

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Trial Hearing
9 Thursday, 12 May 2016
10 (The hearing starts in open session at 9.04 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: Good morning. Today this morning, this hour
15 will be dedicated to Witness -- or the submissions and observations on Witness 369 so
16 that we then can take an informed decision.
17 I would start with the Office of the Prosecutor, then LRV and then the two Defence
18 teams, obviously without repeating what we have already in the books, I mean. We
19 have one hour.
20 So please.
21 MS PACK: Thank you, your Honours. Good morning. Your Honours, the
22 Prosecution oppose the request for the following reasons.
23 The first request -- the request seeks two alternative forms of relief. As far as the first
24 request is concerned, to exclude the testimony of this witness, that request is without
25 basis. There is no proper legal basis for excluding the whole of this witness's

1 testimony in advance of his testifying.

2 PRESIDING JUDGE TARFUSSER: You mean now the request 10 May 2016?

3 MS PACK: Yes. This is what I understood --

4 PRESIDING JUDGE TARFUSSER: Yes, yes.

5 MS PACK: -- I was responding to.

6 PRESIDING JUDGE TARFUSSER: No, no, no. It's just --

7 MS PACK: I apologise.

8 PRESIDING JUDGE TARFUSSER: It's just to be sure.

9 MS PACK: I should have been more specific about the --

10 PRESIDING JUDGE TARFUSSER: Okay. No, that's okay.

11 MS PACK: I'm talking about the motion to preclude and exclude the prospective
12 evidence of Witness P-369. And the filing reference for that, I have a courtesy copy
13 in front of me, but it was dated 10 May.

14 PRESIDING JUDGE TARFUSSER: Yes, yes. Okay. Okay.

15 MS PACK: Thank you.

16 PRESIDING JUDGE TARFUSSER: Just to be clear.

17 MS PACK: So back to our response to that request. And as your Honours are of
18 course aware there are two alternative forms of relief sought: Total exclusion of the
19 testimony; alternatively, restriction of the testimony to the events that the witness
20 personally observed. And of course the relief is described, the alternative forms of
21 relief are described in the pages 13 and 14 of the request.

22 Your Honours, so far as the second request is concerned, that is premature and also
23 without basis. It would be more appropriate in our submission to address the
24 particular arguments raised during the Prosecution's examination of the witness via
25 objections or during Defence questioning of the witness, and for any issues or

1 concerns to be taken into consideration when the Chamber comes to evaluate the
2 weight to attach to this evidence at the end of the case.

3 Your Honours, to exclude the evidence ab initio, to not hear from this witness at all
4 would preclude the Trial Chamber from having all the evidence before it, from
5 having the opportunity to assess this witness's evidence, and from assessing it in the
6 context of all the other evidence from which the Trial Chamber will hear, will receive
7 during the course of the Prosecution case. And this of course has the potential to
8 negatively impact upon the Trial Chamber's duty to establish truth.

9 Your Honour, further I refer to your own decision, the Trial Chamber's decision on
10 the submission and admission of evidence. The reference is filing number 405. The
11 Trial Chamber has decided to defer admissibility determinations to the end of the
12 case and it would be our submission that the Defence has not shown any reason why
13 an exception to that rule should be made here. Ruling on the admissibility of this
14 evidence is neither, in quotes, "necessary or appropriate in order to preserve the
15 expeditiousness and fairness of the proceedings" closed quote. That's references to
16 paragraph 17 of your decision filing number 405.

17 Now, your Honours, the request, the Defence request is based on two broad
18 arguments. The first argument is that the witness gives impermissible opinion
19 evidence on ultimate issues of fact and law. And that argument is described at the
20 outset at paragraph 7 of the request.

21 The second broad argument is that the witness and Human Rights Watch, the NGO
22 for whom he worked, for which he worked demonstrate, quote, "clear bias" closed
23 quote, against the used Mr Blé Goudé. It is also argued that this, quote, "casts doubt"
24 closed quote, on the probative value of his anticipated evidence. And this broad
25 position is described at paragraph 8 of the request.

1 Now, if I can just deal as briefly as I can with these two arguments in sequence going
2 through the paragraph numbers of the request as briefly as I can. So far as the first
3 argument is concerned, ultimate issues of fact and law, our broad position in relation
4 to this is, first, the witness will not be questioned about everything he says in his
5 statement. Second, the witness will not be asked to give his opinion on ultimate
6 issues of fact or law. More particularly, he will not be asked -- I've been asked to
7 slow down. So I will do. Very grateful to my colleague Ms Varga.
8 More particularly he will not be asked to opine as to whether the contextual elements
9 for crimes against humanity are met, whether there was ethnic or political persecution
10 during the post-electoral crisis, or for his opinion about the individual criminal
11 responsibility of the accused.

12 PRESIDING JUDGE TARFUSSER: If he was asked, he would be stopped.

13 MS PACK: Via objections I'm assuming or by the Chamber.

14 PRESIDING JUDGE TARFUSSER: Of course.

15 MS PACK: So addressing the specifics of the Defence argument. In the request
16 they come under the heading A, which starts from paragraphs 9 to 13 of the motion.
17 First, the Defence authorities broadly relate to the admissibility of expert evidence,
18 and this witness, of course, is not characterised as an expert. And, your Honours,
19 there is a difference between international overview witnesses and expert witnesses
20 in that the role of an expert is to assist the Trial Chamber in its assessment of the
21 evidence and not to testify on disputed facts as would ordinary witnesses; whereas
22 this witness will testify on disputed facts. It is not his role to assist the Trial
23 Chamber in its assessment of the evidence.

24 That being said, the Prosecution of course agrees with the principle that the Chamber
25 as the ultimate trier of fact has the right and the duty to make judicial determinations

1 on the ultimate issues of fact and law. And that's the request at paragraph 9.

2 And we would also agree that expert evidence should not usurp the functions of the
3 Chamber, as your Honour has indicated, of course, by going into the ultimate issues
4 at trial. And of course we, the Defence rightly refers to the Ruto decision,
5 01/09-01/11, filing number 844 at paragraph 13. That's in the request.

6 We would agree that ultimate issues include opinions as to an accused's guilt or
7 innocence or whether contextual or material or mental elements of the crimes charged
8 are satisfied. That's the request at paragraph 10 and also the Ruto decision I referred
9 to at paragraph 13.

10 We would also agree this witness, as your Honour has indicated, should not be
11 questioned on his opinions as to an accused -- either of the accused's guilt or
12 innocence and whether the contextual elements or material or mental elements of the
13 crimes charged are satisfied.

14 But like I say, the witness will not be asked about everything he says in his statement
15 or everything he says in his report and in the press releases and other Human Rights
16 Watch documents. He will not be asked about his opinion on ultimate issues in the
17 case and the boundaries of his evidence, the proposed evidence are set out in the
18 witness examination sheet that was circulated last night, yesterday evening.

19 The list of material was also circulated yesterday evening. As the Trial Chamber will
20 see and the parties will have seen, the Prosecution has, for example, limited the
21 portions of the report, the Human Rights Watch report, They Kill Them Like It Was
22 Nothing that it will use so as to specifically, for example, not use the last parts of the
23 report that relate to the accused persons specifically.

24 So as I say in all of the circumstances, the request to exclude is unfounded. And as
25 for restricting the witness's testimony, objections may be dealt with during the

1 questioning of the witness and any issues arising out of the examination in
2 questioning by the non-calling parties thereafter.

3 Now, your Honours, still on paragraphs 9 to 13, the Defence relies upon a number of
4 authorities related to the admissibility of expert evidence. Paragraph 12, the request
5 argues that P-369 is a de facto expert witness because his report and associated press
6 releases are not based on events he personally perceived. This is, your Honours,
7 presumably argued as a basis for saying that this evidence should be excluded in its
8 entirety ab initio.

9 But, your Honours, it is not the case that this witness's evidence is based upon his
10 opinion, if that is what is suggested in the request at paragraphs 9 and 12 where this
11 argument is briefly elaborated. He is an overview witness as to facts. His evidence
12 is based on what he saw, what he heard, his visits to sites related to the charged and
13 other incidents and his factual findings resulting from his colleagues' investigations
14 and his own and research, which included witness interviews.

15 And, your Honours, I would note that the request does not argue that the witness's
16 evidence be excluded on grounds that he gives factual evidence as to his human
17 rights investigations and as to his factual findings based on those investigations. Of
18 course not, because this is plainly not a ground for excluding the witness's testimony.
19 It's plain in the jurisprudence of this Court and in the other international tribunals.

20 And, your Honours, here I'll briefly refer to some authorities. Of course, I know
21 you're very, very familiar with the line of authorities dealing specifically with the
22 admission of evidence other than direct oral testimony, because, of course, this
23 witness's evidence will include factual findings based on Human Rights Watch
24 investigations and with reference to Human Rights Watch interviews of witnesses.
25 So there will be hearsay evidence admitted through this witness.

1 So very briefly, and I hope that the parties and your Honours have some authorities,
2 I'm not going to go through all of them, but perhaps the first one at the end, Ngudjolo
3 trial judgment, it was only one paragraph that I wanted to refer your Honours to, and
4 that's paragraph 54.

5 And if your Honours have that paragraph 54 of the Ngudjolo trial judgment as
6 opposed to the dissenting opinion on appeal and the appeals judgment, the Trial
7 Chamber, paragraph 54, says this:

8 "The framework defined by the Rome Statute affords the Chamber a considerable
9 degree of flexibility in weighing the evidence brought before it, as Trial Chamber I
10 stated at the end of its analysis in its decision on the admissibility of four documents."

11 And it's referring there to an earlier decision in that case, referring to paragraph 24,
12 and it says this:

13 "... the drafters of the Statute framework have clearly and deliberately avoided
14 proscribing certain categories or types of evidence, a step which would have
15 limited - at the outset - the ability of the Chamber to assess evidence 'freely.' Instead,
16 the Chamber is authorised by Statute to request any evidence that is necessary to
17 determine the truth, subject always to such decisions on relevance and admissibility
18 as are necessary, bearing in mind the dictates of fairness. In ruling on admissibility
19 the Chamber will frequently need to weigh the competing prejudicial and probative
20 potential of the evidence in question. It is of particular note that Rule 63(5) mandates
21 the Chamber not to 'apply national laws governing evidence.' For these reasons the
22 Chamber has concluded that it enjoys a significant degree of discretion in considering
23 all types of evidence. This is particularly necessary given the nature of the cases that
24 will come before the ICC. There will be infinitely variable circumstances in which
25 the Court will be asked to consider evidence, which will not infrequently have come

1 into existence, or have been compiled or retrieved, in difficult circumstances, such as
2 during particularly egregious instances of armed conflict, when those involved would
3 have been killed or wounded and the survivors or those affected may be untraceable
4 or unwilling - for credible reasons - to give evidence."

5 And I should say the judgment then goes on at paragraph 55 to say: With evidence
6 other than direct oral testimony, the Chamber made allowance for the difficulties
7 encountered where it proves impossible to examine the individual who originally
8 supplied the information. The degree of relevance and potential prejudice would
9 then depend on the nature and circumstances of the particular piece of evidence.

10 The situations which the Chamber might face in this respect being infinitely variable,
11 the Chamber has approached this issue on a case-by-case basis. And then it goes on:
12 The Chamber took a cautious approach in assessing evidence originating from
13 anonymous hearsay. It did not rule out such evidence ab initio, instead assessing its
14 probative value on the basis of the context and conditions in which such evidence was
15 obtained, and with due consideration of the impossibility of cross-examining the
16 information source.

17 PRESIDING JUDGE TARFUSSER: Slow down.

18 MS PACK: Forgive me, your Honour, I am clearly talking too fast. I shall slow
19 down considerably. I think no more long quotes.

20 I'd further refer the Trial Chamber, to avoid further long quotes from the ICC
21 jurisprudence, to the trial judgments in the Katanga case and the Bemba case, which
22 make the same or as in the case of Bemba similar findings to the findings that I've just
23 read out. And the references to those authorities are in the list of authorities that we
24 sent round last night. But for the record, for Katanga, ICC-01/04-01/07-3436, and
25 then it's T-ENG, it's paragraph 88 to 90. And Bemba, ICC-01/05-01/08, the reference

1 is 3343, the filing number, and the paragraph is 238.

2 I'd also refer you, your Honours, to a judgment with which you'll be familiar, of
3 course, the appeals judgment in Ngudjolo at paragraph 226, which is cited at
4 paragraph 238 in Bemba, and also separately but relatedly on the judicial duty to
5 establish the truth, paragraph 256 of that judgment, the appeals judgment. That's also
6 in the list of authorities, the reference being 01/04-02/12, filing number 271-CORR; and
7 to paragraph 25 and 26 of the joint dissenting opinion on the appeal. Again in the
8 list of authorities, again the same case reference, with the filing number 271-ANX-A.
9 There are a number of authorities similarly framed in the jurisprudence of the ICTY
10 and ICTR. So far as ICTY appeals jurisprudence is concerned, I would briefly refer
11 you to the case of Prosecutor and Aleksovski, which is in the list of authorities, and
12 the reference is IT-95-14/1. It's called, quote, "Decision on Prosecutor's Appeal on
13 Admissibility of Evidence," and it's dated 16 February 1999.

14 And you have that in the authorities in front of you. It's the only one that I would
15 ask you also to look at now. It's the only one I'm going to quote from now more
16 extensively. And I would just refer your Honours to paragraph 15 of that decision
17 on appeal.

18 Just at the very start of that paragraph 15, the Appeals Chamber states, quote, "It is
19 well settled in the practice of the tribunal that hearsay evidence is admissible."

20 Then it goes on to reason that, over the following page, still in the same paragraph,
21 quote, "Trial Chambers have a broad discretion under Rule 89(c) to admit relevant
22 hearsay evidence," Rule 89(c) being an ICTY rule in their Rules of Procedure and
23 Evidence.

24 It then goes on to identify how that discretion should be exercised. And going on in
25 that same paragraph, "A Trial Chamber must be satisfied that it is reliable for that

1 purpose" -- talking there about the relevant hearsay evidence -- "in the sense of being
2 voluntary, truthful and trustworthy, as appropriate, and for this purpose the Trial
3 Chamber may consider both the content of the hearsay statement and the
4 circumstances under which the evidence arose."

5 Then it goes on at the next sentence the "absence of the opportunity to cross-examine
6 the person who made the statements, and whether the statement is -- the hearsay is
7 firsthand or more removed are also relevant to the probative value of the evidence."
8 And then again at that paragraph goes on, "The fact that the evidence is hearsay does
9 not necessarily deprive it of probative value, but it is acknowledged that the weight
10 or probative value to be afforded to that evidence will usually be less than that given
11 to the testimony of a witness who has given it under a form of oath and who has been
12 cross-examined, although even this will depend upon the infinitely variable
13 circumstances which surround hearsay evidence."

14 In the context in that case of a complaint of error based on the failure to require the
15 opposing party to establish the person to whom the hearsay statement is attributed
16 could not testify, the Appeals Chamber further noted, and this is over the page at
17 paragraph 19 about halfway down, and I'll paraphrase, they noted that there is no
18 reason to import the sometimes elaborate rules in national jurisdictions concerning
19 availability of witnesses into the practice of the Tribunal, which is not bound by such
20 rules. Rather, the purpose of the applicable national rule -- international rules "is to
21 promote a fair and expeditious trial, and Trial Chambers must have the flexibility to
22 achieve this goal."

23 Your Honours, that's that on the quotes.

24 PRESIDING JUDGE TARFUSSER: Yes. The very expeditious trial is also if you
25 speak less, we are more expeditious.

1 MS PACK: Okay.

2 PRESIDING JUDGE TARFUSSER: Okay.

3 MS PACK: I shall limit to five minutes more if that's -- just addressing very briefly
4 the specific, the particulars that are argued throughout the request on the particular
5 aspects of this witness's evidence. In the broad position I've stated, but there are
6 particular aspects that the Defence motion addresses.

7 So firstly, if I can just deal with one thing, the use of certain terms by the witness.

8 The Defence argues at paragraphs 7 and 12 that P-369 in saying that evidence is
9 corroborated is trespassing on the Trial Chamber's role.

10 Your Honours, this isn't a ground for excluding his testimony, of course. In any
11 event he is talking about evidence he has gathered, not about if evidence before the
12 Trial Chamber is corroborated, which is obviously a matter for the Trial Chamber to
13 decide.

14 It's also argued that the witness qualifies certain acts as, quotes, "crimes." Your
15 Honours, that's at paragraph 15.

16 PRESIDING JUDGE TARFUSSER: The problem is we cannot -- there is a balance to
17 strike between the slow speaking and the long speaking. I would say we are now
18 quite aware of all the positions.

19 MS PACK: Okay.

20 PRESIDING JUDGE TARFUSSER: We are professionals. We're not -- we know
21 what we are doing --

22 MS PACK: Yes.

23 PRESIDING JUDGE TARFUSSER: -- tangentially I would say, let me say this, yes.

24 MS PACK: Yes. Well, your Honours, I would of course, with respect of course,
25 agree and quote your own decision at which, the decision on admissibility and

1 submission of evidence, which at paragraph 16 makes that very point. You are
2 professional judges and you can have all the evidence before you.
3 So far as specific requests, aspects of the request are concerned, I've said he's not
4 going to give legal opinions on ultimate issues.
5 He will be asking, and let me just make this plain so there is no doubt, paragraph 15
6 of the request, he is well placed to deal with factual conclusions as to which groups
7 were attacked, as to what Mr Blé Goudé said on 25 February, as to his findings, as to
8 the increased incidence of acts of violence thereafter. He can speak to his
9 understanding of what certain terms meant based on his research in the Ivorian
10 context. But like I say, he won't be asked about his opinion on individual criminal
11 responsibility.
12 Your Honours, I should just very briefly, because this is getting too specific and my
13 time has run out, I should deal with the issue of bias, the second argument. Briefly,
14 the position is the allegation is unfounded. Human rights advocacy following an
15 impartial independent investigation, human rights investigation does not
16 demonstrate bias on the part of the relevant investigator. That's the first point.
17 And the second point, any supposed bias is not a basis for excluding the evidence.
18 Any concerns or issues may be addressed by the Defence in questioning the witness.
19 The Chamber will determine the weight to be given to the evidence at the end of the
20 case.
21 And so far as the specific allegations are concerned, I won't address them. They are
22 issues that can be raised in questioning by the non-calling party and are not a basis
23 for excluding the evidence. And that's the close of my submissions.
24 PRESIDING JUDGE TARFUSSER: Thank you very much.
25 Legal Representative.

1 MS MASSIDDA: Thank you, your Honour. I have four brief observations on the
2 matter. The first one, of the fact that -- and I will not repeat the Prosecution
3 arguments.

4 PRESIDING JUDGE TARFUSSER: That's good, that's very good.

5 MS MASSIDDA: I will skip everything from my notes.

6 PRESIDING JUDGE TARFUSSER: Very welcome.

7 MS MASSIDDA: First one, on the fact that the testimony of P-369 should be
8 excluded because we will provide opinion evidence which as such are, and I quote
9 the Defence, "wholly irrelevant to the Chamber's determination of the issue."
10 I think it's important to first of all state that the testimony of P-369 is perfectly
11 admissible for several reasons. In this regard it's true, as the Defence has put in his
12 request, that the new directive, paragraph 23, requests the parties to refrain from
13 asking the witnesses to provide opinion evidence, which in our understanding means
14 that questions are not admissible if they require witnesses to provide conclusions,
15 impressions or opinions on facts that they have witnesses.
16 However, this Chamber has already clarified that questions are admissible if they
17 inquire about how the witness perceived the facts they saw or heard about.
18 This has been a constant ruling by this Chamber on several occasions. I will skip all
19 the references and I will give only one. Transcript 29, 14 March 2016, page 50, lines
20 19 to 21.
21 Moreover, this Chamber has also stated that this is more the case for persons who has
22 a broader knowledge of the facts, which in our submission is the case of P-369.
23 P-369, and I'm going now to the second point, P-369 evidence will broadly relate in
24 accordance with the witness sheets provided by the Office of the Prosecutor to
25 matters he perceived during his investigation and will give limited evidence related

1 to the investigation of the charged incidents.

2 Before we don't see how this could not be relevant for the determination of the

3 Chamber on the specific issues concerning the five incidents.

4 Further observation, and again very brief, we agree with the Office of the Prosecutor

5 that P-369 should be considered as a factual witness with a broader knowledge of the

6 crimes adjudicated in this case because he visited the crime scenes, spoke to victims

7 and witnesses and drafted a report on it. And on this part, of course, he can be

8 questioned.

9 In this regard we also think that it's important, as the Prosecutor did, to state that

10 hearsay evidence has been admitted before this Court. Judge Henderson in his

11 dissenting opinion attached to the decision of the Prosecution application to protect

12 the sources of P-369 has also indicated that hearsay evidence is not, per se,

13 inadmissible before this Court, especially when, as it is in this case, the witness is not

14 anonymous.

15 And finally, your Honour, my fourth submission, it's in relation to the limited

16 probative value that this testimony will have because Human Rights Watch has

17 demonstrated bias against Mr Blé Goudé. We submit that this evidence will not be

18 biased. P-369's statements and the report to which he contributed also referred to

19 crimes allegedly committed by Ouattara supporters.

20 P-369 evidence constitutes merely a personal view of the events in Côte d'Ivoire, and

21 the mere fact that P-369's statement and report provide a perspective of the events

22 different from the ones of Mr Blé Goudé cannot automatically lead to the Chamber's

23 declaration of the mere admissibility of the report itself and of the subsequent

24 testimony.

25 In this regard the Chamber has already clarified, and I will quote, "A determination of

1 admissibility and/or relevance upon the submission of an item of evidence might
2 provide necessary and appropriate in a system where fact-finding is conducted by a
3 jury with a view to preventing that the proceedings be compromised by irrelevant or
4 prejudicial material. This is not the case where decisions are taken by a bench of
5 professional judges." It's the quote of your decision on submission and admission of
6 evidence, 29 January 2016, number 505, paragraph 16.

7 Even if arguendo we assume that P-369 could not be called as factual witness but as
8 expert witness, we still maintain that his statement and report must be declared
9 inadmissible only if they are so lacking in terms of indicia of reliability that they are
10 not probative, which in our submission it's not the case.

11 Thank you, your Honour.

12 PRESIDING JUDGE TARFUSSER: Thank you.

13 Now the Defence. Maître Altit, I suppose.

14 MR ALTIT: (Interpretation) I thank you, Mr President. Mr President, your
15 Honours, I would like to make a procedural comment, first of all. The Chamber in
16 its decision of 29 January 2016, which was quoted at an earlier stage on the
17 admissibility of evidence, indicated that it would only study the admissibility of
18 evidence at the end of the trial. It is true. It noted, however, that in appropriate
19 circumstances it might make a decision at an earlier stage, and that was in the
20 disposition of the decision that was quoted earlier, 405 of 29 January 2016. I shall not
21 come back to that. We all know about it.

22 The Defence is minded that it is justified to examine the admissibility of the witness
23 testimony of P-369 now in that this witness is covering a number of issues raised in
24 the Prosecution pre-trial brief, and that to preserve the uncertainty as to the
25 admissibility or not of this testimony would only have an impact on a number of

1 other testimonies to come. If we sort this problem out immediately, this would
2 enable the parties to know what they are up against and organise themselves in
3 accordance.

4 Furthermore, deciding upon the admissibility before the end of the trial is in this case
5 necessary because the witness, contrary to most other witnesses, covers virtually all of
6 the Prosecution pre-trial brief. And to *put off a decision on the admissibility of
7 such evidence to the end of the trial would oblige the Defence to give over a
8 considerable amount of time in its final *submissions to respond to and contest the
9 affirmations of P-369 whereas an anticipated decision would enable us to save time.

10 I would like to add that the principle of the free evaluation or assessments of evidence
11 does not mean that it should not exist within a legal framework and within which
12 such an assessment can be conducted. And more particularly, there should exist
13 clear rules which would enable the parties to know what they can expect with regard
14 to the admissibility also at a later stage with regard to the relevance of the evidence.
15 An assessment case by case without any directives would open the door to an
16 arbitrary approach.

17 Having said this, the Defence of Laurent Gbagbo would like to present a number of
18 observations which would enable the Chamber to have all the information, all the
19 useful information to reach a decision with regard to the admissibility or not of the
20 testimony of P-369.

21 And, Mr President, I will make sure or attempt to present my observations in a brief
22 time frame because I do believe that I will have finished in approximately 20 minutes,
23 maybe even a little less. I will try and synthesise what I wanted to say.

24 PRESIDING JUDGE TARFUSSER: In writing, you mean?

25 MR ALTIT: Pardon?

1 PRESIDING JUDGE TARFUSSER: In writing or --

2 MR ALTIT: (Interpretation) No, no, no, no. No, no, no. So the Chamber can
3 organise itself, as we have not got much time to play with as the parties have a lot to
4 say, I just wanted to say to you how much time I'm going to be using. I do not
5 believe that I will exceed 20 minutes in my submissions, just so that we can all
6 organise ourselves.

7 PRESIDING JUDGE TARFUSSER: Okay.

8 MR ALTIT: (Interpretation) Shall I continue?

9 PRESIDING JUDGE TARFUSSER: Yes. Well, the less you speak, the better it is of
10 course. But okay, the Prosecutor had its time, you have your time of course.

11 MR ALTIT: (Interpretation) Mr President, I shall do my very best with regard to
12 the time that was left to us. I can't do any more than that.

13 So having said this, I would like first off to say that for the Defence P-369 cannot be
14 considered as a witness nor as an expert.

15 Firstly, it is important for us to really understand who Witness P-369 is. He is a
16 researcher that was recalled earlier on belonging to an NGO that is present in a
17 number of countries.

18 He went -- during the crisis, very rarely, he went to Abidjan. Very rarely. More
19 specifically, during that period he went on four occasions for periods that did not
20 ever exceed a few days. And from the outside of Abidjan, he compiled a number of
21 reports on behalf of the NGO that he is a member of. He drafted these reports on the
22 basis of interviews that he allegedly had with a certain number of witnesses or
23 individuals having reported rumours to him.

24 And it was only on the basis of this material obtained over a few days that he drafted
25 these reports that presented the official position of his organisation.

1 It is interesting to note that at no moment in time was the witness actually on location,
2 never, when the events took place that were then contained in these reports, nor was
3 he on location when the incidents occurred that were mentioned in the Prosecution's
4 pre-trial brief.

5 And as a result, this individual cannot be considered as a factual witness in the usual
6 sense of the word.

7 He only tells us what was told to him by others. And we should note that an
8 important part, or considerable part of the interviews, were conducted over
9 telephone - over the telephone - whilst Witness P-369 was not in the country. And as
10 a result, the methodology followed is highly debatable.

11 In other terms, the witness cannot directly talk of the reality of the facts that unfolded
12 during the post-electoral crisis, and his possible testimony is only -- only comprises
13 hearsay and is of very limited value.

14 How come then the Prosecution claim, as it did a few moments ago, that this witness
15 will testify to contested facts or challenged facts when he has or was not witness to
16 the events?

17 The usefulness of the witness testimony, or the intervention of P-369, is therefore very
18 reduced and will not bring much to the debate.

19 And we should recall that the Prosecution has on his list of witnesses to come people
20 who, according to the Prosecution, were witness to the events contained in the
21 charges.

22 Secondly, we should clearly understand that the witness is not an expert and cannot
23 be considered as such.

24 Firstly, the Prosecution has never presented this individual as -- or, considered this
25 individual as an expert. The Prosecution has never talked about a specific expert

1 report conducted on Côte d'Ivoire or, more particularly, the events that occurred
2 during the post-electoral crisis.

3 In order to do this, in order to say that the witness is an expert, the Prosecution
4 should have shown that the witness fulfils a number of criteria which have a bearing
5 on his scientific knowledge, his impartiality and the credibility of his testimony. He
6 did not do so and nor did he ever claim that this witness was an expert, is an expert,
7 or could be considered as an expert.

8 In this regard, the Defence would like to call the attention of the Chamber to a
9 decision of the special tribunal for Sierra Leone, which is particularly interesting
10 when adjudicating on this issue of the testimony of P-369.

11 The decision that I am referring to was distributed earlier on, I believe that everybody
12 has received it and the Prosecution has? Yes, very well. Good.

13 And the question put to the special tribunal, Special Court for Sierra Leone was the
14 same put -- that is being put to the Chamber today.

15 PRESIDING JUDGE TARFUSSER: I'm sorry to interrupt you, but the Prosecution, I
16 don't know why, request to go into private session to redact the whole transcript.
17 And I really don't understand why.

18 MS PACK: Your Honour, on reflection, we decided -- we were just about to reply to
19 say no because -- it was my mistake, of course.

20 The request had been -- it was filed confidentially and I just assumed we were in
21 private session when I started my submissions. It's completely my error. So just in
22 deference to the confidential nature of the request, I instructed Ms Mandavia to
23 inform the Registry of that position. It was my mistake completely. I assumed we
24 were in private session. It was of course not to cut off the Defence or in any
25 event -- any way bar the public from hearing. This testimony will be public, but it's

1 just the request is confidential and thus far obviously that it's confidential and under a
2 pseudonym. So that's the only reason. And I do, of course, hugely apologise.

3 PRESIDING JUDGE TARFUSSER: That's okay. So I think we should reclassify the
4 request because there is no reason for the request to be confidential and not make this
5 confidential.

6 And go ahead, please. Thank you.

7 MS PACK: Thank you, your Honour.

8 MR ALTIT: (Interpretation) I thank you, Mr President. Well, I'm in your hands.

9 So we are in open session, is that correct? Is that what you have decided upon?

10 PRESIDING JUDGE TARFUSSER: We are in open session and the -- we are in open
11 session and the request, which is classified confidential is reclassified as public. So
12 everything is public and please go ahead.

13 MR ALTIT: (Interpretation) Very well. Thank you, Mr President.

14 So as I was saying, the question put to the SCSL was the same as raised today and put
15 before your very Chamber.

16 It was in the Taylor trial. And the Chamber had to decide upon the status as an
17 expert of an NGO researcher.

18 (Counsel confer)

19 MR ALTIT: (Interpretation) Yes, this person belonged to an NGO. The Chamber
20 of the SCSL ruled on that occasion that the mere fact of compiling witness testimony,
21 this is what was said earlier by the Prosecution, notably that the witness compiled a
22 number of testimony, the fact that an individual compiles witness testimony over a
23 certain number of time does not make of this individual, notably a researcher from an
24 NGO, does not make them an expert as to what was said in the witness testimony as
25 what was related or recounted.

1 And we are, we find ourselves in precisely the same decision. This is decision
2 Taylor, paragraph 13. I should not read it out to you in order to speed up matters
3 but, of course, it has been distributed to you.

4 The approach by the judges in the SCSL and the ensuing logic should serve as an
5 example to us here. Moreover, it is important or interesting to note that.

6 (Counsel confer)

7 MR ALTIT: (Interpretation) Moreover, it is interesting to note that researcher in
8 question in that very decision by the SCSL was Corinne Dufka. And here, Mr
9 President, we are in open session, I believe that we would need to go for 30 seconds in
10 private session, no?

11 True, very true. The Prosecution said that it was Human Rights Watch, so I think
12 that I can say that Corinne Dufka, the researcher, who was spoken of in the decision
13 by the SCSL court is, in fact, the co-author of the reports drafted by the witness that
14 we are discussing today.

15 So this is the same thing, the same individuals, the same issue. So virtually the same
16 protagonists are involved here and practically the same effects are in question. So
17 your decision will be the same logically as that taken by SCSL.

18 P-369 cannot of course be considered as an expert. The technical consequence is that
19 no opinion of any sort expressed by P-369 can be considered admissible by the
20 Chamber.

21 Yes, but of course, because this individual is neither a witness, *nor an expert and as
22 such, *P-0369 cannot be admitted to testify.

23 In such conditions, the question is to know or to ascertain why the Prosecution wants
24 to call this person at all costs.

25 So one need only read the statement of the witness to note what is obvious, that the

1 Prosecution is attempting to have a third party validate their approach to the case.

2 Why is that? Because they are really overlooking the true role of the true protagonist,
3 notably the role of the French authorities. And because the Prosecution is presenting
4 a biased vision of the facts, the events, that have been criticised by all experts and
5 even by the judges of the Pre-Trial Chamber in its decision of the 3 June 2013 -- the
6 only people who did not criticise the approach by the Prosecution were the members
7 of Human Rights Watch.

8 And how could it be otherwise when it appears, after close analysis, that the
9 Prosecution only repeated, right from the outset of the trial, in support of its
10 accusations, the reports drafted by P-369 in both their structure and details.

11 So the Prosecution is attempting to bring to testify P-369 and to use the approach
12 followed by Human Rights Watch and in so doing inverts the data and presents the
13 things in an erroneous manner. In so doing, it presents the reports of Human Rights
14 Watch as corroborating its own investigation, whereas its accusations, the accusations
15 of the Prosecution, are only a repetition of the reports of Human Rights Watch
16 themselves.

17 Calling and having P-369 come to testify would enable the Prosecution to have the
18 Judges believe that they did, indeed, conduct an investigation that would then be
19 corroborated by P-369, which of course is a false or erroneous way of presenting
20 matters.

21 In other terms, in order to be crystal clear, the Prosecution would like to have us
22 believe that Human Rights Watch is in agreement with us or with him, whereas it is
23 in fact he who copied Human Rights Watch.

24 The Prosecution has, since the outset of the trial, not really conducted a true
25 investigation but has merely copied the reports of the NGO, using the same terms,

1 talking about the same individuals, reproducing the same accusations for the same
2 events and has even reproduced or repeated the legal characterisations suggested by
3 Human Rights Watch.

4 What is more --

5 (Counsel confer)

6 MR ALTIT: (Interpretation) So, Mr President, from this we can say that calling to
7 testify Witness P-369 is interesting for the Prosecution in the sense that he would have
8 a third party who would have the authority of Human Rights Watch who would then
9 submit to you, the Judges, certain considerations that go to the constituent elements of
10 the crimes and the responsibility of the accused and they would propose to you a
11 narrative or an account or they would suggest to you a prejudgment that would
12 validate the account of the Prosecution outlined in its pre-trial brief. This is a far cry
13 from a testimony. And no criteria allowing us to hear P-369 are fulfilled and we
14 should therefore refuse to let him testify.

15 Were the Chamber to allow for *P-0369 to testify despite all of this, we should then
16 *confine his testimony *to the following points, which are the only points that could
17 be of use to the *parties and the Chamber.

18 Firstly regarding the facts, the witness can only express himself on what he saw or
19 experienced directly. He should not testify on hearsay basis in relation to other
20 events other than what he witnessed.

21 (Counsel confer)

22 MR ALTIT: (Interpretation) Your Honour, it appears that there was a small
23 problem of interpretation, but I see it has been corrected. So it was not to exclude
24 but to limit. I believe the error has been corrected.

25 So in order to be very clear, let me repeat. If the Chamber allowed the appearance of

1 P-369, despite everything, it would be appropriate for the testimony to be limited to
2 the following two points which would be relevant.

3 First of all, the witness cannot -- can only express himself on what he saw or observed
4 directly. And hearsay should not be allowed. And this hearsay is already
5 compiled in the Human Rights Watch reports. So in order to hear that hearsay
6 evidence, we really do not need the witness. So the Prosecutor simply has to present
7 those Human Rights Watch reports and we will immediately know what the witness
8 is able to tell us instead of wasting the time of the Court.

9 The report of the Human Rights Watch does not have any intrinsic value. The fact
10 that P-369 is explaining -- coming to explain those drafts does not add anything to the
11 value because this is only hearsay evidence.

12 It is only when the identity of the people whose testimony was used in the reports of
13 the Human Rights Watch will be revealed and that these people are questioned in a
14 legal manner that they can provide or contribute to the search for the truth.

15 Consequently, the only advantage that can be derived from the appearance of P-369
16 will be to clarify the Chamber and parties on the identity of the people to which he
17 spoke and whose accounts constitute the substance of the human rights report.

18 Under such circumstances it will be necessary to ensure that P-369 provides to the
19 parties information making it possible for them to better assess and test the account of
20 the witnesses so far presented by the Prosecutor event by event. In fact, that was the
21 meaning of the decision of the Chamber of 26 March 2016, filing 466. I will not dwell
22 on it here because it is a confidential filing.

23 Let us point out that instead of relying on Human Rights Watch reports blindly, the
24 Prosecutor should have for many years already carried out genuine investigations on
25 the allegations made by the members of the various NGOs, including Human Rights

1 Watch.

2 Nothing prevented them from cross-checking the information that P-369 provided at
3 the time. And today because of the defects in the investigation of the Prosecutor, it
4 would be up to the Defence to cross-check the authenticity of the testimony of this
5 witness if he is allowed to appear, as well as the credibility of his informers.

6 Once again, your Honours, the Defence believes that P-369 does not fulfil any of the
7 criteria that would make it possible for him to appear as a witness and his appearance
8 would contribute nothing to the search for the truth, because P-369 cannot provide
9 any useful information regarding what he experienced.

10 On the other hand, it is highly likely that his appearance will obstruct the
11 determination of the truth by the Chamber. But if the Chamber authorised his
12 appearance, then it would be necessary to limit his testimony to what he actually saw
13 and that he should provide to the parties and the Judges information relevant to
14 search for the truth and identify the people with whom he was in contact.

15 PRESIDING JUDGE TARFUSSER: Thank you very much.

16 Mr Knoops, I guess that you will very much refer to what you wrote and what Mr
17 Altit said.

18 MR KNOOPS: Yes, Mr President.

19 PRESIDING JUDGE TARFUSSER: Thank you.

20 MR KNOOPS: If the Court, allow me just to --

21 PRESIDING JUDGE TARFUSSER: Of course.

22 MR KNOOPS: -- address the Court for five minutes --

23 PRESIDING JUDGE TARFUSSER: Of course.

24 MR KNOOPS: -- in addition to my submissions.

25 PRESIDING JUDGE TARFUSSER: Yes, please.

1 MR KNOOPS: Mr President, as authors of the request, our intention was to prevent
2 objections in the course of a potential examination. That was the reason why we
3 filed this motion. The Prosecution just said, well, the Defence can address the Court
4 during the examination of P-369 with objections. But we predict, with all due
5 respect, that if the Court would not rule on these two principle issues beforehand, the
6 examination by the Prosecution will lead to numerous objections and therefore to a
7 non-expeditious proceeding.

8 That was our first intention, Mr President. This motion is not about hearsay. This
9 motion of the Defence is not about the credibility or probative value of P-369. This
10 motion is simply about two fundamental principles in international criminal law,
11 which was also alluded to by the late Judge Richard May, the former Presiding Judge
12 in the Milosevic case, in his eloquent book International Criminal Evidence on pages
13 200 and 202 where the late Judge May actually set out these two fundamental
14 principles.

15 The prohibition on going to the ultimate issue, but secondly, a witness, not being an
16 expert cannot usurp the role of the Chamber in assessing the credibility or
17 truthfulness of witnesses. You agree with me, but that's in essence also the
18 statement of Witness P-369. P-369 will present the Court, as it stands now, his
19 projection, his corroboration what he calls of evidence, which clearly usurps the role
20 of the Chamber.

21 These two fundamental principles, they call for indeed prejudgment. That's my first
22 observation.

23 By the way, in the book of Richard May on page 202 you'll find a transcript from the
24 Kordic and Cerkez decision of 6 October 2000 where the Court also applied these
25 principles to non-experts, simply say, witnesses.

1 Secondly, in addition to the numerous precedents we have elaborated on in footnote
2 10 of our request, the Bizimungu decision of the Rwanda tribunal addresses a similar
3 situation where a human rights expert on sexual abuses actually was not allowed to
4 bring her testimony to court on the same reasons.

5 Therefore, there is no foundation for the Prosecution argument that this request
6 should be inadmissible. There are several decisions of international courts where
7 these type of expertise or testimonies were beforehand found inadmissible. There is
8 no foundation to say what the Prosecution says, that the Court should simply at the
9 end of this trial assess the admissibility or probative value. That's simply not correct.
10 The jurisprudence dictates otherwise.

11 Mr President, the Prosecution has introduced P-369 as an overview witness. That's
12 what she told you. An overview witness. Mind you, that P-369 was only 18 days in
13 Abidjan during the relevant time of the charges, 18 days, and not in the districts
14 where it's supposed to have happened. That means that the qualification of being an
15 overview witness in combination with his violation of these two principles on
16 ultimate issue and usurping the role of the Chamber in assessing the credibility of
17 evidence is even more very important to take into account.

18 My last observation, Mr President, concerns the second point, the biasness of human
19 rights and specifically these two researchers. The point is, the point wasn't grasped
20 by the Prosecution. The point of the Defence which you also find in paragraph 24 of
21 our request is the following: If a researcher like the researchers at stake have shown,
22 because the statement of P-369 was given in September 2013, directly after the
23 unsealment of the arrest warrant of Mr Blé Goudé and in the same time frame as his
24 statement to the Prosecution, if the researcher shows clear biasness, that reinforces the
25 argument that even the violation of the ultimate issue principle and the principle that

1 the witness should not usurp the role of the Chamber in assessing the credibility of
2 evidence, that this selection of evidence is based on a subjective selection by the
3 witness and therefore his alleged corroboration of evidence, which he presents in his
4 report, is even more affected. So it's a reinforcement of the argument that the
5 violation of the two principles is based even on a subjective selection of the materials,
6 and therefore also his alleged corroboration of evidence is affected by the same
7 biasness and that reinforces the violation of the two mentioned principles.

8 If your Honours look at the witness summary, which was presented by the
9 Prosecution, the Prosecution intention was clearly to go into these matters with the
10 witness.

11 Now, the Prosecution admits today that it will not question the witness on several
12 issues which go into the ultimate issue. If that's the case, Mr President, then the
13 request is to be sustained, is to be granted because this is exactly one of the remedies
14 the Defence has asked to the Chamber. This was the reason for our request and,
15 therefore, it's totally illogic that the Prosecution says, well, the request should denied
16 in its entirety while it now admits that it will not question the witness on these issues.
17 In other words we believe the request should be granted in its primary remedy.

18 Thank you.

19 PRESIDING JUDGE TARFUSSER: Thank you very much.

20 The hearing is adjourned to 10.45 when we start with, or when we continue and end
21 by 12.30 with the witness. Thank you very much.

22 THE COURT USHER: All rise.

23 (Recess taken at 10.15 a.m.)

24 (Upon resuming in open session at 10.48 a.m.)

25 THE COURT USHER: All rise.

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1 Please be seated.

2 PRESIDING JUDGE TARFUSSER: Good afternoon, Mr Witness.

3 WITNESS: CIV-OTP-P-0441 (On former oath)

4 (The witness gives evidence via video link)

5 (The witness speaks French)

6 THE WITNESS: (Interpretation) Good morning, Mr President.

7 PRESIDING JUDGE TARFUSSER: Good morning. I will now give the floor to the

8 Defence again, to the Defence of Mr Blé Goudé, and I just would like to recall the

9 12.30 deadline.

10 MR ZOKOU: We'll try and we'll do normally (Interpretation) Mr President, I will

11 indeed try to finish up in maximum one hour, maybe less, and there will be an

12 addition, an additional questioning by Maître Gbougnon which should not exceed I

13 believe 20 minutes.

14 PRESIDING JUDGE TARFUSSER: Okay. So just start, make your questions and so

15 we finish also.

16 MR ZOKOU: Okay, yes.

17 PRESIDING JUDGE TARFUSSER: Thank you.

18 QUESTIONED BY MR ZOKOU: (Continuing) (Interpretation)

19 Q. Good morning, Mr Witness.

20 A. Good morning, Mr Witness.

21 Q. So we shall be continuing our little discussion from yesterday.

22 A. Yes.

23 Q. Let us continue from what I was saying to you yesterday regarding the scuffle

24 between the youth from Doukouré and Yao Séhi. You will recall that when I was

25 questioning you about this scuffle between the youth from Doukouré and Yao Séhi,

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1 you answered me as follows:

2 "Between the Doukouré and Yao Séhi neighbourhoods, there was constantly this
3 noise going on between them." End of quote.

4 I'm referring to transcript dated 11 May, page 95, line 12 to 14.

5 Can you confirm this, Witness?

6 A. Yes.

7 MR ZOKOU: (Interpretation) I cannot hear the witness, okay.

8 Q. So with reference to this you said that before the crisis, the youth from the
9 Doukouré and Yao Séhi neighbourhoods would clash on a regular basis. So when
10 you say "before the crisis," do you mean before the elections?

11 A. Yes, sir.

12 Q. Thank you. To your knowledge, why is it that these -- this youth would clash
13 on such a regular basis? Because you're from the neighbourhood, you will
14 understand this.

15 A. Well, I do not have any idea.

16 Q. And to your knowledge, was there anybody behind each group who was
17 requesting that they clash?

18 A. Well, before the events, no.

19 Q. Thank you. Were you able to determine what religious persuasion these
20 groups belonged to?

21 A. During that time, yes.

22 Q. And you were unable -- you were able to distinguish this, were you?

23 A. Yes.

24 Q. And how did you do it? On the basis of what characteristic traits?

25 A. Whatever clashes occurred at that time, it did not stop people from going to

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1 prayer.

2 Q. Very well. Thank you.

3 And you will confirm before this Chamber that to your knowledge these clashes,
4 these regular clashes between the two neighbourhoods, can we say that they were
5 based on neighbourhoodly difficulties, you know, between groups of youths who did
6 not particularly like each other, a situation that we find elsewhere?

7 A. Yes.

8 Q. Very well. Thank you.

9 This enables me to also broach an issue that you raised, notably the parliament at the
10 Sideci, which is not far afield from where you lived where you would on occasion go
11 yourself. So to your knowledge in this parliament, were there any Muslims present
12 or people hailing from the north who were also in charge of the Sideci parliament
13 who took the floor?

14 A. No, sir.

15 Q. So do you know some of these members of parliament, because there were some
16 of them who were well-known, do you know any of them?

17 A. Yes.

18 Q. Could you provide us with some names?

19 A. I would only be able to give you two names, yes. For example, there was a
20 parliament called Sorbonne, a parliamentary called Sorbonne, Plateau, *as well as in
21 my area in Youpougou, as far as I could see, as (phon.), no, there were some.

22 THE INTERPRETER: Inaudible.

23 MR ZOKOU: (Interpretation)

24 Q. So that is the parliament that you know, but you do not really know the people
25 who were there conducting debates?

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1 A. No.

2 Q. Very well. So if I give you the name of Idriss Ouattara, does that ring a bell?

3 A. Absolutely not.

4 Q. If I say Gaoussou?

5 A. It rings no bell at all.

6 Q. So if I say Fofana Doumbia Difama (phon) or in other words Fama or

7 Ature (phon)?

8 A. All of these are Muslim names that mean nothing to me.

9 Q. Very well. I thank you. You're not obliged to know who these people are.

10 So did you know that in the entourage of Mr Blé Goudé, the minister, did you know

11 that there were people hailing from the north, Muslims or so who were working with

12 him? If you don't know, then just say "No, I don't know."

13 A. Apart from Navigué, no.

14 Q. Very well. If I were to say to you Diaby Youssouf, Diaby Youssouf, does that

15 ring a bell?

16 A. I don't really know those groups. I did take a few notes.

17 THE INTERPRETER: Inaudible.

18 MR ZOKOU:

19 Q. (Interpretation) So if I was also to talk to you about Coulibaly Sita, who was

20 also a close person to Charles Blé Goudé, do you know anything about him?

21 A. No.

22 Q. Aboubakar Diabaté --

23 THE INTERPRETER: Message from the interpreter: Counsel is quoting names --

24 MR MACDONALD: Your Honours, I think it's going pretty quickly --

25 THE INTERPRETER: -- very fast.

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1 MR MACDONALD: -- and the names that are mentioned that -- the transcript will
2 not catch.

3 PRESIDING JUDGE TARFUSSER: Yes, the names, the names, you must be careful
4 with the names.

5 MR MACDONALD: And even to -- yes, exactly.

6 THE INTERPRETER: Message from the interpreter: Spelling should be required,
7 please. Thank you.

8 MR ZOKOU: (Interpretation) We will of course send a list in the future. But I do
9 understand the concern.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 MR ZOKOU: (Interpretation)

23 Q. So we are on the same wavelength.

24 A. Yes.

25 Q. That's what I wanted to determine. Thank you.

1 So at that point in time, namely when people had been sent, well, any event, they said
2 that Mr Blé Goudé had sent them. And this allows us to make some comparisons,
3 wouldn't you say, between your mosque, your neighbourhood and the situation with
4 Mr Blé Goudé? To your knowledge, where was Mr Blé Goudé living? I said was
5 living because his --

6 MR MACDONALD: Objection, your Honour.

7 MR ZOKOU: (Interpretation) Well, his house is actually been --

8 MR MACDONALD: Can we just ask questions if we want to go quickly. And all
9 these little editorial comments, and this and that and the vernacular language being
10 used is completely inappropriate.

11 MR ZOKOU: (Interpretation) No, I'm not using any jargon or anything of the like.
12 I am asking questions. It is not up to you.

13 Q. So to your knowledge, where was Mr Blé Goudé living?

14 A. According to what people were saying in the neighbourhood, *in the
15 groupement français neighbourhood.

16 THE INTERPRETER: Inaudible.

17 MR ZOKOU: (Interpretation)

18 Q. Very well. So you said that you are quite familiar with Abidjan. Can you
19 confirm that?

20 A. Yes.

21 Q. And you know Yop? Well, I meant Yopougon, but I --

22 A. Yopougon, yes.

23 Q. How many metres would it be, what is the distance would you say is it between
24 the Doukouré mosque and the home of Mr Blé Goudé?

25 A. I really couldn't tell you. It's a bit of a way off. Doukouré is a neighbourhood.

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1 Well, it's a bit of a distance, I would say.

2 Q. And you do know Millionnaire neighbourhood?

3 A. Of course I do.

4 Q. You know Bel Air?

5 A. Yes. That's before Millionnaire neighbourhood.

6 Q. Thus someone who is Bel Air or in Bel Air or in Millionnaire neighbourhood,
7 the prayers in Doukouré, would they be able to send bodyguards to interrupt your
8 prayer ceremony?

9 MR MACDONALD: Objection, your Honour. This is -- M. le témoin, M. le témoin.
10 This -- the witness answered, but this is a clear opinion evidence that goes against
11 your recent directives. Alors, est-ce qu'il pouvait entendre. And I don't think it is a
12 proper question if we're going to ask questions like that.

13 PRESIDING JUDGE TARFUSSER: The problem is that I hear everything a little bit
14 delayed.

15 MR ZOKOU: (Interpretation) Once I've finished my question, I think
16 Mr MacDonald will realise that there is a direct link between my question and these
17 other matters. If he would be so kind as to allow me to conclude my question as we
18 did while he was examining.

19 MR MACDONALD: The question was over --

20 PRESIDING JUDGE TARFUSSER: Yes.

21 MR MACDONALD: -- and it's a question of formulation asking opinion evidence to
22 a witness, and he's not here to give opinions.

23 PRESIDING JUDGE TARFUSSER: I do agree that he's not here to give opinions.

24 And I would ask the counsel to continue without asking the witness to give opinions,
25 but to stay on facts.

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1 MR ZOKOU: (Interpretation)

2 Q. Now, in the Wassakara neighbourhood is there a mosque there?

3 A. Yes.

4 Q. In Selmer neighbourhood, in particular when you go to the end of Prince Street,
5 is there a mosque there?

6 A. Yes.

7 Q. So to your knowledge, between Doukouré or Wassakara, Selmer, which one is
8 closest to Bel Air or Millionnaire neighbourhoods where Mr Blé Goudé was living?

9 THE INTERPRETER: Message from the interpreter: Could the witness repeat his last
10 reply?

11 *A. Wassakara.

12 MR ZOKOU: (Interpretation)

13 Q. So, you can't come off at Doukouré. Thank you, ok. So, somebody in the
14 Millionnaire neighbourhood, that's what we are saying, could not have been bothered
15 by prayers in Doukouré because that's much further away. Very well.

16 PRESIDING JUDGE TARFUSSER: That's a conclusion that you draw. That's a
17 conclusion that you draw, it's not a fact.

18 MR ZOKOU: (Interpretation)

19 Q. So this allows me, since we're discussing Mr Blé Goudé's home, I can ask you if
20 you have ever been to his home?

21 A. No, Counsel.

22 Q. And yet you stated here yesterday that Agbolo was the bodyguard of Blé Goudé
23 and he was always to be found in front of Mr Blé Goudé's home, at the door; can you
24 confirm?

25 A. Yes.

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1 Q. Thank you.

2 PRESIDING JUDGE TARFUSSER: Wait.

3 THE INTERPRETER: Agbolo was the name.

4 MR ZOKOU: Oh sorry. Yes.

5 Q. (Interpretation) So how do you know that Agbolo was Blé Goudé's bodyguard and
6 would stand in front of his home, right at the door of his home, a home that you had
7 never been to?

8 A. I know that because not far from there, not far from that place -- well, before
9 logement, before the place had been built, before the director of the office of my boss,
10 towards down there, I was once there and I met Agbolo. And he was in a hurry, he
11 was heading out and he said he was on his way to see Mr Blé.

12 Q. I thank you, Witness. We will continue but I don't have too many more questions
13 for you. I'd like us to hark back to the attacks that you have told us about and the
14 songs that people were singing at the time of the attacks. You said that before
15 attacking the people were singing "A Dioula for every one"; is that correct?

16 A. Yes.

17 Q. Very well. Thank you.

18 And to your knowledge, what did that mean?

19 A. Counsel, I told you yesterday. And I think you understand French better than
20 I do. I can't write or read French, but when someone says, for example, "A
21 Dioula -- "A lawyer for every one", what does that mean? So I put the question to
22 you. Please.

23 Q. Thank you. But since I am the one who is supposed to be asking questions
24 here, if you don't mind. Very well.

25 So you said that it was an aggressive?

1 A. Yes.

2 Q. I see. So when people were singing these songs and then they began to attack
3 and -- during the attack, right in front of you, they killed Cissé because he was Dioula
4 and a Muslim; can you confirm that?

5 A. No, no, because -- I can't confirm because it wasn't -- I can't say that it was
6 because Cissé was Dioula. If you let me rewind a bit. That expression "A Dioula
7 for each person", that had been sung since the morning and the killing of Mr Cissé
8 was in the afternoon. So there was some time between. So they didn't even ask
9 him. He said he had some personal protection on him, and he had to show it, you
10 see. But I did not hear him -- I didn't hear any mention made of his tribe or anything
11 like that.

12 Q. So in your opinion, why was Mr Cissé killed? It wasn't because he was at the
13 mosque and because he was a Dioula person?

14 A. Well, it's up to you to determine that. And I could ask myself why didn't they
15 kill me, why did that happen.

16 Q. Well, if that's the case, if that's the case, yesterday you told us that you had had
17 a problem with a licence, a driver's licence and they came back with it, isn't that so?

18 A. Yes.

19 Q. But didn't you say that *you aren't Dioula, and you are Dioula? Did you say
20 they were looking for Dioula people or not?

21 A. Yes, indeed. That's what it means, but -- but I didn't have that in mind. I was
22 afraid.

23 Q. Very well. And they also killed some other people, and you helped bury those
24 people?

25 A. Many.

1 Q. Those people, what faith were they of?

2 A. I couldn't tell you what everyone's religion was. The three people that I
3 mentioned to you, they were not part of our faith. They were not part of the mosque,
4 the three people I mentioned yesterday. But the others could have been in the
5 process of converting or just living.

6 Q. So in your case they came, they killed Cissé, they killed some other people and
7 were there many Dioula people killed or not?

8 A. Yes.

9 Q. And finally, when you told us your account and how the events unfolded, now,
10 you had to sort of deal with these people with this whole issue about the microphone
11 and religious matters, and finally, but they didn't kill you.

12 A. I was not killed.

13 Q. Very well. That's what I wanted to know. That's fine. I thank you.

14 PRESIDING JUDGE TARFUSSER: It wasn't a question I hope.

15 MR ZOKOU: (Interpretation) I have concluded, your Honour.

16 PRESIDING JUDGE TARFUSSER: Thank you very much.

17 Now I think you pass on to your colleague.

18 MR GBOUGNON: (Interpretation) Good morning, your Honours.

19 QUESTIONED BY MR GBOUGNON:

20 Q. Good morning, Witness.

21 A. Good morning, Counsel.

22 Q. I'd just like to ask you a few questions, no more than 15 minutes.

23 A. Very well. I'm all ears.

24 Q. Now, the young people who were running on the paved road as you mentioned
25 in the Doukouré neighbourhood, when did they begin to do that?

1 A. Counsel, I can only tell you that it was at 9. My intent was to -- 9 o'clock. It
2 was not the first time.

3 Q. That's what I'm asking you. You said it wasn't the first time?

4 A. Yes.

5 Q. Let me speak. Just wait.

6 Now, when you say that it wasn't the first time, they began to do this well before the
7 election? When did they begin this, these activities?

8 A. Well, Counsel, before, already before the election, they were doing this sort of
9 thing every morning along that road. And on that day, the day I'm speaking of, it
10 was the Friday, and I do believe that was when the mosque was burnt down.

11 Q. So it was well before the mosque was actually set on fire. They were doing
12 these activities and this warm-up, so to speak?

13 A. Yes.

14 Q. This running, rather?

15 A. Yes.

16 Q. And that particular day, the Friday, I believe we have some problems with the
17 dates, 26th or -- in any event, it's not so important.

18 On the Friday, these young people that you saw running, did they come from a
19 particular location? Had they gathered in a particular place before?

20 *A. I saw them coming from behind the antenna, as every day, even from
21 elsewhere, before, and go round. But on that day it was more violent. Or on that
22 Friday, as they weren't going far, they looked back. When they arrived at the
23 Doukouré bridge, they looked back. That's why I say it was a bit violent. Violence
24 ensued.

25 Q. Do you know Le Baron Bar?

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- 1 A. What?
- 2 Q. Le Baron Bar.
- 3 A. In Yopougon? Yes.
- 4 Q. Now, is Le Baron Bar opposite the antenna?
- 5 A. Yes, Counsel.
- 6 Q. So you say that these young people did not come from Le Baron Bar?
- 7 A. No.
- 8 Q. Thank you. Witness, I'd like to read to you what you said yesterday during
- 9 your testimony. Transcript of 11 May, line 15 to 17. "The young people were
- 10 heading towards us and there were some roadblocks at the entrance to each
- 11 neighbourhood."
- 12 Did you say that?
- 13 A. Yesterday we talked about roadblocks, please? *Otherwise, yes, the roads had
- 14 roadblocks on them, of course, between Yao Séhi and Doukouré. There was a
- 15 roadblock between us. Yes, I know about that.
- 16 Q. Was there a roadblock at --
- 17 THE INTERPRETER: Inaudible.
- 18 THE WITNESS: (Interpretation) Yes, at the mosque.
- 19 MR GBOUGNON: (Interpretation)
- 20 Q. Yesterday you said that the roadblock was torn down?
- 21 A. Yes, on that Friday.
- 22 Q. By whom?
- 23 A. By the people who were going along who were running on the main -- on the
- 24 road. They did.
- 25 Q. Who set up that roadblock in the Doukouré neighbourhood?

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1 A. I don't know.

2 Q. You live in the neighbourhood?

3 A. Yes.

4 Q. You said yesterday that the neighbourhood is mostly inhabited by Dioula
5 people.

6 A. Yes, Counsel.

7 Q. But within your neighbourhood, you don't know who set up the roadblock?

8 A. I can't give you a name because the first roadblock was at Yao Séhi and then I
9 saw the other one. Each time you would cross there would be problems.

10 Q. Agreed. But I'm talking about the roadblock in the Doukouré neighbourhood.
11 That's indeed the roadblock that was torn down, that's what you're telling us?

12 A. Yes.

13 Q. I'm not asking you to give us the identity of the people or the name of the
14 people who set up the roadblock. I'm not asking you that. I'm asking you whether
15 the roadblock was set up by the young people in your neighbourhood?

16 A. Yes.

17 Q. Thank you. Now, these young people, as they set up the roadblock, that was
18 at the request of whom? Who asked them to set up the roadblock?

19 A. I don't know.

20 Q. Thank you. Do you know the invisible commander? Do you know the
21 invisible commander?

22 A. Who?

23 THE INTERPRETER: Overlapping speakers.

24 THE WITNESS: (Interpretation) The commando, the Invisible Commando, no.

25 THE INTERPRETER: Message from the interpreters: Counsel and witness are

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1 speaking simultaneously.

2 MR GBOUGNON: (Interpretation) Thank you.

3 Q. Thank you very much, Witness. I thank you very much I have concluded.

4 A. Thank you, Counsel. And you have a good day too.

5 PRESIDING JUDGE TARFUSSER: Thank you very much. Thank you to the
6 witness.

7 Now I ask the Prosecutor if there is -- if he wishes to re-question the witness.

8 MR MACDONALD: Yes, your Honour, briefly.

9 PRESIDING JUDGE TARFUSSER: Briefly and limited to what is stated in paragraph
10 25 --

11 MR MACDONALD: Yes, your Honour.

12 PRESIDING JUDGE TARFUSSER: -- of the decision. Okay. Thank you.

13 Mr Witness, sorry, but now the Defence is finished. We have a brief re-questioning
14 by the Prosecutor and then it should be for you all over, okay?

15 THE WITNESS: (Interpretation) Yes, your Honour.

16 PRESIDING JUDGE TARFUSSER: The floor is yours.

17 QUESTIONED BY MR MACDONALD: (Interpretation)

18 Q. Good morning.

19 A. Good morning, Counsel.

20 Q. I have a few questions for you just to clear things up in light of earlier
21 questioning by my learned friends opposite. And I would like to turn to one issue
22 that was mentioned this morning. We'll try to find the reference to today's transcript,
23 but this is actually transcript 36, transcript 36, confidential, French version, more
24 specifically, page 53, line 5.

25 THE COURT OFFICER: Mr MacDonald, we are in open session.

1 MR MACDONALD: (Interpretation) Yes.

2 (Speaks English) The transcript itself is confidential because different parts are
3 confidential, but the part I am going to quote is public.

4 Q. (Interpretation) I'd like to read out a question that was put to you yesterday by
5 the Defence and the answer that you provided, and then I will ask you some
6 questions to clear a few things up.

7 Now, the question was this:

8 "You explained earlier that at noon when you heard them singing a Dioula for each
9 one, for each person, that led you to go and speak to the imam. Why didn't you go
10 speak to the imam at 9 in the morning?"

11 That was the question.

12 And then your answer was this:

13 "Why I didn't go earlier as you said, even at 6 in the morning? I could have done
14 that, but they were in the habit, I'm telling you, it was their habit, they were in the
15 habit of doing that. Well, they were in the habit of doing that, and that day, the
16 Friday in question, it was too much, too fast, too violent. That is why I waited first
17 before I went to tell the imam. Otherwise I would have gone at 6 in the morning."
18 And then once again it was mentioned at page 43, line 25 onwards, and once again,
19 the same issue, could you explain to the Court, now, before the crisis, before the
20 election, when these young people or these militia --

21 MR GBOUGNON: Monsieur le Président, s'il vous plaît. (Interpretation) You
22 mustn't put words in the witness's mouth. He might have said "youth," but he did
23 not say "militia members."

24 MR MACDONALD: Your Honours, for the purposes of this question, it does not
25 matter, because I think the witness clearly had indicated "milice" before in-chief about,

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1 you know, but it's okay.

2 PRESIDING JUDGE TARFUSSER: If it doesn't matter, if it doesn't matter, try to use
3 a neutral --

4 MR MACDONALD: (Interpretation)

5 Q. Well, let's call them the young people, the people who were going back and
6 forth on the road during the crisis -- before the crisis, not the day of the attack on the
7 25th, but before the crisis, before the election. The young people who would go up
8 and down the road and sing, what were they doing then? What was the purpose of
9 them going back and forth like that? What were they doing exactly? What kind of
10 things were they doing?

11 A. Is it my turn to speak now?

12 PRESIDING JUDGE TARFUSSER: It is, it is. It is your turn, Witness.

13 THE WITNESS: (Interpretation) Prosecutor, what you are saying is correct. We
14 referred to them as militia members at the time. And they were in the habit of
15 running nearly every morning.

16 MR MACDONALD: (Interpretation)

17 Q. So there we go. What is this running? When you use the expression
18 "running" or "footing" in French, what does that mean?

19 A. Well, Mr Prosecutor, personally speaking, in my knowledge, it is a type of sport,
20 you know. You do lots of movements, that's what I call footing. That can occur
21 elsewhere, on a football pitch, for example.

22 Q. And how many times a week would they do that in the morning, this footing,
23 F-O-O-T, F-O-O-T-I-N-G?

24 A. Mr Prosecutor, I can't give you names, two or three names, but they did it
25 regularly.

1 Q. And did they only do it on the tarmac of the main road or in football pitch -- on
2 football pitches, or did they do it in other areas in the neighbourhood around the
3 mosque?

4 A. Mr Prosecutor, it was on the road that they would do this before.

5 Q. And during this footing that you talk about associated with football, did they
6 used to sing?

7 A. Yes, every day.

8 Q. And what did they sing whilst they were running?

9 A. Mr Prosecutor, I'm not able to say what they were singing before that Friday
10 when it was said "A Dioula for everyone." But they were singing.

11 Q. Very well. I'd like to move on to another subject now that was broached by Mr
12 O'Shea in extenso, and I am referring to transcript 37, page 40, lines 4 onwards. So
13 yesterday Maître O'Shea, Mr O'Shea put the following question to you, and I shall
14 provide you with your answer and then come back to you with a question seeking
15 clarification.

16 The question was as follows -- and I've nearly finished, Mr Witness. I would just like
17 to come back to this subject that caused a great deal of irritation in this courtroom, but
18 I'd like to come back to it for a few moments. It is the subject of your meetings in
19 Côte d'Ivoire.

20 You said that you did indeed meet the president of the Muslim community with a
21 view to telling him what happened on that Friday. And I would merely like to
22 clarify two matters with you. Firstly, when you told your account to the president of
23 the Muslim community, other people were in attendance, were they not?

24 And your answer at line 16, "Well, uh, I no longer remember. I know that Amnesty
25 International was there. It was at the residence of the gentleman. And that is when

1 I talked a great deal with them. But I don't remember everything. I don't
2 remember everything anymore." End of quote.

3 So, Mr Witness, I would like to come back to this subject, to that meeting with
4 Amnesty International. How many representatives of Amnesty International were
5 present at the time of that meeting?

6 A. Mr Prosecutor, there was one lady, a gentleman and a cameraman or maybe
7 two, because there were people standing by the side of the cameraman. I don't
8 know whether they were part of it all who were there. There was a gentleman and a
9 lady who were taking notes, and I took them to the residence of our leader.

10 Q. And I understand that it was at the residence that you gave your version of
11 what occurred during the attack, that is at the time when you were at the president's
12 residence; is that correct?

13 A. Yes, indeed.

14 Q. And at that moment in time when you provided your account, your version,
15 who was present with you and the representatives of Amnesty International, that is to
16 say the gentleman, was there anybody else present in the house at the time when you
17 were meeting with Amnesty International?

18 A. Yes, Mr Prosecutor. (Redacted)
19 (Redacted). There were two individuals from Amnesty
20 International and the family members (Redacted).

21 Q. And do you remember how long this meeting lasted for approximately?

22 A. No.

23 Q. Was it a few minutes? Was it an hour?

24 A. To my knowledge, no. Well, we spent a little bit of time, because at the time I
25 really wasn't okay. I wasn't all right.

1 Q. And when you say that you weren't all right, what do you mean by that?

2 A. Well, I was impeded by pain. Whenever -- when I sat down on the chair
3 (Redacted), I was in pain. I was squirming with pain. And after a few
4 questions, we were free, each and every one of us was free to leave. Otherwise I
5 can't remember.

6 Q. So these questions from Amnesty International were put to you before the
7 family of the president. They were in attendance throughout the whole duration,
8 were they?

9 A. Yes, indeed, Mr Prosecutor.

10 Q. Very well. I would now like to move on to another subject, hark back once
11 again to the incidents of the 12th and 13th of April 2011. We presented a video to
12 you of a burial. I'm going to address my comments to the Chamber for a couple of
13 moments.

14 (Speaks English) Your Honours and my colleagues, I presume there is no objection to
15 the transcript to be submitted of that video that was on our list of evidence and
16 documents to be submitted, which is also the translation of it, which -- so the original
17 can be found at CIV-OTP-0053-0003, and the translation, 0053-0147. I'm looking at
18 my colleagues.

19 I didn't in-chief, I didn't refer to that, but obviously I could have. I chose not to.
20 But now since you were requesting transcripts and so on, I'm just raising it for the
21 Chamber.

22 MR O'SHEA: If we could just have one moment please, your Honour.

23 (Counsel confer)

24 MR O'SHEA: To the specific question about the transcript, there is no objection.

25 PRESIDING JUDGE TARFUSSER: Okay. Thank you very much.

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1 Please go ahead.

2 MR MACDONALD: Yes, yes, I understand. I don't know if the Defence of

3 Mr Blé Goudé said anything, your Honours. Sorry.

4 MS MASSIDDA: Your Honour, meanwhile --

5 MR KNOOPS: Mr President, our team has no objections either. Thank you.

6 MS MASSIDDA: It was just again time, for the record, we also do not have any
7 objection.

8 PRESIDING JUDGE TARFUSSER: Please go ahead.

9 MR MACDONALD: We submit they can be considered to be submitted. Thank
10 you.

11 Q. (Interpretation) Mr Witness, I would like to come back to the incidents of the
12 12th and 13 April 2011 that you mentioned. You indicated that you took part in the
13 burial of the bodies. And this morning we came back to page 43, line 8 of these, we
14 came back to these issues on said pages.

15 But I would like to put a number of questions seeking clarification. This is also at
16 transcript 37, page 32, lines 12 onwards. And you mentioned that you were asked to
17 go and pray for them. Why was that?

18 A. With a view to seeking clarification, Mr Prosecutor, asking to go and pray for
19 them, well, that's a bit much. Really it was to go to pray in front of the bodies that
20 were found subsequently.

21 Q. So was that the day of the burial itself or was it the day when the weapons
22 entered the neighbourhood?

23 A. It was the day of the burial, at the same time.

24 Q. And why were you requested to do that?

25 A. Well, I do apologise, Mr Prosecutor. At that time (Redacted)

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1 (Redacted) yes.

2 Q. Very well. You spoke in nexus with this issue of the bodies, the bodies that we
3 see lined up on the video that are covered. But to your knowledge, where did those
4 bodies come from?

5 A. To my knowledge, Mr Prosecutor, these were the bodies from the
6 neighbourhood.

7 Q. On the 12th, after the weapons had come and the door-to-door activities had
8 occurred and things had become calmer, did you go out into the neighbourhood?

9 A. Me?

10 Q. Yes, you. On the 12th, after the weapons had arrived and the door-to-door
11 activities had occurred, when things were calmer maybe, did you go out in the
12 neighbourhood?

13 A. Mr Prosecutor, I did not go out at all. I had gone out of the mosque, yes.

14 Q. But did you go beyond the fence surrounding the mosque, the courtyard and
15 the allotment?

16 A. Yes, Mr Prosecutor.

17 Q. And so when you are in the streets, the neighbouring streets, what do you see?

18 MR O'SHEA: Sorry, just a moment. With respect --

19 PRESIDING JUDGE TARFUSSER: Wait a minute, Mr Witness.

20 MR O'SHEA: With respect, your Honours, this is moving beyond what arises out of
21 the questions of the Defence and is going back into areas already covered by the
22 Prosecution in their examination-in-chief, with respect.

23 PRESIDING JUDGE TARFUSSER: You mean the examination by the calling party?

24 MR O'SHEA: Yes, the examination by the calling party.

25 MR MACDONALD: If you allow me, your Honour?

1 PRESIDING JUDGE TARFUSSER: Please.

2 MR MACDONALD: That set of questions was not asked in examination by the
3 examination -- by the Prosecution in its examination, sorry. I'm trying to avoid the
4 wording examination-in-chief.

5 Can we all agree that examination-in-chief it's us and cross-examination it's them and
6 it's exact -- can we -- no, we cannot? Okay.

7 PRESIDING JUDGE TARFUSSER: (Microphone not activated)

8 MR MACDONALD: Because then everyone understand each other.

9 PRESIDING JUDGE TARFUSSER: Please continue.

10 MR MACDONALD: All right. So it's true that this was not covered by the
11 Prosecution. What was covered was the burial. The Defence has been alleging in
12 its cross-examination or challenging the provenance of these bodies in a general way.
13 And I'm trying to clarify the record as to the provenance of these dead bodies, beyond
14 going into a - what should I say - deduction, reasonable and only deduction from the
15 facts, which I won't go into because the witness is listening to us.

16 But I'm trying to make that link, and the witness just said now that -- he just said that
17 he went outside the premises of the mosque. So I'm trying to make that link right
18 now for your Chamber's appreciation of the evidence as a whole. So it's in that sense
19 that we're coming back in re-examination by the calling party.

20 MR O'SHEA: It's not really a question of whether questions have been asked before.
21 It's more a question of whether a topic has been covered. And the onus is on the
22 Prosecution. When they cover -- this is a topic that they raised. They showed the
23 video. They raised the issue of the bodies. It's up to them to be exhaustive when
24 they do their examination-in-chief.

25 Otherwise we, you know, we start playing ping-pong around topics.

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1 PRESIDING JUDGE TARFUSSER: But I must say I have hard times to understand
2 what has to be clarified. I mean, we are clarifying things which are to my
3 understanding are quite clear. So I would invite you to go ahead, but limited to
4 what was -- it bears upon and is limited to issues having arisen during the
5 questioning. And this, this has arisen during the questioning, say the burials of
6 these dead bodies, so this has arisen, so I think it can. But I would really invite you
7 to keep it in the straight boundaries of this.

8 MR O'SHEA: Your Honours, we have to be careful here, because if the test is simply
9 arisen, cross-examination will of course address most of the issues that the
10 examination-in-chief addresses. The idea is that something comes up for the first
11 time which the Prosecution has not had the opportunity to address before. That's
12 the idea behind that rule, I would suggest.

13 PRESIDING JUDGE TARFUSSER: Mr Prosecutor.

14 MR MACDONALD: Thank you, your Honour. I'll be very focused.

15 Q. (Interpretation) Mr Witness, can you hear me well?

16 A. Yes, Mr Prosecutor.

17 Q. Very well. When you went beyond the fence surrounding the mosque on the
18 12th, what could you see around you? What was the situation like? What did you
19 note?

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 This is the last subject.

23 MR MACDONALD: I'll stop, Your Honour, actually.

24 PRESIDING JUDGE TARFUSSER: Okay.

25 MR MACDONALD: Maybe just one, sorry, just one quick question.

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1 Q. (Interpretation) Just a very brief question, Mr Witness, or a fast question.

2 Mr Witness, you yesterday and at an earlier stage today when Mr Gbougnon was
3 putting questions to you, you mentioned roadblocks. You said that there was a
4 roadblock in Yao Séhi area; do you recall?

5 A. Yes, Mr Prosecutor.

6 Q. So the questions that I am going to put to you are with reference to this
7 roadblock only. Did you go through that roadblock at any moment in time in your
8 life?

9 A. Mr Prosecutor, I did not go through there. I was going to visit somebody, but I
10 was not allowed through.

11 Q. And why is it that you were not allowed through?

12 A. I do not know why. Everybody knows me, so.

13 Q. Who was at the roadblock manning it?

14 A. The roadblock was manned by the youth of the Yao Séhi neighbourhood.

15 Q. And how were they dressed?

16 A. Mr Prosecutor, they were in civis.

17 Q. And how did they make people respect or have themselves respected at that
18 roadblock?

19 A. Well, they were carrying bladed weapons.

20 Q. I thank you, Mr Witness. These are the questions that I had to put to you.
21 And thank you very much for your testimony and for your cooperation.

22 A. I thank you, Mr Prosecutor.

23 PRESIDING JUDGE TARFUSSER: The Defence?

24 MR ALTIT: (Interpretation) Nothing for us. Thank you, Mr President.

25 PRESIDING JUDGE TARFUSSER: Thank you very much. (Microphone not

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1 activated)

2 MR GBOUGNON: (Interpretation) I have no questions, Mr President.

3 PRESIDING JUDGE TARFUSSER: Thank you very much.

4 What is now?

5 MR MACDONALD: I love being in court, your Honour. I love addressing the
6 Chamber.

7 PRESIDING JUDGE TARFUSSER: No. Yes. But what do you want to address
8 now?

9 MR MACDONALD: Each time I'm standing up, it's like whoa.

10 PRESIDING JUDGE TARFUSSER: Yes, but I thought now --

11 MR MACDONALD: There is always things to discuss.

12 PRESIDING JUDGE TARFUSSER: Tell me.

13 MR MACDONALD: There is one issue that we'd like to bring up. I know that
14 it's -- there is only half an hour left, so there's two things actually that will need to be
15 discussed.

16 My learned friend Mr O'Shea used prior statements, drew the attention of the
17 Chamber to these prior statements. So the Prosecution wants to discuss them
18 because drawing the attention does not mean submitted. No, no, no, no. But it's
19 important here because -- and that's why I don't want to restart the debate because --

20 PRESIDING JUDGE TARFUSSER: Please.

21 MR MACDONALD: -- the only way to introduce statements according to any
22 directives that were adopted, the old ones or the new ones, is if the witness that made
23 the statement is questioned on that witness. You cannot introduce statements of
24 another witness via that procedure.

25 So that's what I want to discuss and it's very important.

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1 And also, there was a mistake anyway in the first statement in the way it was used.
2 The Chamber will certainly have noted that, the name mentioned does not
3 correspond whatsoever to the second person that was basically the person that was
4 killed as testified by the witness this week.

5 But there is something to be said about that process which we don't need to discuss
6 today, but we will have to make time for that because it's an important issue.

7 The only way you can introduce written statements, the only exception to the rule of
8 orality is via Rule 68, the new Rule 68.

9 You cannot -- so the process of also challenging or drawing the attention or putting
10 what Mr O'Shea did in his own country, is putting his case to the witness because the
11 witness is there, and we don't want to recall him, that is fine.

12 PRESIDING JUDGE TARFUSSER: Let us first --

13 MR MACDONALD: Yes.

14 PRESIDING JUDGE TARFUSSER: -- say goodbye to the witness.

15 Mr Witness, your testimony has ended now. You're free. You can go. We will
16 switch off the video link with where you are. I thank you very much for your time.
17 I thank also Felipe and the staff member of the VWU and wish you all the best.
18 Goodbye.

19 THE WITNESS: (Interpretation) Thank you, your Honour. Goodbye.

20 THE COURT OFFICER: (Via video link) Thank you, Mr President. We will now
21 disconnect the audio and video link.

22 (The witness is excused)

23 PRESIDING JUDGE TARFUSSER: Now we have switched off.

24 I would ask you to, if you think, to make a submission in writing on this or we
25 postpone it to some other time.

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- 1 MR MACDONALD: Orally is fine too, your Honour --
- 2 PRESIDING JUDGE TARFUSSER: Yes, yes.
- 3 MR MACDONALD: -- but not today. That's why I'm saying that.
- 4 PRESIDING JUDGE TARFUSSER: Yes, yes.
- 5 MR MACDONALD: That's one issue. But I'm forewarning --
- 6 PRESIDING JUDGE TARFUSSER: So at least the Defence is prepared on --
- 7 MR MACDONALD: Yes, yes.
- 8 PRESIDING JUDGE TARFUSSER: -- what's upcoming. So that's good. I think
- 9 we --
- 10 MR MACDONALD: There's a second issue.
- 11 PRESIDING JUDGE TARFUSSER: Okay. Yes, tell me. Tell us, please.
- 12 MR MACDONALD: I thought we had till 12.30. Anyway, the point is the map
- 13 book.
- 14 I am making a formal request orally, as I said last week in an email that it would due
- 15 on the 9th but I'm doing it now, that the map book that we distributed that the
- 16 Chamber take judicial notice as facts of common knowledge and that they be
- 17 submitted in the case. And I'm looking at the latest directives on the matter and the
- 18 paragraphs related to facts of common knowledge and the Chamber's decision on
- 19 that.
- 20 These maps you have. These maps are from UN or other organisations. And the
- 21 Chamber, I think, can take notice of maps, certainly of the country of Côte d'Ivoire,
- 22 but also of the city of Abidjan with today's world where you can compare the
- 23 information on your own with Google maps or anything. There, I've just made my
- 24 request. Thank you.
- 25 PRESIDING JUDGE TARFUSSER: Okay. Thank you very much.

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- 1 I think you will reply on this, not now, I would say. Good.
- 2 You as well?
- 3 MR KNOOPS: We will reply with the Gbagbo team, but our observation is that it
- 4 does fall in the scope of judicial notice, but that we can put in writing.
- 5 PRESIDING JUDGE TARFUSSER: But that's then -- you have your ideas, then the
- 6 Chamber will decide on this, so what falls and what does not fall.
- 7 So now we have to adjourn the hearing on Monday at 9.30 again because we have a
- 8 witness, Witness 579, which is here, which should last, according to the time frame
- 9 which was indicated, no longer than one day altogether, but here surprises are always
- 10 behind the corner, but let's say we should manage to do it in one day.
- 11 On Monday we will also obviously issue the decision on Witness 369, which is then
- 12 due, if -- to come after this.
- 13 So I wish you a good time and see you on Monday morning, 9.30.
- 14 The hearing is adjourned.
- 15 THE COURT USHER: All rise.
- 16 (The hearing ends in open session at 12.04 p.m.)