

Trial Hearing
WITNESS: CIV-OTP-P-0330

(Open Session)

ICC-02/11-01/15

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera-Carbuccia and
7 Judge Geoffrey Henderson
8 Trial Hearing - Courtroom 1
9 Monday, 5 September 2016
10 (The hearing starts in open session at 9.36 a.m.)
11 THE COURT USHER: [9:36:52] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:37:16] Good morning.
15 Before introducing the witness for the continuing of the questioning by the Defence, I
16 would read two decisions, two oral decisions taken by the Chamber. The first one
17 relates not to this witness, but to the Prosecutor's application for protective measures
18 for its 15th witness, which is 501, the next witness.
19 On 17 August 2016, the Prosecutor requested, one, that in-court protective measures
20 in the form of use of pseudonym, voice and image distortion be granted for Witness
21 501; and, two, that in-camera proceedings be adopted for identifying portions of his
22 testimony with a view to preventing his identity from being disclosed to the public.
23 Detailed information supporting the application was submitted to the Chamber in the
24 application and in confidential ex parte annexes to filing 648.
25 On 29 August 2016, the Defence for Mr Blé Goudé and the Defence for Mr Gbagbo

1 both responded, both objecting to the applications, objecting to the application, the
2 filings, confidential filings are 654 and 655.

3 On 23 August 2016, the VWU informed the Chamber that, first, that the witness has
4 explained the challenges related to his current professional assignment and the risk
5 that his family might be subject to retaliation should his identity as a witness become
6 known to the public; and, two -- not only the Outlook is not working, but also
7 the -- well, two, that accordingly, he had requested to benefit from in-court protective
8 measures.

9 The VWU finds that the witness's concerns are valid and recommends the granting of
10 the measures requested by the Prosecutor.

11 The Chamber, having considered the information provided by the Prosecutor, the
12 objections submitted by both Defence teams, and the VWU's assessment and
13 recommendation finds that the requested measures are warranted, namely, in light of
14 the objective circumstances of the witness's current personal and professional
15 situation and his position at the time of the charges.

16 In light of the above, and pursuant to paragraph 56 of the directions of the conduct of
17 the proceedings, the Chamber is satisfied that the requested protective measures are
18 warranted and therefore grants the Prosecutor's application.

19 And this concludes the ruling on this issue.

20 I come now to the oral ruling on the Prosecutor's objection concerning the showing of
21 document CIV-OTP-0045-1090 last Friday, 2 September 2016.

22 At the end of the last session on Friday, when the Defence of Laurent Gbagbo wanted
23 to show document CIV-OTP-0045-1090 to the witness, the question arose through an
24 objection raised by the Prosecutor whether a witness has to be the author or recipient
25 of a document or item for which -- for it to be shown to the witness.

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1 I'm referring to English transcript, realtime transcript page 95, line 7, to page 98, line
2 9.

3 The Chamber hereby rejects the objection of the Prosecutor. The Chamber considers
4 that a witness does not have to be the recipient or the author of a document or item in
5 order for it to be shown to him or her. In this specific case and also as concerns the
6 approach in these proceedings in general, the Chamber considers that documents or
7 items can be shown to a witness during questioning by any of the parties or
8 participants in order to elicit answers from the witness as long as the relevance of the
9 documents or items in the context of that witness's testimony is established. And the
10 questions relating thereto by the parties or participants are pertinent. And it is
11 this and it in this way assists the witness in providing and the Chamber in receiving
12 the most complete and accurate account possible of the events the witness has
13 knowledge of.

14 And this concludes the oral ruling on this issue.

15 And now I would ask the court usher to introduce the witness. Thank you.

16 MR KNOOPS: [9:43:58] Mr President, sorry to interrupt, just to announce to the
17 Court that I ask leave from the Court to leave the courtroom at 10 because I have to
18 attend another hearing at the High Court of Justice here in The Hague. Mr N'Dry
19 will represent the Blé Goudé team for today. Tomorrow I will be here again.

20 PRESIDING JUDGE TARFUSSER: [9:44:23] Okay. Of course, no problem.

21 MR KNOOPS: [9:44:26] Thank you, Mr President. Thank you.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE TARFUSSER: [9:45:01] Good morning, Mr Witness.

24 WITNESS: CIV-OTP-P-0330 (On former oath)

25 (The witness speaks French)

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1 THE WITNESS: [9:45:09] (Interpretation) Good morning, Mr President.

2 PRESIDING JUDGE TARFUSSER: [9:45:13] I hope you had a good and relaxing
3 weekend. And now we continue with your testimony.

4 And in order to do so I give the floor to Mr O'Shea to continue his questioning.
5 Thank you very much.

6 MR O'SHEA: [9:45:43] Good morning, your Honours. I'm obliged.

7 QUESTIONED BY MR O'SHEA: (Continuing)

8 Q. [9:45:46] Good morning, Captain. I hope you had a restful weekend.

9 A. [09:46:00] Counsel, yes, I did have a good rest.

10 Q. [9:46:07] Good. On Friday afternoon you will remember that I asked you
11 some questions about the positions of rebels within Abobo at the time that you were
12 in command between 2009 and 2011. And I started to refer you to a document on
13 that subject, and I'm going to ask you to help us with some of the information in that
14 document.

15 So if I could please bring back to the screen CIV-OTP-0045-1090.

16 Naturally, the document within Ivory Coast was of a confidential nature and
17 disclosed to us as a confidential document. But I take it that there's no objection at
18 this stage from the Prosecution for me treating the contents of this document as
19 public.

20 MR MACDONALD: [9:46:45] No objection, no objection.

21 PRESIDING JUDGE TARFUSSER: Thank you.

22 MR O'SHEA: [9:47:56] Thank you.

23 Q. So if we can go to the first page of the document, which is CIV-OTP-0045-1090.

24 Now, you are neither the author nor the recipient of this document. Can you
25 confirm that, Captain?

1 A. [9:48:46] I can confirm that, Counsel.

2 Q. [9:48:49] However, I will ask you to just help us with some of the preliminary
3 information to help us contextualise and identify this document to the extent that
4 you are able to. The document is dated 28 February 2011 and it is headed
5 (Interpretation), "National Strategy and Intelligence Agency." (English spoken)
6 Could you please tell us what that body is, if you know?

7 A. [9:49:34] Thank you, Counsel. Thank you, Counsel. I have no knowledge of
8 this agency.

9 Q. [9:50:09] Yes, I noticed Maître von Bóné, I was wondering whether there was
10 a question. I don't know if the translation came through, did it? Did the translation
11 come through okay of the question?

12 MR VON BÓNÉ: [9:50:27] Yes, eventually.

13 MR O'SHEA: [9:50:30] Okay.

14 Q. Yes, thank you, Mr Witness, for that answer.
15 (Interpretation) Mr Inspector General of the Police Bredou M'Bia (English spoken) Is
16 that a person whom you knew?

17 A. [9:51:03] Yes, Counsel. I do know that individual.

18 Q. And he is described there as Directeur Général de la Police Nationale; is that
19 right?

20 A. [9:51:27] That is correct, Counsel.

21 Q. [9:51:29] So this is a note of information and it is signed by the directeur général
22 de L'ANSI Lorougnon Jean-Pierre. Is that a person you knew or knew about?

23 A. [9:51:58] Thank you, Counsel. I have already heard about that person. But I
24 have never seen him.

25 Q. [9:52:08] So if we go to the second page of the document, which is 0045-1091, it's

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1 clearly headed "Note d'Information" and then it says A/S. What does A/S mean?

2 The initials A/S, what do they signify?

3 A. [9:53:00] Counsel, I do not know.

4 Q. [9:53:05] And then it says (Interpretation) "Determination of positioning areas
5 for rebels in Abobo."

6 THE INTERPRETER: [9:53:22] Overlapping speakers.

7 MR O'SHEA: [9:53:25]

8 Q. And if I've understood you correctly, your command covered an area which
9 included Abobo and Anyama, your zone of responsibility?

10 A. [9:53:49] That is correct, Counsel.

11 That is correct, Counsel.

12 Q. [9:54:02] And then it says, (Interpretation) "Three majors areas are --"

13 PRESIDING JUDGE TARFUSSER: [9:54:10] But we don't see it because it is always
14 the same.

15 Okay. Can we go up a little bit more? No, no, up -- or down, sorry. Yes, that's it.

16 Okay. Sorry.

17 MR O'SHEA: [9:54:27] Sorry, Mr President.

18 PRESIDING JUDGE TARFUSSER: Otherwise we couldn't follow.

19 MR O'SHEA: Yes, I should keep an eye on that. I am struggling with my glasses at
20 the moment, but I will do my best.

21 PRESIDING JUDGE TARFUSSER: [9:54:39] I can see that.

22 MR O'SHEA:

23 Q. [9:54:41] "Three major areas are identified as obviously hostile areas for the

24 Forces of Defence and Security, the FDS. These areas will serve as a rear base for

25 preparations for attack or military reprisal against the FDS. These zones are listed as

1 follows."

2 THE INTERPRETER: [9:55:11] Overlapping speakers for two sentences.

3 MR O'SHEA:

4 Q. [9:55:14] So before I go into the detail there, it would be right I suppose in your
5 position that it would be part of your responsibility to keep yourself informed of the
6 rebel positions and particularly those which could be the sources of attack or
7 movements against the FDS; is that right?

8 A. [9:55:38] Counsel, I do not understand the question.

9 THE INTERPRETER: [9:55:49] Message from the English interpreter: When
10 counsel quotes, could he please leave a gap? Thank you.

11 MR O'SHEA:

12 Q. As a commander of a military camp covering the zone of Abobo, is it right that
13 it would be part of your duty to keep yourself informed insofar as you can of rebel
14 positions within Abobo?

15 A. [9:56:20] That is correct, Counsel. But it was not part of my mission. I had
16 already previously explained the mission of our two subdivisions. There was the
17 departmental gendarmerie whose mission was to seek intelligence, and it was more
18 the role of attempting to ascertain the positions of the rebels or at least seek
19 intelligence generally speaking.

20 Q. [9:56:55] In the normal course of events, you would be a person who would
21 need to know about the positions of rebels. That would be fair, wouldn't it?

22 A. [9:57:18] That is not what it was, Counsel. Those individuals who are
23 supposed to be in the know are those who are tasked with seeking intelligence. We
24 are there to lead any action, and if there is action to be lead, we receive the order to do
25 so.

1 Q. [9:57:51] Interesting. So you as the commander of that camp, you would wait
2 for your instructions, but you would not consider it necessary for you to actually be
3 aware of where the rebels were located within your zone; is that right?

4 A. [9:58:20] No, that is not what I said, Counsel. It is necessary for me to know,
5 but it was not my mission as such. I can glean the knowledge from intelligence, and I
6 hand the information on, but any intelligence that is taken seriously by our hierarchy
7 on the basis of paper information, that is the information coming from the
8 departmental gendarmerie.

9 Q. [9:59:06] Did you receive communications concerning where the rebels were
10 located within Abobo, official communications, either orally or in writing?

11 A. [9:59:30] Indeed, we did discuss this with the supreme commander of the
12 gendarmerie.

13 Q. [9:59:43] So was he your principal source of information on this subject?

14 A. [9:59:57] No, Counsel. In view of the fact that my men were out in the field,
15 when during our patrols we would note that there was some movement or there were
16 some unusual things going on that were out of the ordinary, then we would pass that
17 information upstream.

18 Q. [10:00:30] So your men who were in the field would report to you on the
19 positions of rebels as they observed them?

20 A. [10:00:44] I cannot know whether it was the rebels, but I'm talking more about
21 armed individuals, civilians in -- people in civilian attire who were armed. I can't
22 know whether they were rebels or not.

23 We heard at the time that there were rebels who were infiltrated and as such I would
24 report back, especially with regard to the first zone that is mentioned in the document.
25 We talked about this at length.

1 Q. [10:01:25] Are you saying that because there was a difficulty in identifying
2 whether the people observed with weapons were rebels or other groups or are you
3 saying that because you have a difficulty with the term "rebel"?

4 A. [10:01:53] Thank you, Counsel. I don't have any trouble with the word "rebel."
5 The problem -- well, I was just sticking to what I had seen, armed people whom we
6 saw and I reported back to my hierarchical superiors about that fact.

7 Q. [10:02:21] And am I to understand from what you've just said that while you
8 were in command between 2009 and 2011, the individuals that you saw with weapons
9 or your men saw with weapons in Abobo, you did not know and were not able to
10 identify which groups they belonged to; is that the position?

11 A. [10:02:55] Thank you, Counsel. Indeed, they were armed people that we were
12 in the habit of seeing. So I can't say which group they belonged to. However, they
13 represented a danger for us, for the defence and security forces.

14 Q. [10:03:31] On the basis of the intelligence that you had and the information that
15 you had from your men and from other sources, who were the groups who were
16 operating within Abobo with weapons?

17 A. [10:04:11] Thank you, Counsel. I just answered that question. I said that I
18 couldn't say so. But I do know that armed men who were not identified by their
19 clothing, by proper clothing, were attacking the defence and security forces. So I am
20 going to stick by that statement.

21 Q. [10:04:36] In the discussions that you had with General Kassaraté and with other
22 gendarmerie with which you worked, were there names which were used to describe
23 groups operating within Abobo?

24 A. [10:05:03] Thank you, Counsel. Indeed, some names were used. For example,
25 we spoke of rebel groups quite often, and then and as I said somewhat earlier, the

1 presence of Chérif Ousmane and Zakaria, these were warlords after PK18, after that
2 junction, the junction at PK18. We also heard talk about the Invisible Commando,
3 a group that was known as the Invisible Commando.

4 Q. [10:06:06] Chérif Ousmane, which group did he belong to?

5 A. [10:06:24] Thank you, Counsel. I don't understand your question.

6 Q. [10:06:32] Was he a rebel? Was he Commando Invisible? How would you
7 describe the group that he was involved in?

8 A. Thank you, Counsel. At that time Chérif Ousmane and Zakaria were part of
9 the rebellion.

10 Q. [10:07:14] Was there a time when those two individuals formed part of the FDS?
11 Any time. I am not talking about 2009 to 2011.

12 A. [10:07:54] Thank you, Counsel. I heard talk of Zakaria being a soldier before he
13 joined the rebellion. However, Chérif Ousmane, I am well aware of what his
14 position is. He did go to the national school for non-commissioned officers, so he
15 was a soldier before joining the rebellion.

16 Q. [10:08:24] And when you say "military," are you saying that these two
17 individuals were part of the national army of Ivory Coast at some point?

18 A. [10:08:44] That is correct, Counsel.

19 Q. [10:08:47] So that's army and not any of the other units like the gendarmerie, for
20 example? That's army?

21 A. [10:08:57] That is correct, Counsel.

22 Q. [10:09:04] Do you know in which years those individuals defected?

23 A. [10:09:24] Thank you, Counsel. That was in 2002, when there was the attempt
24 to overthrow the president of the republic, Mr Laurent Gbagbo.

25 Q. [10:09:44] Now coming back to the document, the first zone which is mentioned

1 there is called quartier Marley, and it says here that the quartier was situated between
2 the carrefour Anador and the limite des rails until the level of the brigade of the
3 gendarmerie.

4 So where was quartier Marley in relation to your camp?

5 A. [10:10:39] Thank you, Counsel. You are asking me for the distance or what?
6 I don't understand.

7 Q. [10:11:00] Was it in Abobo, first of all?

8 A. [10:11:05] Yes, Counsel, Marley neighbourhood is within Abobo.

9 Q. [10:11:18] And how far was it from your -- how far was the edge of that quartier
10 from your camp?

11 A. [10:11:37] The beginning of that neighbourhood is about 400 metres from my
12 barracks.

13 Q. [10:11:45] So extremely close, from a military point of view?

14 A. [10:11:55] Closer to the brigade. Closer to the brigade. About 100 metres
15 away.

16 Q. [10:12:15] So it says here that the (Interpretation) "the commando who attacked
17 the police officer," (Speaks English) Can you comment upon that statement?

18 A. [10:12:40] Thank you, Counsel. A few moments ago you asked me a question
19 and I mentioned the name of the Invisible Commando. In this document, I believe
20 this is the commando they are talking about.

21 The -- in the past days I mentioned a police officer who was killed at the Gagnoa Gare
22 junction and also the junction by City Hall. I think this is what is being referred to
23 here.

24 Q. [10:13:31] What was the size and strength of this group at quartier Marley at the
25 time that you were there in 2011?

1 A. [10:13:58] Thank you, Counsel. Personally I never had occasion to meet up
2 with this group. And according to the comments and the reports from my own men,
3 well, they told me that at some points they saw three or four people at a bit of
4 a distance, so somewhat further away within the population. So I really couldn't tell
5 you exactly how many of them there were.

6 Q. [10:14:39] But this group was extremely close to you?

7 A. [10:15:13] Thank you, Counsel. I think, well, it's the neighbourhood that is
8 close.

9 Q. [10:15:23] So you had a group of Commando Invisible that close to you and you
10 did not have information, intelligence on its size and strength; is that really right?

11 A. [10:15:49] Yes, that's, that's so.

12 Q. [10:15:58] From a military perspective, if you have a group no more than 400
13 metres away from your camp and you don't know the size or strength of the group,
14 does that make it difficult for you to defend yourself?

15 A. [10:16:52] That is correct, Counsel.

16 Q. [10:16:55] On Friday you will remember that I asked you about your resources,
17 your weapons and your ammunition, and you told the court that they were sufficient.
18 If you don't know the strength of those you're fighting with, how do you know your
19 resources are sufficient?

20 A. [10:17:32] Thank you, Counsel. I said that our resources were sufficient,
21 particularly in terms of material, weapons, ammunition. It was enough in relation to
22 the population, because if -- well, in terms of the ratio, to my mind -- and before my
23 predecessor, the request that needed to be made for additional resources had been
24 made. And when the situation degenerated or changed for the worse, we made the
25 necessary requests and we got the additional resources we needed. So to my mind it

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1 was enough, the resources were sufficient.

2 Q. [10:18:50] The document that we're looking at gives a second zone, which you
3 did mention I think, which is quartier Derrière Rails, 21st Arrondissement-Antenne
4 RTI-Bocabo, it says that (Interpretation) "the border of this zone goes from the railway
5 tracks all the way to the 21st Arrondissement, to the junction of the 21st
6 Arrondissement."

7 So where is this situated in relation to your camp?

8 A. [10:19:52] Thank you, Counsel. In relation to my barracks, that neighbourhood
9 was beyond the major road. If we look at the map that the Prosecution showed to us,
10 there's an express lane, a motorway actually, and when you go to PK18 and to the left
11 of the motorway, there are some railway tracks, and that neighbourhood is called
12 au-delà des rails. And you see there is this road that separates the Marley
13 neighbourhood from Bocabo.

14 Q. [10:20:44] And at what distance is the edge of that quartier Derrière Rails from
15 your camp?

16 A. [10:21:00] Thank you, Counsel. This neighbourhood begins at the same spot as
17 the Marley neighbourhood, so it's practically the same distance, about 400 metres.

18 PRESIDING JUDGE TARFUSSER: [10:21:20] Could we not, could we see a map on
19 this instead of just trying to guess? You're referring to locations in Abidjan, so
20 maybe it could be helpful.

21 MR O'SHEA: [10:21:36] If that's of assistance to the Chamber. My learned friend
22 has already shown us some of these positions on the map. I'm trying to sort of get
23 a perspective on the distances from the camp at the moment. If it's helpful to
24 the Chamber, we can look at the map at the same time.

25 PRESIDING JUDGE TARFUSSER: [10:21:56] I would say yes, in order to have

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1 an idea of what we are talking about. Thank you.

2 MR O'SHEA: [10:22:05] Yes, very well.

3 MR MACDONALD: [10:22:11] Can I propose to my colleagues that we use the
4 agreed map, if that's convenient, because I think you may have added other maps to
5 your list, but --

6 PRESIDING JUDGE TARFUSSER: [10:22:23] I think there is no other map than
7 agreed.

8 MR MACDONALD: [10:22:25] That's the agreed map, it is called "the agreed map."

9 PRESIDING JUDGE TARFUSSER: [10:22:30] And that was a hard job.

10 MR O'SHEA: [10:22:33] My only concern, of course, was not to slow down the
11 proceedings too much. But I understand the importance of having a visual
12 perspective on what we are talking about.

13 I turn to the Registry and ask the question: Is it possible to have two screens or do
14 we have to choose whether we have the document or the map? Can we have both?

15 THE COURT OFFICER: [10:23:40] (Interpretation) Your Honour, with your
16 permission, we can give it a try and see what is possible.

17 MR O'SHEA: [10:23:50] All right. It should be an interesting experiment. So the
18 number is CIV-OTP-0092-0405.

19 (Pause in proceedings)

20 MR O'SHEA: [10:25:09] I think it's going to be a bit difficult if it has to stay within
21 that size. Perhaps we will just have to keep swapping between the map and the
22 document.

23 MR MACDONALD: [10:25:23] In order to help my colleagues and maybe also the
24 clerk, from Ringtail I'm being told it's hard to manipulate that map. If you use the
25 other version that we gave you where you can zoom in, it may help.

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1 MR O'SHEA: [10:26:10] If we perhaps zoom in on the map so that we can see where
2 the witness marked his camp and where he marks Derrière Rails.

3 You can get rid of the document now if it helps to do this.

4 PRESIDING JUDGE TARFUSSER: [10:27:19] Yes, I was informed by the court officer
5 that we could use Evidence 1 for the document and Evidence 2 for the -- so we could
6 switch here and there as we need it. It would be probably the best solution than
7 have it small on one screen.

8 MR O'SHEA: [10:27:36] Yes, I agree, your Honour.

9 PRESIDING JUDGE TARFUSSER: [10:28:27] So now we should have on Evidence 1
10 the document and Evidence 2 the map as far as I can check.

11 MR O'SHEA: [10:28:39] Yes, that's better. Thank you.

12 Of course, this version doesn't have the markings of the witness, does it? I think it
13 would be more expeditious if we use the one the Prosecutor got marked rather than
14 me getting the witness to mark it again. Yes.

15 PRESIDING JUDGE TARFUSSER: [10:29:24] Can we not use this one?

16 MR MACDONALD: [10:29:30] I think we'd have to put it on the -- I don't know
17 what it's called again, it has a nice name.

18 PRESIDING JUDGE TARFUSSER: [10:29:38] I don't know.

19 THE COURT OFFICER: [10:29:42] (Interpretation) If you don't mind, the annotated
20 map, each one was given a reference number. And I believe those numbers range
21 from 0001 to 0006. And I can display those particular maps, if you wish.

22 PRESIDING JUDGE TARFUSSER: [10:30:12] Okay. Decided, we leave it as it is,
23 otherwise we will never come to an end. I think we do without map and we try to
24 find a solution. Otherwise we're stuck here in order to find a way. Thank you.
25 Please just go ahead.

1 MR O'SHEA: [10:30:29] Yes, yes, thank you. I will give it some thought during the
2 breaks.

3 Q. [10:30:39] Yes, so we're talking about the quartier Derrière Rails now where the
4 rebel group is located, and you're saying that's about the same distance as the quartier
5 Marley from your camp. So we're talking about 400 metres, again, a very close
6 location.

7 So I ask you the same question in relation to the group Derrière Rails, what
8 information did you have either from your men in the field or from intelligence, what
9 information did you have about the size and strength of that group?

10 A. [10:31:27] Thank you, Counsel. I believe that I need to clarify something. At
11 that time there was the issue of infiltration, people who had infiltrated and who were
12 training either in Banco forest or beyond PK18.

13 And this brings me to come back to the question that you put to me with regard to
14 means. I said that the means were sufficient. I did not know how many men
15 strong that group was, but the means were sufficient for us.

16 And in regard to all of this information, all of this intelligence, our chief said that the
17 number and weapons that we had in the barracks was no longer sufficient for the
18 situation that prevailed and that was at the time that the PC was set up and
19 reinforcements were decided upon.

20 We could not have five weapons for only one combatant.

21 Q. [10:32:58] But there is also, is there not, a question of the types of arms used
22 when one is talking about the sufficiency of resources? Because if you have a very
23 large group attacking you with very sophisticated weapons, do you not need a certain
24 level of sophistication yourself?

25 MR MACDONALD: [10:33:26] Okay, your Honour, I will intervene at this stage.

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1 I think this is close to being argumentative. Is there a question? What level of
2 sophistication? I mean it's -- the witness is giving the answers that he is giving,
3 the Chamber will appreciate, but I think the question should be rephrased because we
4 are presuming a number of things in the question.

5 PRESIDING JUDGE TARFUSSER: [10:33:49] I think it is very subjective in any case,
6 it's an opinion if the resources are sufficient or not. I mean, of course I think if you
7 go more to facts and elicit less opinion, subjective opinions, I would prefer it. So
8 please rephrase.

9 MR O'SHEA: [10:34:10] As your Honour pleases. At the moment what I'm doing is
10 I'm addressing what the witness is -- yes, what the witness is claiming and the extent
11 to which the Chamber can rely or believe what he is claiming. But I will try to
12 rephrase.

13 PRESIDING JUDGE TARFUSSER: [10:34:48] Thank you.

14 MR O'SHEA:

15 Q. [10:35:01] When you as a commander were making decisions about whether
16 your resources were sufficient, did you take into account the strength of the attacking
17 force? Was that a factor that you took into account, including the type of weapons
18 used and the size of the force?

19 A. [10:36:01] Thank you, Counsel. It's a bit difficult to answer that question
20 because these were not open clashes. We couldn't see the enemy, which means that
21 those individuals were using locality-based or guerrilla combat. And they had
22 roadblocks and they would man those roadblocks.

23 And when the FDS vehicles needed to go through, they were in buildings and they
24 were shooting through openings. So you couldn't know how many enemy -- how
25 many enemies there were. So this is just an approximation that you can make.

1 And as to the date mentioned on the document, the date of 28 February 2011, the
2 command post had already been set up, so it was no longer up to me to decide the
3 means to be used. There was a higher-ranking officer who could judge whether the
4 means were sufficient or not, because this was an open form of confrontation.

5 Q. [10:37:24] Did you not have at the time elements within your forces who went
6 on missions to try to ascertain the answers to these questions that you did not know,
7 in other words, the strength of the forces that you were confronting? Were there no
8 reconnaissance missions to discover these, to try to discover these facts?

9 A. [10:38:12] Thank you, Counsel. As I said, the attacks were not really open.
10 During the patrols that we sent a number of times out into the field, there were
11 indeed attacks. And those -- correction, those patrols were not attacked. It was on
12 every time that the convoy had to go through with the supplies that they came under
13 attack. However, the patrols in Derrière Rails, in PK18, in Marley, those patrols did
14 not come under attack.

15 Q. [10:39:10] Did the FDS, and I use the term "FDS" deliberately broadly, did the
16 FDS have spies within the locations of rebel positions or Commando Invisible?

17 A. [10:39:37] Thank you. At my level of responsibility it was not allowed for me
18 to put spies anywhere. As I said at my level, the gendarmerie seeking intelligence is
19 at the level of the departmental gendarmerie. As regards deeper intelligence, there
20 are two structures that are seeking intelligence. And as I said, we do what we are
21 told, and when we are told that there is a nest of rebels, then we go on the offensive.

22 Q. [10:40:35] I understand that it's not within your responsibility, but is it within
23 your knowledge that there were spies within the ranks of the rebels, or you knew
24 nothing about that?

25 A. [10:40:56] Thank you, Counsel. I know that any army that respects itself is

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1 duty-bound to seek intelligence. And there is an adage back home that says that
2 commanding is foreseeing, which means that you need to foresee with regard to what
3 you have in terms of intelligence. Of course, in order to glean intelligence, we had to
4 infiltrate those men. So I do suppose that there must have been people who were
5 infiltrated, but I cannot say that for sure.

6 Q. [10:41:47] Are you guessing or did you hear this?

7 A. [10:41:52] Well, I did hear about this. When the 12 individuals from the GSPR
8 arrived, they told me that intelligence had enabled them to identify certain residences
9 and to ascertain that heads of rebel teams were within my jurisdiction. So the chiefs
10 requested that I assist them in their mission and that is what I did.

11 Q. [10:42:43] And as a commander within the zone of conflict, did you or did you
12 not receive intelligence reports to help you with respect to the position and strength
13 of the groups who were attacking you?

14 A. [10:43:07] Thank you, Counsel. Officially from my chiefs, I never received any
15 instructions or any intelligence of this type.

16 Q. [10:43:29] Between 2000 and 2011, you never received such intelligence yourself
17 as a commander?

18 A. [10:43:41] Indeed, it was rather in the meetings that I would talk about this to
19 my hierarchical superior.

20 PRESIDING JUDGE TARFUSSER: [10:44:00] Did you mean 2009-2011 or did you
21 mean 2000-2011.

22 MR O'SHEA: [10:44:09] I meant 2009 and 2011.

23 PRESIDING JUDGE TARFUSSER: [10:44:14] Because it is written here between 2000
24 and 2011.

25 MR O'SHEA: [10:44:16] No, between 2009 and 2011, because that's the relevant --

1 PRESIDING JUDGE TARFUSSER: [10:44:21] Yes, yes. I thought it was wrong, yes.

2 MR O'SHEA: [10:44:28] Yes.

3 PRESIDING JUDGE TARFUSSER: Thank you.

4 MR O'SHEA: So if we can go to the next page of the document, which is 0045-1092,
5 there it speaks of Quartier PK18, and it says (Interpretation) "This neighbourhood is
6 between --"

7 PRESIDING JUDGE TARFUSSER: [10:45:05] "It says and I quote," please, because of
8 the record, "And it says, and I'm quoting."

9 MR O'SHEA: Yes, yes.

10 PRESIDING JUDGE TARFUSSER: It's just for the clarity of the record. Thank you.

11 MR O'SHEA: [10:45:12] Yes. Thank you. And to give the translators time to adapt.
12 Thank you.

13 Q. And I quote (Interpretation) "This neighbourhood is essentially located between
14 the Agripac intersection and the N'Dotré intersection. The entire zone is located
15 higher up towards Anyama is called Quartier PK18, which is an essential rebel
16 resistance point."

17 (English spoken) Why, based on your understanding of the field, why was that an
18 essential position for the rebels, as described there?

19 A. [10:46:14] Thank you, Counsel. The PK18 neighbourhood according to what I
20 can see here and according to my knowledge as I have already said, I have already
21 spoken about the Hotel Harmony, which was allegedly occupied by the two warlords
22 that I mentioned previously.

23 Now I did have that piece of intelligence, and during the meeting with my
24 hierarchical superiors, I indicated this. I believe that there is a very large foreign
25 community in PK18, especially of Marley origin, so the area could be favourable to

1 the rebels or favourable for the armed groups.

2 Q. [10:47:34] It then says, and I quote (Interpretation) "Most of the young people
3 who came to sit in crowds around the kiosks and shops on the main road of N'Dotr 
4 Agripac at the level of the Diallo intersection and Saphir Pharmacy are presented as
5 suspicious individuals actively taking part in attacks against the FDS." End of quote.
6 Does that statement accord with your experience?

7 A. [10:48:40] Not exactly, Counsel. However, there is one detail that is mentioned
8 here that is of importance, the Diallo intersection. One of my colleagues, a captain,
9 Captain Kassy D  odat, who was working at the MACA civilian prison, came there on
10 one occasion with some troops and was killed there at that very intersection.

11 Q. [10:49:20] And when you say that it's not exactly in response to my question
12 whether this statement accords with your experience, what do you mean by "not
13 exactly"? Do you disagree with the statement or do you agree with the statement
14 with reservations?

15 A. [10:49:46] Thank you, Counsel. The Diallo intersection is mentioned and I
16 came back to that because that was the level at which we identified the danger.
17 But with regard to the people on the side of the roads attacking the FDS, I do not
18 know, because my patrols went there on a number of occasions, as did I and we did
19 not come under attack.
20 However, in coming to the Diallo intersection in the neighbourhood, that is where my
21 colleague went, he went deep into that neighbourhood and he was attacked there and
22 killed with a number of other people. But it was not by the side of the road as
23 mentioned here.

24 Q. [10:50:57] Apart from your squadron, how many other squadrons were there in
25 Abobo of the gendarmerie?

1 A. [10:51:22] Thank you, Counsel. There was only one gendarmerie squadron,
2 that is to say the commando 3/1 gendarmerie squadron.

3 Q. [10:51:40] So far as the gendarmerie is concerned, you as the commander of
4 squadron 3/1, were you the principal source of intelligence or information to your
5 superiors with respect to the situation on the ground in Abobo?

6 A. [10:52:12] Thank you, Counsel. As I mentioned at an earlier stage, I said that
7 the source, the most reliable source is the gendarmerie brigade, the departmental
8 gendarmerie in seeking intelligence.

9 And the intelligence that I had at my level when we were regularly called by the
10 supreme commander, well, I would try to find out, to communicate what I had learnt
11 out in the field, and the information was cross referenced and everything was
12 communicated by me with regard to what we have here in the document. But I was
13 not the main source of the information.

14 Q. [10:53:19] On the basis of the experience of your men in Abobo, what would you
15 describe as the different types of arms, weapons which were observed in the hands of
16 the rebels?

17 A. [10:54:02] Thank you, Counsel. We could see a whole array of weapons, from
18 the 12 millimetre rifles to the rocket launchers. So those 12 millimetres rifles, the
19 AK-47s, that's the Kalashnikovs and the machine gun version with the cartridges on
20 belts, they all had that, in addition to which there were the rocket launchers.

21 Q. [10:54:35] And in terms of vehicles, what was observed, vehicles in the hands of
22 the rebel groups?

23 A. [10:54:53] Thank you, Counsel. I said that the rebels did not attack us face on.
24 These were people who would hide in buildings and through the openings such as
25 windows and doors they would fire at us. So they did not engage themselves, truly

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1 they were not out in the field as such, they were in the various neighbourhoods, but
2 they did not come out into the street in order to have a face-to-face confrontation.

3 Q. [10:55:51] I'd like to show you a photograph, the reference is
4 CIV-D15-0004-1505.

5 MR MACDONALD: [10:56:19] Just before showing it to the witness, with your
6 permission, your Honour, can we have the source for this, when it was taken, where
7 and so on so that we know what we're looking at?

8 MR O'SHEA: [10:56:50] Yes, with pleasure. The source is Reuters. And the date is
9 15 October 2002. And the photographer is Éric Gaillard, and the reference is
10 CIV-D15-0004-1505.

11 Q. [10:57:57] Now, just to be fair to you, Captain, this is not a picture taken in
12 Abobo, but in Bouaké.

13 But can you help us please as to the type of weapon which we see in photograph?

14 A. [10:58:27] Thank you, Counsel. Here we have an anti -- a 12.7 millimetre
15 man-portable air defence system.

16 Q. [10:59:05] And what are the capabilities of this weapon in terms of confronting
17 the enemy? For example, can it be used against helicopters?

18 A. [10:59:18] As I said, it is a man-portable air defence system which enables people
19 to fire on aircraft.

20 Q. [10:59:36] And what is its range?

21 A. [10:59:42] Thank you, Counsel. I believe -- well, I have not studied this in
22 detail, but it must be more than 10 kilometres.

23 MR O'SHEA: [11:00:05] If that's a convenient moment, your Honours.

24 PRESIDING JUDGE TARFUSSER: [11:00:10] Yes, I just wanted you to finish the
25 questions on this photo.

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1 Now we suspend, Mr Witness, for half an hour for a break, a short rest, and we
2 resume in half an hour at 11.30. Thank you.

3 (Recess taken at 11.00 a.m.)

4 (Upon resuming at 11.34 a.m.)

5 THE COURT USHER: [11:34:51] All rise. Please be seated.

6 PRESIDING JUDGE TARFUSSER: [11:34:58] Good morning again.

7 Once again I give immediately the floor to Mr O'Shea for his questioning of the
8 witness. Please, yours the floor.

9 MR O'SHEA: [11:35:10] Your Honours, thank you.

10 Q. [11:35:38] Captain, I want to show you a document which has already been
11 shown to you, which is CIV-OTP-0043-0441.

12 And it is public. If we could please zoom in to the second half of the document.

13 Now, you have described how units of the FDS were under attack by rebels. And
14 the following part of this document was drawn to your attention where it says

15 (Interpretation) "In the case of attack, return fire and then report back."

16 (English spoken) So the expression "rendre compte," does that refer to the reporting
17 process?

18 A. [11:37:56] Thank you, Counsel. Indeed, it does mean prepare a report.

19 Q. [11:38:08] And the idea here is that if you are under attack, you have to act in
20 defence, and it is not practical at that point in time to report. Would that be the idea
21 behind this principle?

22 A. [11:38:35] Counsel, if you could repeat your question.

23 Q. [11:38:48] So is it the idea behind this principle that's listed here that in the event
24 that you are attacked as a military unit, it is not practical to start reporting
25 immediately, but you have to take immediate action to defend yourself?

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1 A. [11:39:14] Yes, that is correct, Counsel. At that time it was known that we were
2 surrounded by the enemy. So if we were to take time to report back, that would cost
3 us some time.

4 Q. [11:39:35] So the suggestion of my learned friend of shoot first and ask questions
5 later has nothing to do with what's written here, does it?

6 A. [11:39:54] Well, in actual fact that's somewhat different. We were defending
7 ourselves and we would then report back on the outcome.

8 Q. [11:40:07] Thank you for that clarification.

9 Now, after you left your command post in 2011, would it be fair to say that
10 information that you received after that time with respect to your own forces in
11 Abobo was of a limited nature?

12 A. [11:41:02] That is correct, Counsel.

13 Q. [11:41:07] And even while you were in command between 2009 and 2011, your
14 information with respect to attacks which did not directly affect your men was
15 limited, was it?

16 A. [11:41:44] Counsel, I don't understand your question.

17 Q. [11:42:03] While you were in command between 2009 and 2011, would it be fair
18 to say that information with respect to attacks on units, FDS units other than your
19 own in Abobo, information was of a limited nature?

20 A. [11:42:34] Yes, indeed, Counsel, the information was limited.

21 Q. [11:42:50] Was it the case that when there were supply convoys on their way to
22 your camp, communication between you and the supply convoy directly was
23 sometimes difficult?

24 A. [11:43:16] That is correct, Counsel. We would communicate over the
25 telephone.

1 Q. [11:43:32] And those in command of a supply convoy, if they had a particular
2 problem en route, would they report to you or would they report to
3 General Kassaraté or to someone else?

4 A. [11:44:06] Thank you, Counsel. I already explained the situation, but I will try
5 to tell you about it again. Now, in the second part of February a command post was
6 set up, and as of that point in time there were no longer any forces coming to provide
7 reinforcements within the Abobo camp.

8 At the head of the command post, there was a high-ranking officer appointed by
9 General Mangou Philippe. And when the convoy was supposed to leave the camp,
10 and it was that officer who was giving the orders, and it was that officer to whom
11 reports were made if there was an attack.

12 Q. [11:45:07] So does it follow that the number of rocket launchers which had been
13 used against supply convoys is a piece of information that you wouldn't necessarily
14 know?

15 A. [11:45:43] Thank you, Counsel. I think that -- I think that the only attack for
16 which we have specific information, an attack using a rocket launcher, I think I've
17 mentioned that already. And, you see, a detachment from the armoured squadron
18 was attacked. So other than that particular case, there was no other case of a rocket
19 launcher attack that was mentioned to me.

20 Q. [11:46:39] But given what you've been saying over the last few minutes, the fact
21 that it wasn't mentioned to you does not mean that it did not happen; would you
22 agree with that?

23 A. [11:46:54] Yes, indeed, Counsel.

24 Q. [11:47:01] Apart from Chérif Ousmane and Zakaria, the two rebel commanders
25 you mentioned, could you please provide us with the names of other rebel

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1 commanders operating within Abobo?

2 A. [11:47:47] Thank you, Counsel. Those are the two names that were given or
3 reported to us.

4 Q. [11:47:55] So those two names were brought to your attention specifically. But
5 is it the position that you personally do not know the names of others today?

6 MR MACDONALD: [11:48:15] Your Honour, the question is formulated in a way
7 that there's a presumption that there were other rebel commanders. And we can
8 discuss the presence or not of rebel commanders according to the information that he
9 has just given, but the foundation is not there as to the presence. I will limit myself
10 to this right now because the witness is in the courtroom.

11 MR O'SHEA: [11:48:42] Well, the damage has already been done. But there is no
12 presumption here. I'm asking him if he personally knows the names of other rebel
13 commanders today.

14 PRESIDING JUDGE TARFUSSER: [11:48:56] Maybe we could ask if there were, to
15 his knowledge, other rebel commanders.

16 MR O'SHEA: [11:49:06]

17 Q. [11:49:06] Were there other rebel commanders to your knowledge?

18 A. [11:49:12] Thank you, Counsel. To my knowledge, those two names that were
19 provided to us.

20 Q. [11:49:29] Putting aside what was communicated to you, let me put the question
21 again, to your personal knowledge, okay, whatever the source, were there other rebel
22 commanders operating in Abobo at the time that you -- between 2009 and 2011?

23 And your basis of knowledge could be then or it could be after then. But I'm asking
24 about your personal knowledge as opposed to what was reported to you at the time.

25 A. [11:50:13] Thank you, Counsel. I can see that you're talking to me about two

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1 periods of time. So after the post-election crisis, the name of Fongnon was
2 mentioned quite a bit. People were saying that he was the head of the Invisible
3 Commando.

4 Q. [11:50:55] Can you spell that, please?

5 A. [11:51:02] Thank you, Counsel. It is spelled as follows, F-O-N-J-N-O-N.
6 Fongnon with a G, not a J.

7 THE INTERPRETER: Fongnon with a G, not a J. The interpreter apologises.

8 MR O'SHEA:

9 Q. [11:51:48] And who was his next in command?

10 A. [11:52:09] I don't know, Counsel.

11 Q. [11:52:13] Now just before I ask this question, just reminding you that at this
12 point in time today --

13 MR VON BÓNÉ: [11:52:27] I think there is a misspelling.

14 MR O'SHEA: I'm told there is a misspelling.

15 THE INTERPRETER: [11:52:31] Message from the interpreter: The interpreter
16 corrected the spelling, Fongnon with a G.

17 PRESIDING JUDGE TARFUSSER: [11:52:41] There was a misspelling in the English,
18 but it was corrected, so everything is okay.

19 MR O'SHEA: [11:52:45] okay.

20 Q. I just want to remind you that today of course we're before a court of law, so
21 you are not limited to what was reported to you, all right, in a military context,
22 because I understand as a military man you have a particular way of addressing
23 things. But in a court, we are interested in what you know. And the source does
24 not necessarily need to be an official report. I am just pointing that out to you.
25 So can you please tell me, or tell the Chamber, rather, the names of any other people

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1 that you know today as being Commando Invisible, whether in a position of
2 command or not, in Abobo in those years between 2009 and 2011?

3 A. [11:54:06] Thank you, Counsel. There were many names mentioned here and
4 there afterwards, but I think the name -- well, it's difficult to remember all the
5 nicknames and the like. There were about 10. But the name that was mentioned
6 often was the name that I just gave.

7 Q. [11:54:58] How many of those 10 or so names do you remember?

8 A. [11:55:04] Thank you, Counsel. I think that -- well, I'll try, I'll try to remember
9 those names.

10 Q. [11:55:35] If you like, you can write them down on a piece of paper. Does that
11 help you?

12 A. [11:55:48] Well, if the names come back to me.

13 MR O'SHEA: [11:55:54] Can the witness be provided with a piece of paper, a blank
14 piece so that we can have it afterwards.

15 PRESIDING JUDGE TARFUSSER: [11:56:14] I think he has paper now to write
16 down.

17 MR O'SHEA: [11:56:36] Yes.

18 Q. I'll just give you a minute to do what you can.

19 (Pause in proceedings)

20 MR O'SHEA: [11:59:15] You don't have any difficulty with any of these names being
21 shown in public, do you?

22 A. [11:59:27] That is correct, Counsel.

23 MR O'SHEA: [12:00:46] There is a technical problem. It is just as easy for me to
24 look at the list after it has been shown to the judges and the parties.

25 MR VON BÓNÉ: [12:01:16] Mr President, would you like the witness to sign the

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- 1 document or date it or -- (Microphone not activated)
- 2 PRESIDING JUDGE TARFUSSER: [12:01:23] I don't think because -- (Microphone
3 not activated)
- 4 THE INTERPRETER: [12:01:28] Microphone.
- 5 PRESIDING JUDGE TARFUSSER: [12:01:29] Sorry. I don't think it is needed. If
6 we acknowledge it, it's okay, thank you.
- 7 MR O'SHEA: [12:01:35] It is not necessary. It was just to facilitate him giving the
8 information.
- 9 PRESIDING JUDGE TARFUSSER: [12:01:42] Has the Prosecutor seen it?
- 10 MR O'SHEA: [12:01:45] Has the Prosecutor seen it? No. He must see it, and the
11 other parties as well.
- 12 MR MACDONALD: [12:01:53] No, it is okay, we can maybe read the names, your
13 Honours. It's fine.
- 14 PRESIDING JUDGE TARFUSSER: [12:01:58] Yes, okay. Thank you. Just give it
15 back to them.
- 16 MR O'SHEA:
- 17 Q. [12:02:07] So who was the first name, Jack Bauer, is it, Jack Bauer?
- 18 A. [12:02:21] That is correct, Counsel.
- 19 Q. [12:02:26] Who was he? What do you know about him?
- 20 A. [12:02:54] Thank you, Counsel. I know that Jack Bauer was one of the people
21 attacking the FDS.
- 22 Q. [12:03:00] Did he hold a position of command?
- 23 A. [12:03:06] I do not know, Counsel.
- 24 Q. [12:03:17] Did you know him?
- 25 A. [12:03:20] No, Counsel.

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1 Q. [12:03:29] Diezel, who was he?

2 A. [12:03:47] The same answer that I gave for Jack Bauer is applicable to the two
3 others, so the three names that I wrote down on the paper are the names of people
4 who belonged to the groups attacking the FDS in Abobo and Anyama. But I've
5 never seen these people and I do not know them personally.

6 Q. And you don't know in the case of each of them whether they held a position of
7 command or not?

8 PRESIDING JUDGE TARFUSSER: [12:04:25] Please. The translation, you
9 overlapped.

10 MR O'SHEA: [12:04:30] Sorry.

11 Q. [12:04:31] You don't know if each of them, any of them had a position in
12 command or not?

13 A. [12:04:47] That is correct.

14 Q. [12:04:49] And in what context and when did you hear these names?

15 A. [12:05:04] Thank you, Counsel. Regarding Jack Bauer, this was a name that
16 was heard frequently. It seems that he operated in the N'Dotré area. As for the two
17 others, I really have no idea. I heard about them from members of the population
18 after the crisis.

19 MR MACDONALD: [12:05:46] Your Honours and Mr O'Shea, just is it possible to
20 put the third name on record also.

21 MR O'SHEA: [12:05:52] Yes, I will do that and the spellings.

22 PRESIDING JUDGE TARFUSSER: [12:05:55] It was the fault of the witness who said
23 all three names without giving the opportunity to put the third name.

24 MR O'SHEA: [12:06:03] I will complete the record, yes.

25 Q. So yes, you were saying that Jack Bauer was at N'Dotré. And you heard in

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1 relation to each of these names, you heard from the population at the end of the
2 events; is that what you said?

3 A. [12:06:37] Yes, indeed, Counsel.

4 Q. [12:06:38] And where were you when you heard about these people? Were
5 you at the camp or were you at the Hotel du Golf or was this after?

6 A. Thank you, Counsel. I have already answered that question. I said it was
7 after the crisis.

8 Q. [12:07:08] Where were you? Sorry. Where were you?

9 A. [12:07:12] Thank you, Counsel. After the crisis, I returned to Abobo to inspect
10 my house, which had been looted. And during that occasion I met with some
11 friends and they were the ones who were giving accounts of the deeds of those
12 people.

13 Q. [12:07:51] And the third name that you've written here is Petit Lasso; is that
14 correct?

15 PRESIDING JUDGE TARFUSSER: [12:07:56] Again, we didn't get the first part of
16 your question because of the overlapping.

17 MR O'SHEA: [12:08:03] I'm sorry.

18 PRESIDING JUDGE TARFUSSER: [12:08:05] So if you would pause after the witness
19 is finished, I would be very grateful.

20 MR O'SHEA: Thank you.

21 Q. [12:08:16] The third name that you have listed here is Petit Lasso; is that correct?

22 A. [12:08:27] That is correct, Counsel.

23 Q. [12:08:28] And that is spelt Petit, as in French P-e-t-i-t, and Lasso, L-a-s-s-o.

24 And the first name that you gave was Jack Bauer, which is spelled J-a-c-k and then

25 B-o-w-e-r; is that correct?

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1 A. [12:09:07] Bauer is spelt B-A-U-E-R.

2 Q. [12:09:17] Thank you. And Diezel is spelt D-i-e-z-e-l?

3 A. [12:09:30] That is correct, Counsel.

4 Q. [12:09:41] In your mind do you make a distinction between rebels and
5 Commando Invisible, or are we referring to the same people?

6 A. [12:10:16] Thank you, counsel. As the FDS, a member of the FDS, as far as I am
7 concerned, those are the same people.

8 MR O'SHEA: [12:10:26] Could we go into private session for one moment, please?

9 PRESIDING JUDGE TARFUSSER: [12:10:30] Can we go please into private session.

10 Thank you.

11 (Private session at 12.10 p.m.)

12 (Redacted)

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14 (Redacted)

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23 (Open session at 12.16 p.m.)

24 THE COURT OFFICER: [12:16:44] (Interpretation) We are in open session,

25 your Honour.

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1 PRESIDING JUDGE TARFUSSER: [12:17:01] Okay, Mr O'Shea. Thank you.

2 MR O'SHEA: [12:17:04] Thank you, your Honour.

3 Q. [12:17:06] So the person who came to see you who -- at the camp who had been
4 involved in the initial coup d'état in 2002, you are not able to give his name?

5 A. [12:17:34] Thank you, Counsel. I am able to give his name.

6 Q. [12:18:15] Please do. You can say it if you want, unless you prefer to write it
7 down.

8 MR VON BÓNÉ: [12:18:31] I think, your Honour, the witness would like to request
9 to go into private session.

10 PRESIDING JUDGE TARFUSSER: [12:18:39] So let's go into private session. Thank
11 you.

12 (Private session at 12.18 p.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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17 (Redacted)
18 (Open session at 12.40 p.m.)
19 THE COURT OFFICER: [12:40:56] (Interpretation) We are in open session.
20 PRESIDING JUDGE TARFUSSER: [12:41:06] Mr O'Shea.
21 MR O'SHEA:
22 Q. [12:41:09] Okay, so I'm going to put a question to you, which is this: Did you
23 personally know anyone who was involved in the rebellion at the time that you were
24 at the camp? And let me extend the period from 2004 to 2011, since we know that
25 you were at the camp earlier times as well.

1 A. [12:41:45] Thank you, Counsel. From 2004 to 2011 I did not have any
2 knowledge. The rebels, the people who were members of the rebellion in the north
3 of the country, I did not know any of them. I did not know any of those people.
4 And I would like to specify one thing as well. It was easier for me, if there had been
5 gendarmes -- or, well officers from the gendarmerie it would have been easier for me.
6 But when the rebellion began none of the officers from the gendarmerie took part.

7 Q. [12:42:57] Did you know, during the same period, did you know anybody who
8 was themselves well connected or connected within the ranks of the rebellions? Did
9 you know anybody who had good connections among the rebels?

10 A. [12:43:27] Thank you, Counsel. I don't remember meeting any people who had
11 any dealings with rebellion.

12 Q. [12:44:05] I'm just going to come back to my question for a moment. Because
13 from your answer it is not clear, to me at least, that you fully understand what I am
14 saying. During the relevant period, the period that I've specified, 2004 to 2011,
15 you've already stated that you did not personally know of people involved in the
16 rebellion. My question is: Did you know anybody who themselves knew people
17 within the rebellion? Who were connected or well connected to people who were
18 involved in the rebellion. Is that question clear?

19 A. [12:45:06] Thank you, Counsel. I do understand the question. But -- and
20 I -- well, I'm thinking. And I respond right away and I don't think, I don't think I
21 knew anyone who was part of the rebellion. Who was connected, rather, with the
22 rebellion.

23 Q. [12:45:34] In your answer you said, and I quote in French, "qui a été introduit
24 auprès de la rébellion".

25 Do you include within that, do you mean that you knew nobody who themselves had

1 connections with rebels? Is that your position?

2 A. [12:46:16] I don't know if I'm quite following you. But I think I've answered the
3 question. I think that is what I've said.

4 Q. [12:46:34] So when you told the Office of the Prosecutor before this hearing that
5 the cousin of your wife had a lot of connections among the rebels, that was wrong,
6 was it?

7 A. [12:47:06] Thank you, Counsel. I said that. And that was when I was
8 supposed to leave and I was looking for people to contact. And so that is how it
9 came to be that I called my wife and she gave me the name of that cousin, who myself
10 I didn't know.

11 Q. [12:47:48] What was the name of the cousin of your wife?

12 MR MACDONALD: [12:48:02] Your Honours, I think I'll -- for security reasons and
13 the obligations that we have I would recommend a private session on that one.

14 MR O'SHEA: [12:48:16] Why?

15 PRESIDING JUDGE TARFUSSER: [12:48:22] Let me please ask Counsel von Bóné
16 about private session on this. Could you consult with the witness, because I don't
17 understand why.

18 MR N'DRY: (Interpretation) Your Honour.

19 MR VON BÓNÉ: [12:48:55] The witness says that he can stay in open session.

20 PRESIDING JUDGE TARFUSSER: [12:48:58] Maître N'Dry.

21 MR N'DRY: (Interpretation) Just a reminder. I believe there already was a ruling
22 on that matter and you've been quite clear. You said that the witness had counsel
23 and that, if necessary, if we had to go into private session, well, the counsel of the
24 witness would assist. And the Prosecution certainly doesn't have to play the role of
25 the witness's counsel.

1 PRESIDING JUDGE TARFUSSER: [12:49:30] Yes, but it doesn't also prevent him to
2 suggest this but that's exactly how we proceeded. And so please, Mr O'Shea, it's
3 your turn. Put the question in public session.

4 MR O'SHEA:

5 Q. [12:49:46] What was the name of the cousin of your wife?

6 A. [12:49:57] Thank you, Counsel. I myself mentioned that party. I don't think I
7 gave the actual name because I don't know the name.

8 Q. [12:50:20] At that time when you were looking for contacts and you asked your
9 wife, at that time how long had she been your wife?

10 A. [12:50:33] Thank you, Counsel. We have been together since 2007, so already it
11 had been four years.

12 Q. [12:51:04] And when you say "cousin", do you mean that he was the son of
13 a sister or a brother of your wife's parents?

14 A. [12:51:26] Thank you, Counsel. I don't know. But what I can tell you is that in
15 Africa we attribute a concern meaning to cousin, so I really couldn't tell you much
16 more. It's a rather broad meaning. I couldn't tell you much more than that.

17 Q. [12:52:05] So before you asked your wife to help you, you had never met this
18 man before, the cousin?

19 A. [12:52:25] Thank you, Counsel. I met some of her relatives in Anyama and
20 I don't know whether that cousin was amongst the people at that place in Anyama.
21 Personally, I don't think I ever met the person.

22 Q. [12:52:59] Where were you born? In which region of Ivory Coast were you
23 born?

24 A. [12:53:09] Thank you, Counsel. I was born in the north, in the northern part of
25 the country.

1 Q. [12:53:24] And where did you go to school?

2 A. [12:53:29] Thank you, Counsel. I went to school in several towns. It
3 depended on my father's transfers and secondments. He himself was a gendarme as
4 well and he was transferred various places.

5 Q. [12:53:55] And where were your schools -- and where
6 were your schools located?

7 A. [12:54:01] I don't understand your question. Do you mean in terms of my
8 home or in terms of a town?

9 Q. [12:54:22] Yes, in which part of Ivory Coast? In which town, region of
10 Ivory Coast did you go to primary school?

11 A. [12:54:37] Thank you, Counsel. I was here, there and everywhere really, from
12 the centre of the country, and then we were in the east, and then we ended up in the
13 south. So I was in the centre, the east, the west and I ended up in the south.

14 Q. [12:55:04] And when you were going to school in the west of the country, which
15 stage of your schooling was that?

16 A. [12:55:12] When I was in the west of the country I was in the second cycle and
17 that's when I did my terminal year.

18 Q. [12:55:35] Did you not have any friends at school or acquaintances at school
19 who subsequently became part of the rebellion?

20 A. [12:55:48] Thank you, Counsel. If I recall, I don't think so.

21 Q. [12:56:12] And how many brothers and sisters do you have? Or did you have?

22 A. [12:56:29] Thank you, Counsel. I have more than 15 brothers and sisters.

23 Q. [12:56:49] Did any of your brothers and sisters participate in the rebellion?

24 And remember you can always go into private session any time you like.

25 A. [12:57:10] Thank you, Counsel. That's not a problem. None of my brothers

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1 took part in the rebellion.

2 Q. [12:57:22] And what about in your extended family? Was there anybody?

3 A. [12:57:32] Thank you, Counsel. I'm not so sure. I don't know.

4 MR O'SHEA: [12:58:00] I don't know what time your Honours want to break for
5 lunch.

6 PRESIDING JUDGE TARFUSSER: [12:58:14] Now. So I think we break, but before
7 breaking I will ask the court usher to bring out the witness. And I give the floor also
8 to Mr Altit who is on his feet.

9 MR ALTIT: [12:58:27] (Interpretation) Thank you, your Honour. Your Honours, I'd
10 like to correct the assessment about the time that we said we needed. I'd like to give
11 you a new assessment of the amount of time necessary.

12 (The witness stands down)

13 MR ALTIT: [12:58:54] (Interpretation) Your Honour, O'Shea will finish off today's
14 questioning and then tomorrow I will need two, probably two sessions,
15 approximately two sessions in the course of the day. And I hope that I will have
16 finished tomorrow before the end of the day.

17 PRESIDING JUDGE TARFUSSER: [12:59:23] Before the end of the second session,
18 no?

19 MR ALTIT: [12:59:27] (Interpretation) Probably I will need two full sessions. And
20 I hope I will not go over that and if I do I hope that it will not encroach too much
21 upon the third session.

22 PRESIDING JUDGE TARFUSSER: [12:59:45] Okay, thank you.

23 MR MACDONALD: [12:59:47] Very briefly. Thank you very much for that. And
24 then maybe if we know in advance are the Defence -- I am thinking of witness now
25 414, which is maybe easier to move around than 501.

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1 PRESIDING JUDGE TARFUSSER: [13:00:03] What do you mean easier to turn
2 around, to move around?

3 MR MACDONALD: [13:00:07] To move around, because what I'm thinking now is
4 can we literally squeeze in 414 this week? Because this Friday is our last day and then
5 we resume on the 19th or 20.

6 PRESIDING JUDGE TARFUSSER: [13:00:25] Something like this, yeah.

7 MR MACDONALD: [13:00:28] That that is what I am thinking about, your Honour,
8 right now.

9 PRESIDING JUDGE TARFUSSER: [13:00:29] And why do you think --

10 MR MACDONALD: [13:00:31] Not switch, not a switch. But just inform the
11 witness not to come this week.

12 PRESIDING JUDGE TARFUSSER: [13:00:37] Oh, he is not here? 414 is not here
13 yet?

14 MR MACDONALD: [13:00:42] I don't think the witness is here yesterday.

15 PRESIDING JUDGE TARFUSSER: [13:00:44] 501 is here?

16 MR MACDONALD: [13:00:46] That I don't know. I will find out.

17 PRESIDING JUDGE TARFUSSER: [13:00:49] We will find out now and then we will
18 see.

19 MR MACDONALD: [13:00:52] That is what I am concerned with.

20 PRESIDING JUDGE TARFUSSER: [13:00:54] Yes, thank you. Mr Von Bóné.

21 MR VON BÓNÉ: [13:00:56] Yes, I truly hope, your Honour, that this witness could
22 be concluded on Tuesday, as I have some obligations on Wednesday that I simply
23 cannot reschedule. So, anyway, just to let you know.

24 PRESIDING JUDGE TARFUSSER: [13:01:15] Okay. So I think we do our best, but
25 it's good to know that on Wednesday you can't. Wednesday is after tomorrow. Yes.

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- 1 So you can, only tomorrow the whole day but then not on Wednesday?
- 2 MR VON BÓNÉ: [13:01:30] Any other day of the week is fine.
- 3 PRESIDING JUDGE TARFUSSER: [13:01:32] Just Wednesday not.
- 4 MR VON BÓNÉ: [13:01:34] Any other day is fine.
- 5 PRESIDING JUDGE TARFUSSER: Okay. Thank you.
- 6 MR MACDONALD: [13:01:36] So, strong of this information like we did maybe on
- 7 the first day --
- 8 PRESIDING JUDGE TARFUSSER: Yes, of course.
- 9 MR MACDONALD: -- we can do two hours this afternoon. It's a proposal,
- 10 suggestion.
- 11 MR O'SHEA: [13:01:48] Can we see how it goes?
- 12 PRESIDING JUDGE TARFUSSER: [13:01:50] Yes, we can't see simply how it goes
- 13 because we have to, also to think about, it is not about us, it is about more the people
- 14 in the booth, so.
- 15 MR O'SHEA: [13:02:01] Well I might be finished in an hour and a half and I will aim
- 16 to do that, personally.
- 17 PRESIDING JUDGE TARFUSSER: [13:02:07] Good. So we hope we stick on that.
- 18 MR O'SHEA: [13:02:09] Yes.
- 19 PRESIDING JUDGE TARFUSSER: [13:02:09] Okay.
- 20 MR MACDONALD: [13:02:11] And last, but we're discussing scheduling,
- 21 your Honour, this fascinating subject of scheduling, 501 then could maybe be started
- 22 on the Wednesday.
- 23 PRESIDING JUDGE TARFUSSER: [13:02:23] We'll see. But I don't want to -- and
- 24 then to stick in in the middle. Well, I would not be very happy with this but I also
- 25 have to consult with my colleagues and we will see.

1 Thank you. The hearing is adjourned and we will see each other at 2.30.

2 THE COURT USHER: [13:02:42] All rise.

3 (Recess taken at 1.02 p.m.)

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

5 PRESIDING JUDGE TARFUSSER: [14:34:29] Good afternoon.

6 Good afternoon, Mr Witness. In order to, not to lose any time, I give immediately
7 the floor to Mr O'Shea. And I think that we should go to the end of the questioning
8 of Mr O'Shea. If he exceeds the one hour and a half, we continue up to two hours.

9 But we still hope that he can manage to stay in one hour and a half. Thank you.

10 MR O'SHEA: [14:35:02] Thank you, Mr President.

11 Q. [14:35:08] Yes, captain, okay. What can you tell us about the member of the
12 FDS by the name of Alla, who defected and went over to the other side of the rebels?

13 A. [14:35:28] Thank you, Counsel. During the first days of the testimony, this
14 person was mentioned. I spoke about him. I said at the time Alla was a lieutenant
15 when we went to the front, and he directed the offensive, a group of rebels from
16 Liberia known as Mpigo. So we fought together and we separated in 2004, when I
17 returned to my barracks.

18 Subsequently I learned that he had defected to the Golf Hotel.

19 Q. [14:36:44] And when you were fighting together, were you friends?

20 A. [14:36:47] Thank you, Counsel. I would like to point out that at the
21 gendarmerie academy, I was admitted one year before Alla. So I was his senior.
22 But he was recruited into the officer's academy one year before me. So that was the
23 time during which we knew ourselves.

24 Q. [14:37:31] So this was in fact somebody that you did know in the rebels?

25 A. [14:37:40] Thank you, Counsel. I did not say that Alla was amongst the rebels.

1 I said he defected and went to l'hôtel du Golf.

2 Q. [14:38:03] Did he not support the cause of the rebels after defecting?

3 A. [14:38:08] Thank you, sir. I believe that the rebellion was in existence up to a
4 certain point. But at the time Alla defected he did not travel to the rebel area, so I do
5 not think that he was allied to the rebel cause at that time.

6 Q. [14:38:50] And when he was at the Golf Hotel, did you contact him, or did he
7 contact you?

8 A. [14:38:59] Thank you, Counsel. When he was at the Golf Hotel, he did not
9 contact me.

10 Q. [14:39:17] And you didn't contact him?

11 A. [14:39:19] No, I did not contact him, Counsel.

12 Q. [14:39:21] And what can you tell us about IB?

13 A. [14:39:37] Thank you, Counsel. I talked about IB previously. I said that he
14 was not a candidate. He never ran. But based on rumours, he wanted to stand
15 between the two candidates, Mr Laurent Gbagbo and Mr Alassane Ouattara. Based
16 on what was said, he was also claiming his share of the spoils. Apparently he
17 wanted to be president of the republic.

18 Q. [14:40:55] And was there a time when IB was supporting the national efforts
19 against the rebellion before?

20 A. [14:41:22] Thank you, Counsel. I really cannot say. However, we heard that
21 Mr IB had distributed foodstuffs to members of the FDS.

22 Q. [14:42:02] What was Alla doing after he defected?

23 A. [14:42:20] Thank you, Counsel. When Alla defected he was subsequently
24 appointed as the spokesperson, so he was the one who would come and speak on the
25 television known as the TCI, which was based at the Golf Hotel.

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1 Q. [14:43:04] And that's porte-parole for who?

2 A. [14:43:15] Thank you, Counsel. He was the spokesperson for those who
3 claimed to be in power, and who were based at the Golf Hotel, who claimed to have
4 won the elections.

5 Q. [14:43:34] Was he assisting Guillaume Soro?

6 A. [14:43:44] Thank you, Counsel. I'm not in a position to say.

7 Q. [14:43:58] Do you know who nominated him? As porte-parole I mean.

8 A. [14:44:17] No, Counsel.

9 Q. [14:44:21] If I was to tell you that it was Guillaume Soro, would that jog your
10 memory?

11 A. [14:44:28] It is possible, Counsel.

12 Q. [14:44:45] And was Guillaume Soro at the head of some of the rebels?

13 A. [14:44:53] Thank you, Counsel. From the very beginning of the rebellion,
14 Ivorians, all Ivorians knew that Mr Guillaume Soro was behind the rebellion, and he
15 stated that he was the secretary general of the rebellion.

16 Q. [14:45:30] Did Mr Soro have any other official position within the structure,
17 within the rebellion structure?

18 MR MACDONALD: [14:46:02] Sorry, at which time? Back in 2002 or in 2011? If
19 it's in 2011 I'm willing to admit that he was the shadow prime minister of Mr
20 Ouattara's cabinet or government at du Golf. I'm willing to make that admission on
21 record.

22 MR O'SHEA: [14:46:22] That's very helpful, Mr MacDonald, but I'm seeing what the
23 witness knows at the moment. But anyway you've told him, so I'll move on.

24 Q. [14:46:43] What was the situation with les Wattao?

25 A. [14:47:11] I didn't quite understand your question, Counsel.

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1 Q. [14:47:15] Was les Wattao involved in the rebellion?

2 A. [14:47:33] Counsel, I'm hearing two names, I've heard les Wattao.

3 Q. [14:47:42] Let me then adopt the name Wattao. Was there a gentleman by the
4 name of Wattao who defected and joined the rebellion?

5 A. [14:47:49] Thank you, sir. Wattao is very popular in our country. It was from
6 the very beginning of the rebellion that this gentleman joined the rebels.

7 Q. [14:48:18] Now, if we come on to discuss some of the attacks which the FDS had
8 to deal with. In your evidence you disclosed that some of those who are involved on
9 3 March stated that they were under attack; is that right?

10 A. [14:49:33] Thank you, Counsel. Are you referring --

11 Q. Yes --

12 A. -- to the FDS soldiers in the convoy? That is correct.

13 Q. [14:50:11] And in your evidence on 9 February 2016, English transcript at page
14 23, lines 14 et seq, you stated the following, and I quote:

15 "Well, I conducted my rounds and I redistributed the personnel so that the positions
16 that had been left by the reinforcements were held whilst waiting for new personnel
17 to arrive. And at a later stage I received a telephone call from the town. As I was
18 saying, I received a telephone call telling me that our men had fired once again and
19 allegedly had fired upon some women." End of quote.

20 Was that the first telephone call that you received on that subject?

21 MR MACDONALD: [14:51:49] Your Honours, while the witness is thinking, it's just
22 there is a mistake; it's 2 September, not the 9th of February.

23 MR O'SHEA: [14:51:58] Of course, yes, 2nd of September.

24 Q. [14:52:16] So I'm waiting for your answer, sir. Was that the first telephone call
25 that you received that day on that subject?

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1 A. [14:52:25] Thank you, Counsel. I think that must have been the first call.

2 Q. [14:52:43] In your statement to the Office of the Prosecutor, at page

3 CIV-OTP-0049-2288 --

4 MR MACDONALD: [14:53:50] Just to clarify, the first page of that transcript is 2269,
5 the last four digits.

6 MR O'SHEA: [14:54:03] Thank you.

7 Q. [14:54:13] You stated -- I'll start at line 639. You stated: (Interpretation) "I'm
8 the one who called."

9 Interviewer: "Very well."

10 (Speaks English) Then you said: "Did they tell you precisely, if you remember,
11 because I asked 'What was happening, why this gunfire? Can they tell us
12 anything?'"

13 (Speaks English) The interviewer: "Mm-mm."

14 And you responded: (Interpretation)" They told us, they told me that they were
15 seeing people running in all directions, but that they were going to inquire. They
16 found out some information and then they called us back to tell us these were our
17 people passing by who had fired. But then they did not say on the women. They
18 had been -- they had fired on people, but they did not precise that it was on women."

19 (Speaks English) During this telephone call what you were told was that it was your
20 men who fired, but you were not told at that point that it was on the women. Is that
21 correct, what you told the Office of the Prosecutor?

22 A. [14:56:27] Thank you, Counsel. The two cases mentioned on the telephone
23 calls are correct. The first call came from the town, and they told us that our men
24 had fired and that this time around it seems to be that they fired at women.

25 Now, since I had people located at an elevated area, I asked them to give us some

1 more information. But they could only see as far as the station. So they also told us
2 that they were seeing chaos, people running in all directions, and that they were
3 going to find out.

4 It was during the second call from my men that they told me that our men had
5 opened fire, but at that time they did not specify that they had fired at women. So
6 these are two facts and I'm telling you what I heard during those two phone calls.

7 Q. [14:57:58] So it was in the second call that there was no indication that it was
8 firing on women; but in the first call it was said that there was firing on women?

9 A. [14:58:28] Thank you, Counsel. In the first case there was no confirmation. It
10 was said that there might have been gunfire against women. But since there was a
11 doubt, I asked my men to find out. And my men said that there was gunfire, but
12 they did not say that women were shot at.

13 Q. [14:59:07] So if I can just understand you here, in this first telephone call, are you
14 saying that your men, or whoever you're speaking to on the phone, is saying to you in
15 the conditional tense, there must have been or there would have been firing on
16 women? Is that what you are trying to say?

17 A. [15:00:08] Thank you, Counsel. I'm referring to the phone call and the
18 statement that I made on 2 September. The first phone call, that very first phone call
19 when I had just repositioned my men, I received a first phone call, and that is when
20 the conditional tense was used. And it was in that same first phone call that I
21 was -- talked -- well, that women were mentioned to me. And the discussion that I
22 had with my men made mention of gunshot, but they did not mention any women.

23 Q. [15:01:08] So in the first telephone call, if you can just focus on the first
24 telephone call for a moment, in the first telephone call, it was not said that women
25 were fired on?

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1 MR MACDONALD: [15:01:29] I'm sorry, I understand we're questioning the witness,
2 but that's not what the witness is saying. So, I mean --

3 MR O'SHEA: [15:01:38] Well, that's what we're trying to clarify here, Mr MacDonald,
4 what the witness is exactly saying.

5 MR MACDONALD: [15:01:44] It looks pretty clear on the transcript.

6 MR O'SHEA: [15:01:48] Well, not to me it doesn't.

7 Q. [15:01:52] You talked about conditional, Mr Witness. I'd understood you to be
8 saying that in the first call it wasn't clear that they were saying that there was -- that
9 women had been fired on, but there was a presumption, they thought that women
10 may have been fired on. Is that the point? What exactly are you saying about the
11 first call?

12 A. [15:02:26] Thank you, Counsel. The individual who called me first occupies a
13 position in charge of transporters at the town hall roundabout. And the gist of what
14 this person had to say to me was expressed in the conditional tense. As I mentioned
15 in my interview or in my hearing, during the hearing, that first call was made and the
16 conditional tense was used, and that's why I wanted to make sure for myself by
17 asking my men to go and check.

18 Q. [15:03:20] Well, what do you mean by "conditional"? It's the person who is
19 speaking to you is speaking in the conditional tense; is that what you mean?

20 A. [15:03:32] That is correct, Counsel.

21 Q. [15:03:41] So the person who is speaking to you is not saying women have
22 been shot. He's saying --

23 PRESIDING JUDGE TARFUSSER: [15:03:48] What did he say? Just what did he
24 say exactly? I mean, what was, what was --

25 MR O'SHEA:

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1 Q. [15:03:57] All right, what were his words?

2 PRESIDING JUDGE TARFUSSER: [15:04:00] What were his words?

3 THE WITNESS: [15:04:05] (Interpretation) Well, if I try and recollect, he called me
4 and he said to me "Captain, your men fired once again, and this time it would seem
5 that they shot at women."

6 So I understand that conditional, because by virtue of his position, he was not able to
7 see the scene itself, the location.

8 MR O'SHEA:

9 Q. [15:04:56] So when you were giving evidence to the Prosecution on 2 September,
10 why did you choose to say that there was an allegation that the women had been fired
11 on in that telephone call? Because you're not saying that now, are you, you're not
12 saying that --

13 MR MACDONALD: [15:05:29] Objection. Objection. That's exactly what the
14 witness is saying. We're playing with words here.

15 PRESIDING JUDGE TARFUSSER: [15:05:34] I think so, yes. I think they're the
16 same. It's exactly what he said. It seems that, well, what he is saying before? It
17 seems that there had been, that women had been fired -- I think there is no
18 contradiction.

19 MR O'SHEA: [15:05:52] Well, I'm listening in French, and the witness is emphasising
20 the conditional. And he's explaining --

21 PRESIDING JUDGE TARFUSSER: [15:06:00] I don't understand the word
22 "conditional". I mean --

23 MR O'SHEA: [15:06:03] I understand he's talking about the conditional sense -- tense,
24 sorry. In other words, this person who is speaking, he's not confirming that women
25 have been fired on. What he's saying is --

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1 PRESIDING JUDGE TARFUSSER: [15:06:15] He's allege --

2 MR O'SHEA: [15:06:17] Well, this is my point, this is where we differ. What he's
3 saying is that he's talking in the conditional sense. Because of his view he could not
4 see whether women were being fired on or not, but he's essentially saying -- I mean, I
5 don't want to put words in the witness's mouth, but my understanding of this, which
6 is why I have been questioning on it, my understanding of this is that he's saying
7 something to the effect of, well, it seems as though, you know, women may have been
8 shot, without confirming it.

9 PRESIDING JUDGE TARFUSSER: [15:06:52] Well.

10 MR O'SHEA: [15:06:53] So it's not an allegation, is it?

11 PRESIDING JUDGE TARFUSSER: [15:06:57] I don't see the big difference, I must say,
12 but.

13 MR O'SHEA: [15:07:00] Well, I'll move on from that point.

14 Q. [15:07:23] Well, Mr Witness, your explanation of this is that -- your explanation
15 of this difference between your statement and the transcript of these proceedings is to
16 say that there are two telephone calls, and that the statement, in other words, what
17 you said to the Office of the Prosecutor relates to the second telephone call; is that
18 right? That what you said to the Office of the Prosecutor where they did not specify
19 that women were fired on, that that relates to a second telephone call. Is that your
20 position?

21 A. [15:08:08] I maintain that position.

22 Q. [15:08:16] Because that position doesn't sit well with what you're actually saying
23 in this statement, and I'll remind you, quote: (Interpretation) "Because I asked what
24 was going on, why was that -- were those shots fired? Could they tell us anything?"
25 That doesn't sound, does it, like a follow-up call? That sounds like you trying to get

1 your initial information on this incident.

2 A. [15:09:12] Thank you, Counsel. I believe that as a chief or a soldier, when you
3 want to report back about a situation, you need to have a certain amount of
4 information in your hands. You need to have an overview of the situation. So this
5 is the first phone call that I received from an individual who was in the centre of the
6 town. And according to what this person told me, there was a conditional tense
7 used.

8 It is the individual who is not sure about his information that uses the conditional
9 tense. And that is why in order to make sure if I was already -- well, I was -- I asked
10 whether he was in a position to see actually what was going on, and he said that they
11 had heard gunfire. So it was up to them to tell me what was going on. So I didn't
12 suggest anything to them, talking to them about women being shot at, no. I let them
13 discover for themselves what really happened. And when they came back to me
14 with the information, they did not talk about women being shot at.

15 Q. [15:10:46] All right. Now, you -- is it your position that you reported this
16 incident or allegation to *Toaly?

17 A. [15:11:08] Thank you, Counsel. I believe so.

18 Q. [15:11:25] And on 2 September you stated at page 28, lines 11 to 12, that you
19 don't remember Toualy assembling the troops; is that also right?

20 A. [15:12:24] Yes, Counsel.

21 Q. [15:12:30] When you spoke to the Office of the Prosecutor at CIV-OTP-0049-2292,
22 you're asked the question by the interviewer, and I quote: (Interpretation) "Okay.
23 Did you talk with Toualy after you learnt that women had been shot at?"
24 (Speaks English) And you respond: (Interpretation) "No. I do not recall. I do not
25 recall. I do not recall."

1 (Speaks English) And the question: (Interpretation) "Did he himself know that women
2 had been shot at on that day?"

3 I do not recall, but I believe that."

4 (Speaks English) And the interviewer says: (Interpretation) "On the same day?"

5 (Speaks English) And you say: (Interpretation) "Yes, I believe so, because there were
6 complaints about behaviour, about gunfire and other unforeseen circumstances. So
7 it would seem to me that he must have gathered us together in order to talk to us
8 about the gunfire, a little group of us that he found outside. It would seem that that
9 is the case. But I can't confirm."

10 Question: "On the same day or the next day?"

11 Answer: "On the same day. On the same day, because me, after that, I was no
12 longer there."

13 Question: "Very well. Were you there when they said that they gathered
14 together?"

15 Answer: "Yes.

16 Very well."

17 (Speaks English) And you say: (Interpretation) "When they gathered together, I
18 know that there was still lots of gunfire, that the people were firing without receiving
19 any orders. There we are."

20 (Speaks English) So when you're speaking to the Office of the Prosecutor, closer to
21 these events, you say that you don't remember speaking with Toualy. So did you
22 speak with Toualy or not?

23 A. [15:15:26] Thank you, Counsel. I still do not remember because I know that
24 Toualy was not there for just one day. So we discussed, we had discussions. So
25 really I do not remember.

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1 Q. [15:15:54] And in this same interview, you remember Toualy assembling the
2 troops, but in court you don't remember him assembling the troops. So did he
3 assemble the troops or did he not assemble the troops?

4 A. [15:16:24] Thank you, Counsel. You asked whether I talked to him or not, and I
5 said that I did not recall. But as far as the troops being gathered together, I know
6 that he did so because he was always complaining about the fact that there was
7 gunfire.

8 Q. [15:16:53] And the position of Toualy when he's speaking to the troops is that
9 people have fired without instruction; is that right, without order?

10 A. [15:17:40] Thank you, Counsel. Indeed, when a piece of information or
11 intelligence of this type reaches us, generally speaking, it is said that our men were
12 firing. And until proof to the contrary, they then say that they came under attack in
13 order to explain why fires -- why the guns were fired.

14 THE INTERPRETER: [15:18:24] Can the witness please be requested to repeat his
15 answer, please.

16 MR O'SHEA: And you tell the Office of the Prosecutor --

17 PRESIDING JUDGE TARFUSSER: [15:18:28] Excuse me.

18 MR O'SHEA: [15:18:29] Sorry.

19 PRESIDING JUDGE TARFUSSER: [15:18:30] The interpreter asked me or asks the
20 witness to repeat his answer because it didn't come through.

21 THE WITNESS: [15:18:48] (Interpretation) Thank you, Mr President. As I was
22 saying, when Commander Toualy talked to his men in such a situation it was with a
23 view to complaining, because he had really underscored this element of discipline in
24 terms of gunfire.

25 MR O'SHEA:

1 Q. [15:19:19] Yes, captain. And you say to the Office of the Prosecutor, quote:
2 (Interpretation) "In fact, he was making comments to the troops with regard to the
3 non-respect of instructions, for example, undisciplined firing of guns."
4 (Speaks English) so Toualy, Toualy's concern was that these were undisciplined
5 troops who had fired without order?

6 A. [15:20:19] Thank you, Counsel. I believe that that is correct.

7 Q. [15:20:21] Thank you. So while we're on the subject of attacks on the FDS, after
8 you left the camp in 2011, did you hear of any serious attacks from your men?

9 A. [15:21:16] Thank you, Counsel. I believe that when I left it was rather that the
10 attacks upon my men became more severe.

11 Q. [15:21:33] So this is something which you discussed with your men over the
12 telephone, was it?

13 A. [15:21:44] I do apologise, Mr Counsel. Could you please put this --

14 THE INTERPRETER: [15:22:00] Overlapping speakers. The interpreter was not
15 allowed to finish.

16 PRESIDING JUDGE TARFUSSER: [15:22:08] Can you say, could you please put this.

17 MR O'SHEA: [15:22:14] (Microphone not activated)

18 THE INTERPRETER: [15:22:18] Microphone please, Counsel.

19 MR O'SHEA: [15:22:20] In context of time.

20 PRESIDING JUDGE TARFUSSER: [15:22:22] In context of time.

21 MR O'SHEA:

22 Q. [15:22:32] In 2011 you leave the camp, and I won't go into the details of that for
23 now, but you leave the camp in 2011, and you've just told us that it's after you left that
24 attacks become more serious on your men. Have I understood you correctly?

25 A. [15:22:57] That is what I said, Counsel.

1 Q. [15:23:10] My question is: Is this something that your men are telling you on
2 the telephone?

3 A. [15:23:31] Thank you, Counsel. There were those who remained behind who
4 were in a position to give me such information. And then there was information that
5 was relayed over the television or the radio.

6 Q. [15:23:55] And can you give the Chamber a concrete example of a serious attack
7 which took place on your men after you left?

8 A. [15:24:21] Thank you, Counsel. There were some troops from the GEB, from
9 the armoured squadron, who were due to go back to Abobo in order to come to the
10 barracks via Samaké roundabout. And they came under attack there. They were
11 attacked by rocket launchers and they lost two armoured vehicles.

12 Q. [15:24:59] Did people die? Did men die?

13 A. [15:25:20] I do not believe so, Counsel. But there was one officer who was
14 seriously burnt.

15 Q. [15:25:34] And some of your men were caught up in that situation?

16 A. [15:25:47] Thank you, Counsel. There was one of my troops who was at the
17 RTI. He was posted there. And he was inside the vehicle. He was not part of the
18 armoured squadron, but he was there because he was on his way to Camp
19 Commando, and he was the one who provided me with the account of the situation.

20 Q. [15:26:29] How much time had passed between that attack and you leaving the
21 camp?

22 A. [15:26:41] I do not recall, Counsel.

23 Q. [15:26:53] Even approximately?

24 A. [15:27:04] It's a shame, Counsel, I don't know.

25 Q. [15:27:18] In your statement to the Office of the Prosecutor, at page

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1 CIV-OTP-0049-2335, you state the following: (Interpretation) "On 10 March, I said
2 10 March, it was around the 7th, there. Because when I went to the Golf, it was a few
3 days after that there was an attack, quite a serious attack, where tanks were set on fire.
4 And I had some of my troops inside them." End of quote.

5 Is that the attack that you have just been talking about?

6 A. [15:28:17] Yes, that is correct, Counsel.

7 Q. [15:28:22] Do you have any explanation for the coincidence in time between you
8 leaving and that attack taking place?

9 A. [15:28:37] Thank you, Counsel. I believe that it's like you're asking me to do
10 harakiri. I only said what I had seen, what I know. When you try to ask me to
11 make a link between that serious attack or those serious attacks and my departure, I
12 can already see where this is leading, I do not believe that there is any link. That is
13 my personal opinion.

14 Q. [15:29:27] Very well. Now, you spoke about someone called Maître Baï when
15 you were talking to Prosecution counsel. And you said that Maître Baï had
16 been -- Baï, okay, I'm just saying it as it's spelt. But Maître Baï.

17 MR MACDONALD: [15:30:10] It is a nice island though.

18 MR O'SHEA:

19 Q. [15:30:20] You spoke about Maître Baï and you described him as someone who,
20 from what you had heard, was somehow involved in the security of the president.
21 Now, when you heard this what was being suggested? When was it being
22 suggested that this man was involved in the security of the president? In which year
23 was it being suggested that this man was involved in the security of the president?

24 A. [15:31:16] Thank you, Counsel. Maître Baï was mentioned a long time before
25 Mr Laurent Gbagbo became president. When he was in the opposition and he was

1 organising demonstrations, there was a gentleman being shown alongside him on the
2 television.

3 Q. [15:31:53] Sorry. So we're talking about the early years?

4 A. [15:32:05] The early years in relation to what?

5 Q. [15:32:19] From what you've just said it would appear we're talking about what,
6 2003-2004? Which year are you referring to?

7 A. [15:32:37] Thank you, Counsel. I'm referring to the years when President
8 Laurent Gbagbo was still organising demonstrations in order to accede to power.
9 He was not yet president.

10 Q. [15:33:04] And what was Maître Bai's first name?

11 A. [15:33:30] Counsel, I do not know.

12 Q. [15:33:42] Is it the reality that you knew very little about him?

13 A. [15:33:52] Thank you, Counsel. I know very few things. As I told you the last
14 time, he was simply referred to as "Maître", and sometimes "Maître Bai", because he
15 was a master of martial arts. That is all I know.

16 Q. [15:34:32] And how many times have you seen him personally? How many
17 times have you seen him personally?

18 A. [15:34:37] Thank you, Counsel. I do not know him personally. I saw him
19 from very far away, so I cannot even recognize him on a photograph.

20 Q. [15:35:02] And insofar as any men that were allegedly with him at one time or
21 another, would it be right that you would not be able to name any of those men?

22 A. [15:35:23] Thank you, Counsel. That is correct. I never approached him.
23 And we have never been in contact.

24 Q. [15:35:53] When you left your position of command in 2011 and you went to the
25 Golf Hotel, at that point in time would it be right to say that you were a person who

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1 had a lot of valuable information so far as the rebels were concerned?

2 A. [15:37:09] Thank you, Counsel. You are asking whether I had extremely
3 valuable information.

4 Q. [15:37:35] Not from, not from your perspective but from the perspective of the
5 rebels, you had a lot of information which was potentially useful to the rebels; would
6 that be fair to say, given your position of command and the length of time you spent
7 in the camp?

8 A. [15:37:53] Thank you, Counsel. That is indeed one way to look at it.

9 Q. [15:38:18] And when you arrived at l'hôtel du Golf, were you questioned by the
10 rebels?

11 A. [15:38:26] Thank you, Counsel. I will answer this question and elaborate if you
12 wish. The rebels did not ask me questions and I did not ask the rebels questions.
13 They did not ask me questions because I suppose they might have thought that I was
14 a spy. The rebellion started in 2002 and it was in 2011 that I came into contact with
15 them. So what would they expect from me at such a time?

16 Q. [15:39:38] So are you telling this Court that the whole time that you were at the
17 Golf Hotel, you were never questioned about your military position, your camp, the
18 position of your troops, what communication you had with your troops or could have
19 with your troops? None of those kind of questions were put to you ever by the
20 rebels.

21 A. [15:40:19] That is what I would like to confirm, Counsel.

22 Q. [15:40:34] On the basis of your interactions with people in the rebel movement
23 at the Golf Hotel, were you able to ascertain -- or, were you able to ascertain to what
24 extent you were trusted?

25 A. [15:41:23] Thank you, Counsel. I believe that I had an idea, given that I was not

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1 assigned any responsibilities.

2 Q. [15:41:46] No responsibility was conferred upon you at any time by the rebels?

3 A. [15:42:17] Thank you, Counsel. When President Laurent Gbagbo was arrested,
4 following that many members of his government and other senior officials were taken
5 to the Hôtel Pégola, and it was at that time that I was asked to join the people who
6 had already been selected to provide security for them.

7 Q. [15:43:06] Who asked you to do that?

8 MR VON BÓNÉ: [15:43:37] (Interpretation) Mr President, I would like us to go
9 into private session.

10 PRESIDING JUDGE TARFUSSER: [15:43:45] Court officer, please can we go in
11 private session. Thank you.

12 (Private session at 3.43 p.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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15 (Open session at 3.57 p.m.)

16 THE COURT OFFICER: [15:57:16] (Interpretation) We're in open session, Mr
17 President.

18 PRESIDING JUDGE TARFUSSER: [15:57:18] Thank you very much.

19 MR O'SHEA:

20 Q. [15:57:21] Yes. Did you give evidence in a court of law in Ivory Coast?

21 A. [15:57:31] Thank you, Counsel. There was no follow up, that is after the
22 interviews. So I did not give any testimony before a court in Côte d'Ivoire.

23 Q. [15:57:59] So does that mean that you did not turn up at court?

24 A. [15:58:15] Thank you, Counsel. I went to the military tribunal and I was
25 questioned. Then I was asked to appear again later when I would be convened, or

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1 someone. But so far I was never called back.

2 Q. [15:58:48] I'd like to show you a document which is CIV-D15-0004-0097. And
3 it can be public. This, Captain, is a decision of the military tribunal in Abidjan dated
4 16 March 2015. And there are two accused persons, the Commander Gnawa Dablé.
5 Did you know that person?

6 A. [16:00:38] Thank you, Counsel. Yes, indeed, I know that person.

7 Q. [16:00:53] And then MDL/C Kamanan Brice Eric Tanoh. Did you know that
8 person?

9 A. [16:01:02] As to the second individual, I do not know this person.

10 MR MACDONALD: [16:01:41] I will have a question on relevance, your Honours,
11 on this document. Because I think it's important that you take cognizance of this.
12 And maybe we can excuse the witness and finish on this legal discussion today,
13 unless my colleague -- unless the Chamber wants to continue further, because --

14 PRESIDING JUDGE TARFUSSER: [16:02:07] I would like to continue further
15 until -- Maître O'Shea has not finished his questioning.

16 MR MACDONALD: [16:02:13] I will ask, I have a paper copy, I will ask the
17 Chamber to have a look at -- because I think it's to follow the discussion.

18 PRESIDING JUDGE TARFUSSER: [16:02:20] Which discussion, sorry?

19 MR MACDONALD: [16:02:22] The objections that I raised as to being able to put
20 questions on this to the witness. This is a decision by a court of law for incidents for
21 which the witness is not present at Camp Commando and the dates indicated. At
22 that moment he's, according to his testimony, at the Golf Hotel.

23 These relate to events on which he is not privy directly, certainly not.

24 PRESIDING JUDGE TARFUSSER: [16:03:06] Yes. Then I think the witness is
25 absolutely fine --

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- 1 MR MACDONALD: [16:03:09] Yes.
- 2 PRESIDING JUDGE TARFUSSER: [16:03:10] -- with responding in this sense, or
- 3 whatever he knows.
- 4 MR MACDONALD: [16:03:15] Okay, your Honours, okay.
- 5 PRESIDING JUDGE TARFUSSER: [16:03:17] Thank you.
- 6 Please go ahead.
- 7 MR MACDONALD: [16:03:20] He cannot comment on an acquittal of individuals,
- 8 no matter what --
- 9 PRESIDING JUDGE TARFUSSER: [16:03:24] No, no, no.
- 10 MR MACDONALD: [16:03:25] Do we agree on that at least? Thank you.
- 11 PRESIDING JUDGE TARFUSSER: [16:03:30] Mr MacDonald, please.
- 12 MR O'SHEA: [16:03:35] Your Honours can trust me not to ask irrelevant questions
- 13 about this document.
- 14 PRESIDING JUDGE TARFUSSER: [16:03:40] Please go ahead.
- 15 MR O'SHEA:
- 16 Q. [16:03:43] If I can take you to page 4 of the document, it is there stated, and I
- 17 quote: (Interpretation)
- 18 "In view of the fact that there are not many MDL witnesses, MDL/C Kangoute Idrissa,
- 19 Colonel Niamke Koroa Basile and Commander Obeniere Barthélémy Ouattara called
- 20 to testify by the Prosecution office, he" --
- 21 THE INTERPRETER: [16:04:33] Message from the interpreting booth, too fast, too
- 22 fast.
- 23 MR O'SHEA:
- 24 Q. [16:04:50] "Obeniere Barthélémy Ouattara has been called to testify by the
- 25 Prosecution office. Yes, he is a military witness who has taken an oath prior."

1 (Speaks English) This Obeniere Barthélémy Ouattara, is that you, Captain?

2 A. [16:05:18] Thank you, Counsel. I can confirm that that is indeed me. There
3 are not two of us in the army of Côte d'Ivoire.

4 Q. [16:05:37] And did you give evidence against these accused?

5 A. [16:05:44] Thank you, Counsel. I would answer to that that when I was called
6 by the military tribunal, this was with regard to the events that occurred on 3 March.
7 And as the Prosecutor just said, if you looked closely at my interviews with the Office
8 of the Prosecutor, Commander Gnawa Dablé came after me. He came after I left.
9 So I cannot testify against him because if he committed any acts I am not in a position
10 to make any comment on that.

11 So it is certainly an error on the part of the military tribunal. But whatever the case
12 may be I did not present myself because, as I said, we are summoned to the military
13 tribunal via a message from the tribunal to the supreme commander of the
14 gendarmerie, who then informs us. But then when we are directly called over the
15 telephone, we do not present ourselves. I was called directly over the telephone. I
16 did not present myself.

17 Q. [16:07:21] A moment ago you said that you did give evidence before a military
18 tribunal. Was this a different case?

19 A. [16:07:35] Thank you, Counsel. I am not contradicting what I said. I've
20 already said this. And I repeat myself. I have already testified before two military
21 tribunals. The military tribunal put questions to me with regard to the events of the
22 3rd of March, whereas on the 3rd of March, Commander Gnawa Dablé was not yet
23 present.

24 Q. [16:08:19] So is there another court proceeding separate from the one we're
25 looking at here where you gave evidence about 3 March?

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1 A. [16:08:30] No, I do not believe so, because I was not interviewed with regard to
2 any other problem.

3 Q. [16:08:50] So you were interviewed by an investigating judge, is that right?

4 A. [16:09:19] That is correct, Counsel.

5 THE INTERPRETER: [16:09:27] Overlapping speakers.

6 MR O'SHEA:

7 Q. [16:09:32] You gave a deposition?

8 A. [16:09:39] Yes, that is correct, Counsel.

9 Q. [16:09:44] And then later you did not come before the court to give evidence on
10 your deposition; is that the position?

11 A. [16:09:57] No, that is not what I said. It is the document that says that. In
12 order to appear, for a military man to appear, the tribunal addresses the summonses
13 to his hierarchical superior. I responded to the only summons I received. There
14 was not a second summons. It came over the telephone. And I reminded them
15 what the actual summons for us military men was or should be. It did not arrive
16 and I did not go.

17 So one of my hierarchical superiors would have had to be in the know that I was
18 going to testify before the tribunal, but that was not the case, so I did not present
19 myself.

20 PRESIDING JUDGE TARFUSSER: [16:10:59] And that's exactly what you said.

21 MR O'SHEA: [16:11:07] Can I go into private session for the last couple of questions?

22 PRESIDING JUDGE TARFUSSER: [16:11:21] Can we go into private session.

23 (Private session at 4.11 p.m.)

24 (Redacted)

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22 (Open session at 4.19 p.m.)

23 THE COURT OFFICER: [16:19:44] (Interpretation) We are in open session.

24 MR MACDONALD: [16:19:57] Thank you very much, your Honour, for affording

25 me this 2 minutes that I requested, because when we have colleagues that join the

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1 team, we usually introduce them. But in this office we also say goodbye to colleagues
2 when they leave, especially after close to 10 years working for this institution. And I
3 understand this was Ms Vargas last presence in this courtroom. Well, who knows
4 the future, but certainly the last presence in this case, and we wish her all the best.
5 Thank you, your Honour.

6 PRESIDING JUDGE TARFUSSER: [16:20:35] Thank you very much. And
7 obviously we join, we join Mr MacDonald in wishing you all the best for the future
8 and thanking you for the work in the last 10 years here. Have a good time. And we
9 assure you that you know exactly what you are going to do.

10 I would just now say that tomorrow we would like and we will start at 9 o'clock and
11 have extended hours, meaning 9-11, 11.30-1.30 and then 3 to 5. So in order to
12 advance as much as possible, we would like this week still to have to finish with this
13 witness and to have Witness 501. Probably Witness 414 will come after the week off.
14 And this shouldn't be a big problem for the management of the Court.

15 And for the further detail, we go on a daily basis, we navigate from day to day, so
16 we'll see how advanced we are tomorrow in with this witness. And then of course
17 we take in account that on Wednesday Mr von Bóné is not here and that he can't be
18 here, and we will deal with it tomorrow sometime when we see how far we are going.
19 So we adjourn the hearing today, and tomorrow it's 9 o'clock. Thank you very
20 much.

21 THE COURT USHER: [16:22:36] All rise.

22 (The hearing ends in open session at 4.24 p.m.)