

Trial Hearing
WITNESS: CIV-OTP-P-0441

(Open Session)

ICC-02/11-01/15

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 Wednesday, 11 May 2016
10 (The hearing starts in open session at 10.40 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. Good morning to all here in the
15 courtroom.
16 And good morning to you, Mr Witness. Can you hear me?
17 WITNESS: CIV-OTP-P-0441 (On former oath)
18 (The witness speaks French)
19 (The witness gives evidence via video link)
20 THE WITNESS: (Interpretation) Yes. Good morning.
21 PRESIDING JUDGE TARFUSSER: Bonjour. Today we continue with the
22 examination by the Defence, first the Defence of Mr Gbagbo, and as soon as
23 Mr Gbagbo's Defence is finished with his questions, we hand over -- I will hand over
24 to the Defence of Mr Blé Goudé.
25 THE WITNESS: (Interpretation) Very well.

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1 PRESIDING JUDGE TARFUSSER: So before giving the floor to the Defence, I see
2 once again the Prosecutor on his feet.

3 Please, Mr Prosecutor.

4 MR MACDONALD: Good morning, your Honours. It's just to clarify the record, if
5 you allow me, before the cross-examination continues.

6 PRESIDING JUDGE TARFUSSER: You mean the examination by the non-calling
7 party?

8 MR MACDONALD: The examination by the non-calling party.

9 PRESIDING JUDGE TARFUSSER: I see.

10 MR MACDONALD: Indeed.

11 PRESIDING JUDGE TARFUSSER:

12 MR O'SHEA: Your Honour, may I draw the Court's attention to the one technical
13 issue. Yesterday my friend when he was talking, he said "I can talk in English."
14 I think we have to remember that there's no headphones in this process, and so even
15 if my friend talks in English, unless the interpreters are specifically warned, whatever
16 he says is going to be interpreted. So either we cut off the line with the witness or
17 we specifically instruct the interpreters. But if we specifically instruct the
18 interpreters, of course, we miss something from the transcript. So it's better just to
19 cut off the witness.

20 PRESIDING JUDGE TARFUSSER: Well, I think that all parties which intervene
21 should know if they are saying things which are to be -- which should be heard or can
22 be heard or cannot heard by the witness.

23 MR O'SHEA: Absolutely, your Honour. It's just that yesterday my learned friend
24 seemed to be under the impression that if he spoke in English it was okay.

25 PRESIDING JUDGE TARFUSSER: Yes, yes. No, I've understood that. Yes.

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1 Mr Prosecutor.

2 MR MACDONALD: Thank you, your Honour. Can we cut off the sound just to
3 make sure?

4 PRESIDING JUDGE TARFUSSER: Yes. Let's cut off the sound a moment.

5 Just a moment, Mr Witness, we cut off the sound for a few minutes and then we start.
6 It should be off now. It should be off now.

7 MR MACDONALD: I just want to clarify a comment I made, which I believe was in
8 closed session, but in reference to a document that was used in public session during
9 the examination by my colleague. And I refer to evidence number
10 CIV-OTP-0057-1371. The procès-verbal de constat. I just want to go on record that
11 indeed it is not contested that this procès-verbal was drafted by the person that
12 signed it, l'huissier. So I just want to clarify that.

13 Now, the question that I was raising is that the circumstances in which this document
14 was drafted, and it's my comment in relation to Witness 433, will be dealt with by the
15 Prosecution by that witness -- with the examination of that witness. That's what
16 we're saying. But of course the content can be used. We're not challenging that.
17 We're not -- but in terms of its weight, the Chamber made comments yesterday about
18 it, in the context in which these are made, the witness can answer obviously and
19 provide his own explanations.

20 So that is the question. And as was noted previously, there's an allegation that
21 persons were met, and that will be elicited with other witnesses also. Thank you,
22 your Honour.

23 PRESIDING JUDGE TARFUSSER: Thank you. Now I think we can switch on the
24 audio again with the remote location.

25 THE COURT OFFICER (Via video link): (Interpretation) Your Honour, we can

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1 hear you once again.

2 PRESIDING JUDGE TARFUSSER: Thank you very much.

3 Mr Witness, I give now the floor to the Defence of Mr Gbagbo for the questioning, for
4 the continuing of the questioning.

5 Okay, yours the floor, Mr O'Shea.

6 MR O'SHEA: Thank you, Mr President, your Honours.

7 QUESTIONED BY MR O'SHEA: (Continuing)

8 Q. Good morning, sir.

9 Now, on the day in question you were located inside the courtyard in front of the
10 mosque under an open hangar; is that correct? That's been your evidence.

11 A. Yes.

12 Q. Now, the courtyard in front of the mosque is surrounded by a fence and a brick
13 wall behind the fence, correct?

14 A. Yes.

15 Q. And what is the height in your estimation of the fence?

16 A. I don't know.

17 Q. Is it higher than you are tall?

18 A. Of course.

19 Q. Is it perhaps twice your size?

20 A. No, not twice as high.

21 Q. But a little bit higher than you?

22 A. Yes.

23 Q. And behind the fence is a brick -- and behind the fence is a brick wall which
24 extends up the side of the fence?

25 A. Well, *the fence itself is built of brick.

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1 Q. And there is a gate, a principal gate which sits between this fence/wall for access,
2 correct?

3 A. The main entrance is opposite the main road. *Two gates.

4 Q. Yes. And this gate as well is higher than you are tall; would that be right?

5 A. Yes.

6 Q. And would it also be right, would it also be right that that gate, although not
7 necessarily locked, would normally be closed?

8 A. Yes, often. That day it was not closed. The main gate was not closed because there's
9 a tiny entrance beside for pedestrians. *But where the vehicles entered, it was a
10 double-sided gate, but which was not closed on that day, no.

11 Q. And the gap through which a vehicle would have to drive when going through
12 that gate would be just a little bit wider than the average size of a car, right?

13 A. Of course.

14 Q. These two camionnettes which arrived, did they arrive at exactly the same time
15 or did they arrive at different times?

16 A. The two vehicles arrived --

17 THE INTERPRETER: Inaudible.

18 THE WITNESS: (Interpretation) -- up to the door -- or rather, the gate.

19 MR O'SHEA:

20 Q. And then they stayed out -- and then they stayed outside the gate on the side of
21 the street? The vehicles, I'm talking about.

22 A. Yes, exactly.

23 Q. So you standing under the shelter, which you have described as a hangar in
24 front of the mosque, you would be able to see some things but not everything if
25 you're looking through the gap where the gate is, correct?

1 A. The place where I was I had an opportunity to see, because the two vehicles
2 were closer to the gate than to the main road, so I could see everyone coming out of
3 them. That is what I saw.

4 Q. But given that there are two vehicles outside the fence, your line of vision
5 would not have been such that you could have seen everything going on in relation to
6 both of those vehicles, would it?

7 A. I could see those two vehicles.

8 Q. From where you stood could you see exactly where both vehicles were parked?

9 A. Yes.

10 Q. So from underneath that open shelter looking towards that gap where the
11 principal gate is, you were able to see the exact position of both vehicles when they
12 parked; is that what you're saying?

13 A. Yes.

14 Q. And were the vehicles parked with their front towards the mosque or with one
15 side of the vehicle towards the mosque? What was the position with respect to each
16 vehicle?

17 A. Those vehicles were parked -- * These vehicles, they were parked ... I don't
18 know whether to call it the ditch ... and one next to the other... That's what I saw.

19 Q. Were they next to each other?

20 A. Exactly.

21 Q. And presumably there was a space between them?

22 A. Yes, there was a bit of a space between them.

23 Q. Normally one would leave a space between two parked vehicles so that the people
24 who were getting out would have space to get out. Was that the case in this instance?

25 A. Yes.

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1 Q. And were the front part of both vehicles facing the gate, facing the mosque?

2 A. I am telling you that the two vehicles were parked, the first one and then the
3 other one, like that. As you can see, well, two cars facing parked. I could see
4 *everything that was happening inside the front of the vehicle, the two cabins, the cab.
5 I could see the two cabs of the vehicles.

6 Q. Well, I would suggest to you that would be quite difficult. Do you disagree
7 with that?

8 A. No.

9 Q. And did you see when the vehicles were parked people sitting in both vehicles?

10 A. Yes.

11 Q. And you saw the people getting out of both vehicles from both sides of both
12 vehicles?

13 A. Yes.

14 Q. How many individuals were in the first vehicle?

15 A. I wasn't able to tell how many.

16 Q. Why would you say that?

17 A. The first vehicle that arrived, well, they came one after another. The first one,
18 the person who got out at the front got out with a jerrycan and --

19 Q. Can I just stop you there.

20 A. Huh?

21 Q. Can I just stop you there. My question is different.

22 A. Oh, very well. Go ahead.

23 Q. You said that you could not really see how many people were in the first vehicle,
24 and my question is why not?

25 A. Because I didn't count how many people were inside the two vehicles. What I

1 wanted to know was find out what they had come to do.

2 Q. When you gave your statement to the Prosecutor, you said at paragraph 55 --

3 And interpreters, I'm going to read in French:

4 (Interpretation) "Two trucks arrived and parked in front of the office of the

5 CNI-COCY on the day of the incident at the mosque. In the first truck there were

6 two people. In the second truck there were several people and I did not count how

7 many they were."

8 (Speaks English) Did you say to the Prosecutor in the first vehicle there were two

9 persons?

10 A. Yes.

11 Q. You told this Court that at a certain point in time Cissé went to throw a bucket

12 of water over the stalls of the traders which were on fire. Do you remember saying

13 that?

14 A. Yes, but it did not happen as quickly as I am hearing. Now, what I said was

15 that in the first truck there was a gentleman who came out with a jerrycan and

16 sprayed its content. Then the other person sparked the fire. And it is after that that

17 Cissé asked me to go put out the fire, if I understand properly.

18 MR O'SHEA: Your Honours, page 72 of the English transcript: Question --

19 MR MACDONALD: Sorry, which transcript number, the date?

20 MR O'SHEA: 9 September -- sorry, 9 May, page 72:

21 Question: "So they started throwing fuel on the little sheds of the traders?"

22 Answer: "Yes."

23 Q. So you confirm that this incident with regard to the throwing of the water from

24 the bucket was with respect to a fire on the stalls of the traders?

25 A. Sorry, let me, let me backtrack somewhat. The jerrycan which was used by the

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1 man from the truck who sprayed the liquid, what he sprayed was fuel. Now, the
2 bucket that Cissé used contained water.

3 Q. Yes. Yes, we understand each other, Mr Witness. But it was --

4 A. (No interpretation)

5 Q. But it was water which was being thrown over the stalls of the traders which
6 were on fire, correct?

7 A. Yes, that's correct.

8 MR MACDONALD: Just to note, your Honour, with your permission, that I
9 understand we were quoting from the realtime transcript, and there is now an edited
10 transcript version that is available for 9 May for the purposes of the transcript in the
11 future.

12 PRESIDING JUDGE TARFUSSER: Thank you.

13 MR O'SHEA:

14 Q. Now, did you say on a previous occasion, and I'm going to read in French from
15 the procès-verbal which we discussed yesterday, I'm going to read in French what it
16 is said that you said. And this is CIV-OTP-0057-1373, the page, third paragraph
17 down.

18 Do your Honours have it? Last line in that paragraph: (Interpretation) "After a
19 few noises from the shooting, we began to see some smoke at the headquarters of
20 CNI-COCY. Cissé Moustapha, one of the guards of the mosque, took a bucket of
21 water and tried to put out the fire."

22 Mr Witness, this seems to be suggesting that the fire which is being put out is the fire
23 at the seat of the CNI-COCY. Is that wrong?

24 MR MACDONALD: No. Just a second. I'll object here because it's a matter of
25 procedure, and my colleague is well aware of it. We need to ask the witness does he

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1 remember saying that in order for him to adopt what is being reported by a person
2 allegedly he would have spoken to, and it's in that context then that he can provide an
3 answer so that the Chamber can evaluate any weight to this alleged contradiction.

4 PRESIDING JUDGE TARFUSSER: But I think the witness has given enough
5 evidence that he is quite -- quite aware of what he is saying and he can distinguish
6 things and say, well, and also say to the counsel who is asking, "You are wrong
7 because I didn't say", or "I said something different." So I think he is quite good in
8 responding and quite brilliant I would say. So just go ahead, please.

9 MR O'SHEA: I'll be strictly fair to the witness.

10 Q. Did you say that, Mr Witness, on a previous occasion?

11 A. What you have just said is slightly different. You see, whether there was water
12 or fuel -- the fuel actually was used on the sheds which is completely separate from
13 the CNI-COCY. The sheds are outside of the fence, whereas the offices of
14 CNI-COCY are within the fence. So the fire was at the level of the stalls and that is
15 where Cissé went to put out the fire. Please, understand it that way.

16 Q. Yes, thank you. So am I to imply from what you've just said that the statement
17 which I read out you did not say or is incorrect?

18 A. The statement you have just made is slightly different. You see, there is the
19 CNI-COCY and then there are these stalls around the fence. So I think you need to
20 clarify the situation, please.

21 Q. Now, when Cissé ran to try and put out this fire and then he ran back to you,
22 were you still at that point standing underneath the open shelter or hangar in front of
23 the mosque?

24 A. Yes, indeed.

25 Q. So that particular time you were not hidden, you were in the open?

1 A. Yes.

2 Q. And it is only at a later time in these events that you went to hide in the
3 bananas -- in the banana trees?

4 A. Yes, it was later.

5 Q. So continuing on in this sequence with Cissé, he tries to put out this fire, he
6 comes back. Did you say on a previous occasion the following, and I'm going to go
7 into French: (Interpretation) "When they drove him away, he fled and came back
8 to me in my hiding place. Then later on, realising that the flames had intensified,
9 Moustapha left our hiding place in an attempt to recover some of his clothes."
10 Did you say that on a previous occasion in Ivory Coast to a huissier?

11 A. Yes, I said that, but let me revisit the point again. When Cissé was threatened,
12 he came towards me. And as the flames continued to increase, there is a small stall
13 near the place where we do our ablutions and his clothes were there, so he attempted
14 to go there to get his clothes while *I was still in the shed.

15 Q. So why on that previous occasion did you say that he rejoined you in your
16 hiding place since today you say you were not hidden?

17 A. Of course, *if I was not in full view, I would not have been able to see what was
18 happening. In fact, *I was in the shed; I would call it a hiding place, just before the
19 banana farm. I didn't want anyone to see me, but I was able to see other people.
20 You see, the sheds were not within a fence, so I was able to see everything. And
21 when Cissé came back, he said, "It's all over. Everything is finished." And so he
22 said that to me and asked, "What do we do now?" And I told him, "You are the one
23 who has caused all of. *That is how come he had to go fetch his clothes. You are
24 the one who has brought trouble upon us." That's what I said.

25 Q. If you are under an open hangar and you see everything, you're not in a hiding

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1 place, are you?

2 A. If someone looked carefully, they might see me, but I was in a position from
3 which I could see everybody. The shed is -- the hangar is very big.

4 Q. When you spoke to the Prosecutor of this Court, at paragraph 51 of your
5 statement, which is CIV-OTP-0070-1100, you said this, and I'm going to speak in
6 French:

7 (Interpretation) "When Gbagbo's people started to stone us, Cissé, the guard,
8 quickly went to close the doors of the buildings of the mosque."

9 Did you say that to the Prosecutor of this Court?

10 A. Yes. The building does not have only one door. It has several doors. But it
11 was not possible for anybody to go and close the big door with the soldiers and the
12 officials who were present. Yeah, but nobody could do that. In any event, he was
13 able to go and close the other doors. Yes, that's my testimony.

14 Q. So he closed the doors to the mosque, did he?

15 A. Now, the doors of the mosque -- the doors of the mosque there were at least five
16 doors and he went on to close those doors before going to fetch his clothes in the
17 small shed. *Me, I was not there to follow.

18 MR MACDONALD: I'm sorry to intervene. The Chamber may be looking at what
19 I can see on the French transcript line -- page 14, line number 4 at the end. If you
20 could -- if someone could inform you of what you can see. Because the question is
21 do we go in closed session, do we make an order immediately? We're in public
22 session right now. I'm not going any further in what I am saying. It comes from
23 the witness.

24 PRESIDING JUDGE TARFUSSER: Court officer.

25 We are redacting this part of the French transcript which didn't come out in the

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- 1 English.
- 2 MR MACDONALD: That's right, but --
- 3 PRESIDING JUDGE TARFUSSER: Well, but I don't think it -- it just passed through.
- 4 MR MACDONALD: That's what -- that's -- you'll --
- 5 PRESIDING JUDGE TARFUSSER: But yesterday -- I mean, the persons over there
- 6 are always the same, others are students, do not care.
- 7 MR MACDONALD: Of course.
- 8 PRESIDING JUDGE TARFUSSER: The persons you are referring to and who care,
- 9 they are still there and they are -- still recall what I said yesterday.
- 10 MR MACDONALD: They recall what you said yesterday. And we have -- we
- 11 can -- we have their names. We can get their names.
- 12 PRESIDING JUDGE TARFUSSER: Yes, yes.
- 13 MR MACDONALD: And if the information is leaked from this minute on --
- 14 PRESIDING JUDGE TARFUSSER: Yes, but --
- 15 MR MACDONALD: -- then the Chamber will know.
- 16 PRESIDING JUDGE TARFUSSER: -- we are not threatening, we're just --
- 17 MR MACDONALD: No, no, no, we're noting it.
- 18 PRESIDING JUDGE TARFUSSER: That's it. We're noting it, yes, of course.
- 19 Please go ahead. I will deal with this in the meantime.
- 20 MR O'SHEA: Your Honours, out of an abundance of caution I'm going to go to the
- 21 next step of this line of questioning in closed session.
- 22 PRESIDING JUDGE TARFUSSER: Private session.
- 23 MR O'SHEA: Private session, yes.
- 24 PRESIDING JUDGE TARFUSSER: Okay.
- 25 So we go in private session.

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- 1 (Private session at 11.25 a.m.)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
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- 25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
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- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Open session at 11.30 a.m.)
- 14 THE COURT OFFICER: We're in open session, Mr President.
- 15 PRESIDING JUDGE TARFUSSER: Now the floor is yours again.
- 16 MR O'SHEA: Thank you, your Honours.
- 17 Q. Now, if I may, Mr Witness, I'd like to come to this incident where you say you
- 18 were personally violated. You explained to this Court quite a horrific scenario
- 19 whereby a gun -- or, the barrel of a gun was placed inside your anus. Do you
- 20 remember talking about that?
- 21 A. Yes.
- 22 Q. You explained that after this incident you saw blood and this --
- 23 A. Yes.
- 24 Q. -- this must have caused you an extreme amount of pain, I am sure?
- 25 A. Of course.

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1 Q. Did you become dizzy?

2 A. My head was spinning, so to speak. Is that what you mean? When -- now, if I
3 understand your question, when, or after?

4 Q. In that moment and the moments that followed, did you feel dizzy?

5 A. No. More -- I was more afraid. I was afraid. I didn't have that at first.

6 Q. And following this incident, you actually followed these armed men outside,
7 did you?

8 A. Yes.

9 Q. Did you not feel weak and afraid to do that?

10 A. I was not myself. I had to. I had no choice. I was obliged to do so. With all
11 of that, yes. With all those threats, yes.

12 Q. And according to you, following this incident and you going outside, you
13 witnessed the death and attempted disposal of the body of Cissé; that's your evidence,
14 isn't it?

15 A. Yes.

16 Q. When you saw the huissier in Ivory Coast and you recounted --

17 MR MACDONALD: Objection. It is not established on the record that he would
18 have seen a huissier. It is not on the record. My learned friend is using a document
19 alleged to be that, but it hasn't been established. And yesterday the witness was
20 questioned on that, he answered. First of all, does he understand what a huissier is?
21 Did he confirm that he met such a huissier? Did he say anything in that relation.
22 So far there is nothing on the record. We're using that document because it is
23 alleged to contain a prior statement of his, which is fine, but we cannot then assume.
24 And that foundation has not been established yesterday or today.

25 MR O'SHEA: Well, I think that at an earlier point today I -- I put it to him that he

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1 spoke to a huissier. I thought I had.

2 MR MACDONALD: No, you did not.

3 Your Honours, I'm sorry to intervene. He -- my colleague has been assuming that, I
4 objected earlier on as to that formulation. But that foundation has not been
5 established.

6 PRESIDING JUDGE TARFUSSER: Yes, but yesterday we were talking about this
7 and about this document and about who this document produced and that -- the
8 witness was asked if he spoke to somebody else about these incidents beyond the
9 OTP and Human Rights Watch.

10 MR MACDONALD: And his answer was clear. And we can go in private session
11 briefly so that I can give the name of that person, but it's not the huissier.

12 PRESIDING JUDGE TARFUSSER: Yes, it's -- well --

13 MR MACDONALD: It's someone else. But we can go back to the context. Right
14 now there is nothing on record that this witness would have spoken with the huissier.
15 He clearly identified the people that he spoke to about these events beyond Amnesty
16 International and the Office of the Prosecutor.

17 PRESIDING JUDGE TARFUSSER: So I would ask you to go back and to ask who he
18 spoke with, who he spoke with besides the Office of the Prosecutor and Amnesty
19 International. If we go back to yesterday and to ask him, make a step back and then
20 continue the line of questioning.

21 MR MACDONALD: And just to clarify, to be clear, it will -- everyone will recall
22 because I don't have the reference with me immediately, we were going on judicial
23 authorities.

24 PRESIDING JUDGE TARFUSSER: Yesterday we --

25 MR MACDONALD: My colleague was using the expression "judicial authorities".

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1 And the witness never said that he spoke to any judicial authorities of Côte d'Ivoire,
2 he explained who he spoke to --

3 PRESIDING JUDGE TARFUSSER: Yes.

4 MR MACDONALD: -- which was closer to him, without going into who -- you
5 know, private session.

6 PRESIDING JUDGE TARFUSSER: I know. I know what you're referring to.

7 I would just ask you to go this step back and ask him the origin of what then you will
8 confront him with.

9 MR O'SHEA: Yes, very well, your Honour.

10 And if my learned friend could please be cautious about the witness listening to what
11 he's saying next time.

12 Q. Yes. Yesterday I asked you, Mr Witness, if you had spoken to the president of
13 the communauté musulmane SICOGLI-LEM and you confirmed that you had. Did
14 you on that occasion meet with Maître Soumahoro Arrouna who is a huissier?

15 A. I don't know who Mr Arrouna is, but *it is entirely normal to report to the President of
16 my community, to give him information every day. Yes, that's quite normal each day. The
17 events that occurred at the mosque, that was in the presence of Amnesty International. I
18 took them to his home. I took those people to the home of my president. Thank you.

19 Q. Were you aware of the presence of somebody who you did not know who was
20 taking notes?

21 A. Yes, maybe even several people.

22 MR O'SHEA: I think I can move forward, your Honours. And if I use the word
23 "huissier" it's for the benefit of the Chamber not for the benefit of the witness.

24 Q. Yes, now when you recounted these events in Ivory Coast in that formal context
25 which you have just described of several people taking notes, you had the

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1 opportunity to explain what had been happening, but you did not say anything, did
2 you, about this incident with the gun violating your body, you didn't say anything
3 about that to these people, did you?

4 A. I was talking about that -- I talked about that only -- I told only the investigators
5 from the Office of the Prosecution because I realised they were serious people, you
6 see.

7 Q. Now, when you say "Office of the Prosecutor," are you talking about the Office
8 of the Prosecutor of the International Criminal Court?

9 A. Of course, sir.

10 Q. And you're saying that in front of these individuals in Ivory Coast in the
11 presence or with the president of the communauté musulmane in the vicinity, you're
12 saying that you did not think that that was a sufficiently serious occasion to mention
13 this horrific part of your story; is that right?

14 A. Well, let me go back and I will explain it to you if you wish. I'm telling you,
15 and let me repeat, I received visitors from Amnesty before the investigators from the
16 ICC after the events, and when I had these visitors from Amnesty International, that
17 was at home, at the home of the president of our -- of the -- well, the administration of
18 the mosque. That's different. I told you that I was being precautionous. I realised
19 that I had to say everything, absolutely everything, the entire truth, and that is what I
20 did.

21 Q. Now, you're talking about speaking to the Office of the Prosecutor and in Ivory
22 Coast speaking to Amnesty International. What I am suggesting to you is that in
23 Ivory Coast you spoke --

24 PRESIDING JUDGE TARFUSSER: Excuse me, but he's signing something.

25 THE WITNESS: (Interpretation) Please, may I speak?

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1 PRESIDING JUDGE TARFUSSER: Yes.

2 Well, I don't know. I don't know what he has to say.

3 Please say what you have to say.

4 THE WITNESS: (Interpretation) A correction is needed. When you talked to me

5 *about the office of the Prosecutor of the Côte d'Ivoire, I never spoke to any Ivorian

6 administrator except the mayor who came two days after. That's all. And if I

7 didn't -- if I didn't talk about that, I did not go to the police, to the justice officials. I

8 didn't go to the traditional chief either.

9 PRESIDING JUDGE TARFUSSER: Okay. I just saw that he was wanting to say

10 something, so I didn't know. Please go ahead.

11 MR O'SHEA: All right.

12 Q. Now, you see, I have to suggest to you that while you were in Ivory Coast, right,

13 there were two situations where you spoke to people other than the Office of the

14 Prosecutor of the International Criminal Court.

15 (Counsel confer)

16 THE WITNESS: (Overlapping speakers)

17 MR O'SHEA:

18 Q. I'll just finish my question if I may. One occasion, one occasion was when you

19 spoke with Amnesty International and one or more people took notes of what you

20 were saying. And then there was another occasion, I don't know whether Amnesty

21 International was present or not, but again, people were taking notes of what you

22 were saying. Do you agree that there were two such occasions?

23 A. I noticed just two opportunities. The second was the ICC, but the others being

24 a person from that area, each person would come and ask me, "What happened?

25 How did you manage? How did you get out of there?" *But whether someone was

1 taking notes or not, I do not know. But officially I received people from Amnesty
2 International and the investigators from the Prosecutor's office, the Prosecutor of the
3 ICC. That's all I remember. To my knowledge, that's all.

4 Q. Well, I have to put this to you and you can respond as you wish. Amnesty
5 International you spoke to and indeed you did speak about this sexual violation
6 which you said you underwent, to Amnesty International. You spoke to other
7 people who also took notes and you did not speak to them about this incident, and
8 these are the ones that I am saying involves the huissier.

9 MR MACDONALD: I'm objecting because who are these people? We have to be
10 fair to the witness. The witness, in order to know -- and he's saying, Je ne me
11 souviens pas. À ma connaissance.

12 Now, if my colleague wants to be fair to the witness and in the truth-seeking
13 mission -- functions of the Chamber, sorry, we need to ask to put it to the witness not
14 in abstract. Who, where and when, so that we can get the disclosure of the
15 information and the Chamber can evaluate and the witness can say, "Oh, yes, now I
16 remember." But right now we're playing a cat and mouse game with the witness
17 where he's saying, "I do not remember" meaning beyond Amnesty International and
18 the Office of the Prosecutor.

19 MR O'SHEA: Well, with respect, it's my learned friend who is going around in
20 circles because we've tried to elicit from this witness the information with regard to
21 this procès-verbal and we haven't been able to, but that does not remove its evidential
22 value. As far -- I can only go as far as this witness is saying that there was an
23 occasion when he sat in front of people who were taking notes, because that's what
24 he's accepted, and I have to put it to him that there were two such occasions. Now,
25 the difficulty is that when he's in front of Amnesty International he talks about his

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1 sexual violation. When he's talking --

2 MR MACDONALD: Just a second. Just I --

3 MR O'SHEA: No. I'm sorry, I'm the middle of talking to the Judges, if you don't
4 mind.

5 PRESIDING JUDGE TARFUSSER: Can we just switch off the audio to the remote
6 place.

7 And then I ask the parties to speak -- to let one finish and then speaks the other.

8 MR O'SHEA: Thank you, Mr President. In front of the huissier he does not talk
9 about the sexual violation that he underwent. In front of Amnesty International he
10 does. We have documents which evidence that these two occasions credibly existed.
11 Now, he may -- the witness may of course say, you know, "I only had two occasions
12 where I spoke to people in any serious manner, one in the front of the Office of the
13 Prosecutor of this Court and once in front of Amnesty International." And that may
14 be his position and we may have submissions later about his credibility with respect
15 to that, but my learned friend is really going around in circles because earlier he was
16 objecting because I'm using words like "huissier" to the witness when I'm trying to
17 describe the context in which he said something, and now he's objecting because I
18 don't explain the context in which he said something. So it's my learned friend
19 who's going around in circles in my respectful submission and disrupting my
20 cross-examination unnecessarily.

21 MR MACDONALD: Briefly, your Honour, very briefly.

22 PRESIDING JUDGE TARFUSSER: Yes.

23 MR MACDONALD: My colleague makes it sound as if he's talking about something
24 else than the statement to the huissier. Put it to him that "I allege that you met the
25 huissier and you did not speak about the rape." Let's put it that way. But right

1 now we don't know what he's talking about. The witness cannot understand what
2 he's referring to. He doesn't have a chance. It's misleading the witness because it
3 could be someone else that we're talking about.

4 Now, we're making reference to Human Rights Watch report. Let's submit the
5 report because my colleague is saying in there he's talking about the rape, which is
6 true, but now let's submit it because it's not before the Chamber. So he's alleging
7 something which the Chamber is not privy to. It's on the Defence list. We don't
8 have any objection. Let's submit the report.

9 MR O'SHEA: It's for me to decide the order of my cross-examination and I can -- I'm
10 certainly happy to keep repeating to the witness that I'm talking about the occasion
11 when I say he saw the huissier, and hopefully I won't have an objection from my
12 learned friend when I say that.

13 PRESIDING JUDGE TARFUSSER: Can we switch on again the audio to the remote
14 location.

15 THE COURT OFFICER (Via video link): (Interpretation) Your Honour, we can
16 hear you once again.

17 PRESIDING JUDGE TARFUSSER: Thank you very much.

18 Mr Witness, just a clarification which I would ask you for, a clarification. About the
19 incident you are talking, not about the sexual violence, generally about the incidents
20 happened on that Friday and following -- and other days, at the mosque, you spoke
21 with the Prosecutor, with the Office of the Prosecutor, right? Then you spoke with
22 Amnesty International.

23 And my question is: Do you remember having spoken a few months later also with
24 somebody else together with -- and now I have to go in private session because I have
25 to mention two names.

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1 MR MACDONALD: And just to clarify, your Honour, in private session, it's
2 important, I don't want to interrupt you, but the sequencing and the times is
3 important too.

4 (Private session at 11.55 a.m.)

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- 14 (Open session at 12.01 p.m.)
- 15 THE COURT OFFICER: We are back in open session, Mr President.
- 16 PRESIDING JUDGE TARFUSSER: We are back in open session just to announce that
- 17 we make the lunch break and we resume at 1.30 the hearing.
- 18 THE COURT USHER: All rise.
- 19 (Recess taken at 12.02 p.m.)
- 20 (Upon resuming in open session at 1.35 p.m.)
- 21 THE COURT USHER: All rise.
- 22 Please be seated.
- 23 PRESIDING JUDGE TARFUSSER: Good afternoon once again.
- 24 Good afternoon, Mr Witness.
- 25 THE WITNESS: (Interpretation) Good afternoon, Mr President. Thank you.

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1 PRESIDING JUDGE TARFUSSER: (Interpretation) And good afternoon to you.
2 (Speaks English) I see that Maître Altit is provisionally absent, but that's okay, it's
3 just for the record.

4 And I give the floor to Mr O'Shea for the continuing of the questioning.

5 MR O'SHEA: Yes, Maître Altit sends his apologies. He's doing other work on the
6 case.

7 PRESIDING JUDGE TARFUSSER: I have no doubt.

8 MR O'SHEA: Yes, your Honours, I'm moving away from the issue we were talking
9 about before. I'm just going to ask one final question which takes me off the scene.

10 Q. Mr Witness, after a purse of money was found inside the other person who was
11 receiving the end of a rifle, after they found that money, there were no further acts of
12 that nature which were committed, were there?

13 A. To my knowledge, I never said this to somebody but, yes, it did. But I've never
14 talked to anybody about it.

15 Q. Now, I'd like to -- I'd like to come, if I may, to your assertion that Cissé had his
16 arm cut off and that this arm was handed to you. That --

17 A. That is true.

18 Q. -- that must have been a very shocking thing for you, was it not?

19 A. For me, yes.

20 Q. Why did you not mention that to Amnesty International?

21 MR MACDONALD: No. Again, your Honours: Why didn't you mention this to
22 Amnesty International? We don't know what he said to Amnesty International. It's
23 not on the record. We're always presuming what did he say Amnesty International.
24 It has to be put to the witness --

25 PRESIDING JUDGE TARFUSSER: It has to be put to the witness: Did you say to

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1 somebody else? To whom did you say it? Yes.

2 MR O'SHEA: Please, your Honours, I can frame my questions. As long as the
3 witness understands my question I can frame my question, I can follow up with the
4 document, I don't have to put things in the order my learned friend wants me to put
5 them in.

6 Q. So why did you not say that to Amnesty International, Mr Witness?

7 A. Well, Mr Cissé's arm was cut off and given to me. As to this event, a question
8 was not put to me in this regard as to what was done afterwards or anything, so I
9 couldn't just say it quickly like that.

10 Q. I'm going to -- I'm going to read to you what Amnesty International has you
11 recorded saying about Cissé.

12 And the ERN is CIV-D15-0001-3091. And the page ERN is CIV-D15-0001-3113.

13 And basically you tell Amnesty International about the incident with the rifles. And
14 during the course of your story, according to Amnesty International, which they
15 purport to quote verbatim from you, they say this -- and, interpreters, I'm moving
16 into French:

17 (Interpretation) "During this time the ONUCI helicopter was flying over the
18 mosque. Every time it flew over they asked us to take cover in order to avoid seeing
19 us. After the helicopter left, they continued to hit us in the courtyard of the mosque.
20 As I was coughing, they pushed me to the ground, but they left with Moustapha Cissé
21 and since that Friday, we have never seen him again." End of quote.

22 (Speaks English) You don't tell Amnesty International that you saw Moustapha
23 Cissé being killed, do you? You tell them that they took him and you never saw him
24 after that day?

25 A. Please, a little bit of confirmation. At the time, or the moment when they cut

1 the gentleman's arm in question off, and the time that the helicopter of the ONUCI
2 arrived, we were told to lie on the ground. *We were told to lie on the ground, not to
3 seek cover. *During that time, we were all together. We were held like this by people.
4 And I had two people holding me and the other person too *the Hausa, Mr Cissé had
5 already lost his arm. And that is what I said to the gentleman from Amnesty
6 International. It was a woman who was writing things down, a lady. *I don't know
7 how they saw it, but that is how it happened.

8 Q. At another point you say this to Amnesty International, you say:

9 (Interpretation) ""Cissé Moustapha was wearing amulets. They let rip on him more
10 than on me or anybody else. They accused him of being an assailant. They forced
11 us to lie on the ground --"

12 Why didn't you at that point say that they cut his arm off?

13 A. It was after his arm was cut off. We were supposed to leave, to leave the
14 mosque courtyard, and it was at that moment in time, I repeat, that the ONUCI plane
15 flew over the mosque, and we were told every time that we needed to lie on the
16 ground. That might be something that was typed or mistyped, but that is what
17 happened. *Otherwise, it was already done.

18 Q. You didn't tell Amnesty International about the arm being cut off and you also
19 didn't tell Amnesty International that you saw him being killed. You told Amnesty
20 International that you had not seen Moustapha since that Friday. So can I put it to
21 you that you did not see him being killed, did you? This is a detail you've added?

22 A. Yes, I did not see the gentleman in question again. After everything that he
23 went through, we didn't see each other again because I did not go with him. He was
24 killed before me, however, but I -- we were all together. That's what I'm trying to
25 say, with your leave.

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1 THE INTERPRETER: Could the witness please be asked to repeat his answer. It
2 was unclear. Thank you.

3 PRESIDING JUDGE TARFUSSER: From the interpretation the answer was unclear,
4 so if he could repeat the answer. I don't know what wasn't clear, but that was the
5 signal I have from the interpretation booth.

6 MR O'SHEA:

7 Q. Can you repeat your answer, please?

8 A. Yes, I shall repeat. It was afterwards, when the arm of the gentleman was cut off, it
9 was after that that we went with them towards the door and the ONUCI plane appeared,
10 it was flying over. And every time the plane came we were told to lie down, to remain
11 lying down on the floor until the plane had flown over. And we left together. After
12 everything that happened afterwards -- well, it was afterwards, it was after he was
13 executed. If I understand French correctly, after he was cut into pieces, this gentleman
14 was cut into pieces, we never saw each other again. That's what I mean when I said we
15 never saw each other again. *It was not when the ONUCI came, the plane arrived, and
16 we lay on the ground, and we didn't see each other again, or he left; no!...
17 Well, I took him right to the road and there he was cut into pieces and he was put in
18 the manhole. They didn't manage to fit him in, but he was -- they continued cutting
19 him up. And it was after he was cut up *I was asked to give the arm back, and I gave
20 back the ... I cut it two pieces. There we are.

21 So I don't know quite know how else I can explain this to you.

22 MR O'SHEA: For the benefit -- for the benefit of the Chamber and the parties, my
23 next question makes reference to a document, which this witness will not have seen,
24 but I'm drawing attention to the Chamber so that the Chamber can follow. And the
25 document has the ERN number CIV-OTP-0068-0008-R01. And the page from which

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1 I take my information is on the ERN number in the right-hand corner,

2 CIV-OTP-0068-0037.

3 I think it's a bit early for an objection, Mr MacDonald.

4 MR MACDONALD: Your Honours, we don't have the document on the lists, that's
5 why I'm standing up. So if you have a paper copy, I'll be very much obliged to have
6 a look. I'll tell you on the spot if we have any objections.

7 MR O'SHEA: Well, I'll give my learned friend an opportunity.

8 MR MACDONALD: It's 91, entry 91 on the list. The list is not (Microphone not
9 activated).

10 THE INTERPRETER: Microphone, please, Counsel.

11 PRESIDING JUDGE TARFUSSER: First of all, microphone. But I really don't know
12 why you don't let counsel speak until the end and then you make the objections,
13 otherwise we do not understand what's going on. I mean, just let him finish, then
14 before he puts the question, you make the objections, but not to interrupt while he is
15 talking. Please, Counsel.

16 Could you -- Mr O'Shea, please come to the end and then we'll have the objection or
17 not by the Prosecutor.

18 MR O'SHEA: Yes. So I've just made that reference so that the Chamber can follow
19 what I'm doing.

20 Q. Now, Mr Witness --

21 PRESIDING JUDGE TARFUSSER: Is the document on the list?

22 MR O'SHEA: Your Honour, yes.

23 PRESIDING JUDGE TARFUSSER: No, because it was said it's not on the list.

24 MR MACDONALD: We confirmed that it is on the list, your Honour. It's a list --

25 PRESIDING JUDGE TARFUSSER: But why did you jump up and say it's not on the

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1 list?

2 MR MACDONALD: Because their list is not in chronological order and everything
3 is except a few ones at the end. I'm sorry, your Honour, if I intervene and I'm
4 spontaneous and I'm being too fast.

5 PRESIDING JUDGE TARFUSSER: I'm also very spontaneous, but I try to contain
6 myself.

7 MR O'SHEA:

8 Q. Mr Witness, would it surprise you to know that there is another person who
9 saw these events who spoke to Mr Cissé after this day? Would that surprise you?

10 A. Of course it would.

11 Q. Now, when you saw the president of the communauté musulmane on
12 19 May 2011, and you saw him with other people, why did you not mention at that
13 stage about Cissé's arm being cut off? Because that very significant point hasn't been
14 recorded, you see?

15 A. I told you that these questions were not put by Amnesty International, as to
16 what they did to us. I explained everything else to *you, you know. Do you think
17 this is an easy thing? Do you think it's easy? *Do you think it's easy to be much
18 quicker than that, when I was not expecting such a judgment?

19 MR O'SHEA: Now, Mr President, your Honours, I'm going to ask the greffier to
20 place a piece of paper on the projector so that this witness can see a name. So I will
21 hand -- I won't mention the name, and I will hand the piece of paper, if I may.

22 PRESIDING JUDGE TARFUSSER: (Microphone not activated)

23 MR O'SHEA:

24 Q. Now, Mr Witness, this is very important. Please don't read out what's written
25 on that paper, but I want to ask you a question. I've written the name of a person.

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1 Do you recognize the name of that person?

2 A. Yes.

3 MR O'SHEA: Can the piece of paper be handed up to their Honours and

4 Mr MacDonald, please.

5 (Redacted)

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5 Q. Yes, thank you very much. Those are all my questions. There will be some
6 more questions from another lawyer within this team.

7 MR O'SHEA: Mr President, your Honours, I'm handing over the baton, if I may, to
8 Maître Agathe Baroan.

9 PRESIDING JUDGE TARFUSSER: Yes, please do so.

10 MR O'SHEA: If we could just have one moment to move the lectern.

11 (Pause in proceedings)

12 MS BAROAN: (Interpretation) Good afternoon, Mr President. Good afternoon,
13 your Honours.

14 QUESTIONED BY MS BAROAN: (Interpretation)

15 Q. Vaa Sibéra. Amina.

16 MR MACDONALD: Objection, Monsieur le Président.

17 PRESIDING JUDGE TARFUSSER: We have to -- we have to speak in -- I do
18 understand, but otherwise we don't understand. So I would ask you to
19 speak -- okay.

20 MS BAROAN: (Interpretation) *We -- I spoke this way because the Prosecutor
21 mentioned "jumu'ah", which is neither an English nor a French word.
22 Thank you.

23 Q. Now, Mr Witness, I will be following up with a number of questions and I want
24 to thank you first of all for all the answers you have provided so far. However, I
25 need to clarify a number of points with you and that is what we are going to do right

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1 now, starting with point one being your familiarity with the (Redacted)

2 (Redacted)

3 When you talked to the OTP --

4 MS BAROAN: (Interpretation) Mr President, it might be better for us to proceed in
5 private session in order to avoid making any statements that might disclose his
6 identity.

7 PRESIDING JUDGE TARFUSSER: Okay. Please can we go in private session.

8 Thank you.

9 (Private session at 2.10 p.m.)

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- 19 (Open session at 2.16 p.m.)
- 20 THE COURT OFFICER: We are in open session, Mr President.
- 21 PRESIDING JUDGE TARFUSSER: Please slowly and keep -- don't overlap with the
- 22 voices. Thank you.
- 23 MS BAROAN: (Interpretation)
- 24 Q. After what we have just discussed, could it be said that you are very familiar
- 25 with your neighbourhood?

1 A. Yes, I am familiar with Abidjan.

2 Q. That's even better. Now, throughout the questioning you talked about

3 Sicobois, Lem 1, Lem 2, Sideci, Doukouré. Can you be more specific whether these

4 belong to the same block, or whether they are entire neighbourhoods within

5 Yopougon? Can you please describe the relations or the links between those various

6 places?

7 A. I can reassure you, madam, that these are neighbourhoods that share the same

8 roads within the same locality. They are only separated by roads.

9 Q. *Regarding the Doukouré neighbourhood, the manager of the community stated

10 that this neighbourhood was occupied mostly by Dioula people; do you agree with

11 that opinion?

12 A. Yes, he knew the neighbourhood better than I because he used to live there

13 before I got there.

14 Q. Now, according to you, is Doukouré a neighbourhood inhabited by the Dioula

15 as a majority of the population?

16 A. Yes, madam.

17 Q. In general terms, in the Côte d'Ivoire and in the various mosques, who do you

18 find there? Do you find Muslims or non-Muslims in the mosques?

19 A. In the mosques? Madam, it is Muslims that you would find in the mosques;

20 isn't it so?

21 Q. Therefore, you would agree with me that when one is in Doukouré the question

22 doesn't even arise whether one is dealing with a Muslim or with a Dioula; is that

23 correct?

24 A. Well, today one could ask that question because right now things are all mixed

25 up.

1 Q. Let me repeat my question.

2 I'm not going to repeat my questions, but please note that we are dealing with the
3 events of February and April 2011. At that time, in February 2011, when one was in
4 Doukouré neighbourhood, or if one was at the Doukouré mosque, one would not
5 wonder whether one is dealing with a Muslim or a Dioula; is that correct?

6 A. They are people who are converts, people who would be converted from all
7 ethnic groups.

8 Q. I agree with you. So when somebody is converted, they become a Muslim?

9 A. Yes.

10 Q. So I put it to you, again: When you are in Doukouré at the mosque, the
11 assumption is that one is dealing with a Muslim or a Dioula?

12 A. Yes, madam.

13 Q. Therefore, if someone is in Doukouré they do not need any particular sign to
14 determine whether the person they are dealing with is a Muslim or a Dioula; is that
15 correct?

16 A. Even the Muslims have no signs.

17 Q. Yes, that's even better, if the Muslims don't carry any particular signs. Now, so
18 if we agree that in Doukouré and in the mosque you have Muslims or/and Dioulas
19 the identity card bearing a Dioula name, therefore, no longer has any importance?
20 And I'm talking specifically about Doukouré and not elsewhere in Abidjan, I'm
21 talking about Doukouré, and in the mosque specifically.

22 A. *When one is in the mosque the assumption must be that one is dealing with a
23 muslim, for the most part they are dioula, because it is spoken a lot, dioula, in that
24 mosque, that is (inaudible) elsewhere.

25 Q. Very well. Thank you. Let's move on to something else.

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1 *Since you are one of the, let me say privileged witnesses of the events, and I would
2 like to avail myself of your presence here to understand some of the things that can
3 help me understand the description of the mosque in that context.

4 Now, the courtyard of the mosque, it has been said several times that it had trees?

5 A. Yes, madam.

6 Q. Can you describe to the Court the location of the trees in relation to the mosque?

7 A. Yes, madam, if you want me to.

8 Q. Yes, please do.

9 A. Well, very -- to begin with, at the main entrance there is a tree, a neem tree
10 which welcomes you. Do you get it? And then immediately to your left, towards
11 the toilets, you have what is called a tamarinier tree, a tamarind tree.
12 Now, let me go on towards the left, there is the tamarind tree and there is another tree
13 called toba in Dioula. Yeah, that's it. And then there is another tree that -- that
14 doesn't bear fruit but which is very useful for medicinal purposes and I forget its
15 name.

16 Then we go to the right now, please, in front of the CNI-COCY office. Then you
17 have the toba tree again and then a tamarind tree still there. Then you have
18 three -- two or three mango trees in that area. That's what it looked like when I was
19 there. There you have it.

20 Q. Would you agree with me if I put it to you that the trees that you have
21 mentioned are trees that have -- are very, very leafy?

22 A. Yes, madam.

23 Q. So we are looking at big trees which are very leafy; is that correct?

24 A. Well, I have spoken about the toba, which is a Dioula word for that tree, and
25 anybody who knows a toba knows that it is a very leafy tree.

1 Q. Thank you. But nobody here knows the toba, so you are the one who has to
2 help the Court to understand what toba is all about.

3 A. Okay. I thank you.

4 Q. You talked about a banana farm as well.

5 A. No. I talked only about a few banana stems at that time, opposite, and that
6 you would see them towards the side from which the sun rises, and there were some
7 palm trees in that area as well.

8 Q. You told us that you hid in those banana plants?

9 A. Yes, madam.

10 Q. You said that only those who went up on the fence were able to see you?

11 A. Yes. By the militia.

12 Q. Was it because they were on the gate, or on the fence?

13 A. Yes.

14 Q. The banana plants, were they on the side of (Redacted)

15 A. They were somewhat opposite to the mosque, somewhat to the left, slightly to
16 the left.

17 Q. Let me return to the mosque. You said that the mosque is surrounded by a
18 terrace.

19 A. Yes.

20 Q. What could be the approximate height of the terrace?

21 A. Well, madam, I really -- I can't say. I have never measured it.

22 Q. Let me help you. It is -- let me put it to you this way: Do you have to raise
23 your leg very high to get to the terrace, or is it just one step? Would one step be
24 enough?

25 A. Well, it depends, madam. The height varies from side to side. There are

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1 some parts on which you need a *staircase, that is the main side for the imam, and on
2 the side for the women that is near the main entrance to the hangar you do not need
3 to raise your legs that high because that is the section for the women.

4 Q. Maybe we will take a photograph of the front of the mosque to understand
5 what you are talking about in relation to the entrance to the imam's quarters; is that
6 okay?

7 A. Yes, that's fine by me.

8 MR MACDONALD: Le micro, s'il vous plaît.

9 MS BAROAN:

10 Q. As far as the fence is concerned, you can confirm that it is higher than you are?

11 A. Yes, madam.

12 Q. And the same applies to (Redacted)

13 A. Yes.

14 Q. On the left-hand side?

15 A. Straight ahead, opposite.

16 Q. Yes. The fence it has places where it is higher at some locations than other?

17 A. Yes.

18 THE INTERPRETER: Message from the interpreter: Could counsel please be
19 requested to observe a pause. There has been overlapping speakers and we are
20 losing the record. Thank you.

21 PRESIDING JUDGE TARFUSSER: Counsel, please. You can't continue to speak
22 and overlapping with the --

23 MS BAROAN: (Interpretation) I really am sorry, Mr President.

24 Q. So let me come back to the fence. The fence is higher than you are in its
25 entirety; is that correct?

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1 A. Yes, madam.

2 Q. So if I summarise, we have the mosque which is surrounded by large trees that
3 are very leafy in nature, and there are banana plants where one can hide oneself;
4 would we agree on that?

5 A. Not entirely, madam. There were banana plants. Now they are no longer
6 there. Somebody went to -- if you went to check, you'd see.

7 Q. Thank you. You would see that the questions are talking about what the
8 situation was in 2011, okay?

9 A. Very well, madam.

10 Q. So we are in agreement with the description, are we not?

11 A. Yes, we are.

12 THE INTERPRETER: A pause needs to be observed.

13 MS BAROAN: (Interpretation)

14 Q. So to finish with the subject of the mosque we're going to show you a
15 photograph shortly with regard to the height of the stairs. Now, while we're waiting
16 for the photo to be brought up on the screen, we're going to move forward in order to
17 save time.

18 THE COURT OFFICER: Could you please provide us with an ERN number of the
19 picture, please.

20 MS BAROAN: (Interpretation)

21 Q. In your statement to the Prosecutor you said that you had met an FRCI soldier;
22 is that correct?

23 A. After the events, yes, indeed, madam.

24 Q. So I am going to read to you what you said when you met. So for -- this is
25 exhibit CIV-OTP-0070-1090-R01, and we are talking about page 15, at paragraph 70,

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1 seven-zero. So I'm going to read from the statement.

2 Quote: "Maguy Le Tocard was stopped at the level of the FRCI. Maguy Le Tocard
3 then served as a person who provided information to the FRCI, as an informant for
4 the FRCI."

5 And at a later stage you say, "I asked the FRCI." Were you not one of the soldiers
6 who were rounding people up at Yopougon and he admitted to being part of the
7 FRCI?

8 MR MACDONALD: I'm objecting, your Honour.

9 MS BAROAN: (Interpretation) So I'm going to read this in its entirety.

10 MR MACDONALD: I understand that -- yes.

11 MS BAROAN: (Interpretation) "Maguy Le Tocard was stopped at the FRCI where
12 they were located. Maguy Le Tocard then served as an informant for the FRCI. It
13 was after this that his body began to swell. He fell sick and he died. I know this
14 because I was" -- are we in closed session?

15 MR MACDONALD: (Interpretation) Well, we can go past this excerpt in order to
16 avoid the private session and I very -- do very much appreciate the respect for these
17 protective measures. Maybe we can just continue on to the next point. Thank you.

18 MS BAROAN: (Interpretation) (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 THE INTERPRETER: Interpreter correction: (Redacted)

23 THE WITNESS: (Interpretation) Very well. Madam, you are confusing two
24 matters here. I do apologise for saying this. You asked me whether I had not met
25 previously a soldier in the mosque. Of course I did. Of course I did. And he came

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1 to the mosque, yes, he did. But before that and a long time before it was Maguy
2 Le Tocard who was in charge.

3 MS BAROAN: (Interpretation)

4 Q. I'm going to stop you there. I do apologise.

5 PRESIDING JUDGE TARFUSSER: Please. We have -- when he finishes, let, please,
6 a little bit of time for the translation.

7 MS BAROAN: (Interpretation)

8 Q. My concern here is to ascertain whether or not you met an FRCI soldier or not.

9 A. Yes, madam.

10 Q. And you also talked about the rounding up in Yopougon?

11 A. Yes, madam.

12 Q. And this would then lead me to asking you about the entry of the FRCI into
13 Yopougon?

14 A. If you wish, madam.

15 Q. So in order to be more specific, what precisely did the sweeping-up operation
16 entail?

17 A. Well, madam, to my mind as somebody who is not very conversant in French,
18 when we were in Yopougon -- well, as far as sweeping is concerned they came to
19 drive out all of those who were problematic to us in that neighbourhood with the
20 assistance of the -- of their rifles. Can you hear me?

21 Q. Yes, I'm listening to you.

22 A. Because at the moment -- that moment in time the FRCI had stationed
23 themselves at Wasakara, so there was no road as such.

24 Q. Very well.

25 A. So you see.

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1 Q. But do you remember the date at which they entered Yopougon?

2 A. Not the date itself, but the day, yes.

3 Q. So do you remember more or less the period?

4 A. Yes, madam, I do.

5 Q. Was it a long time after the incident of the 25th?

6 A. It was after when I had finished burying those 34 individuals. We might come
7 back to that. It was a few days after that, that's when Mr Ouattara came. There we
8 are.

9 Q. Very well. We shall come back to the photograph, the promised photograph.

10 MS BAROAN: (Interpretation) Now, for the Registry the reference is
11 CIV-OTP-0070-2619.

12 THE COURT OFFICER: Could you please let us know if the document is public,
13 please.

14 MS BAROAN: (Interpretation) The document is public in nature.

15 Q. Mr Witness, can you see the photograph?

16 A. No, madam.

17 Now, I can. It's the mosque.

18 Q. There we are. So we're talking about -- or we were talking about the terrace.

19 A. Yes.

20 Q. And if we are seeing the same photograph --

21 A. Yes.

22 Q. -- before reaching the staircase there's a little space.

23 A. Yes.

24 Q. In order to gain access to that small space before the staircase one needs to
25 make -- or step up onto something before gaining access to that area?

1 A. Well, it's a piece of stone that actually injured my foot.

2 Q. So I'm coming back to my question.

3 A. Yes, madam.

4 Q. In order to get up onto the terrace, before coming to the staircase, you step up
5 and then there's the small terrace that goes around -- surrounds the mosque?

6 A. Yes, madam. If you look to the right-hand side you can see that's where the
7 imam goes in. You -- there are some locations that are a little higher up. You can
8 see this when looking at the photograph.

9 Q. Yes, of course you need a staircase like in front of the imam's entrance in order
10 to gain access, or can you gain access without a staircase?

11 A. Yes, there is a staircase a little bit higher, so the second door to the left-hand side,
12 you can see that.

13 Q. No, we're just talking about what we can see here on the photograph around the
14 mosque, the terrace area that we can see on the photograph.

15 A. That is what surrounds the mosque, madam.

16 Q. Yes. On the side that we are looking at you can see that you can go straight
17 into it.

18 A. Yes, madam. (Redacted)

19 (Redacted) you

20 can't see behind the mosque.

21 Q. Thank you very much. We have now come to an end with the description of
22 the mosque.

23 A. Thank you, madam.

24 Q. And we shall now move on to the events of 12 April. So on 12 April, in your
25 statement, your statement to the Prosecution in Abidjan, you say to us that on the

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1 next day on the 12th, at 10.30, two canons entered the Sicobois Doukouré
2 neighbourhood. It was Maguy Le Tocard and Agbolo accompanied by many armed
3 individuals. There were civilians present, there were uniformed individuals,
4 policemen and even ne'er-do-wells; is that correct?

5 A. Yes, madam. I would like to make a small correction, however. On the 12th
6 that you are referring to, that was after the arrest of my president.

7 Q. Yes, we're going to come to that, but first of all I would like to ascertain whether
8 what I have just read to you corresponds to what you stated.

9 A. No, it does not correspond, madam.

10 Q. Very well. So we'll continue.

11 A. No, it doesn't.

12 Q. So it does not correspond. We shall move forward.

13 A. No, I did not make any statement to the Prosecution because I never met with
14 the Prosecutor.

15 Q. When we're talking here about the Prosecutor, we're talking about the
16 representatives of the Court who went to take your statement in Abidjan.

17 A. Very well. Okay.

18 Q. So every time we talk about the Prosecutor you should deem that these are the
19 individuals who visited you in Abidjan as representatives of the Prosecutor.

20 A. Very well, madam.

21 Q. Now, after this clarification, you maintain, do you, that you did not say what I
22 have just read to you?

23 A. As to the fact that they entered the neighbourhood with the canons.

24 Q. You said this to the Prosecutor or not, this excerpt that I have just said?

25 A. Yes, I did, madam. I did say that.

1 Q. And then when we go a little further, and we're still talking here about the same
2 document, CIV-OTP-0070-1090-R01, page 26 thereof, paragraph 125. The paragraph
3 is going to be taken in fine because it describes an action, and I believe that the
4 paragraph is self-explanatory.

5 Quote: "They started to fire on those houses. They were going door to door. They
6 were firing at the doors of the houses and then entered the houses in order to take the
7 objects found inside. Whenever this happened, I was on the terrace of the mosque.
8 The terrace surrounded the mosque." End of quote.

9 A. Yes, indeed, madam.

10 Q. And after having just provided this description of the mosque, there is a fence
11 that is higher than you are, there are large leafy trees, the terrace on which you were
12 to be found has just been shown in the photograph with a panoramic view provided
13 in the Prosecutor's film. We saw the layout of all the surrounding houses. We saw
14 the roofs and the windows. And today you are confirming to me that from the
15 terrace you can see people going door to door breaking into houses, taking the
16 belongings from inside from this very terrace?

17 A. Yes, madam.

18 Q. Very well. And a question with reference to this terrace. On the 25th you say
19 to us, when you saw the young people arriving, that you went to hide under the
20 banana plants. These young people, according to what you stated, did not have any
21 canon. Today there are canons that came, that fired, or mortars that came and fired.
22 Were you not frightened? Did you not want to hide?

23 A. Would you like me to tell you how I was hiding and how -- where I was when I
24 saw all of this? Do you want me to describe all of this to you, or should I have
25 described this to the Prosecutor?

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1 Q. No, I am not asking you that because you've already said it.

2 A. Yes, I have.

3 Q. You were saying that you were on the terrace of the mosque and you could see
4 them going door to door, breaking down the doors, taking belongings. So I'm not
5 asking you to tell me where you were. My concern is that somebody who is fleeing
6 from young people who have arrived who is not however fleeing from canons firing
7 at all these doors -- well, you're not obliged to answer me.

8 MR MACDONALD: (Interpretation) You're not obliged to make any commentary
9 either.

10 THE INTERPRETER: Overlapping speakers.

11 MR MACDONALD: I object. We can make these comments to the witness about
12 his credibility in the final --

13 PRESIDING JUDGE TARFUSSER: (Microphone not activated) Just wait for
14 translations, otherwise I can't get anything in my ears.

15 Mr MacDonald, what did you say?

16 MR MACDONALD: My colleague is argumenting with the witness or making final
17 opinion arguments that are not necessary. We are here to ask questions.

18 PRESIDING JUDGE TARFUSSER: I must say that I was thinking the same half a
19 minute ago that these are conclusions you are drawing from what the -- say the
20 conclusions you are drawing. I mean we are here to put questions to the witness, to
21 receive answers. And the conclusions on what -- on the reliability, on everything
22 else will come in a later moment. So I would ask you please to go ahead. In five
23 minutes we have the break and I would like to give also the floor to the Defence of
24 Mr Blé Goudé.

25 MS BAROAN: (Interpretation) He will be speaking, but I would like to say that I

1 wasn't making comments, it was a question that I was putting. And as to the
2 analysis of the questions, I believe that this behoves the individual who was putting
3 them, but I was only making -- drawing things from the question. But these -- I
4 might rephrase, but these were not comments that I was making. I was trying to
5 ascertain how somebody who was fleeing before the arrival of these young people
6 did not do so, however, when the canons arrived and they were firing at all the doors
7 and the doors were all being broken down for belongings to be snatched away. That
8 was -- that was what I was saying. It wasn't a comment.

9 PRESIDING JUDGE TARFUSSER: Now it is a comment. It was a comment. You
10 commented now. Please go ahead putting questions. We have another five
11 minutes.

12 MS BAROAN: (Interpretation) As I -- is it not a comment. As I was saying, I'm
13 asking the witness who was hiding when the young people arrived, why did he not
14 hide when he saw the weapons firing at the doors? That's what was the question.

15 THE WITNESS: (Interpretation) May I answer?

16 PRESIDING JUDGE TARFUSSER: Yes, please go ahead, answer the question. Why
17 did you not hide?

18 THE WITNESS: (Interpretation) There we are. Thank you, Mr President. What
19 madam counsel is saying, well, a correction should be made. It wasn't under the
20 banana trees that I remained, it was from the terrace that I could see the young people
21 coming. There were roadblocks at the entry to every neighbourhood. And the
22 young people came to knock those roadblocks down whilst I was on the terrace, as
23 you showed at the other side. They came via the Yao Séhi side and I was standing
24 before the imam's place and I could see them coming. I could see them coming and I
25 don't know whether it was at the same time that the weapons arrived. They came on

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1 the other side, on the CNI-COCY side, that's where the weapons came right opposite
2 the imam's entrance.

3 So, you know, these are two opposite things, madam.

4 THE INTERPRETER: Inaudible.

5 MS BAROAN: (Interpretation)

6 Q. I do understand with you that these are two conflicting views. Now, these
7 youths who arrived, who made you run into the banana plantation, this is on
8 25 February, this is when you explained to us that you went to hide under the banana
9 plants, so -- so these are two different claims.

10 A. There we are.

11 Q. Let us move on. In order to save time let's go on to the ceremony, the burial.
12 With regard to the burial ceremony, the Prosecutor yesterday showed a video. Do
13 you remember it?

14 A. Yes, I do.

15 Q. Do we need to show it again, or is it not worth our while? Do you remember
16 what was contained in the video?

17 A. I can describe everything to you.

18 Q. Very well. So you will be able to tell me whether yes or no what I say to you as
19 to what we saw on the video is false or correct?

20 A. Yes, I will.

21 Q. So on yesterday's video we saw a number of individuals digging a hole, did we
22 not?

23 A. Yes, we did.

24 Q. There were more than four individuals digging a hole?

25 A. Yes.

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1 Q. Now, those people, they were nearly -- nearly all of those people had nothing on
2 their heads, they were not wearing any headgear; isn't that so?

3 A. Yes.

4 Q. What's more, we see in the video that -- well, we heard, rather, that people were
5 speaking Dioula or Koyaa or other languages in that video, Maoka or
6 Koyaa -- Maoka.

7 A. Yes, that's so.

8 Q. So if we agree that there were more than four people, they were bareheaded,
9 they were speaking Dioula, why did you say to the Prosecution that on that day there
10 were four of you and that you had to put on hats so that people could not see your
11 faces?

12 A. Have you finished, ma'am? Listen, that's not -- that's not -- that's not what
13 I -- that's not what I said. I was --

14 Q. I beg your pardon. I'm going to read out --

15 A. Very well.

16 Q. -- what the Prosecution said.

17 MS BAROAN: (Interpretation) Your Honour, I see that the time for the break is
18 here. I think I have about 10 more minutes. Would the Court be in a position to
19 grant me those extra 10 minutes?

20 PRESIDING JUDGE TARFUSSER: Yes, we are, but we will have to shorten a little
21 bit because at 5 we must close because we have another thing to do upstairs, we have
22 a meeting. So 10 minutes, then we shorten, we start at 3.30, 15 minutes, 20 minutes,
23 but please go ahead. Thank you.

24 MS BAROAN: (Interpretation)

25 Q. Thus, in this statement taken by the Prosecution, and I make reference to

1 paragraph 130, page 27, once again CIV-OTP-070-1116-R01.

2 Now, just to move along quickly, tenth line: "We were all wearing shorts and hats,
3 caps so that the people could not see the prayer markings on our foreheads and so
4 that people would not realise that we were Dioula." And you have to make --

5 A. No, ma'am, that is not what I said. That is not -- that is not my statement
6 you're reading.*I am even confused, because I did not have the time. We wore shorts
7 because we had to. And to go out, well, you see, we had to protect -- and you said
8 something about marks -- prayer marks on our foreheads. *But at the time of the
9 burial, it was not compulsory to wear concerning... No. They had taken all our stuff.
10 We had nothing. We had nothing to put on our heads.

11 Q. Thank you, Witness.

12 A. Thank you, madam counsel.

13 Q. Now, regarding the burial, yesterday you told us that of the 34 people you
14 recognized only three?

15 A. Yes, ma'am.

16 Q. And the other people were not recognized?

17 A. Not by me, not personally.

18 Q. Very well. Thus we can conclude that all the other dead people were not from your community?

19 A. Yes, ma'am.

20 Q. Why?

21 A. You see, I was called upon -- I was called upon by someone else from the
22 mosque to come and help with the burial and say some prayers and -- but, you see, I
23 couldn't tell who these people were from where I was.

24 Q. Very well. Thank you.

25 One last point: In April 2011 a young man was beaten at the mosque. Are you

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1 aware of that incident or not?

2 A. I don't know exactly what that's all about, but I do know, I can confirm to you
3 that no one was ever beaten within the courtyard. They came and took someone and
4 accused the person of being an attacker. And that was during the month of fasting.
5 And afterwards I heard something about the man not being able to withstand and he
6 died. But it wasn't inside the mosque.

7 Q. It was in the Doukouré neighbourhood?

8 A. It was in the Doukouré neighbourhood opposite the main road, close to the
9 antenna.

10 Q. I thank you for answering my questions and I do hope that you will conclude
11 your testimony soon. Thank you.

12 A. Thank you, ma'am.

13 PRESIDING JUDGE TARFUSSER: Thank you.

14 Now we will have the break.

15 I just always housekeeping: I think that now we have these one hour and a half and
16 then probably, I don't know, but we -- if we continued tomorrow, I would say that we
17 start at 9 because we have a two hours time difference, so that we start at 9 with the
18 369 issues, from 9 to 10, and then at 10.30 we continue with the witness. Just for
19 housekeeping purposes, right? Okay. Thank you.

20 THE COURT USHER: All rise.

21 (Recess taken at 3.09 p.m.)

22 (Upon resuming in open session at 3.32 p.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE TARFUSSER: Good afternoon for the last time today.

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- 1 Welcome to Maître Altit and Mr Knoops. I give now the floor to the Defence of
2 Mr Blé Goudé.
- 3 Mr Witness, now the Defence of Mr Blé Goudé is questioning you. Now we have
4 another session of one hour and a half and also tomorrow morning and then it should
5 be -- you should be released, okay?
- 6 THE WITNESS: (Interpretation) Very well.
- 7 MR KNOOPS: Mr President, good afternoon.
- 8 PRESIDING JUDGE TARFUSSER: Good afternoon.
- 9 MR KNOOPS: The examination by the team of Mr Blé Goudé will be conducted by
10 Mr Seri Zokou, and maybe there are some questions to be posed by Maître Serge
11 Gbougnon after the finalisation of the questions by Mr Zokou. Thank you.
- 12 PRESIDING JUDGE TARFUSSER: Thank you.
- 13 Yours the floor.
- 14 MR ZOKOU: (Interpretation) I thank you, Mr President.
- 15 QUESTIONED BY MR ZOKOU: (Interpretation)
- 16 Q. Good afternoon, Mr Witness.
- 17 A. Good afternoon, sir.
- 18 Q. I hope that you're not too tired. Are you all right?
- 19 A. Yes, I'm fine.
- 20 Q. Very well. So I'm going to be putting a number of questions to you and for us
21 to be able to grasp on to the truth here. And if you do not understand something,
22 you can ask me a question. If I go too fast, you can also tell me and I shall begin
23 again, okay?
- 24 A. Yes.
- 25 MR ZOKOU: (Interpretation) Mr President, in order to start my examination I

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1 would like for us, if possible, to move into private session, please.

2 PRESIDING JUDGE TARFUSSER: Can we please go into private session. Thank
3 you.

4 (Private session at 3.34 p.m.)

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17 (Open session at 3.48 p.m.)

18 THE COURT OFFICER: We are back in open session, Mr President.

19 PRESIDING JUDGE TARFUSSER: Thank you very much.

20 The floor is back to you, Counsel.

21 MR ZOKOU: (Interpretation) I thank you, Mr President.

22 Q. Mr Witness, we're going to talk about your professional background now. I
23 can see that it was not an easy one.

24 A. Indeed.

25 Q. So you really suffered a lot, as we say, you took it on the nose.

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1 And in your driver's licence you, if I believe what you stated, you obtained it in 1977?

2 A. Of course, Counsel, yes.

3 Q. So in order to obtain the licence, you prepared it, you went to the driving school,
4 et cetera. So in 1977, that means for at least a few months ahead of that you learnt
5 how to drive and then you sat your driver's test; is that correct?

6 A. Yes, Counsel. That's true. I don't think it was of much use because I didn't
7 have my driver's licence at the time. I'm doing myself harm here, but there we go.

8 Q. Very well. It is because you stated in your statement when the Office of the
9 Prosecutor questioned you, you said that you obtained your driver's licence in 1977?

10 A. Yes, indeed.

11 Q. So you, yourself, said this.

12 And for the Court I would like to recall that this is contained in the statement in
13 paragraph 16, page 5 of his statement.

14 So you do have a driver's licence?

15 A. I did have a driver's licence.

16 Q. Very well. And at the time when you obtained said licence in 1977, you were
17 how old?

18 MR MACDONALD: (Interpretation) Objection. We are in public session.

19 (Speaks English) We're in public session now. Again, I think all, some or most of
20 these details have been given in private session.

21 MR ZOKOU: Okay. Je vais reformuler.

22 PRESIDING JUDGE TARFUSSER: Yes. I just think that in Côte d'Ivoire there are
23 other people of the same age, I would say so. But never mind, it's okay. A time ago
24 I redacted the younger sister, I just remember younger sister, so as if there was only
25 one person having a younger sister in Côte d'Ivoire. But I'm very much aware that

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1 this is a very delicate issue, but we should not even exaggerate.

2 Please. But try to reformulate in order so -- also because these are notorious facts.

3 We know. I mean, why should he tell us how old he is when we all know how old

4 he was. We can calculate ourselves, I mean.

5 MR ZOKOU: (Interpretation) Very well. Then I shall be more direct. I didn't

6 say directed. Thank you, Mr President.

7 Q. So you were 20 years of age when you sat your driver's licence?

8 A. I believe so.

9 Q. At that moment in time in 1977, the age for sitting a driver's licence was the
10 majority, was it not, when one came of age?

11 A. 21 years of age.

12 Q. 21 years of age. So you were in fact a minor when you prepared your licence
13 and then you obtained it. So you were not legally of age to sit a driver's licence?

14 A. Yes, with the authorisation of my father.

15 Q. Very well. So if I am to calculate, you said to me that you started to work, or
16 you stated to the Prosecution that you started to work in 1980?

17 A. Yes.

18 Q. So you started to work at the age of 23?

19 A. Yes.

20 Q. So when you were questioned here in the hearing on 9 May, the Prosecutor
21 asked you at what age, and I shall provide you with the reference, we are talking here
22 of transcript, the transcript of 9 May, we are at page 25, this is the first part of the
23 transcript, and the relevant details are located at lines 7 and 8.

24 So the Prosecutor asked you how old you were when you started to work. Would
25 you like me to read your answer back to you?

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1 A. If possible.

2 Q. You stated that you started to work at the age of 18. Do we agree?

3 A. With regard to the date, no, sir. I always told you that with regard to dates I'm
4 not too clear in that regard. I do apologise.

5 Q. I do understand you. But your first job when I really look at your professional
6 background closely, you passed your driver's licence. You did everything you could
7 to clinch that job. So this job was very important to you. It was your first job and it
8 was a job in an interesting place for you. So in principle you should remember that.
9 So you stated to the Court that you started to work at the age of 18? That is what
10 was important to point out here.

11 MR MACDONALD: Was that a question or an argument or a comment or
12 arguments that will come at the end? We're just, we're going on --

13 PRESIDING JUDGE TARFUSSER: The argument --

14 MR MACDONALD: -- contradictions to the age of when the first job?

15 PRESIDING JUDGE TARFUSSER: It seems, yes. It seems, it seems this is the
16 argument. But just continue. But when the witness was 20, it is far away in time,
17 far away from the facts which are as relevance to this -- to this trial, so.

18 MR ZOKOU: (Interpretation) I do concede, but I believe that the professional
19 background of the witness and his current statement and his current situation is the
20 result of what he claimed to have done. So this point seems interesting or important
21 because it is an important job in his past. And I would clarify that I did put a
22 question to him and he did answer me, so I have no further questions to put in this
23 regard and I shall move on.

24 PRESIDING JUDGE TARFUSSER: Excuse me. The witness made a sign that he
25 wants to say something.

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1 Yes, please, Witness, what do you want to say?

2 THE WITNESS: (Interpretation) Yes. With regard to the date in question, I
3 started in 1977 after having obtained by driver's licence, and in 1978 I was already
4 driving in public, which means I was driving as a taxi driver. I don't know what you
5 mean by the age of 18.

6 MR ZOKOU: (Interpretation)

7 Q. No, no, no. I shall be refreshing your memory. I have wrapped up that point
8 now. *That was your first job, by apprenticeship of the car in that ministry?

9 A. No, no. That was in 80.

10 THE INTERPRETER: Overlapping speakers. Overlapping speakers. The
11 interpreter could not follow that important part.

12 MR ZOKOU: (Interpretation)

13 Q. So I would like to talk about your current employment. I think we're going to
14 go into private session now.

15 PRESIDING JUDGE TARFUSSER: Yes, please, private session.

16 (Private session at 3.59 p.m.)

17 (Redacted)

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23 (Open session at 4.03 p.m.)

24 THE COURT OFFICER: We are back in open session.

25 MR ZOKOU: (Interpretation) Thank you very much.

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1 Q. In all your statements you spoke about length about several persons, and one of
2 the people that you talked about quite a lot was the person known as Agbolo.

3 Now, while you were speaking about him you were asked what Agbolo means and
4 you gave the meaning, you said it means casse-tout in French; is that correct? Very
5 well. And you said that this is in the Nouchi language. So does this mean that you
6 speak Nouchi?

7 A. No, sir.

8 Q. You don't speak Nouchi at all?

9 A. No, no, because if you tell me good morning in Nouchi, I will not know how to
10 answer. But in Côte d'Ivoire it is known that Agbolo means everything has to be
11 destroyed.

12 Q. So you know some Nouchi words?

13 A. Yes.

14 Q. That is what I have realised. So at least you understand a little bit of Nouchi.
15 Now you described Agbolo, didn't you? You said, and I'm going to read out what
16 you said about him, and that is paragraph 43:

17 "Agbolo was fully fit, he was very solidly built with bow legs. He was a big person,
18 but I did not notice any distinctive features."

19 Now, in Abidjan when someone is in full form or fully fit, how do you describe him?

20 A. You say he is in good form, he's fit, or he is digbâ (phon).

21 THE INTERPRETER: If counsel could wait, observe the pause, please, before
22 speaking.

23 PRESIDING JUDGE TARFUSSER: (Microphone not activated)

24 MR ZOKOU: Oh, sorry, Mr President.

25 Q. It means somebody who is really fit and who is digbâ, as it is said. That is a

1 common Ivorian language. It is said he is digbâ and he is Agbolo. That's what you
2 have just said. Do we agree on that?

3 A. Yes.

4 Q. So we knew that the person that you describe, the way you described it means
5 his nickname means what you have just said; is that correct?

6 A. Yes.

7 Q. So you are aware of that, but you gave a different meaning. Very well.

8 Thank you for that. You spoke frequently about him, and the first thing you said
9 was that he was a FESCISTE. Now, what is a FESCISTE?

10 A. As far as I'm concerned it is someone who is a member of the students'
11 movement.

12 Q. And this students' movement?

13 A. Yes, the students' movement.

14 Q. All the students' movements?

15 A. There was an organisation, a students' organisation known as FESCI and he was
16 a member of that.

17 PRESIDING JUDGE TARFUSSER: (Microphone not activated)

18 MR ZOKOU: Oh, sorry. I'm very sorry, Mr President. I will try to do my best.

19 Q. (Interpretation) Now, the FESCI movement, were you familiar with it? Do
20 you know what FESCI is? Were you a member of FESCI?

21 A. No, sir. It was hearsay and it was emblazoned on their T-shirts. When they
22 came in groups to chase away the students, people would say it is the FESCI that
23 chased away the students.

24 Q. So you do not know anything about FESCI?

25 A. No, no, no. I never attended university.

1 Q. So you are not in a position to say with any degree of certainty that any
2 particular person is a member of FESCI?

3 A. Except when I saw them and particularly when this gentleman was marching in
4 front of others forcing students out of the premises of the school.

5 Q. You stated that there were many students' organisations and not only FESCI.
6 Now, when it comes to Agbolo, what is it that made you say that he was a FESCISTE?

7 A. To begin with the T-shirt that he was wearing had the inscription FESCI on it
8 and it was black.

9 THE INTERPRETER: No, not -- correction from the interpreter: He was
10 loubard (phon). Says the witness. A defender.

11 MR ZOKOU: (Interpretation)

12 Q. Loubard, that is another word that you are using. Can you explain what that
13 means? What did he do that you refer to him as loubard?

14 A. I can only tell you that he was frequently at the very front of the marches or
15 demonstrations. Whenever there were strikes, he was always there. And members
16 of those groups were always referred to as loubard, especially when they were
17 demonstrating.

18 Q. Can you tell me precisely what Agbolo did for the very moment that you saw
19 him performing the acts that you have attributed to him and dates?

20 A. No, I cannot tell you about dates, but on several occasions when there were
21 ceremonies on the field, particularly when he was in the company of Mr Blé Goudé
22 during activities at the maracana stadium, he was the one who opened and closed the
23 door for him. So he was a loubard.

24 Q. You have said that he was with Mr Charles Blé Goudé?

25 A. Yes, sir.

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1 Q. And then he opened doors for him during events and especially at the maracana;
2 is that correct?

3 A. Yes.

4 Q. What does a bodyguard mean to you?

5 A. Yes, that is correct; he was the protégé of the boss.

6 Q. So if you are someone's protégé it means you are his bodyguard?

7 A. Yes.

8 Q. Very well. Now, regarding Mr Charles Blé Goudé and the person known as
9 Agbolo, you have said that he was a bodyguard. As you have said, you already
10 observed Mr Blé Goudé arriving at certain locations. How was it possible for you to
11 identify a bodyguard who was with him?

12 A. I really do not know whether it is the appropriate word, but I referred to him as
13 the protégé of the boss. Even at home where Mr Charles was living, he was all the
14 time in front of the door.

15 Q. And how many bodyguards did Mr Blé Goudé have? Did you know those
16 guards?

17 A. It is not possible to tell you. I think everybody who liked him protected him.
18 So I cannot tell you about individuals.

19 Q. This, therefore, means that when Mr Charles Blé Goudé arrived at a public
20 location, people were thinking about his security, even including you since you just
21 said you were a fan of his, you were his fan. You -- he -- that person could go next to
22 him and do --

23 THE INTERPRETER: Inaudible.

24 THE WITNESS: (Interpretation) That is what I said. But I never went close to
25 him. I was small and so on. And when he arrived, it was said that the general had

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1 arrived and then people would start clapping.

2 MR ZOKOU: (Interpretation)

3 Q. In your statement you said that Agbolo usually introduced himself as Charles
4 Blé Goudé's bodyguard. What I would like to know is whether, as you have said,
5 Agbolo actually introduced himself to you as Blé Goudé's bodyguard?

6 A. Yes, sir.

7 Q. He introduced himself as such?

8 A. Yes, sir.

9 Q. What was the occasion? Where? And when?

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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8 (Redacted)

9 (Redacted)

10 Q. So if I've understood you correctly, there was a curfew in force during that
11 period?

12 A. Yes.

13 Q. Very well. Thank you.

14 Now, during that period you have said it was before the crisis; is that correct?

15 A. Yes.

16 Q. Very well. Before the crisis.

17 MR ZOKOU: (Interpretation) Just one moment, please.

18 (Counsel confer)

19 MR ZOKOU: (Interpretation)

20 Q. Mr Witness.

21 A. Yes.

22 Q. If I put it to you that during the period you are referring to there was no curfew
23 in force in Abidjan at all, what is your reaction to that?

24 A. I am going to tell you to cross-check because there were several curfews.

25 Q. Thank you.

1 A. Thank you.

2 Q. We will cross-check, but I'm putting it to you that there was no curfew in force
3 at that time.

4 Now, to conclude on this particular issue, you mentioned the maracana stadium
5 where Mr Blé Goudé used to go and play. What is the maracana stadium? Where is
6 it located?

7 A. When I say maracana stadium, it's just a little space prepared in the Sideci
8 neighbourhood opposite Saguidiba and the young people were in the habit of
9 training there. It is not really an official name, it was simply referred to as the
10 maracana stadium.

11 Q. So maracana is a word that is used in Abidjan?

12 A. Yes.

13 Q. So maracana is the field on which people play football, small poles or large
14 poles; is that correct?

15 A. Yes.

16 Q. So there are maracanas in many neighbourhoods?

17 A. Yes, sir.

18 Q. In Abidjan?

19 A. Yes.

20 Q. And that is where young people train, where committees are set up and so on?

21 A. Yes, indeed.

22 Q. Now, the maracana stadium in Sideci, did you actually see Charles Blé Goudé
23 playing there and specifically when?

24 A. I no longer remember when, but I saw him. He came and parked his car in the
25 parking lot, so he was wearing a blue and white tracksuit top.

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1 Q. You say that when you saw him he parked his car? That is my question to you.

2 A. Yes.

3 Q. This means that you saw the vehicle. Which type of vehicle was it?

4 A. He was in a four-by-four vehicle and there was a certain Navigué next to him.

5 Q. A four-by-four vehicle?

6 A. Four-by-four, grey in colour.

7 Q. Is that all?

8 A. Yes, that is all I can say about it.

9 Q. So you don't know the model of vehicle?

10 A. No.

11 Q. That's fine. No problem at all.

12 Now, were you aware that Mr Charles Blé Goudé played in a different stadium?

13 A. No, I'm not aware of that.

14 Q. Now, you do not know that Charles Blé Goudé stadium was the Jesse Jackson
15 stadium?

16 A. No. This is the first time I'm hearing that name.

17 MR MACDONALD: Your Honours, I'll intervene in the formulation. He can ask

18 has he ever seen Mr Blé Goudé at Jesse Jackson, but he cannot testify to the truth of

19 the allegation in the questioning. He can put facts, not comments. So: Did you

20 see him at Jesse Jackson or -- that's the question. Not that: But you're not aware

21 that he was only going to Jesse Jackson and nowhere else? Mr Blé Goudé can testify

22 in X number of years about that if he wants.

23 PRESIDING JUDGE TARFUSSER: Just please go ahead.

24 MR ZOKOU: (Interpretation)

25 Q. So we shall move on. We are going to be talking about the main event. And

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1 in this regard, you were asked during the interview given at the outset by the
2 Prosecutor -- or, maybe I should rephrase and make things easier for you.

3 On 26 February where were you?

4 A. I do not know because the date doesn't ring a bell. I told you that there's a
5 problem with dates, you know, all of that. I do apologise. I've forgotten this
6 somewhat.

7 Q. Because you said that on the Friday, 26 February - it was a Friday - that people
8 came to burn down the location where you worked.

9 A. Yes, I said it was a Friday. I didn't give a date. Maybe the investigators
10 estimated that it was the 26th. All that I know is that it was a Friday because of the
11 prayer.

12 Q. You were told that on the 26th it was not a Friday?

13 A. Well, I know that it did take place on a Friday. That is what I experienced.
14 What I experienced took place on a Friday.

15 Q. Very well. I am putting the question to you because at paragraph 32 of your
16 statement you stated that the mosque was burnt down on 26 February 2011, on the
17 Friday, 26 February 2011, that's what you stated.

18 A. Whatever the case may be, it was a Friday and I maintain that.

19 Q. And not the 26th then?

20 A. Well, may be.

21 Q. And when you were talking about this you said that people came by singing in
22 Dioula -- singing to each one his Dioula.

23 THE INTERPRETER: Correction.

24 MR ZOKOU: (Interpretation)

25 Q. And you said that on a number of occasions during your testimony.

1 A. They went by and they sang on a number of occasions.

2 Q. It was a song, as you say. And this song, what was it like?

3 A. Well, I do apologise, these were violent songs, as I say, and for each and every
4 one of you, to each one his own counsel.

5 Q. Well, I hope not. But as you are saying that he was singing and they're singing
6 isn't there and then there's talking, so what was the song like? Can you sing it?

7 A. Yes, sir. I repeat to you that this song was somewhat aggressive as we were in
8 the habit of hearing in the neighbourhood.

9 Q. So if I understand you correctly, I asked you whether you could at least give us
10 a little tune?

11 A. You mean that aggressive thing? Well, I apologise, when I said "to each one
12 his Dioula," for me, personally, to each one it meant that we were expecting the worst,
13 that means that you get hold of your Dioula, you take his possessions and you beat it.

14 Q. So those people who were singing that song, where were they?

15 A. They were on the public road.

16 Q. On the public road. So on the big road there, the main road?

17 A. Yes, from the 16th to Saguidiba, and so on.

18 Q. And where did they come from?

19 A. From the parliament side, Saguidiba. They came from there and then they
20 went not far from the Doukouré bridge, and then they went to and fro on a number of
21 occasions.

22 Q. And at that moment in time where were you located?

23 A. Well, it was quite a spectacle. Everybody wanted to see what was going on. I
24 was curious to see what was happening, what they were doing because they hadn't
25 started being aggressive, so I was performing my ablutions on the terrace opposite

1 this main road. And there was nothing between us. There was nothing between
2 me and the road.

3 Q. Let us try and be specific.

4 A. Yes.

5 Q. You were performing your ablutions?

6 A. Yes, of course I was.

7 Q. These ablutions, when you explained to us about the mosque and its layout, you
8 indicated a location to us where ablutions were performed?

9 A. Yes.

10 Q. And said location where you performed your ablutions, we will agree that it is
11 located inside the mosque?

12 A. As to the place where I performed my ablutions, well, there are two or three
13 locations; there's the inside of the toilet, there is the inside of the courtyard and then
14 there's the terrace outside opposite the road where I was located.

15 Q. In the description that you provided of the various parts of the mosque, you
16 showed us the space, the area where there is one part where you -- where the women
17 do theirs and you do yours. And we will agree that that location was not outside,
18 but within the courtyard of the mosque itself?

19 A. That was the location where ablutions were performed. Well, I'll make things
20 easy for you. When you come into the courtyard of the mosque you have to your
21 right-hand side the office of the CNI-COCY, and to the left-hand side there is the
22 toilet, right there. And there's a terrace there that has nothing to do with the other
23 two. There's another place inside and there's the other place outside opposite the
24 road.

25 Q. So the place that you have spoken about is inside?

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1 A. No. The place where I was located there is a road that goes from the
2 terrace -- there's a door, rather, there's a door.

3 THE INTERPRETER: The witness corrects himself.

4 THE WITNESS: (Interpretation) From the inside to the outside of the terrace.

5 MR ZOKOU: (Interpretation)

6 Q. So there's a door and this door is closed?

7 A. It wasn't closed. *It was in front of the door where there was a kettle on the table.
8 And inside the fence, against which the toilets are built, there were other kettles there
9 too, and "mini-chateau" barrels.

10 THE INTERPRETER: Inaudible.

11 MR ZOKOU: (Interpretation)

12 Q. In your testimony here you said, and here I am going to make reference to the
13 English transcript, the realtime because we're really working with this unedited
14 realtime version mainly, we are talking about transcript dated 9 May, at page 57, line
15 16; page 58, line 17; and page 32, lines 5 to 7. When --

16 MR MACDONALD: (Interpretation) I do apologise, Maître Zokou, are we talking
17 about transcript 35 or 36? I didn't quite get the information.

18 MR ZOKOU: (Interpretation) It's 35.

19 Q. So you said that you were in the toilets at that moment in time, but the toilets
20 that were shown, that were shown to you, the first toilets there where the terrace is
21 located with your various kettles, you then said that it was behind, you said that it
22 was behind.

23 A. Go on, sir.

24 Q. So if the toilets were behind, they're not in front.

25 A. I'm going to interrupt you somewhat. The toilets, there are at least eight doors,

1 eight toilets lined up, and then there's an alleyway in the middle, and then there's a
2 small room in which ablutions can be performed. And on the left and right-hand
3 side of this small room there is a terrace outside, outside on the right-hand side and
4 on the left-hand side. There we are.

5 Q. Very well. So the ablutions that you explained to us about earlier, you said
6 that when performing your ablutions you do a certain number of things?

7 A. Yes.

8 Q. They are intimate in nature; you wash yourself, you wash your private parts,
9 et cetera. If in that location where you are performing your ablutions, if this is
10 located on the terrace itself, facing the road, how can you do that whilst you have to
11 perform a certain number of intimate gestures whilst performing your ablutions?

12 A. I'm going to interrupt you here. This cleaning of the private parts is done
13 beforehand, before coming out onto the terrace. That's done in the toilets or under
14 the shower before coming out onto the various terraces. And then we continue
15 performing our ablutions. And that is where I was looking towards the main road
16 and I could see people passing by. As I said to you, I was curious to see what was
17 going on. I wanted to see what was happening, sir.

18 Q. So I shall finish on this point. As you said that you were performing your
19 ablutions, and we know how they are performed, so with regard to what you were
20 doing on the terrace, that is no longer ablutions?

21 A. Of course it is.

22 Q. So you were no longer performing your ablutions?

23 A. There are two types of ablutions. One is washing your private parts, which is
24 done within the shower or the WC. You can't do everything there. Once you have
25 washed your private parts you come outside and you get on with the rest of it, that is

1 to say your face, your hands, your feet. That's all done outside. It's not done inside.

2 That's how ablutions are performed.

3 Q. And what time was that at? When did you start performing the ablutions of
4 your private parts in the toilets?

5 A. Yes, well, I shall describe it to you once again. As I told you since the outset it was
6 9 o'clock when it was inside the fence that -- in the direction of the shower. *I washed
7 the kettles. I then washed my private parts, I went to the other side and I saw the events.

8 Q. Very well. So as there are already points that have been covered by my
9 learned colleague, I wanted to ask you something about the description of the
10 location inside. We saw how it was drawn and how there were ceilings. There
11 were ceilings, were there not? You pointed that out.

12 A. In the mosque, yes.

13 Q. Yes, yes. Can you tell us or tell me approximately what the height of the
14 ceiling was with reference to the ground?

15 A. Yes, but not quite.

16 Q. Why is that?

17 A. Because the ceiling, if you look at the ceiling there are ventilators hanging
18 between the ceiling and the floor that do not actually touch the heads of people, so I
19 can't tell you quite how many metres high that is.

20 Q. So in order to reach the ceiling they cannot be reached if one is standing up?

21 A. No. Not even the ventilators.

22 Q. Okay. So you need something in order to get up there?

23 A. To get up there, yes.

24 Q. Very well. I shall come back to that point.

25 So we are going to be talking about these people who arrived singing, singing as you

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1 say in an aggressive manner.

2 A. Aggressively.

3 Q. Yes. And when they arrived singing in an aggressive manner they came close
4 to the location where you were?

5 A. Apologise. Well, saying that they got close, well, that's a little exaggeration
6 *because they covered the entire width of the road. They were walking along the road.
7 I can't lie about that. They had not yet become aggressive, but they were coming
8 closer and they were walking along the road.

9 Q. Very well. Okay. So we're talking about the morning, 9 a.m.?

10 A. Yes.

11 Q. They had not yet become aggressive, that's what you said?

12 A. Yes.

13 Q. Thank you very much. In a document where you made a statement which is
14 the document containing the individuals whom we cannot name, which was used
15 earlier on by my learned colleagues where somebody came to take your statement,
16 you know, mmm?

17 A. Yes.

18 Q. Do you remember that?

19 A. I remember that somewhat.

20 Q. At an earlier stage we talked about this a lot as to whether we could give the
21 document to you and a -- and we asked you whether a court officer came to take your
22 testimony?

23 A. Yes.

24 Q. Now, for the Court, please, and for my eminent learned colleagues, I'm going to
25 provide you with reference of said document. CIV-OTP -- CIV-OTP-0057-1371.

1 And I shall, therefore, read an excerpt of said document, which contains your
2 statement. I read, quote: "On Friday, 25 February 2011, at approximately 9 o'clock,
3 we were alerted by noise of gunfire on the road not far from the mosque. We
4 approached the mosque in order to see what was going on. It was a battle between
5 the youth of the Doukouré neighbourhood and those of the Yao Séhi." End of quote.
6 That is what you stated.

7 A. Well, I said -- I tried to correct that somewhat. Between the Doukouré
8 neighbourhood and the Yao Séhi neighbourhood there was a constant sound which
9 has nothing to do with that day on the Friday, especially with that date the 25th or the
10 26th that I don't recognize. It was always going on. I would not want you to make
11 reference to that because there was a constant going-on opposition between these two
12 neighbourhoods, you see?

13 Q. But you stated that it was on the Friday, 25 February at approximately 9 o'clock.
14 This is what I see here. And you said that it was a battle between the youth of the
15 Doukouré and Yao Séhi neighbourhoods and you confirm that it was constantly
16 going on - we'll come back to that later - and you said that we got close up to the
17 mosque to see what was going on. And at that moment in time, where were you for
18 you to get closer to the mosque?

19 A. Well, in order to avoid any accusations or remarks of this ilk, when there was
20 noise like this, as I said to you, this was constantly going on. There was constant
21 noise. And sometime -- and on the terrace, outside the mosque, you can see outside,
22 you can see everything that's going on on the road. That's what I mean by
23 approaching. I'm not talking about going there, because I'm frightened of fights.

24 Q. So you say that you approached the mosque; however, you declared that you
25 were already at the mosque, so how is it that you approached a location where you

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1 were already at?

2 A. Yes, the hangar is very extensive, approximately 15 metres in length. And
3 inside there were people who were cleaning because it was a Friday. And when the
4 noise occurred, we all came out onto the terrace in order to see what was going on
5 better on the road, sir. Otherwise we didn't go beyond the fence.

6 Q. So when you left the hangar you came to see what all the noise was about.
7 You did not leave that location in order to come and perform your ablutions on the
8 terrace?

9 A. On that day there was no fighting. The Friday I'm talking about there. I
10 apologise, as I said to you there was no fighting first, otherwise I wouldn't have come
11 outside to do my ablutions because it wasn't on that day. There was
12 constant -- when I said that there was constant fighting between them, maybe that
13 was the source of confusion, but on that Friday there was no fighting, but there
14 was -- there were people walking by singing and that was repeated on a number of
15 occasions during the week. And I heard those same voices coming back again and
16 again, and that's why I rapidly performed my intimate ablutions, I came out onto the
17 terrace facing the road in order to see things better in a curious way.

18 PRESIDING JUDGE TARFUSSER: And on this --

19 MR ZOKOU: Yes, Mr President. I'm sorry.

20 PRESIDING JUDGE TARFUSSER: And on this I think we should stop and resume
21 tomorrow morning.

22 And I now just repeat for clarity and for the -- for Maître Altit and Mr Knoop
23 tomorrow we start at 9. From 9 to 10 we have the discussion on 369, on Witness 369,
24 and then we have the break, and at 10.30 we continue with the witness, going to the
25 end. And as I heard that we will have more or less --

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- 1 MR ZOKOU: (Interpretation) I will have finished tomorrow certainly.
- 2 PRESIDING JUDGE TARFUSSER: Okay. So we have a session --
- 3 MR ZOKOU: (Interpretation) I do hope that I will have finished tomorrow.
- 4 Absolutely.
- 5 PRESIDING JUDGE TARFUSSER: We will have a session of two hours from
- 6 9 -- from 10.30 to 12.30, and that's it.
- 7 Okay, thank you.
- 8 MR MACDONALD: Just -- no, no. Prosecution is also arguing orally tomorrow as
- 9 we --
- 10 PRESIDING JUDGE TARFUSSER: Everything has to be done tomorrow.
- 11 MR MACDONALD: Yes. So but we had announced in writing, but I informed the
- 12 Chamber's ALO that we would do it orally --
- 13 PRESIDING JUDGE TARFUSSER: Okay.
- 14 MR MACDONALD: -- tomorrow. So within the hour.
- 15 PRESIDING JUDGE TARFUSSER: With 369 you mean?
- 16 MR MACDONALD: With 369, yes.
- 17 PRESIDING JUDGE TARFUSSER: Well, all parties are going to argue 369 in one
- 18 hour, I think, also less I would say.
- 19 Mr Witness, now you are free until tomorrow, same time as this morning, for you
- 20 8.30, I think. Oui.
- 21 THE WITNESS: (Interpretation) Thank you, Mr President.
- 22 PRESIDING JUDGE TARFUSSER: And we see each other tomorrow at 8.30 for you
- 23 and 10.30 for us for the last session, okay?
- 24 Thank you very much. The hearing is adjourned.
- 25 THE COURT USHER: All rise.

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- 1 THE WITNESS: (Interpretation) Thank you.
- 2 (The hearing ends in open session at 5.01 p.m.)