 A. [10:15:26] Thank you.

24 PRESIDING JUDGE TARFUSSER: [10:15:28] Thank you, Maître N'Dry.

25 This concludes the questioning by the Defence teams. Now I ask the

1 Prosecutor if he has questions for the re-questioning?

2 MR DEMIRDJIAN: [10:15:37] Your Honours, yes. And I should be done
3 before the break.

4 PRESIDING JUDGE TARFUSSER: [10:15:41] Okay. And then, of course,
5 the last possibility is to both Defence teams according to Rule 140 of the Rules
6 of Procedure and Evidence. So yours the floor now.

7 MR DEMIRDJIAN: [10:15:58] Thank you, Mr President.

8 QUESTIONED BY MR DEMIRDJIAN:

9 Q. [10:16:10] (Interpretation) Good morning, Mr N'Guessan.

10 A. [10:16:12] Good morning.

11 Q. [10:16:14] I would like to begin with something that you talked about with
12 my learned friend Mr N'Dry a short while ago, and this relates to the swearing-in
13 ceremonies of Mr Ouattara and Mr Gbagbo *I think you were allowed to provide
14 a comprehensive response so in which context would you like to provide your
15 response regarding regarding the circumstances of those swearing-in ceremonies.

16 A. [10:16:44] The independent Electoral Commission proclaimed the
17 results on the 3rd. On that same day of the 3rd, the validator of the UN that
18 President Gbagbo himself wanted to have for the elections confirmed that
19 Mr Ouattara had won the presidential elections. And I told you that, when
20 the results were being proclaimed, an individual came up to the podium and
21 tore up the results sheets. You have the footage. And from that moment on
22 the premises *where the results were due to be announced - that is the CEI
23 headquarters - were invaded by the Republican Guard tanks of Mr Gbagbo.
24 So Mr Bakayoko was not able to continue the proclamation of the results.
25 Now, against all expectations, Mr Gbagbo had himself proclaimed president

1 by the president of the constitutional council at the time, *based on information
2 invalidating elections in almost *ten departments in Côte d'Ivoire. Our election
3 law is clear, if there are protests that could call into question the results of the
4 election, then the election is immediately reorganised. *This was not done. So he
5 invalidated the results for 10 departments. Then he kept the results for Mr Gbagbo
6 and said that Mr Gbagbo had won. Mr Choi, who was in charge of validating the
7 results said in his report later that even if some votes had been taken out, as was
8 done, *by Mr Yao N'dré then Mr Ouattara would still have won the elections. *It
9 was under these conditions, as even access to the presidential palace and the CEI
10 was impossible, that the elections were announced in the Golf and then Mr Ouattara
11 was sworn in. So, on the one hand, the election results were proclaimed in the Golf
12 and then he was sworn in. But from the day that Mr Gbagbo was sworn in, his
13 government was illegal. And every act taken by that government was illegal.
14 This was usurpation of power.

15 The president-elect had been recognized by the international community, the Africa
16 Union, ECOWAS. President Gbagbo himself had requested that there should be a
17 panel of experts to come and validate who had won the elections. They came and
18 confirmed that Mr Alassane Ouattara had won. And despite that, he tried to
19 maintain himself in power by all means, and we know what happened afterwards.

20 Q. [10:20:21] Mr Witness, in answer to questions from my colleagues in the
21 Defence, well, at some point passages from your book were read out to you and I
22 would like some excerpts to be displayed, CIV-OTP-0083-0332.

23 Do we have a hard copy for the witness?

24 (Speaks English) Your Honours, with your permission, could we show the witness
25 exactly the copy we have? Perhaps we can pass it on in the old style again just to

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1 make sure that he reads.

2 PRESIDING JUDGE TARFUSSER: I think we should in this courtroom trust
3 each other in a way that we have not to circulate. This is my suggestion.

4 MR O'SHEA: [10:21:39] Well, there should be no question of doubt as to my
5 learned friend's statements about what he's holding.

6 PRESIDING JUDGE TARFUSSER: [10:21:44] Yes, I think so.

7 MR O'SHEA: [10:21:46] If that's the question, then certainly not.

8 PRESIDING JUDGE TARFUSSER: [10:21:48] I think so as well. Thank you
9 very much.

10 MR DEMIRDJIAN: [10:21:50] Thank you.

11 PRESIDING JUDGE TARFUSSER: [10:21:51] I hope for the Blé Goudé
12 Defence it's the same.

13 MR N'DRY: [10:21:54] (Interpretation) Yes.

14 PRESIDING JUDGE TARFUSSER: [10:21:55] Okay, thank you very much.

15 MR DEMIRDJIAN: [10:22:00] Okay. We can display it on the screen also
16 for everyone's benefit.

17 THE WITNESS: [10:22:15] (Interpretation) Yes, I confirm.

18 MR DEMIRDJIAN:

19 Q. [10:22:27] (Interpretation) Mr Witness, you gave us an electronic
20 version; is that correct?

21 A. [10:22:32] Yes.

22 MR DEMIRDJIAN: [10:22:34] If we can go to page 5 just to see the first few
23 pages on the screen.

24 Q. [10:22:48] (Interpretation) That is the beginning of your book that we
25 can see on the screen?

1 A. [10:22:55] Yes.

2 Q. [10:22:58] The book is about 600 pages. I'm not going to show all the
3 pages, I just wanted to know that we have the right version?

4 PRESIDING JUDGE TARFUSSER: [10:23:08] I would say the manuscript.

5 MR DEMIRDJIAN: [10:23:09] Yes.

6 PRESIDING JUDGE TARFUSSER: [10:23:10] Yes, because it's not the book
7 otherwise. Thank you.

8 MR DEMIRDJIAN: [10:23:13] The manuscript.

9 Q. [10:23:16] (Interpretation) Mr N'Guessan, on Wednesday the
10 Presiding Judge asked that a map be used to sort of guide everyone in
11 relation to certain locations that we mentioned in Abidjan. Now, if we
12 display a map of Abidjan can you identify three locations: Your residence,
13 that is just the neighbourhood, the presidential residence where you were
14 taken, and then the presidential palace? Do you think that you can identify
15 those locations on a map?

16 A. [10:24:07] Yes.

17 MR DEMIRDJIAN: [10:24:11] (Interpretation) Mr President, the map that
18 we have is a map on which we agreed with the parties. It is
19 CIV-OTP-0092-0410. And in order for the witness to see well I believe we
20 should scroll down to the bottom of the page, towards the bottom. Very
21 well.

22 Q. [10:24:43] Can you see anything? Are you familiar with it?

23 A. [10:24:52] It's not clear. I would like us to enlarge the map a little bit.

24 Q. [10:25:06] Is it a bit clearer now?

25 A. [10:25:09] Yes.

- 1 Q. [10:25:10] Do we have the locations that you can show us or do we
2 need to shift the map a little bit?
- 3 A. [10:25:20] You should shift towards the right and then down a little bit.
- 4 Q. [10:25:41] Is it too low now, or?
- 5 A. [10:25:47] Scroll up a little bit.
- 6 MR GBOUGNON: [10:25:50] (Interpretation) Can it be enlarged a little bit?
- 7 MR DEMIRDJIAN: [10:25:58] (Interpretation) I'm being directed by the
8 witness here.
- 9 THE WITNESS: [10:26:05] (Interpretation) Scroll up, please, to the right.
- 10 MR DEMIRDJIAN:
- 11 Q. [10:26:21] (Interpretation) A little bit to the right?
- 12 A. [10:26:25] Yes, and then scroll down a little bit more.
- 13 Q. [10:26:30] Yes.
- 14 A. [10:26:36] It is okay. Please go back up a little bit, a little bit more,
15 some more, a little bit more, yes. Yes.
- 16 Q. [10:27:08] To begin with, Mr N'Guessan, we are not talking about the
17 specific street, since we are talking about your residence, we just want the
18 neighbourhood in general.
- 19 Can the court usher assist the witness to mark the locations that he wants to
20 show us on this map?
- 21 Can you show the Chamber?
- 22 A. [10:28:00] My neighbourhood is located in this area.
- 23 Q. [10:28:06] Very well. Can you put the letter A right next to the circle
24 and just remind us what is the name of your neighbourhood?
- 25 A. [10:28:18] *It's Angré, the Arcades neighbourhood.

- 1 Q. [10:28:31] Can we record this image.
2 And was this the neighbourhood in which you were in 2010?
- 3 A. [10:28:43] That is where I was as from February 2011.
- 4 Q. [10:28:51] Now, can we see the location of the presidential residence on
5 this map?
- 6 A. [10:28:56] No.
- 7 Q. [10:28:57] So can you guide us a little bit to where we can find the
8 residence?
- 9 A. [10:29:11] Shift to the left.
- 10 Q. [10:29:12] (No interpretation)
- 11 A. And then you go down towards Cocody, to the right now. Yes,
12 please, stop there.
- 13 Q. [10:30:10] Can you mark the location of the presidential residence
14 where you were taken on 8 of April? And please put letter B.
15 Also can we see the presidential palace on this map?
- 16 A. [10:30:35] We have to go towards the Plateau. That's towards the left.
- 17 Q. [10:30:39] Can you see the Plateau on this map?
- 18 A. [10:30:41] Yes, yes, I can see it. I don't think you need to enlarge it.
19 The presidential palace is in this area.
- 20 Q. [10:31:02] Can you put the letter C there.
- 21 MR DEMIRDJIAN: [10:31:11] Your Honours, does that assist a little bit in
22 terms of the locations?
- 23 PRESIDING JUDGE TARFUSSER: [10:31:18] It does.
- 24 MR DEMIRDJIAN: [10:31:22] (Interpretation) If we could please save this
25 particular image. Thank you.

1 Q. [10:31:35] I would like us to go back to one particular topic stemming
2 from Linas-Marcoussis. Mr N'Dry, my learned friend, said yesterday, allow
3 me to find the reference -- oh, here it is. And you responded, this is pages 80
4 to 82, that Mamadou Koulibaly had left the round table three days after the
5 beginning of the meeting. And in response the day before yesterday to a
6 question from Mr O'Shea, you said at page 107, line 22, transcript 55, you said
7 that the number 2 of the FPI had left the meeting room after the third or
8 fourth day to go back to Abidjan, and later we learned that he had left in
9 order to go back and organise the resistance movement.

10 Are we talking about two different people here or the same?

11 A. [10:32:51] We're talking about the same person.

12 Q. [10:32:55] And you explained yesterday that Mr Koulibaly was the
13 president of the national assembly at that time in Côte d'Ivoire; is that correct?

14 A. [10:33:06] Correct.

15 Q. [10:33:08] How did you learn that once he had gone back Mr Koulibaly
16 had organised the resistance movement?

17 A. [10:33:16] We found out, thanks to conversations with some friends,
18 when he went back, he met with Mrs Gbagbo, who was one of the leading
19 figures within the FPI, *who was vice-president of the National Assembly,
20 and they began discussing the resistance. So, you see, I learned from
21 conversations with others.

22 Q. [10:33:42] And to be absolutely clear, when we talk about resistance,
23 resistance to what?

24 A. [10:33:49] Resistance to the Linas-Marcoussis Agreement.

25 Q. [10:33:54] Yesterday my learned friend showed you some passages

1 from a book, and apparently Mr Koulibaly wrote something about a
2 constitutional coup d'état. At the time of Linas-Marcoussis, or subsequently,
3 did you hear this expression, a constitutional coup d'état?

4 A. [10:34:30] I'd never heard anything about that expression or read
5 anything. It was just yesterday that I learned about this book which I am not
6 at all familiar with. *Mention is made of a certain Pigeaud (phon),
7 something like that. But to be quite frank, I've never seen this book. I've
8 never read it, and I had never heard that expression before either.

9 Q. [10:34:49] In January 2003, could you tell us what *Mr Paul Yao-N'Dré's
10 position was?

11 A. [10:35:07] I really couldn't tell you. I no longer recall.

12 Q. [10:35:11] That is not a problem.

13 You mentioned his name a few moments ago. Now, in 2010, well, you
14 didn't tell us exactly who he was?

15 A. [10:35:24] He was the president of the constitutional council.

16 Q. [10:35:28] Very well. Could we put the manuscript back up on the
17 screen, CIV-OTP-0083-0332. And if we could move to page 94. The ERN
18 would be CIV-OTP-0083-0425. If we could just zoom in and look at the
19 bottom of the page.

20 Now, there was an article that you added, "Denunciation of the Marcoussis
21 agreements," and we see that someone from Mr -- a representative of
22 Mr Gbagbo denounced the agreements in Lomé. And he said it was a
23 constitutional coup d'état.

24 And if we could move to the next page the article continues, and if we could
25 just zoom in.

1 Second paragraph, do you see what we -- the Marcoussis agreements have
2 been rejected?

3 A. [10:37:11] Yes.

4 Q. [10:37:12] Does that --

5 THE INTERPRETER: [10:37:14] Overlapping speakers.

6 THE WITNESS: [10:37:16] (Interpretation) Yes, that does refresh my
7 memory. He was minister of the interior as well as minister of
8 decentralisation. Later he was appointed *president to the constitutional
9 council by Mr Gbagbo.

10 MR DEMIRDJIAN: (Interpretation)

11 Q. [10:37:28] Very well. Mr N'Guessan, at one time you said that
12 Mr Koulibaly had returned to Abidjan and had spoken to Mrs Gbagbo at that
13 time in February 2003. What was Mrs Gbagbo's role?

14 A. [10:37:52] She was vice-president of the national assembly.

15 Q. [10:37:54] I'll move on to another topic, Mr N'Guessan. Now, on
16 Wednesday my learned friend from the Defence of Mr Gbagbo asked you a
17 question about the Accra III Agreement, and this is transcript 55, page 110.

18 You were asked whether Laurent Gbagbo had been present at Accra III.

19 And your answer was that it was Mr Affi N'Guessan who was speaking and
20 who signed on behalf of the FPI.

21 Now, just for the sake of accuracy, could we put the agreement up on the
22 screen. Now in the French, it's CIV-OTP-0091-3038.

23 I'm being instructed to slow down.

24 We have an English version for the Bench and for anyone who wishes to
25 follow in English, CIV-OTP-0091-3030.

1 Very well. Now if we could move to the next page, please, page 2. If we
2 could zoom in so that Mr N'Guessan can see that we are having a look at the
3 Accra III Agreement.

4 A. [10:40:04] Yes, indeed. He was there, but during the discussions,
5 President Gbagbo was not in the room. It was at the end. That is when the
6 heads of state met and initialled this agreement.

7 Q. [10:40:18] Thank you for clarifying that.

8 Now, if we could move on to another topic. Now, once again on
9 Wednesday Mr Altit asked you a question, and this is T-55, pages 73 and 74,
10 he asked you some questions about the slogans being used by the
11 presidential camp. And it was "on gagne ou on gagne," "we win or we win."
12 And my learned friend also had some video footage played. And we saw
13 Antoinette Allany sing a song during an event. We heard Antoinette Allany
14 say "we win or we win."

15 And you identified the current first lady, Mrs Ouattara, and you were about
16 to explain the general context and then you were interrupted. Could you
17 please tell us more about the event and the general context or background.

18 A. [10:41:38] Well, first of all, Antoinette Allany sang "we win or we win,
19 and we shall win."

20 And the FPI slogan is "we win or we win." It's not the same thing.

21 Secondly, the video in which we see Antoinette Allany dancing with the first
22 lady, Mrs Dominique Ouattara, was filmed in Bouaké after the election,
23 practically, well, two or three years later during a ceremony that was
24 welcoming head of -- Mr Ouattara to Bouaké. And I was there at the -- in
25 the, the official visitors' gallery, and you see, the singer used this song to

1 energise the crowd.

2 And for people who understand Baoulé, Antoinette Allany had also thanked
3 the people of that town for voting for Mr Ouattara and thanked Mr Ouattara
4 for coming to give thanks to the people of Bouaké. That was the context. It
5 was not used by the RDR for any political advertising.

6 Q. [10:43:08] Thank you for that clarification, Mr Witness. Now the last
7 topic I'd like us to look at is the issue regarding the residency card that
8 Mr Gbougnon asked about. Now, at page *48 of yesterday's transcript, you
9 were asked the following question:

10 "Can you confirm that in 1991, when Mr Ouattara was *Prime Minister of
11 Côte d'Ivoire, there were -- correction, 2011, there were checks conducted by
12 security and defence staff of people in the vicinity of mosques?"

13 And your answer was this:

14 "I did not say that they took the residency card. I said that they were
15 checking people in the vicinity of the mosques. I want us to be specific
16 about this point."

17 Now, first of all, could we hark back to the issue of Ivoirité that we talked
18 about on the first day. You said that this concept had emerged after
19 President Konan Bédié had arrived; is that correct?

20 A. [10:44:34] Correct.

21 THE INTERPRETER: [10:44:35] Interpreter correction: The date mentioned
22 was indeed 1991.

23 MR DEMIRDJIAN:

24 Q. [10:44:46] (Interpretation) *Very well. On that first day... So
25 transcript T-53, page 17. Now, you gave another example in 1998 of a man

1 who had been stopped alongside the road close to the town of Toumodi
2 because he was a foreigner. And you also mentioned mosques. You said
3 that at one time that identity checks were being done right in front of the
4 mosques and the defence and security forces responsible for the safety of the
5 people were tearing up national identity cards, the cards belonging to any
6 person who had a northern sounding name. Now, just if you could clarify,
7 when was it did these identity checks begin at the mosques, which year?

8 A. [10:45:34] It even started at the time of President Bédié. It had started
9 when Mr Bédié was president. I believe even at one point before the coup
10 d'état, he took measures to oversee himself the operations or the structure of
11 the security forces. I don't remember the exact way it was mentioned, but
12 we -- he saw that the defence and security forces were getting out of hand, so
13 to speak, and he decided to deal with the situation himself personally, and
14 that continued under the Presidency of Mr Gbagbo, namely, this practice of
15 tearing up residency cards of people who had northern sounding names.
16 And when the national residency -- correction, when the national identity
17 card scheme was set up, in some areas it was not implemented.

18 Q. [10:46:45] Now, you say that happened during the time of Mr Bédié?

19 A. [10:46:49] Yes.

20 Q. [10:46:50] *To be clear, he came to power when exactly, just to refresh
21 our memory?

22 A. [10:46:52] He *came to power in 1993 after the death of the very first
23 president of Côte d'Ivoire, President Felix Houphouët-Boigny.

24 Q. [10:47:04] Thank you very much for answering our questions and
25 thank you so much for being so patient.

1 PRESIDING JUDGE TARFUSSER: [10:47:12] Now the floor goes back to the

2 Defence for the re-re-questioning, according to the Rules.

3 MR O'SHEA: [10:47:22] Your Honour, we have no questions.

4 PRESIDING JUDGE TARFUSSER: [10:47:24] Thank you very much,

5 Mr O'Shea.

6 The Defence of Mr Gbagbo.

7 MR N'DRY: [10:47:30] (Interpretation) The Defence team of Mr Blé Goudé,

8 yes, we do have a few questions, and Mr Gbougnon will be putting these

9 questions to the witness.

10 PRESIDING JUDGE TARFUSSER: [10:47:47] So Maître Gbougnon, please go

11 ahead.

12 QUESTIONED BY MR GBOUGNON: (Interpretation)

13 Q. [10:48:00] Witness, at the end of that period, late when the vote -- well,

14 up until the time of the announcement of the results, how many times did

15 you go to the CI -- CEI headquarters?

16 A. [10:48:24] I never set foot there.

17 Q. [10:48:26] How can you know that the Republican Guard had

18 stormed -- please, please, wait, wait. Wait 5 seconds. The interpreters

19 will --

20 A. [10:48:43] You said to me how many times I went to the headquarters?

21 I did not go to the headquarters. I went in the area, and we saw the tanks of

22 the Republican Guard in that area.

23 Q. [10:48:59] You did not go to the headquarters. You were in the area,

24 and you saw the Republican Guard tanks in that area. And where exactly?

25 A. [10:49:19] The CEI headquarters are *in Adjé (phon).

1 THE INTERPRETER: Inaudible.

2 THE WITNESS: [10:49:22] (Interpretation) And when you go on the main
3 road, the boulevard Latrille, you can easily see the CEI headquarters, and
4 nearly anyone who goes to that neighbourhood, Le Plateau, goes -- takes that
5 boulevard. There are now several ways of getting to Le Plateau. But at the
6 time, you see, it was quite an easy matter to see those tanks parked in front of
7 the headquarters of the CEI.

8 MR GBOUGNON: (Interpretation)

9 Q. [10:49:56] Thank you. Thank you, Mr N'Guessan. Several times you
10 have mentioned the incident, and at length you have *talked about the
11 incident that showed -- I'm going to say his name, everybody here is aware --
12 Mr Damana Adia Pickass tearing up the elections results. And what exactly
13 were these results that the CEI representative was about to announce? The
14 national results, the definitive results, or were they election results from a
15 particular region?

16 A. [10:50:41] This principle, well, the principle is that the announce -- the
17 results are announced region by region, préfecture by préfecture, department
18 from department, and then region by region.

19 So he was *announcing the results of one region when that gentleman came
20 out of nowhere and tore up the paper. And that person *is the
21 representative of Mr Gbagbo's *party, it was the CEI.

22 Q. [10:51:16] I'm not asking you about that particular gentleman. Now
23 when you say, and you've said this several times, that the CEI proclaimed the
24 results at Mr Ouattara's headquarters. Mr Youssouf Bakayoko, to your
25 knowledge, did he represent the entire CEI?

1 MR DEMIRDJIAN: [10:51:58] Just a moment. Your Honours?

2 PRESIDING JUDGE TARFUSSER: [10:52:04] Yes, please.

3 MR DEMIRDJIAN: [10:52:05] Yes, sorry, your Honours. This question does
4 not emerge out of my questioning. My questioning was focused on where
5 did President Ouattara and President Gbagbo swear their allegiance, or the
6 swearing in ceremony, where did they take place.

7 During that time the witness provided the context, but now we're entering
8 completely different topics dealing with how the results were dealt with.
9 The president of the independent commission. So this does not have
10 anything to do with the questions that I was asking. My focus was where
11 did they deal with this swearing of allegiance.

12 PRESIDING JUDGE TARFUSSER: [10:52:46] Yes, but we did also talk about
13 who, how, where it was proclaimed. So I think it's just a continuing.
14 Please, Maître Gbougnon, go ahead, but we know all these things. I think
15 we have been talking about these things also in other circumstances. And
16 also with this witness and without this. So please. Thank you.

17 MR GBOUGNON: [10:53:15] (Interpretation) Thank you, your Honour.

18 Q. [10:53:21] Yes, now, I was saying when you say that the CEI
19 announced the results, well, several times you said that as well, that
20 Mr Youssouf *Bakayoko announced the results at the Golf Hotel because he
21 could not do so at the headquarters of the CEI.

22 Mr Bakayoko, did he represent the entire CEI all by himself?

23 A. [10:53:54] *Mr Youssouf Bakayoko was not alone when the results were
24 announced.

25 Q. [10:53:57] Thank you, Mr Witness.

1 [10:54:15] Now without delving deep into commentary, please be specific

2 and precise in your replies. Now, Mr Ouattara swore his oath of office

3 before which authority?

4 A. [10:54:25] He swore his oath of office *by letter, and this is permitted by
5 our constitution.

6 Q. [10:54:35] But before which authority?

7 A. [10:54:40] He swore his oath of office before the people of Côte d'Ivoire.

8 Q. [10:54:45] Thank you. And Mr Gbagbo swore his oath of office before
9 which authority?

10 A. [10:54:56] I really couldn't tell you because I do not know which oath
11 he swore.

12 PRESIDING JUDGE TARFUSSER: [10:55:05] Yes, but here we are again
13 going into politics. I mean, we know, I think it's already been said where,
14 and how and where they swore them in and how they've been sworn in. So I
15 think we should not go into this political debate. Thank you.

16 MR GBOUGNON: [10:55:30] (Interpretation) With your leave, my question
17 was not political. It's, rather, the answer that is political. If I --

18 PRESIDING JUDGE TARFUSSER: [10:55:40] Yes --

19 MR DEMIRDJIAN: [10:55:42] No, but you cannot comment on the witness,
20 the quality of the answers.

21 PRESIDING JUDGE TARFUSSER: [10:55:44] No, but your question
22 triggered a political answer from this witness, so.

23 MR GBOUGNON: [10:55:54] (Interpretation) Thank you, your Honour.

24 PRESIDING JUDGE TARFUSSER: [10:56:03] Maître N'Dry.

25 MR N'DRY: [10:56:06] (Interpretation) Your Honour, I think that the

1 questions are not political in nature. We are asking the witness which
2 authority it was that Mr Gbagbo swore his oath before. It's a simple
3 question. We don't need political speeches. So, quite frankly, the question
4 put by Mr Gbougnon is quite a normal one.
5 We are asking about the events. We are not asking about politics. What
6 was the authority? And I would point out one thing, and I really, I can't
7 hold back, I have to say this, when we ask questions of the witness, we are
8 told that we are trying to transform him into some kind of constitutional
9 expert. You heard the witness. And he is constantly quoting and he shows
10 that he certainly is familiar with the constitution of Côte d'Ivoire when it
11 suits him.

12 MR DEMIRDJIAN: [10:57:21] Again, we're commenting on the witness's
13 quality of the evidence. We cannot do this in front of the witness.

14 PRESIDING JUDGE TARFUSSER: [10:57:25] Please, I will, please be calm,
15 both, both sides. I know, but we have to put questions and answers. But
16 there are some questions we already know because it's not the first time we
17 have heard about it. It's all on the record already. So obviously there are
18 certain questions which trigger a little bit political answers.

19 I ask the witness not to respond in a political way but just to respond to the
20 questions, if he knows. But I ask of both sides a bit of -- please go ahead.

21 If you take longer, we have to make a break, if it takes longer,
22 Maître Gbougnon, because it's going to 11.

23 MR GBOUGNON: [10:58:26] (Interpretation) I think 5 or 10 minutes might
24 be the max. I just have two or three questions.

25 PRESIDING JUDGE TARFUSSER: [10:58:39] Thank you. Then let me turn

1 to the interpreters and court reporters, if we can make it two hours and then
2 we should be through. Okay. Thank you very much. So we can prolong,
3 but that doesn't give you the floor to prolong. I mean, we could prolong
4 until 11.30. Thank you.

5 MR GBOUGNON: [10:59:01] (Interpretation) No, I don't think it will be
6 until -- we won't go until 11.30.

7 Q. [10:59:13] Mr N'Guessan, could you tell us if you remember, now, there
8 were two rounds of voting, and now during the first round of voting, when
9 did Mr Choi certify the results?

10 MR DEMIRDJIAN: [10:59:35] This does not emerge, your Honours, out of
11 my questions. This question does not emerge out of my re-examination.

12 MR GBOUGNON: [10:59:42] (Interpretation) Your Honour, your Honour,
13 your Honour, the Prosecution rose and asked the witness to provide
14 clarification about a question that they them -- well, no, that Mr Altit had
15 asked, and the witness spent 5 minutes answering the question and provided
16 a number of details.

17 I think that it is not unsuitable for me to hark back to a number of the things
18 that he said.

19 PRESIDING JUDGE TARFUSSER: [11:00:24] Maître Gbougnon, please go
20 ahead.

21 But please, Mr Witness, I would like you to respond just to the question
22 without commenting on it. Thank you very much.

23 MR GBOUGNON: (Interpretation)

24 Q. [11:00:46] Do you remember the questions?

25 A. [11:00:48] Please repeat it.

1 Q. [11:00:51] I am asking you this, now, during the first round of voting in

2 Côte d'Ivoire, when did Mr Choi certify the results?

3 A. [11:01:05] After the proclamation by the CEI.

4 PRESIDING JUDGE TARFUSSER: [11:01:16] The CEI being? The

5 independent commission, Electoral Commission, right?

6 THE WITNESS: [11:01:29] (Interpretation) The Independent Electoral

7 Commission.

8 PRESIDING JUDGE TARFUSSER: [11:01:33] Thank you.

9 MR GBOUGNON: (Interpretation)

10 Q. [11:01:44] The Independent Electoral Commission *convenes a plenary

11 assembly with the representatives of all the candidates; is that correct?

12 A. [11:01:54] I don't understand your question.

13 Q. [11:01:57] You just said that Mr Choi certified the results after the

14 Independent Electoral Commission had proclaimed the results. So this is

15 why I asked you whether it was the plenary of the Independent Electoral

16 Commission met with all of the candidates?

17 A. [11:02:27] I'm not a member of the Independent Electoral Commission,

18 so I cannot answer your question.

19 Q. [11:02:35] What about the second round, when did Mr Choi announce

20 the results?

21 A. [11:02:47] After the proclamation made by the Independent Electoral

22 Commission.

23 Q. [11:02:55] At that time, if you remember of course, what were the

24 components or who were the members of the Independent Electoral

25 Commission, the CEI?

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1 A. [11:03:15] I cannot answer that question.

2 Q. [11:03:19] Was the composition of the Independent Electoral

3 Commission discussed at Linas-Marcoussis?

4 A. [11:03:39] In *Marcoussis, it was stated that an Independent Electoral

5 Commission had to be set up to monitor the elections and a decree was

6 *issued by President Gbagbo. And in that decree, the composition was

7 *defined.

8 Q. [11:03:56] During the discussions, did you discuss the composition --

9 or, rather, the members that the political parties who were going to be part of

10 the government, did you discuss the composition of the Independent

11 Electoral Commission?

12 A. [11:04:25] No. The composition of the Independent Electoral

13 Commission was not discussed in Marcoussis.

14 Q. [11:04:32] Thank you. At the time of the election, who was the

15 president of the independent commission?

16 A. [11:04:39] Mr Youssouf Bakayoko.

17 Q. [11:04:44] What was his political party?

18 A. [11:04:47] He was a member of the PDCI-RDA.

19 Q. [11:04:54] The PDCI-RDA was a member of the RHDP, wasn't it?

20 A. [11:05:10] Yes, of course.

21 Q. [11:05:11] What about Mr Koulibaly Mamadou, who was the president

22 of the national assembly at the time? When he came back from Marcoussis,

23 you said he slammed the door and he left. Did he attend public meetings --

24 THE INTERPRETER: [11:06:06] The witness started to answer.

25 MR GBOUGNON: (Interpretation)

1 Q. [11:06:13] Please wait until I finish my question.

2 Did Mr Koulibaly Mamadou *lead a rally or call for resistance?

3 A. [11:06:20] I'm not a member of his party, so I have no knowledge of his
4 programme after Marcoussis.

5 Q. [11:06:24] Mr N'Guessan, that wasn't my question. My question was,
6 to your knowledge, when he returned from Marcoussis, did Mr Mamadou
7 Koulibaly organise public meetings? Did he call for resistance? If you
8 know, tell us.

9 A. [11:06:45] I have no idea.

10 Q. [11:06:47] Thank you. You said *Antoinette Allany sany "tchoko
11 tchoko"... Well, I apologise, "we win or we win." If you remember, she says
12 " tchoko tchoko," "we're going to win"; is that correct?

13 A. [11:07:17] Yes.

14 Q. [11:07:18] What does "tchoko tchoko" mean?

15 A. [11:07:23] Whatever happens we're going to win.

16 MR GBOUGNON: [11:07:27] (Interpretation) Your Honour, I've finished
17 my questioning.

18 PRESIDING JUDGE TARFUSSER: [11:07:30] Thank you very much. So
19 now, Mr Witness, the questioning is finished after nearly, well, more than
20 four days. I think you are tired. You're happy to go back home. I thank
21 you very much in the name of my colleagues and myself for having sat here
22 giving answers to the questions which were posed to you, and I wish you a
23 safe trip back home. Thank you very much.

24 THE WITNESS: [11:08:00] (Interpretation) Thank you very much.

25 I would like to add that I was very pleased to participate in the work of this

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1 Court because, for me, the establishment of the truth and justice should be the
2 basis for all political action, and I have always been in favour of justice, and I
3 have always hated violence and deaths, indeed.

4 PRESIDING JUDGE TARFUSSER: [11:08:40] We think exactly the same.

5 Please, court usher, could you accompany the witness out. And thank you
6 again.

7 (The witness is excused)

8 PRESIDING JUDGE TARFUSSER: [11:08:56] Now I would read out two oral
9 decisions. Then we have to go in a short private session to discuss an issue
10 requested by the Office of the Prosecutor, and then we adjourn the hearing.

11 Why are you looking, Felipe?

12 (Pause in proceedings)

13 PRESIDING JUDGE TARFUSSER: Felipe's housekeeping, well, recording
14 keeping, not housekeeping. Please, Felipe.

15 THE COURT OFFICER: [11:10:13] (Interpretation) Thank you, your
16 Honour. I just wanted to give the ERN numbers of the two maps that were
17 annotated by the witness today. The original map was *CIV-OTP-0092-0410
18 was annotated twice by Witness 48. The initial annotation will bear the code
19 CIV-AEG-0001-0004.

20 And the second annotation will be CIV-AEG-0001-0005.

21 Those are confidential documents for the time being with the same level of
22 classification as the original map.

23 MR DEMIRDJIAN: [11:11:28] (Interpretation) Is it REG?

24 THE INTERPRETER: It's REG, REG, yes, indeed. Correction, REG.

25 THE COURT OFFICER: [11:11:40] (Interpretation) Yes, it's CIV-REG; in

- 1 other words, for Registry.
- 2 PRESIDING JUDGE TARFUSSER: [11:11:48] Did you say that the maps are
- 3 confidential? No. What's confidential?
- 4 THE COURT OFFICER: [11:11:56] (Interpretation) Yes, your Honour.
- 5 They are confidential because it's the same level of confidentiality for the
- 6 initial map, at least according to the metadata that I have in the Court system.
- 7 If those maps are to be reclassified as public, in that case, both the original
- 8 and the two annotated versions may be reclassified. Of course, I can do that.
- 9 MR DEMIRDJIAN: [11:12:26] (Interpretation) There is no reason to keep
- 10 them confidential, your Honour.
- 11 PRESIDING JUDGE TARFUSSER: [11:12:39] I would say the same.
- 12 (Trial Chamber confers)
- 13 PRESIDING JUDGE TARFUSSER: [11:12:58] We are talking about the
- 14 original map without the annotations made by the witness now, right? So
- 15 the original maps should not be confidential.
- 16 MR MACDONALD: [11:13:11] No, no, they don't need to be confidential.
- 17 PRESIDING JUDGE TARFUSSER: [11:13:13] Of course not.
- 18 MR MACDONALD: [11:13:15] I guess my colleagues can -- these are agreed
- 19 maps.
- 20 PRESIDING JUDGE TARFUSSER: [11:13:18] Yes.
- 21 MR MACDONALD: [11:13:19] So I presume that the Defence has no
- 22 objection either.
- 23 PRESIDING JUDGE TARFUSSER: [11:13:23] To maps, I mean --
- 24 MR O'SHEA: [11:13:25] No, no.
- 25 PRESIDING JUDGE TARFUSSER: [11:13:26] Good.

1 MR GBOUGNON: [11:13:30] (Interpretation) Your Honour, we had made
2 an agreement on the map of Côte d'Ivoire. We let it go earlier because there
3 were no discussions, but I'm not sure we've agreed on the map of Abidjan.
4 And, in fact, there was an e-mail exchange, but I don't believe there has been
5 a final agreement on the map of Abidjan.

6 PRESIDING JUDGE TARFUSSER: [11:14:06] I would be very surprised and
7 a little bit upset as well.

8 MR MACDONALD: [11:14:11] What I think my colleague is referring to,
9 and he can correct me if I am wrong, I was not part of those discussions, but
10 from the reporting I received the map itself is agreed.

11 Now what we further need to agree on is certain locations that would be
12 not -- would be of common knowledge. So that's the agreement. But the
13 maps themselves, there is no -- and that's the reporting we did to the
14 Chamber, if I'm not mistaken, also.

15 PRESIDING JUDGE TARFUSSER: [11:14:49] Well, we will sort this out.
16 As I said, I'm coming now to read out two oral rulings on two decisions on
17 two requests, and then we go briefly in closed session to discuss an issue
18 asked by the Prosecutor. Then we come back in open session and to
19 adjourn the hearing accordingly.

20 So the oral ruling, the first oral ruling is on the Blé Goudé, request of the
21 Defence of Mr Blé Goudé for disclosure, for disclosure relating to two
22 witnesses.

23 On 20 June 2016, the Defence of Mr Blé Goudé filed a request for additional
24 disclosure of material under Article 67(2) of the Rome Statute and Rule 77 of
25 the Rules of Procedure and Evidence relating to two witnesses -- I go slowly

1 in order for the translation, sorry. Yes, you are there, yes.

2 More specifically with regard to psychological evaluations prepared by a
3 psychologist of the Office of the Prosecutor in the context of the interviews of
4 two witnesses, of the two mentioned witnesses in the request.

5 The Prosecutor, upon request, refused disclosure of said assessments and
6 instead disclosed to the Defence two investigator reports summarising
7 information from the assessments which in the determination of the
8 Prosecutor were subject -- was subject to disclosure.

9 In its request, the Defence of Mr Blé Goudé submits that; first, the two
10 psychosocial assessments made of the two witnesses contain exculpatory
11 material under Article 67(2) and could assist the Chamber in its truth-finding
12 function pursuant to Article 69(3);

13 Second, the two psychosocial assessments do not appear to be subject to a
14 disclosure restriction under the Statute and the Rules; and

15 Three, the disclosure of the investigator reports prepared on the basis of the
16 psychosocial assessments is not sufficient to discharge the Prosecutor of her
17 duty to disclose the psychosocial assessment.

18 On 24 June 2016, the Defence of Mr Gbagbo responded, supporting the
19 request. And I'm referring to filing number 599.

20 The Prosecutor responded on the same day, opposing the request, and I'm
21 referring to filing 601, arguing that the psychosocial assessments fall under
22 Rule 81(1) of the Rules of Procedure and Evidence as they constitute internal
23 work product and are therefore not subject to disclosure.

24 The Prosecutor further argues that she discharged her disclosure obligations
25 by isolating the material information contained in the assessments and by

1 disclosing this information in the form of investigators' reports.

2 The Chamber notes that the request is properly before the Chamber as there

3 is a need for deciding whether the assessments have to be disclosed under

4 Article 67(2) and/or Rule 77 of the Rules. Article 67(2) of the Statute states

5 that in case of doubt as to the application of this provision, the Chamber shall

6 decide, as is also noted by the jurisprudence of this Court. The Chamber's

7 assessment will look at whether the material is disclosable and, if yes, if

8 non-disclosure is necessary to protect witness pursuant to Article 68.

9 In the instant case, the Defence of Mr Blé Goudé argues that the requested

10 items fall under Article 67(2) or are otherwise material for its preparation.

11 The Chamber notes that this submission is supported by the fact that the

12 Prosecutor herself agrees that at least some information contained in the

13 assessments should be disclosed and indeed did disclose such information.

14 Contrary to the submissions of the Prosecutor, the Chamber does not

15 consider the assessments to qualify as internal work products in the sense of

16 Rule 81(1) of the Rules. In fact, the assessments reflect the exchanges and

17 analysis of these exchanges between a representative of the Office of the

18 Prosecutor and, in this particular case, two witnesses. As such, the

19 assessments form part of the interview process of the two witnesses.

20 Accordingly, the Chamber finds that the assessments shall be disclosed to the

21 Defence.

22 However, the Chamber notes that the Prosecutor may consider the need to

23 apply redactions to some of the information contained in the assessments in

24 accordance with the redactions protocol, filing 737 in the Gbagbo case record.

25 Redactions, however, shall be limited so that the document remains

1 intelligible and usable and its overall coherence is not materially

2 undermined.

3 Since one of the witnesses concerned is expected to start to testify soon, the

4 Chamber directs the Prosecutor to disclose the assessment without delay and

5 in any case, concerning the next witness, no later than Monday, 4 July 2016.

6 Finally, the parties shall file public redacted versions of their respective

7 filings as soon as practicable.

8 I come now to the ruling on the request for leave to appeal the decision

9 concerning protective measures for witnesses.

10 The decision was issued orally by the Chamber on 16 July 2016, and states in

11 relevant part as follows, and I quote the Chamber's decision:

12 "When protective measures are ordered to keep the identity of a witness

13 confidential, meaning the use of pseudonym and image and voice distortion,

14 the following specific measures shall apply:

15 "One, the public broadcast in the proceedings and the publication of the

16 transcripts shall be delayed until the completion of the testimony of the

17 witness and until the entire testimony has been reviewed and redacted as

18 necessary.

19 "Then the redacted video recordings and transcripts will be made available

20 to the public.

21 "The parties are directed to submit their proposals for redactions through the

22 Registry in the same way that this is currently done during the court

23 sessions." End of the quote.

24 This is found at realtime transcript page 100, T-52.

25 The Defence of Mr Gbagbo requested leave to appeal this decision on 22 June

1 2016, filing 597, confidential and public redacted.

2 Leave to appeal is requested on the following five issues:

3 First, whether the Chamber erred in law in considering that there exists risk

4 for certain witnesses who were already heard and that this permits to

5 establish that there is risk for all Prosecution witnesses who are yet to come

6 testify.

7 Second, whether the Chamber erred in fact in not taking into account the

8 probable origin of possible threats to each witness.

9 Third, whether the Chamber erred in law in ruling in advance to stop

10 broadcasting hearings, without undertaking a case-by-case evaluation of the

11 situation of each witness.

12 Fourth, whether the Chamber erred in law in basing itself on the vague

13 notion of integrity of proceedings to justify putting an end to regular

14 broadcast of the hearings.

15 And, fifth, whether the Chamber committed an error in fact in considering

16 that the prejudice to the principle of publicity of hearings could be mitigated

17 by subsequently making available to the public the recordings of the

18 hearings and redacted transcripts.

19 The Defence argues that the decision of the Chamber affects the publicity of

20 the proceedings, which is a basic right of the accused and that by creating

21 conditions of, and I quote, "complete irresponsibility" of witnesses, the

22 decision prejudices the fairness of the proceedings in, and I quote again,

23 "preventing optimal conditions for the emergence of truth".

24 The Defence concludes that an interlocutory appeal is appropriate to prevent

25 that the trial is conducted in disregard of the principle of publicity and of

1 procedural fairness to the accused.

2 The Common Legal Representative of Victims responded on 24 June,

3 submitting that leave to appeal should not be granted, filing 602.

4 The Prosecutor responded on 27 June, also opposing the request, filing 603.

5 Article 82(1)(d) of the Statute states that a party may appeal a decision that

6 involves an issue that would significantly affect the fair and expeditious

7 conduct of the proceedings or the outcome of the trial, and for which, in the

8 opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the

9 Appeals Chamber may materially advance the proceedings.

10 In the present instance, the Chamber considers that the issues identified for

11 appeal do not affect the fair and expeditious conduct of the proceedings.

12 First, the argument of the Defence that the decision and the issues proposed

13 for appeal affect the accused's right to a public hearing under Article 67(1) is

14 totally incorrect.

15 The Defence of Mr Gbagbo also misinterprets and misunderstands the

16 Chamber's ruling. The decision of the Chamber is in the sense that the

17 normal 30-minutes delay in the broadcasting of the hearings has been

18 recognized as insufficient to guarantee the protection and security of

19 protected witnesses and therefore it has been extended.

20 The publicity of the proceedings is guaranteed by the possibility for the

21 public to attend the hearings by coming to the public gallery. The Court

22 understands that effective outreach to concerned communities and to the

23 broader public in general is desirable and important for the Court to succeed

24 in its mission.

25 However, Article 67(1) of the Statute does not make it possible for the

1 accused to claim public broadcasting of the hearings as a matter of right.

2 Moreover, public broadcast for witnesses without protective measures
3 remain in place.

4 Second, the Chamber sees no merit in the argument of the Defence that the
5 broadcasting of witness testimony makes witnesses more responsible and
6 more likely to speak the truth, thereby contributing to the fairness of the
7 proceedings.

8 There is no basis for this argument in the legal text of the Court. The
9 Chamber is concerned by the mere suggestion that these proceedings should
10 profit from the exertion of pressure of any kind on witnesses that appear
11 before the Chamber. Witnesses must be able to speak free of any pressure.

12 These are the reasons why, as said, the issues identified for appeal do not
13 affect the fair and expeditious conduct of the proceedings.

14 The Chamber notes that the Defence does not argue that the issues may
15 affect the outcome of the trial and indeed considers that this is not the case.
16 Therefore, the request for leave to appeal is rejected and it is unnecessary to
17 consider the other criteria of Article 82(1)(d).

18 And this concludes the Chamber's oral rulings, as I said.

19 I see that we have reached also now the two hours' limit. I ask only the
20 Prosecutor how long he will --

21 MR MACDONALD: [11:31:14] I'm very sorry, it's unfortunate but I think we
22 should break, your Honours, for half an hour and come back, because there is
23 important scheduling issues. The Defence will have to respond, so --

24 PRESIDING JUDGE TARFUSSER: [11:31:31] No, no, you're right. Okay.

25 So we go for a break, half an hour, come back at 12, and then probably we

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(Open Session)

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- 1 adjourn very quickly.
- 2 Thank you, thank you very much. The hearing is adjourned to 12 o'clock.
- 3 THE COURT USHER: [11:31:50] All rise.
- 4 (Recess taken at 11.31 a.m.)
- 5 (Upon resuming in closed session at 12.03 p.m.)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
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25 (The hearing ends in closed session at 12.18 p.m.)