

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Geoffrey Henderson and
7 Judge Olga Herrera Carbuccion
8 Trial Hearing - Courtroom 1
9 Monday, 4 September 2017
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:21] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:33:05] Good morning, although it is not the
15 best morning, because the Chamber notes la requête aux fins que le témoin 583 ne
16 soit pas considéré comme un témoin expert by the Defence for Mr Gbagbo, a
17 courtesy copy of which was submitted at 19.06 hours, I repeat 19.06; that
18 is 7.06 p.m. on Thursday, 31 August 2017.
19 The Presiding Judge notes with dismay the timing of this request. The schedule
20 for the appearance of this witness has been known for several weeks, even months.
21 The parties have been on notice since June 2nd that in light of the fact that P-583 is a
22 staff member of the OTP, his appearance might happen at short notice and that,
23 accordingly, they must be ready to proceed with his questioning at all times.
24 Notwithstanding this, the Chamber has to learn last Thursday that he would not be
25 available to appear on that day due to holiday plans and to waste the afternoon

1 hearing session.

2 As to the Defence requests, the Presiding Judge considers it unacceptable that on 31
3 August the Defence for Mr Gbagbo remained silent on the fact that they were
4 preparing this request, which was obviously already at an advanced stage and that
5 the courtesy copy was sent not only well beyond working hours, but also on the
6 eve of a long weekend, Friday, 1 September, being an ICC holiday. This all the
7 more so when the session scheduled for Thursday afternoon could have been put to
8 good use for the purposes of allowing the request to be discussed and the Chamber
9 to deliberate upon it in advance of the beginning of the witness testimony, and this
10 without mentioning the fact that the circumstances of Witness P-583 mentioned in
11 the request have been known for years to the Defence teams.

12 In this scenario, the timing of the request appears purely disruptive, as such neither
13 justified nor justifiable. And, indeed, the Defence makes no attempt to provide
14 any such justification for such timing in their filing.

15 Once again, the Chamber is put before a fait accompli since this leaves no option to
16 the Chamber but to give the floor to the OTP to respond to the request and to delay
17 the start of the questioning.

18 The OTP has the floor to respond to the request.

19 MR MACDONALD: [9:37:04] Thank you, your Honour. With your permission,
20 your Honour, I would give the floor back to the Defence of Mr Gbagbo because I
21 see they've added jurisprudence to their list of evidence, so I think they need to
22 supplement their request.

23 PRESIDING JUDGE TARFUSSER: [9:37:19] No, no, no. I give you the floor and
24 that's it. Please go ahead.

25 MR MACDONALD: [9:37:24] Thank you. Well, first of all, it is indeed very

1 unfortunate and you've made the comments that the Prosecution wanted to make
2 in limine to reject outright the request. It is too late. And for that as an example
3 if the Chamber was to go down that road, I just want to recall a decision in the
4 Katanga case where a stay of proceedings, which is much more of a drastic remedy,
5 was outright rejected by the Trial Chamber because not having been filed
6 expeditiously, and the Appeals Chamber maintained that decision. So in the
7 Katanga case, at which time I think it was still a joined case, it's filing 2259, so if the
8 Chamber was to go down that road it is a remedy available to the Chamber.
9 The main point we want to make, your Honour, is the Defence is trying to import
10 into the ICC legal regime a French approach to lists of experts, and this Court is
11 basically a Court with its own legal regime. What you do have is norm 44, which
12 does create a list of experts. But we submit that while it is a norm adopted in the
13 Regulations of the Court, it is of an administrative nature in the sense that it
14 provides access for the Chamber to, if it did wish, to name experts, and you have a
15 list there that is helpful beyond the choices of the parties. And also the parties,
16 being the Prosecution or Defence, can look into those lists if need be to select
17 experts to help them either during their investigation, preparation of their cases or
18 experts to call.
19 Now, this institution has also recognised that the model of a party assigning an
20 expert is also feasible, and that is why I sent to everyone the Katanga decision and
21 Ngudjolo, which basically is the same, meaning that an expert named out or can be
22 used outside of that list. And you have such examples in the name of
23 Mr Eric Baccard, a former staff -- well, not a former, sorry, a staff member of the
24 Office of the Prosecution.
25 In this case, your Honour, the Chamber has also named on the fitness issue experts

1 that were not on the list. Now, this is just a general background as to norm 54.
2 The two points of the Defence are Mr Xavier Laroche is an employee of the Office of
3 the Prosecution, and he happens to be a gendarme, and they allege that the French
4 army or gendarmerie was involved in the conflict.

5 I will not entertain the second ground, your Honour, because I think it is
6 unsubstantiated, borderline frivolous, again going into the arguments that the
7 Defence have been indicating, anything French is basically foreclosed. I won't go
8 any further because I would have a lot to say on that.

9 The first point is he's a member of the Office of Prosecution. Now, what is his
10 function? What I'm about to say can be asked to the witness directly. He's a
11 member of the forensic and scientific section of the office. He is not an analyst, he
12 is not an investigator.

13 Now, the Defence will raise the issue that he sat on interviews. If you look at the
14 interviews he sat on and his role and his CV, one of the ways of identifying victims
15 is to interview those victims. That's the first step. Beyond scientific evidence in
16 the form of DNA, for instance, or wounds, the first thing is when you have a video
17 is to go and scientifically go through with a witness what the witness remembers
18 beforehand and afterward and what you have on the video.

19 That was the purpose of sitting on interviews. And this can be elicited from the
20 witness himself in questioning.

21 The Defence cites to one example. If you read the full transcript of that decision,
22 and I refer to the case from the ICTY as referenced by the Defence, this gentleman,
23 who was indeed a member of the Office of the Prosecutor at the ICTY but was more
24 than that, he was an investigator, he was an investigator that participated in the
25 investigation. And in that specific case, for their own reason, the Prosecution

1 wanted for this witness to also be declared an expert so he could give opinion
2 evidence. We're not in this situation.

3 Also in that same case, your Honour, Milutinovic, I'm sorry if I don't pronounce it
4 correctly, I think I'm going by heart right now, I don't have it in front of me, in that
5 same case Mr Baccard and another OTP expert, scientific expert, were recognised
6 by the Chamber in that same case.

7 I have given you also, your Honour, samples of decisions, because the only one that
8 exists is the one that is identified by my colleagues, but the other examples that we
9 have, and they explain that decision where Mr Coo was not recognised as an
10 expert, indicate, first of all, what is an expertise, they define it, and indicate, and
11 this is important, and this is the same regime we're in front here at the ICC also
12 independently of norm 44, is that the best way to test any bias or question of
13 impartiality is by cross-examination.

14 And in the French system, that's not the way it works. A magistrate will have lists,
15 can go beyond the suggestion of the parties, can even go beyond the expert lists.
16 He only needs to justify then his decision. And when they're not happy with the
17 content of an expertise, it's not a cross-examination that they have, it's the
18 opportunity also to file and submit expertise.

19 So the question of an expert is administratively ruled differently than before an
20 international organisation and indeed common law.

21 I will say more. In the French system, if a police officer kills a civilian and is
22 charged with murder, the gendarmerie will do the investigation, but they're also
23 under the same ministry, department of the interior, and that doesn't cause any
24 issues if state labs do and conduct the investigations or the expertise, sorry,
25 scientific expertise.

1 So, therefore, therefore, the Defence's request should be rejected. They will have
2 an opportunity to question Mr Xavier Laroche at length. The chain, it's a question
3 of weight ultimately, it's a question of weight. Thank you.

4 PRESIDING JUDGE TARFUSSER: [9:46:19] Thank you.

5 The hearing is suspended for the decision on this issue.

6 THE COURT USHER: [9:46:25] All rise.

7 (Recess taken at 9.46 a.m.)

8 (Upon resuming in open session at 10.13 a.m.)

9 THE COURT USHER: [10:13:35] All rise.

10 Please be seated.

11 PRESIDING JUDGE TARFUSSER: [10:14:17] The Chamber, having read the

12 courtesy copy of the request sent by the Defence for Mr Gbagbo on 31st

13 August 2017 at 19.06 hours -- I notice that this has been filed, this request has been

14 filed at 9:53 of today. Request supported by the Defence for Mr Blé Goudé by

15 courtesy copy dated 1st September.

16 Having heard the arguments by the Prosecutor this morning, decides as follows:

17 First, Regulation 44 of the Regulations of the Court does not prevent either the

18 parties or the Chamber itself from appointing an expert not included in the list

19 created and maintained by the Registrar.

20 Second, Witness P-583 is a staff member of the Office of the Prosecutor appointed

21 by the Office of the Prosecutor for this case as a forensic expert and as such not

22 involved in investigative activities.

23 Three, the appearance of Witness 583 as an expert witness does not prejudice or

24 otherwise affect the right of the Defence to challenge his findings either through

25 their own examination of that witness or, alternatively, by calling their own expert

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1 as a witness if they have appointed one.

2 For these reasons, the Chamber rejects their request for Mr Gbagbo, and with a
3 delay of 2 hours and 15 minutes, we can start with the witness.

4 And I would ask the court usher to bring the witness in. We will continue as
5 always until 11, then the ordinary hours, keeping in mind that for this week we
6 have, I think, four witnesses that we have to go through the four witnesses by the
7 end of the week. And therefore as always, if need be, we will have extended hours
8 if there is a need for this.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE TARFUSSER: [10:17:35] Good morning. Good morning,
11 Mr Witness.

12 WITNESS: CIV-OTP-P-0583

13 (The witness speaks French)

14 THE WITNESS: [10:17:42](Interpretation) Good morning, Mr President.

15 PRESIDING JUDGE TARFUSSER: [10:17:44] Mr Laroche, I would ask you first
16 of all to tell us your -- to identify yourself completely, with the name and date,
17 place of birth, et cetera.

18 THE WITNESS: [10:18:03](Interpretation) Mr President, my name is
19 Xavier Laroche, born 26 January '72 in Thiers in France. And currently I work as
20 an expert in the forensic department in criminalistics in the OTP.

21 PRESIDING JUDGE TARFUSSER: [10:18:31] You say "currently", what do you
22 mean? Since when do you work at the OTP as a staff member?

23 THE WITNESS: [10:18:46](Interpretation) I joined the OTP on 2 February 2015.

24 PRESIDING JUDGE TARFUSSER: [10:18:52] And before joining the OTP, what
25 did you do? Where did you work? What was your occupation?

1 THE WITNESS: [10:19:07](Interpretation) Before joining the OTP, I was a
2 criminalistics coordinator in the Special Tribunal for Lebanon in the Office of the
3 Prosecutor.

4 PRESIDING JUDGE TARFUSSER: [10:19:23] And while you were living in
5 France, before coming to international organisations, what was your occupation?

6 THE WITNESS: [10:19:45](Interpretation) From 2000 to 2006, I was head of
7 ballistics department, forensic expert in the national gendarmerie; to 2006 to 2009
8 forensic expert in the Commission of Inquiry of the UN mission in Beirut.

9 PRESIDING JUDGE TARFUSSER: [10:20:10] Thank you very much. Now I
10 would ask you, as you are perfectly aware being part of this building, that we have
11 two languages, two working languages. I speak English, you speak French. We
12 have interpreters and court reporters to take care of, so I would like to ask you to
13 speak slowly in order to give them all the time needed to do a proper job and to
14 write down and to interpret properly what we are saying, and this becomes even
15 more important and necessary when you will be questioned in French. So there is
16 a tendency to respond immediately and maybe to overlap. And we must try to
17 avoid this, okay, so if I give you a sign sometimes just slow down, okay? Thank
18 you very much.

19 Now, of course, you know that this Chamber has been established to try the case of
20 Mr Gbagbo and Mr Blé Goudé, the case of the Prosecutor against Mr Gbagbo and
21 Mr Blé Goudé. And you're here as an expert witness, and as such you are obliged
22 to say the truth of what you did, what your findings were, and to say the truth
23 about how you did your expertise and to respond truthfully to the questions, the
24 parties, first the Office of the Prosecutor and then the Defence parties will put to
25 you.

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1 Obviously, if you have some problems, if you're not at ease or you have any other
2 issue, just tell me and we will try to address it. So I repeat, your only obligation is
3 to tell the truth and to that effect, I would ask you to read out the formula, the
4 solemn undertaking, which you have in front of you.

5 THE WITNESS: [10:22:41](Interpretation) I solemnly declare that I shall speak the
6 truth, the whole truth, and nothing but the truth.

7 PRESIDING JUDGE TARFUSSER: [10:22:48] Thank you very much.

8 The last thing that I have to tell you is that not saying the truth is an offence against
9 the Court and as such punishable. And now I give the floor to the Office of the
10 Prosecutor for his questioning.

11 Maître Altit.

12 MR ALTIT: [10:23:16] (Interpretation) Thank you, Mr President.

13 Your Honours, on behalf of the Defence team, the questioning will be done by
14 Professor Jacobs, and he would like to address the Chamber very briefly regarding
15 our manner of proceeding. With your leave, your Honour.

16 PRESIDING JUDGE TARFUSSER: [10:23:47] Yes, Mr Jacobs.

17 MR JACOBS: [10:23:51] (Interpretation) Mr President, your Honours, since the
18 Defence of Laurent Gbagbo indicated in its filing 356, 3 December 2015, the Defence
19 does not accept that this witness would be an expert in the subjects indicated, so it
20 would be normal for us to request a voir dire before going into the substantive
21 questioning. Just like in 2015, we indicated that we would not accept his status as
22 an expert. That is why we are requesting a voir dire before we proceed. Thank
23 you.

24 PRESIDING JUDGE TARFUSSER: [10:24:39] And I give the floor to the Office of
25 the Prosecutor for his questioning, and go until to the end of your questioning,

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1 please.

2 MR MACDONALD: [10:24:49] Thank you, your Honour. We were going to
3 make that recommendation. And the first topic that I will broach obviously is the
4 factual information relevant to the question of the expertise.

5 PRESIDING JUDGE TARFUSSER: [10:25:08] Yes. Just I would also like to ask
6 you to go to the end, also when you have done this you go to the merit of the
7 expertise, and then when you have finished I give the floor to the Defence.

8 MR MACDONALD: [10:25:23] Yes, your Honour.

9 QUESTIONED BY MR MACDONALD: (Interpretation)

10 Q. [10:25:26] Mr Laroche, or Mr Witness, to begin with, do you have your
11 reports in front of you?

12 A. [10:25:49] I have my report with me.

13 Q. [10:25:52] Very well. Let me ask you -- or, rather, I will ask you some
14 questions about your CV, and to that effect please take the report of 7 January 2016,
15 ending with 0089-1030, Annex 3, or which is indicated in English as attachment
16 number 3.

17 And for the interpreters, there are French versions in other materials of the
18 Prosecution, other reports are available, and I can mention one. The ERN which
19 is 0094-4253. And the CV is also included in that one.

20 Now, Mr President, I would like the 0094, that is the CV, to be tendered into
21 evidence immediately, and I will deal with the pertinent elements, that is 0089-1094
22 up to page 0089-1100.

23 Now, Mr Witness, can you talk to us about your university studies. Where did
24 you do them and what did you study?

25 A. [10:28:08] Mr President, after my baccalaureate C, I did special mathematics,

1 after which I went to the military school at Saint-Cyr, and I graduated in 1996, with
2 a master's in scientific engineering.

3 Then I joined the gendarmerie officers course in Melun, and then I went to the
4 faculté de Sceaux for a course in criminal law. And after a year of application in
5 the school of gendarmerie, I commanded a squadron of mobile gendarmerie. And
6 from 2001 to 2003, I did a master of science in forensic sciences, that is a second
7 masters in criminalistics in the Lausanne University in Switzerland.

8 In 2001, I also did a university degree in wound ballistics in the University of Lyon.

9 You can see all those qualifications and diplomas in the CV in various domains of
10 criminalistics, including ballistics sciences.

11 Q. [10:30:01] Now, regarding your professional experience, have you already
12 been declared an expert before any tribunal?

13 A. [10:30:28] When I served as a ballistics expert in the national gendarmerie in
14 Paris, I was considered as an expert by a certain number of magistrates, and I
15 drafted about a hundred reports, and this was under Article 158 of the Criminal
16 Code of France.

17 Q. [10:31:01] And which were those domains?

18 A. [10:31:08] Regarding my expertise in France, I was a ballistics expert and an
19 expert in criminalistics which was responsible for major crime scenes in France. I
20 was also an expert in the National Centre for the Identification of Victims of
21 Catastrophes and I participated in many such incidents.

22 Q. [10:31:41] When we look at your CV on this last point, identification of
23 victims of catastrophes, I understand that there were two assignments, one was in
24 Sri Lanka and the other was in Thailand, I believe, following the tsunami that
25 occurred. Let's start with the latter, in other words the tsunami. Why were you

1 chosen, first of all, and, secondly, what was the specific mission given to you at that
2 time?

3 A. [10:32:23] I was sent there just after the tsunami that hit Colombo in
4 Sri Lanka. It was to take part in an international team. Given that I had a
5 masters in criminalistics from Lausanne, that meant that I had knowledge of and
6 experience in other areas other than explosives and ballistics, DNA, fingerprints
7 and many other areas as well as pertaining to criminalistics. I would say that my
8 profile was one of being a general expert in criminalistics, which meant that in
9 Sri Lanka it was possible to intervene quickly. And in Thailand I worked there as
10 a team leader in the investigation for complex cases.

11 I had a team of several experts, around about 15 people, and our task was to
12 identify the children who were victims of the tsunamis, in other words, any bodies
13 between 50 centimetres and 1 metre 40.

14 I was also involved in other identification exercises for victims of catastrophes, for
15 airline catastrophes, for instance, the Flash airlines flight that crashed in Sharm El
16 Sheikh in Egypt.

17 Q. [10:33:51] Very well. We'll go into further details later on matters
18 pertaining to identification and the different methods used to identify victims of
19 catastrophes.

20 There's another point that I'd like to discuss with you and the operation of the
21 device to your right, it's called CEDAR, and I'll spell it, C-E-D-A-R. I understand
22 that you were trained to use such a device, so could you explain this to us, please?

23 A. [10:34:40] Your Honour, the CEDAR system is a system for audio
24 improvement. It's a full system that makes it possible to apply different filters to
25 an audio signal so as to eliminate certain noises that are disturbing, and it means

1 that we can have a clearly audible audio signal as a result.

2 We obtained this system from the forensic science section, and I was trained in
3 Cambridge in May 2015, enabling me to use this system and to be a technician
4 capable of working on any audio recordings and improving the quality thereof.

5 Q. [10:35:41] We'll go into that in further detail. I understand that you have
6 used this device with a video that is on the record, 0077-0411, if I'm not mistaken.
7 So with CEDAR it's possible to clean out the ambient noise. Now, as regards the
8 application to this case, I'd like to know whether it was necessary to use filters?

9 A. [10:36:20] In drafting the report that we're dealing with here, no filter was
10 used. The CEDAR system was used simply to give a simultaneous viewing of the
11 video and the audio signals spectrogram, the audio signal that was present on the
12 video.

13 Q. [10:36:57] Very well. So you took the video as such, and we'll see later on,
14 in technical terms all you did was take a look at the video, you viewed it and you
15 saw the audiogram of that same video and there was a correlation between the
16 two?

17 A. [10:37:20] Absolutely, yes, viewing simultaneously the video and he
18 spectrogram.

19 Q. [10:37:29] Very well.

20 (Speaks English) If you'll allow me just one second, I think, your Honour, these will
21 be the only questions I'll be asking at this stage on the expertise topic. I just want
22 to make sure I'm not forgetting anything.

23 (Interpretation) Very well, Witness. I'd now like to go through some of the
24 reports, the expert reports that you produced. But before that, perhaps I could just
25 explain to the Court that there are mission statements, letters in each of your

1 reports. Could you explain what these mission statements are and why they are
2 there?

3 A. [10:38:46] In carrying out any forensic and technical police activity, it's
4 necessary to have a number of parameters to make it possible in as short a time as
5 possible to carry out all of the necessary police and scientific acts at the scene of the
6 crime.

7 So whether it's at national level in France where the commission of experts sets out
8 the detail of the mission, and at the international level there's a letter of instruction
9 that's sent to the experts, the idea being to give information and also a clear
10 framework in which to fit the police and forensic actions to see what are the limits
11 as to what is actually done in situ.

12 Q. [10:39:39] The first report I'd like to take, that I'd like us to look at is
13 CIV-OTP still 0084-4253. For the record, let me say that the letter of instruction is
14 on page 0084-4294 to 4295.

15 Before going further let me address the Chamber in English.

16 (Speaks English) Briefly, your Honour, I'm going to go through the reports one by
17 one, leading up to the last one, the most important one, the question of the video.

18 So I'll be -- I'm not going in chronological order of when these reports were drafted
19 or the missions executed, and I'll be going briefly to each and single one of them,
20 except the last one where, obviously, I'll be spending more time.

21 (Interpretation) I think everybody can see the mission letter or letter of instruction.
22 I would ask you to summarise in your own words the acts that you carried out in
23 producing this report.

24 A. [10:41:45] The report does not concern an investigation of a crime scene as
25 such. It's to do with documentation pertaining to a crime scene. So what we did

1 in technical terms at the Djeni Kobenan crossroads at Abidjan was to take photos,
2 and this was to obtain a 360 degree panoramic view. And also there are video
3 recordings, if I'm not mistaken, as well. The purpose was in relevant terms to
4 cover the area concerned as regards the facts allegedly carried out at the
5 Djeni Kobenan crossroads at Abidjan.

6 Q. [10:42:42] Very well. In this report is there any expert act as such that leads
7 to an opinion?

8 A. [10:43:05] The forensic police acts were quite simply photo and video
9 recordings. And if there's not been any change made to those recordings, they
10 were transferred to the information and evidence unit in the state in which they
11 were taken in situ. And there is no paragraph where there was any interpretation
12 or discussion in the report.

13 Q. [10:43:36] So this is what is commonly known as a technical act?

14 A. [10:43:49] Absolutely, a technical act involving recording at a crime scene,
15 recording video and audio.

16 MR MACDONALD: (Speaks English) So, your Honours, the intervention in this
17 report, we will ask its admission, so the report to be submitted is 0084-4253.

18 And I draw your attention, your Honour, to the 360 presentation, which I believe
19 that one was submitted, if I can confirm with my colleague, Ms Rodriguez. Yes,
20 she nods. 0084-3957. So it is already submitted on the record, your Honour, but I
21 would also ask that the report leading to that be submitted.

22 Q. (Speaks French) Very well, Witness. The next report I'd like us to discuss
23 is 0084-4305. This is a description of a panoramic view in general terms and a
24 video recording of crime scenes close to the carrefour de la Vie and the RTI
25 building in Abidjan, Republic of Côte d'Ivoire. Once again, we can see the

1 instruction letter, the mission letter on 4350 and 4351 of the report.

2 So, Witness, once again, what were the technical acts carried out at that place?

3 A. [10:46:08] The technical acts carried out close to the carrefour de la Vie and
4 the RTI in Abidjan and presented in the report are strictly identical to those in the
5 previous report at Djeni Kobenan, in other words, photo and video recordings of
6 the different scenes of the crime of the alleged events, alleged facts, without there
7 being any interpretation thereof whatsoever.

8 Q. [10:46:59] Very well. Thank you. We're talking here about the 360 degree
9 presentation, but it is not on the record. Well, we've got two possibilities. My
10 colleagues have taken a look, and they'll see whether it's going to be submitted to
11 the file. If not, I will ask my colleagues whether that will be enough or should we
12 view this. It's a question of doing things as quick as possible. I don't think it
13 should be a problem.

14 MR JACOBS: [10:47:38] (Interpretation) No objection, your Honour.

15 MR ZOKOU: [10:47:48] (Interpretation) We have no objection, your Honour.

16 MR MACDONALD: [10:47:53] (Interpretation) Thank you. I'd like to thank
17 my learned friends.

18 Your Honour, I'm referring to the 360 degree presentation, asking it to be tendered
19 into evidence with the agreement of Defence, CIV-OTP-0084-3959.

20 Q. And last question on the report, on this report. There is no opinion that was
21 included in the report, was there, Mr Witness?

22 A. [10:48:37] There is absolutely no opinion and no interpretation included.

23 MR MACDONALD: [10:48:43] (Interpretation) I would also ask that this
24 report be tendered into evidence for the case, 0084-4305.

25 The next report that I would like to deal with is 0084-4361, and I read:

1 "Description, measures, sketches, panoramic and general photographs, video
2 recordings of the scene of the crime and its environs in Abobo, Abidjan, Republic of
3 Côte d'Ivoire."

4 Once again, in this report we find on page 4404 the mission letter, 4404 and 4405.

5 Q. Once again, what is the situation as regards the acts carried out for the
6 purposes of drafting this report?

7 A. [10:50:16] This report includes forensic police acts carried out at the
8 carrefour Banco in Abobo or in its neighbourhood, and they are of three different
9 types, similar to the two previous reports that we've mentioned, photographs taken
10 with a view to creating a panoramic view and video recordings.

11 This report also includes a sketch that was made with the assistance of a Leica
12 DISTO laser set out on page CIV-OTP-0084-4371.

13 I'd like to point out that for all of the reports of documentation at the crime scene,
14 we used the 360 panoramic measurements and the DISTO was used for this sketch.
15 At the time we did not have a 3D laser scanner. We acquired that in the course
16 of 2015, and with that it's possible to make more accurate recordings at different
17 scenes. It's also possible to have a 3D reconstitution of the scene of the crime and
18 to create a 3D model or even to have an interactive reconstruction of the scene of
19 the crime.

20 Q. [10:51:57] Very well. Before we turn to the sketch, I would turn to my
21 learned friends once again as regards the 360 degree panoramic view, which
22 strangely enough is not on the record, but perhaps we could show it, a few excerpts
23 from it, or I could quite simply ask my learned friends whether they could accept it
24 as they did for the previous one. That's just for the panoramic view.

25 MR JACOBS: (Interpretation) No objection, your Honour.

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1 MR ZOKOU: (Interpretation) Your Honour, we have no objection either.

2 PRESIDING JUDGE TARFUSSER: [10:52:47] Thank you very much.

3 MR MACDONALD: [10:52:49] (Interpretation) Once again, I would like to
4 thank my learned friends.

5 And as for the ERN, I would ask that this be tendered into evidence, 0084-3961.

6 Q. On this last point, you said that it was possible to have a 3D detailed
7 representation of the places. Today, would it be possible to have such a 3D
8 representation?

9 A. [10:53:45] Your Honour, currently it would be possible to have a 3D
10 augmentation of the scene by using a 3D laser scanner, but also it would be possible
11 to make -- using a drone to take aerial footage, and also with the aerial videos,
12 photos extracted from the videos and different shots taken using a specific software
13 that makes it possible to reconstitute a 3D model based on the 2D aerial images.

14 Q. [10:54:19] The reason I'm putting the question to you is that when the
15 Prosecution was to submit its incriminating evidence -- well, I understand what
16 you did. These are perfectly normal technical measures that were taken, but now
17 the OTP has a different technology that is more sophisticated and more developed;
18 is that correct?

19 A. [10:54:48] Yes, absolutely, your Honour. The sketch that was made was
20 using measures, measurements taken using a laser DISTO where inevitably there's
21 a degree of uncertainty in terms of the measurements because we're talking here
22 about long distances. The advantage of a 3D laser scanner is that it records the
23 scene of the crime with several hundreds of thousands of points per second, and
24 the accuracy is significant, it's 1 millimetre at 15 metres.

25 Another advantage is that it makes it possible to reconstitute the scene of the crime

1 in 3D, and you can move around at any position at the scene of the crime so that
2 you can visualise the scene. And there's another example, a last one that I can give
3 you, and that is the possibility using the 3D model to take any measurement
4 because, after all, it is a cloud of points of dots that have been localised within
5 the 3D model and any measurement can be taken.

6 Q. [10:55:59] In other words, this is a technology that makes it possible to move
7 around the scene without having to go there, without the Chamber having to go
8 there; is that correct?

9 A. [10:56:18] To a certain extent, yes. As regards the panoramic view, well,
10 that just gives us a panoramic vision, a view of the different points where the
11 photos were taken. But with a 3D model, it is possible to move around within the
12 scene of the crime and even perhaps to switch over to virtual reality.

13 Q. [10:56:46] So if the Chamber were to conclude that this might be useful, it is
14 something that you or some other laboratory could do, a scientific laboratory that
15 would have the same technology; is that correct?

16 A. [10:57:08] Yes, absolutely. I think that any lab or the forensic unit at the
17 OTP, but any lab that had a 3D laser scanner and a drone would be able to do this
18 in terms of forensic policing.

19 Q. [10:57:34] In this report 4261, is there any opinion included in it?

20 A. [10:57:51] In this report, as in the two previous reports, there is no opinion
21 nor interpretation included. The sketch is the only thing that has a certain margin
22 for error, because the measurements have been taken in situ at a long distance and
23 in difficult circumstances given the traffic and the pedestrian movement.

24 Q. [10:58:19] Just to conclude then, the measurement device is a Leica DISTO; is
25 that correct? Leica produces microscopes, cameras or lasers. Could you describe

1 the apparatus to us? Could you tell us briefly how it works? Could you explain
2 this to the Chamber?

3 A. [10:58:46] The Leica DISTO, it's the D8 in reference, it's a small rectangular
4 box. It's a parallépipède shape. If there's a laser signal that's emitted that it hits
5 an object, that signal is reflected back and captured by the DISTO depending on the
6 speed of its journey. The system recognises the speed of the laser ray and it can
7 determine the distance with 0.01 centimetre's accuracy.

8 Q. [10:59:29] Very well. I would ask that report 0084-4361 be tendered into
9 evidence.

10 I'd now like to move to report 0083-1419, identification of places visible on a video
11 recording and on a photograph.

12 I understand, your Honour, that we will be referring to video 0083-1394 and a
13 photograph that we find in our evidence 0051-2106 and 2107. Once again, the
14 letter of instruction is annexed on page 1467 and 1468.

15 Could you explain to us once again what was the purpose of your intervention in
16 drafting this report?

17 A. [11:01:19] Your Honour, in the drafting of this report, initially I extracted the
18 images, the questioned documents. I then carried out a comparative analysis of
19 those files, that is the photographs and the various relevant images that had been
20 developed by ourselves at the crime scene. And then, thirdly, we compared all of
21 the relevant extracted images that we took from the videos with the images that are
22 referred to as comparison documents. And having done that, I carried out an
23 interpretation in order to draw a number of conclusions.

24 MR MACDONALD: [11:02:28] (Speaks English) I'm sorry, your Honour. I'll
25 speak in English. With your permission, I'm looking at the time. Either we break

1 here, I finish with this report and then we move on to the last two reports.

2 PRESIDING JUDGE TARFUSSER: [11:02:36] I think you've finished this report,
3 so we have a continuity. Thank you.

4 MR MACDONALD: [11:02:46] (Interpretation)

5 Q. [11:02:48] In other words, here there was an interpretation, therefore an
6 opinion. Can you explain your conclusions and tell us how you drew those
7 conclusions and what field of your expertise you drew upon in order to make those
8 conclusions?

9 A. [11:03:21] First of all, the field of expertise is simply criminalistic comparison
10 between the so-called questioned document and the comparison document. This
11 is something that's done extremely often in forensics. We take a projectile which is
12 found on the crime scene and compare it with another one. We compare fibres,
13 for example, that we found at the crime scene with the fibres found on a suspect's
14 clothing.

15 In this particular case I carried out a comparison of various images, these so-called
16 questioned documents either which came from the videos and I compared them
17 with all of the photographs that I had taken at the crime scene at these places a few
18 years later.

19 What I noticed is that there are similarities between the photographs in the
20 questioned documents and the comparison documents, the various sequences of
21 images as mentioned in the report, and over and beyond that in the extracted
22 images, that is from numbers 02 to 15 in the questioned documents, I noticed that
23 there was writing on a sign, and I carried out ordinary examination which is a
24 question of commonsense; in other words, to check that there was a hotel in
25 Abidjan, to check its telephone number, and based on satellite images, I compared

1 whether the work indicated on the sign, indeed, corresponded to what we could
2 see in the satellite image.

3 I was able to draw a conclusion that the zone that was observed in the 802 to 815
4 was indeed, corresponded indeed to images that existed in Abidjan at the Palm
5 Club.

6 So I identified the various question documents and compared with the panoramic
7 comparison, the photographs that were taken in 2015, and there is a certain level of
8 certainty. A number of factors come into play, of course, the dates of the video
9 and the dates when the photos were taken, that is a four-year time period, and of
10 course anything -- things can change, like roadwork or changes in the building,
11 et cetera.

12 Q. [11:06:59] So I'd like to come back to something, an expression you used.

13 You referred to commonsense. In other words, any person who had taken such a
14 video based on the information that you have in the report could conclude that it's
15 the same location, it's not any more complicated than that; is that correct?

16 A. [11:07:34] Yes, there are a number of technical acts that are part of forensics,
17 in particular, to extract the video images and to compare them and to be able to
18 locate them on a satellite image and make the comparisons, but the comparison
19 itself, in my opinion, is something that's just commonsense.

20 Q. [11:08:06] Very well.

21 Your Honour, I'd like to ask that the report 0083-1419 be submitted into evidence.

22 And I think it's time now for the break before we go on to the next report, which
23 will be the 0076-1952.

24 PRESIDING JUDGE TARFUSSER: [11:08:29] All the documents are submitted in
25 the record of the case.

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1 And now we break for half an hour, we come back at quarter to 12 for the second
2 session.

3 Thank you. The hearing is adjourned.

4 THE COURT USHER: [11:08:44] All rise.

5 (Recess taken at 11.08 a.m.)

6 (Upon resuming in open session at 11.46 a.m.)

7 THE COURT USHER: [11:46:58] All rise.

8 Please be seated.

9 PRESIDING JUDGE TARFUSSER: [11:47:18] Good morning. Good morning
10 once again. Good morning, Witness.

11 I give the floor immediately to the Office of the Prosecutor for his questioning.

12 MR MACDONALD: [11:47:33] (Interpretation) Thank you, your Honour.

13 Let's continue with the next document. I indicated the number earlier,

14 it's 0076-1952. And the title is as follows "Expert report of the crime scene at the

15 Sicogi-Lem mosque and the environs in Yopougon, Abidjan, Republic of

16 Côte d'Ivoire."

17 Q. [11:48:12] What was the purpose of your mission here? Again, the mission
18 statement is to be found in the document, but can you describe this case in
19 particular and what kind of expertise you carried out in this instance?

20 A. [11:48:49] In the case of this expert report it wasn't merely crime scene
21 documents, but a crime scene investigation, and there were several parts in the task
22 here. First of all, provide a full and general description of the crime scene, that is
23 the Sicogi-Lem mosque and the environs. There were aerial footage and in order
24 to make 360 panoramic images and also a number of general images.

25 We then examined the crime scene, the mosque and the environs. In particular,

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1 we did reconnaissance and sealed and preserved any trace material or physical
2 evidence that we believed to be relevant. And is the case of any forensic crime
3 scene investigation, any traces that were found at the crime scene were analysed in
4 the laboratory.

5 Q. [11:50:08] Very well. Let me interrupt you.

6 The mission statement is to be found on page 2083 and 2084. If you will allow me
7 just a moment, I've lost the reference. Here we are. And I'd like to speak in
8 English to the Chamber.

9 (Speaks English) So the 360 degree presentation, your Honour, is already submitted
10 on the record via another witness that was used, I can't remember his number, but I
11 remember quite well because I questioned the witness and showed the 360 to the
12 Court, 0078-0085.

13 (Interpretation) Mr Witness, let's discuss the samples. Did you take samples and,
14 if so, why and what kind of samples?

15 A. [11:51:22] Mr President, as is the case in any crime scene investigation, you
16 need to have context elements once you arrive on the scene, because you cannot
17 necessarily stay for a very long time at the crime scene and you can't collect
18 anything. This information was provided by the OTP. We learned that the
19 Sicogi-Lem mosque was attacked in February, 25 February 2011, and that the guard
20 of the mosque had been burned alive. In addition -- and that there had been
21 shooting.

22 In addition, some of the areas around the Sicogi-Lem building had also been
23 burned, the CNICOCY. We began by examining the crime scene, a sort of initial
24 approach, and we collected any valid information, and we took samples. In
25 particular, we took samples of black traces that could be signs of charring on the

1 ground, on various objects, on the walls, as well as books that could be potentially
2 be the Koran.

3 As regards those books we took other samples. We took photographs of
4 undamaged Korans in order to be able to compare and potentially identify those
5 that had been damaged.

6 We also took other samples. In particular, a metal object was sampled from the
7 wall in the courtyard in front of the mosque, and we used metal detectors in order
8 to be able to find any metal objects that might be lodged in the wall.

9 This object was analysed in further detail in order to discover where it might have
10 come from. In particular, it was identified as being most likely the jacket of a
11 weapon, the calibre of which was 7.62x39.

12 So all of the forensic police investigations were carried out on the various objects
13 identified but, of course, we did not only examine signs of charring, burning, or
14 evidence of the use of weapons, fire weapons; we looked for any kind of indication
15 or evidence that might be relevant.

16 Q. [11:55:12] Very well. Let's go back to two or three points, if you will, that
17 you mentioned. And I'd like to look at page 1968, which we could have on the
18 screen if it's helpful for the Chamber. This can be done easily. And it can be
19 shown to the public as well. The name mentioned on this page is not protected.
20 What exactly is the sketch that we can see here on this page?

21 A. [11:56:10] This is a sketch which is part of the general description of the
22 crime scene. This is what we do at a crime scene. This is the initial identification,
23 a baptism, as we call it, of the area to show where the various buildings are located.
24 This enables us to codify thereafter any evidence we collect. So "LEM" is the
25 Sicogi-Lem mosque, and then you have the sub-parts, and you have the various

1 indications of where the different samples were found.

2 Q. [11:57:08] I'd like to take a look now at 1997 and this is an aerial view.

3 Again, this refers to the place that we're discussing?

4 A. [11:57:32] Yes, this is a satellite image dated December 5th, 2014. You can
5 see the outer wall around the mosque. You can see the mosque itself, the main
6 entry gate.

7 Q. [11:57:57] In the following pages, although we don't need to show them on
8 the screen, if I understand correctly, we also have a general view of the place. I'd
9 like to concentrate on the building identified as "LEM-01". Did you find any
10 charred substances anywhere in that area, that is, on the mosque building itself?

11 A. [11:58:53] As regards the mosque, that is LEM-01, we noted that the roof and
12 the base of the roof showed signs of charring that had resulted from burning,
13 whereas others had been replaced. We also noticed that certain lower parts of the
14 roof in corrugated iron also showed signs of charring at the south-west angle of the
15 mosque. We also identified inside the mosque itself certain parts of the inner
16 ceiling that had been replaced and hadn't been repainted as of yet. Others had
17 been repainted. And the localisation of those areas corresponded to the areas on
18 the outer roof that had showed signs of burning or charring.

19 We also identified outside the mosque a sign of impact on a loudspeaker, but once
20 we carried out the reconstruction of this impact on the loudspeaker it was
21 impossible to determine exactly what the origin was.

22 Q. [12:00:35] You referred to carbonisation or charring. Why are you using
23 this term?

24 A. [12:01:03] Charring is a transformation of a substance into carbon and gas
25 when there is combustion which has an exothermic reaction, and this happens

1 when various elements are assembled, that is, combustible elements. Then there
2 are other elements that sustain the combustion such that one of the components is
3 eliminated. And when this happens, there is transformation into carbon which
4 creates the blackish traces which were visible on the frame of the mosque. And
5 these are samples that we took for the purpose of analysis.

6 Q. [12:02:32] I would like to draw your attention to page 2005 of your
7 report, 2005 and 2006. What you describe, what we see on those photographs, is
8 that what you are describing?

9 A. [12:03:00] Yes, indeed. For the lower part of the roof, you have a general
10 view as well as a view of a sample that was taken by scratching using a scalpel, and
11 then the seals that were stored in bags that were, of course, sealed themselves.

12 Q. [12:03:38] A short while you asked us -- you used scientific language to
13 describe carbonisation. Now, what is your expertise in this domain? How
14 qualified are you to be able to give such an opinion?

15 A. [12:04:04] Regarding fires, my knowledge is ordinary common knowledge.
16 Of course, I followed certain courses in fires at the University of Lausanne, so I
17 would say that my knowledge in the area is simply ordinary and common.

18 Q. [12:04:31] I believe that the samples were sent to a French laboratory. Can
19 you describe to us what were the results of the analysis?

20 A. [12:04:54] To give you precise results, I think one would have to consult the
21 expert report in question so as not to make any errors.

22 Q. [12:05:16] Just from memory, were there any traces of accelerants?

23 A. [12:05:26] Based on my memories on all the samples that were analysed and
24 everything, all residues that were analysed in the laboratories, they did not show
25 the presence of accelerants.

1 Q. [12:05:58] Would it be necessary to have accelerants in order to have a fire?

2 A. [12:06:13] No, that is not necessary. I will take a concrete example which
3 maybe relates to the mosque. When you take a book, when you take a
4 combustible object and you take matches and then you set the objects on fire, this
5 finalises the fire and you would be able to set the book on fire without using any
6 object to expedite the process.

7 Q. [12:07:19] When did you visit the location, if you remember?

8 A. [12:07:32] We were there on 11 December 2014, 9 December 2014. I'm sorry,
9 I have to look at the report to be certain. Generally, between the 9th to the 11th,
10 2014.

11 Q. [12:08:10] To your knowledge, is it possible to date that charring?

12 A. [12:08:20] To my knowledge, it was not possible to date the charring.

13 Q. [12:08:30] And once again, is it exceptional that it is not possible to date a
14 charring event?

15 A. [12:08:45] No, because the elements or samples taken cannot be analysed
16 sufficiently in detail in order to be able to determine the date that the charring took
17 place.

18 Q. [12:09:11] Let me move away from the issue of the Korans. Perhaps you
19 can show us on your sketch on page 1968 the location where you saw those Korans.

20 A. [12:09:54] The Korans were present in two white bags in salle number 2 of
21 the building of the CNI-COCY. And some of them were also placed on top of the
22 bags.

23 Q. [12:10:23] And to be specific, you found them at location LEM-02; is that
24 correct?

25 A. [12:10:31] Yes, indeed, in room number 2 of building LEM-02, which was

1 made up of various rooms.

2 Q. [12:10:54] And I believe that you are referring to a sketch that is on
3 page 2027. That is, of the building. Just to confirm, on page 2017, that is the
4 building of the CNI-COCY?

5 A. [12:11:41] Yes.

6 Q. [12:11:43] Now, using your report, can you indicate to us the specific
7 location where you found that metallic object that you referred to a short while ago,
8 of course?

9 A. [12:12:03] I used a metal detector inside the wall, the dividing wall in the
10 mosque, as well as the outside wall. That metallic detector gave us a reaction in
11 the covered courtyard of the mosque, and as presented in the photographs at ERN
12 CIV-OTP-0076-2010. After the reaction of the metal detector at that time, I used
13 another instrument that established a ballistic trajectory. After opening up the
14 hole of that ballistic trajectory, I found a metallic object, LEM-01-005, and this was
15 in a sealed container.

16 Q. [12:13:59] I believe this was also sent to a French laboratory. And you
17 mentioned a certain calibre. Can you repeat that, please.

18 A. [12:14:16] Just to be precise, it was not sent to a laboratory for expertise. I
19 myself carried out the expertise using the laboratory equipment, various optical
20 equipment and materials to clean up this object. And after having cleaned up this
21 object, which initially appeared to be an indeterminate metallic object, it appeared
22 that it showed a mark, when a projectile passes through a barrel or canon.
23 And following the various observation measures, I concluded that in all probability
24 this object, 0070-1578, was part of the casing of a projectile, and it was compatible
25 with calibre 7.62x39, which is used in the Kalashnikovs.

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1 Q. [12:16:00] Just to continue, I would like to draw the attention of the
2 Chamber to page 2069.

3 A. [12:16:18] This preliminary examination of the projectile which was carried
4 out in a few hours -- well, the explanation that I gave in the report is that upon
5 impact of this projectile 7.62x39, the casing of that projectile, CIV-OTP-0076-2067,
6 the casing of the projectile upon impact on a rigid object, a concrete wall would
7 have broken up and been projected back towards its place of origin. So a ballistic
8 expertise could be carried out in order to have supplementary information on that
9 object.

10 Q. [12:17:41] To carry out that test and arrive at that conclusion, what
11 knowledge did you use?

12 A. [12:17:53] I relied on my knowledge of ballistics and materials in the
13 laboratory and the building that I had directed over six years, with the equipment
14 that I used to carry out ballistic reports.

15 Q. [12:18:23] Would it be possible to use any sort of expertise to conclude that
16 this object that you found was fired on 25 February 2011? Is this scientifically
17 possible?

18 A. [12:18:48] It is clearly impossible to determine the date that that projectile
19 penetrated that wall. What is certain is that a projectile was found lodged in the
20 wall in December 2014, and it was there on a previous date, obviously.

21 Q. [12:19:33] Thank you. Now, in relation to this mission, is there something
22 else that you would like to add before I move on to your next report?

23 A. [12:20:04] I have nothing to add.

24 MR MACDONALD: [12:20:07] (Speaks English) So, your Honour, I would ask
25 that report 0089 -- sorry, 0076-1952 be submitted on the record. Très bien.

1 Q. [12:20:44] (Interpretation) I was almost about to mention that what we
2 have done was preliminary to report 0089-1030, which is forensic examination of a
3 video, and this video is obviously a high-definition video, which is 0077-0411.
4 There is a machine that you brought with you. We referred to it a short while ago.
5 There is also a mission letter which is on page 1089, and 1090. Please remind us,
6 for the drafting of this report -- and we are going to look at it -- what technique did
7 you use?

8 A. [12:22:29] For that report that was done in collaboration with Mr Adan
9 French, we carried out an examination of the images of the video in question, as
10 well as the audio recording of the video, because the video had a part that was
11 simply video and then a part that included an audio. So we analysed the various
12 elements before arriving at a conclusion.

13 Q. [12:23:17] Very well. At this stage -- and I will speak in English.
14 (Speaks English) So your Honours, what I would propose now is to re-create or
15 demonstrate, using the video in question, the spectrogram, so a combination of
16 image and sound. It will take a -- shouldn't be that long. It will be done by 12,
17 I'm pretty sure. The thing is is that in normal conditions, one has two screens,
18 where on one side you have the video, on the other side you have the spectrogram.
19 Here in the courtroom, we have to have one screen. We only have one screen.
20 Therefore, I would recommend that everybody look at their screens using shift
21 control 1, so you have the full screen in order to be able to appreciate better what
22 we will be seeing visually and on audio.
23 I would request that the floor -- and we've tested this before, obviously -- be given
24 to the witness. And last but not least, I would request permission to be sitting
25 down when asking the questions to see the screen better.

1 And we'll explain it, obviously, what we see each time. And I presume that we
2 can probably capture screens if necessary, but in any event, let's just start by
3 understanding what we will be seeing and hearing.

4 PRESIDING JUDGE TARFUSSER: [12:24:53] Well, you're permitted.

5 MR MACDONALD: [12:24:56] Thank you, your Honour. So if the floor can be
6 given to the witness. And, again, I understand it's evidence 1 and full screen has a
7 better view or should have a better view.

8 THE COURT OFFICER: [12:25:11] The witness has the floor, evidence channel 1.

9 MR MACDONALD: [12:25:32] (Interpretation)

10 Q. [12:25:33] Mr Witness, I will ask you to put in the copy of the DVD into the
11 machine and we will watch the screen. You can describe what you see, then we
12 can stop, explain and then resume, so that each and everyone should be able to
13 understand what we are seeing.

14 A. [12:26:08] Mr President, as indicated previously, we used the CEDAR
15 Cambridge system for audio improvement. And in order to save time, I already
16 copied the file, the file that was the subject of the seal. The original file was never
17 modified at all, and that was the file that was given as an exhibit for this expert
18 report.

19 The CEDAR Cambridge system is relatively simple to operate. When you open
20 the system, you open a file in order to process the audio video file. And then you
21 can see the spectrum as well as the video, which is displayed.

22 I am going to change the timescale to milliseconds as well as the spectrogram.

23 There are several forms of representing audio signals, temporal representation, a
24 frequencial evolution, but the easiest way is to use a spectrogram, because here you
25 can see the time on the horizontal axis. And on the vertical axis, you can see the

1 figures. The colours that you see represent the intensity of the audio at each time
2 or minute. One could improve the visual nature of the spectrogram.

3 (Viewing of the video excerpt)

4 THE WITNESS: [12:29:24](Interpretation) There you can see the video which is
5 synchronised with the audio. On the spectrogram you can be able to identify
6 specific aspects or components of the spectrum throughout the video.

7 We carried out an attempt to identify on the spectrogram corresponding sounds to
8 the video itself.

9 MR MACDONALD: [12:31:12] (Interpretation)

10 Q. [12:31:12] Is it possible to stop here for a while.

11 Just to specify for the record, what is the extract, the time frame or, rather, the
12 timestamps of the video that you used in this spectrogram?

13 A. [12:31:56] I illustrated from the beginning of the video to about 2.16.

14 Q. [12:32:10] Very well. Please proceed.

15 (Viewing of the video excerpt)

16 MR MACDONALD: [12:32:56] (Interpretation)

17 Q. [12:32:57] I'd ask you to stop here.

18 You said just before, when you were following this with your cursor, you showed
19 where we had the sound of the whistle. We also heard what is often known as a
20 vuvuzela. And you said, you showed us on the spectrogram with the cursor how
21 this could be seen. Would it be possible to hear the vuvuzela again and the
22 whistle without slowing down? And could you show us with the cursor once
23 again what we see and then explain to us why is it that some sounds are at the
24 bottom of the spectrogram and others follow a line going right to the top?

25 A. [12:34:00] According to the description of the events on page

1 CIV-OTP-0089-1057, the vuvuzela are heard several times on different occasions,
2 including after 46 seconds, and I'll come back to 44.

3 (Viewing of the video excerpt)

4 THE WITNESS: [12:35:15](Interpretation) So if we have that portion in a loop.

5 MR MACDONALD: [12:35:29] (Interpretation)

6 Q. [12:35:29] Could you give us a timestamp please for the section that you will
7 play in a loop.

8 A. [12:35:56] The loop is between 0.42 seconds 2.30 and 1.02, 3.18.

9 (Viewing of the video excerpt)

10 THE WITNESS: [12:36:25](Interpretation) That's the end of the sequence.

11 THE INTERPRETER: [12:36:43] Your Honour, it's difficult to hear the witness
12 above the soundtrack.

13 (Viewing of the video excerpt)

14 THE WITNESS: [12:37:02](Interpretation) In answer to your question, what we
15 did was to identify the spectra that are similar here, as I said in this axis you've got
16 the frequency zero to 11,000 hertz or 11 kilohertz, and along here you've got the
17 time. And for each point you've got the colour that represents the sound level.
18 The sound level is given according to this colour scale, from zero to 140 decibels.
19 The decibels measure the sound level at each point.

20 MR MACDONALD: [12:37:54] (Interpretation)

21 Q. [12:37:54] So what is the sound level of what seems to be the vuvuzela
22 sound?

23 A. [12:38:07] The sound level is the sound level for each frequency, it's a sound
24 that's complex. There's a lot of background noise that causes disturbance to the
25 signal. So this is a complex noise, but it is present in a spectrum at a level of 50

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1 decibels, which is pretty similar, and above all it made it possible for us to identify
2 on the video the object that could have been at the origin of the sound. So the
3 spectrum is visible on the spectrogram.

4 Q. [12:38:57] Could you please show us the object in question on the video?
5 (Viewing of the video excerpt)

6 THE WITNESS: [12:39:19](Interpretation) What I will do is ...

7 (Viewing of the video excerpt)

8 THE WITNESS: [12:39:53](Interpretation) Here we have the object in question.
9 This is it.

10 MR MACDONALD: [12:40:00] (Interpretation)

11 Q. [12:40:00] We see a woman wearing a cap, dark blue or dark in colour, with
12 what seems to be a vuvuzela. That's when we look at the image. Very well.
13 We also hear whistles. Do you have any way of showing us the person blowing
14 into a whistle?

15 A. [12:40:41] We repeatedly hear whistling. I think that synchronisation of the
16 screen in the video is something that's been carried out. I'm just looking for it so
17 that I can give you the timestamp. From 0.52 to 0.58.
18 I'll take another sequence. 2.57, 2.57 to 3.13.

19 (Viewing of the video excerpt)

20 THE WITNESS: [12:43:12](Interpretation) Here you can clearly identify the first
21 sound of the whistle.

22 THE INTERPRETER: [12:43:18] The witness is inaudible.

23 PRESIDING JUDGE TARFUSSER: [12:43:23] Excuse me. Excuse me.

24 MR MACDONALD: [12:43:27] Est-il possible d'arrêter?

25 PRESIDING JUDGE TARFUSSER: [12:43:28] No, it is a problem for the

1 interpreters if you speak while we have the sound in the back. So they can't hear
2 you. So when you speak, if you can switch off the sound, okay. Thank you.

3 THE WITNESS: [12:43:52](Interpretation) I do apologise, your Honour.

4 So on the video that we've just shown together with the spectrogram, we identified
5 what we indicated in the description of the events, several occasions when the
6 whistle or when whistles were blown, and we can see this on the spectrogram here
7 with the use of two whistles. Once again, it's impossible to identify on the
8 spectrum where the whistle is coming from because the parameters are random in
9 nature. And the angle of emission of the sound, well, there's the position of the
10 microphone used to record it and there's the position of the origin of the sound.

11 And because of things like this, it means that it is impossible to see on the
12 spectrogram whether it was this object or another object.

13 Anyhow, it is possible to identify by taking together the repetitions on the
14 spectrogram and taking them with the video, comparing the two, and in this way
15 we can attempt to identify the object that gives the sound that is heard.

16 MR MACDONALD: [12:45:14] (Interpretation)

17 Q. [12:45:14] Just to conclude then, without the video, if we didn't have the
18 video and if we just had the spectrogram and the sound or sounds that we hear, it's
19 impossible to determine just using the spectrogram what it is that's producing the
20 sound; is that correct?

21 A. [12:45:40] There's something that I perhaps didn't make clear. I'm not a
22 signal processing expert, nor am I an audio expert. I have some basic knowledge
23 following my studies as an engineer, basic knowledge as regards signal processing
24 and physics.

25 But my ballistics knowledge is such that it's very difficult, if not impossible, with a

1 spectrum to identify a specific firearm or calibre. Although some publications
2 indicate that each weapon and each munition and each shot gives a unique
3 spectrum that is made up of an acoustic signature, but in actual fact, in practice, it is
4 very difficult, indeed, probably impossible to identify a firearm solely on the basis
5 of its spectrum and the spectrogram, the sonogram that's recorded.

6 In this instance we drew the conclusion that at several places the spectrum that's
7 visible on the spectrogram certainly came from the object that was identified
8 visually on the video, bearing in mind that there's also certain area left open for
9 interpretation, because if you have decent hearing, you can differentiate between
10 the sound of a whistle and the sound of a vuvuzela exclusively on the basis of
11 commonsense.

12 So I would say that there were three parts; there's the video, what we call
13 psycho-acoustics, which is interpretation through our hearing of the sound that's
14 heard; and the spectrogram that's synchronised with the video and inter alia the
15 repetitions of certain spectra when the sound is heard.

16 Q. [12:48:00] Very well. Could you please now take us -- well, first of all,
17 what I'm going to ask you is to show to us a sequence that will make it possible for
18 us to see the armoured vehicle. And I'll have questions, first of all, on the
19 armoured vehicle, on its armament, and then we'll come back to the spectrogram
20 and the sounds that we hear and we'll slow it down, we'll slow the video down so
21 that we can hear things clearly. So it will be good if you could show us a first
22 extract.

23 A. [12:49:01] I will show you a three-minute sequence -- sorry, from 3.30
24 and 3.54.

25 (Viewing of the video excerpt)

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1 THE WITNESS: [12:49:50](Interpretation) So I've just played the sequence at
2 normal speed. I can play it to you in slow motion. You can see at the bottom of
3 the screen on the right you can see what my speed is. I'm at 20.26 percent of
4 normal speed.

5 (Viewing of the video excerpt)

6 THE WITNESS: [12:51:04] (No interpretation)

7 MR MACDONALD: [12:51:11] (Interpretation)

8 Q. [12:51:13] Very well. I'll ask you to stop here and to come back to where
9 we see an image showing residue exiting the gun barrel and the first sounds that
10 we hear.

11 We can see smoke coming out of the barrel, and then there's a gap, and then we
12 hear a sound, it's a detonation. And I'd like you to explain to us the gap between
13 the two and the explanation for this and the mechanisms involved when a bullet
14 comes out of the barrel of a gun and the sound. And this is on the basis of your
15 experience as a ballistics expert.

16 MR JACOBS: [12:52:24] (Interpretation) Your Honour, our objection is to do
17 with the way in which the questions are being put by the Prosecutor, because he
18 himself is commenting the video talking about the gun barrel, smoke and so on.
19 Perhaps we should leave it up to the witness to do this interpretation.

20 PRESIDING JUDGE TARFUSSER: [12:52:39] Yes, please can you just --

21 MR MACDONALD: [12:52:41] (Speaks English) Yes, your Honour, I will.
22 Thank you.

23 Q. [12:52:47] (Interpretation) So take us to the armoured vehicle. We can
24 stop here. What do we see there on the image and the cloud at the end of the gun
25 barrel?

1 A. [12:53:10] I'll zoom in on the video image. And perhaps I will play it
2 slowly, if I may.
3 (Viewing of the video excerpt)
4 PRESIDING JUDGE TARFUSSER: [12:53:34] The question would have been
5 better: What do you see? Describe what you see and then ...
6 (Viewing of the video excerpt)
7 MR MACDONALD: [12:54:16] (Interpretation)
8 Q. [12:54:18] Could you stop just before the people start to move and give us
9 the timestamp for the record.
10 A. [12:54:33] The timestamp is 3.38.712.
11 Q. [12:54:44] A little bit more again. A bit further.
12 A. [12:55:13] It's much easier with a video.
13 (Viewing of the video excerpt)
14 THE WITNESS: [12:55:59] (No interpretation)
15 MR MACDONALD: (Speaks English) Stop. Stop.
16 (Viewing of the video excerpt)
17 MR MACDONALD: [12:56:29] (Interpretation)
18 Q. [12:56:31] I'll take you to page 1043 of your report. Let's leave the video to
19 one side for the moment. On page 1043 of your report. Very well. So the
20 images that we see, who created them, who captured the image, in other words,
21 who shot the footage?
22 A. [12:57:15] These images are taken from the original video, the document
23 under question. They were then cropped and enhanced so that we could focus on
24 the vehicle. They were then improved. This improvement quite simply involved
25 automatic adjustment of the curves, in other words the colours, the -- so the colour

1 curves were improved without there being any other change made to the image,
2 other than that automatic adjustment. There were no additional pixels that were
3 created, for instance. We can see this on the images on CIV-OTP-0089-1043. We
4 can see the pixels and these are due to the original video.

5 Q. [12:58:32] On the -- in the image on bottom right we can see an armoured
6 vehicle, we can see a cloud. What is that?

7 A. [12:59:01] As regards the analysis made, what it did was to describe what
8 we saw and heard. In this instance, loud noise, very probably gunshots that are
9 heard and people running away.
10 And then visually, we identified a vehicle. And close to it a cloud of smoke.
11 That is something that we can identify visually. The cloud of smoke appears
12 before the sound of the gunshots can be heard. So as regards fairly superficial
13 interpretation, you could say that the cloud of smoke stems from a gunshot being
14 fired. You see the smoke before you hear the sound because of the speed of sound
15 in normal conditions, at 20 degrees Celsius, 1013 millibars, it's 343 metres per
16 second in those conditions.

17 The bullet, the projectile, and because this vehicle, the armoured vehicle has
18 probably been identified as the particular type, and the armaments on this type of
19 tank tend to be supersonic, which means that the bullet will hit somebody before it
20 being possible for the person to hear the sound, because the sound travels more
21 slowly than the projectile itself.

22 The smoke, clearly, which is the cloud from the residue of the firing of the bullet, is
23 at the mouth of the barrel. There's a part that precedes the projectile because the
24 projectile when it comes out of the barrel will eject all of the oil and metal residue
25 that might be in the barrel, it will then be followed by this cloud which is the

1 residue from the explosive.

2 You might find a barium-type residue, gun powder, mainly nitrate in nature, and
3 this is the explosive that's been used to propel the bullet. There is a so-called
4 smokeless explosive, although it does actually produce smoke and that will contain
5 nitrocellulose and nitroglycerine residues.

6 So, once again, I can say that everything is compatible. The cloud of residue is
7 compatible with the blast of a firearm, the firearm is compatible with the type of
8 vehicle present. The sounds that are heard are sounds of firearms. Clearly, as
9 I've explained, it's impossible to identify precisely which weapon shot the bullet
10 because there are factors that introduce variation into the spectrum which make it
11 difficult to identify things more clearly. The only thing that we could do would be
12 to identify the speed of the gunshot because we can see the different spectra and
13 the separation between -- of the spectra between different gunshots.

14 There are also problems to do with the echo effect. The cameraman here is filming,
15 looking towards the tank, so one would assume that the microphone was
16 positioned in that direction, but then moves so the recordings are not similar
17 between the different bursts of gunfire because of the position of the microphone
18 which varies for the second and third bursts. The person filming left. It was a
19 question of panic and urgency.

20 So to conclude, we have got the video, and this is totally compatible in terms of
21 synchronisation between the gunshot residue, the sound heard and the speed of the
22 projectile.

23 MR MACDONALD: [13:04:36] (Speaks English) Last question, your Honour,
24 maybe before the lunch break because I just realised it is -- just past.

25 PRESIDING JUDGE TARFUSSER: [13:04:42] Yes, but we started 15 minutes late.

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1 So 10 minutes.

2 MR MACDONALD: [13:04:46] Okay perfect. Thank you.

3 Q. [13:04:51] (Interpretation) Before this cloud of smoke and the bursts that
4 we heard, were there any other sounds, any sound at all, that would lead you to
5 believe that it is a firearm?

6 A. [13:05:22] As is stated in the table that describes the various events, this is
7 CIV-OTP-0089-1057, the first noise, the first sound that was heard, that corresponds
8 to a gunshot, occurs at the minute 3.39, which is exactly what you have on the
9 screen right now.

10 When the vehicle appears in the video and shoots and when you see the cloud of
11 smoke resulting from the firing, we did not identify any other (Overlapping
12 speakers) --

13 MR MACDONALD: [13:06:23] (Speaks English) Can we give the floor back to
14 the witness, please. We don't need that.

15 THE COURT OFFICER: [13:06:30] The witness has the floor, evidence channel 1.
16 (Viewing of the video excerpt)

17 THE WITNESS: [13:07:22](Interpretation) As you can see here in the video, as well
18 as the spectrum in slow motion, this is the point in time where the first noise which
19 would correspond to a gunshot wound -- gunshot noise, I beg your pardon, that
20 was heard here.

21 MR MACDONALD: [13:07:49] (Interpretation)

22 Q. [13:07:50] I'd like to discuss the armoured vehicle. And I'd like to look at
23 page 1046 of your report. And it can be displayed on the screen, if the court officer
24 would be so kind.

25 Before I forget, however, what is your level of expertise in gunshot residue?

1 A. [13:08:50] As regards the gunshot residue issue, I was a member of the
2 board of the working group of the ENFSI, the European Network of Forensic
3 Science Institute, and the group was called Firearms and Gunshot Residue.
4 I worked on gunshot residues, on the analysis in a variety of expertises that I
5 carried out. And in Lausanne, I studied the residue of RPG 60 and 59 where I
6 used a microscopic scanning -- a scanner microscope and an X-ray dispersion
7 microscope.

8 As regards my day-to-day work, the pure analysis of gunshot residues, in the
9 ballistics area, we work on gunshot residue to evaluate the distance of shooting.
10 When you are hit by a projectile, you will discover residues of barium, that is, the
11 explosive or other nitrites, for example, that come from gunshot powder.
12 As regards the way these residues are spread out on the victims' clothing, for
13 example, you can calculate the potential distance of shooting.

14 Q. [13:10:56] My question here relates to the cloud that we saw at the end of the
15 canon of the weapon. Gunshot residue includes this cloud, doesn't it, not just the
16 residues found on the victim's clothing?

17 A. [13:11:15] Yes, indeed. You have gunshot residues in this cloud of smoke.
18 If an individual is 10 metres away, you could discover gunshot residues on that
19 individual and, of course, a number of factors come into play: The type of powder,
20 the shape of the actual powder grains. If they're spherical, they have much better
21 aerodynamics than if they're a different shape. But in visual terms, indeed, this
22 cloud of smoke is typical, as we can see here in the video.

23 Q. [13:12:01] Very well. Let's go back to the images we have on the screen.
24 This is page 1046 of your report. What exactly is this armoured vehicle that we
25 can see here? We can see it as well on the video. What exactly is the name of this

1 armoured vehicle on page 1068 of your report?
2 Could the court officer keep the images on the screen rather than showing the
3 report because we all have the report and I'd like to show the BTR-80 on the screen.
4 A. [13:13:11] What we did was to identify the various sequences where this
5 type of vehicle could be seen. We enhanced the image without modifying it,
6 without creating additional pixels, but simply using automatic adjustment tools,
7 that is, adjusting the curves. And we concluded that on the video there was at
8 least one vehicle, but not necessarily this same one, because the vehicle is not
9 always going in the same direction of the road in the convoy. And given the
10 physical visual characteristics of this vehicle and other elements of information, for
11 example, the document in question compared with a comparison document, and
12 knowing that between 2002 and 2003 Belarus delivered a number of pieces of
13 equipment to Côte d'Ivoire, including six BTR-80s, we drew the conclusion that this
14 rather wide grey vehicle camouflaged, that we can see in the sequences 335,
15 et cetera --

16 THE INTERPRETER: The sequences were not well heard by the interpreter.

17 THE WITNESS: [13:15:20](Interpretation) -- and that this is indeed compatible
18 with a BTR-80 grey camouflaged vehicle. Of course, I'm not an expert in military
19 armoured vehicles, but I did undergo training at the military academy of Saint-Cyr
20 in weaponry, including the BTR-80 at the time. Given all of these aspects and
21 taking account of commonsense once again, given the similarities and the absence
22 of any dissimilarity, we knew indeed that Côte d'Ivoire had received six such
23 BTR-80s in that period.

24 MR MACDONALD: [13:16:11] (Interpretation)

25 Q. [13:16:13] What kind of weapon is the BTR-80 equipped with, and taking

1 account of the image and taking account of the cloud of smoke, et cetera, that we
2 can see on the video?

3 A. [13:16:33] The BTR-80, if you consult the website of one of the
4 manufacturers, it has a machine gun, a 14.5 millimetre machine gun, KPVT is the
5 model, and is 7.62, which is a machine gun, 7.62x54 on coaxial equipment. In
6 addition, it's a troop -- it can be equipped as a troop transporter so that the soldiers
7 inside can shoot from the inside using trap doors, trap windows, where their
8 weapons can be aimed in such a way that the armoured vehicle is protected from
9 any enemy that would attempt to approach while they're shooting.

10 MR MACDONALD: [13:17:34] (Speaks English) I would recommend we break
11 here. I have 10 minutes left. I just want to clarify one or two things about the
12 vehicle itself and then show again the sounds, the different sounds, and then I'll be
13 done. So it shouldn't last more than 10 minutes.

14 PRESIDING JUDGE TARFUSSER: [13:17:53] Can we continue now 10 minutes?
15 Okay, let's go 10 minutes and then we resume at 3.

16 MR MACDONALD: [13:18:27] Thank you, your Honour.

17 Q. [13:18:33] (Interpretation) Witness, I'd like to view once again in slow
18 motion the video where we can hear all of the different sounds that resemble
19 gunfire. I beg your pardon. In the first sequence we can hear a round of fire.
20 Can you tell us how a 14.5 weapon functions? Can it fire single shots only or can
21 it function in automatic rounds?

22 A. [13:19:50] If you take a look at the images on page CIV-OTP-0089-1073 and
23 following, you'll see a picture of the 14.5 millimetre machine gun, and on the
24 following page, the 7.62 millimetre Kalashnikov. You can see that there's a sort of
25 a cable coming out of the right-hand side of this weapon that can be connected.

1 That is used for firing. A 14.5 millimetre weapon does not have this kind of
2 automatic feed, it's electric. And it will all depend on the dexterity of the shooter.
3 You can shoot individual shots or rounds of shots. The only limit is the number of
4 bullets in the charger, and other issues that could arise, defects, whatever.

5 Q. [13:21:19] Very well. Could we go back to the images again, please, the
6 video, accompanied by the spectrum.

7 (Viewing of the video excerpt)

8 THE WITNESS: [13:22:28](Interpretation) Now, can we zoom in on to the
9 spectrum. There's something that would perhaps warrant the emphasis, which is
10 that the noise is an impulse-type noise and it's composed of a series of noises. You
11 have the percussion aspect, you have the noise of the ammunition leaving the
12 canon, but the major portion is the burst when the explosion occurs, and then the
13 noise of the projectile itself, because since it's supersonic, it's going to have a Mach
14 number that will create the particular sound of that weapon, that firearm.
15 Now, you could identify it on a single spectrum, saying that it's the noise of
16 gunfire. That it was a calibre 14.5 or 7.62, that's virtually impossible because
17 there's too many other factors that come into play.

18 But it was possible, once again, if you combine all the other visual elements, the
19 type of weapons on the vehicle, the residues discovered and the spectrogram, it
20 was possible, as is indicated in the report, to identify the spectrogram and say that
21 it was compatible with the use of one of the weapons that is used on a BTR, either
22 a 14.5 millimetre machine gun or a 7.62 millimetre machine gun.

23 In addition, CIV-OTP-0082-0061, a sealed piece of evidence which was collected
24 during an autopsy in Côte d'Ivoire, was identified by an expert as being the core of
25 a 14.5 millimetre ammunition, the core of the ammunition which is compatible with

1 a 14.5 installed on a tower of this kind of tank, the BTR-80.

2 MR MACDONALD: (Interpretation)

3 Q. [13:25:54] Very well. One more question before we break. You
4 participated in interviews with witnesses. We're still in open court, but could you
5 tell us what was the purpose of your being present during interviews with those
6 witnesses?

7 A. [13:26:34] Your Honour, indeed, I participated in three interviews with three
8 different witnesses while I was in Abidjan of May 2015. The purpose of my
9 presence during those interviews was to assist the investigators on a precise portion
10 of the interview which was to identify the victims, indeed. A combination of
11 various disciplines contribute to identifying a victim: DNA, dental work,
12 fingerprints. But when none of those elements is available numerous years
13 afterwards, you can use a description of the clothing, an object, for example, that
14 was retained, using a protocol developed by Interpol. This was developed after
15 catastrophe investigations in order to identify victims and confirm the
16 identification of certain victims based on their clothing or based on certain objects
17 that they may have had with them.

18 So I helped the investigators so that the video could be presented in as objective
19 fashion as possible to the witness and to ask them to stop the video when they were
20 able to identify a place, an object or person that they recognised, and then ask them
21 to describe the objects or persons identified in a clear fashion.

22 So my contribution was scientific in nature to help the investigators identify victims
23 on the basis of the videos.

24 Q. [13:29:03] Very well. This is my last question and then I will have finished.
25 This may sound like a strange question, but before you worked on these expert

1 reports, had you ever been in Côte d'Ivoire beforehand?

2 A. [13:29:24] I had never been in Côte d'Ivoire before. I did work on a case for
3 the army criminal court in Paris, and I believe it related, if I remember correctly, to
4 an incident which took place within a French regiment or a French soldier and a
5 mistake had made with his weapon and had killed his comrade. That was the
6 only incident, if you will. I worked on documentary evidence and I provided an
7 expert report regarding the type of weapon, I believe it was an ERC --

8 Q. [13:30:15] So it was a French soldier who had killed another French soldier
9 inadvertently; is that correct?

10 A. [13.30.24] Yes, indeed. We were intervening in cases of homicide either as an
11 expert or a counter-expertise, and we were working for the army, but also for the
12 gendarmerie, the general inspectorate of the gendarmerie because, for example, if a
13 gendarme had killed someone inadvertently we would work on those cases for the
14 general inspection of the gendarmerie.

15 Q. [13:30:58] Thank you very much.

16 (Speaks English) That's my questions, your Honour.

17 PRESIDING JUDGE TARFUSSER: [13:30:59] Thank you. Thank you,

18 Mr Witness.

19 MR MACDONALD: [13:31:01] I would like to submit the report, the last report.

20 PRESIDING JUDGE TARFUSSER: [13:31:04] Yes, yes, of course, it is submitted.

21 All the reports are submitted.

22 Thank you very much. Now we break for lunch and we come back at 3 o'clock.

23 The hearing is adjourned.

24 THE COURT USHER: [13:31:18] All rise.

25 (Recess taken at 1.31 p.m.)

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- 1 (Upon resuming in open session at 3.01 p.m.)
- 2 THE COURT USHER: [15:01:09] All rise.
- 3 Please be seated.
- 4 PRESIDING JUDGE TARFUSSER: [15:01:32] Good afternoon.
- 5 Good afternoon, Mr Witness.
- 6 I give immediately the floor to the Defence for Mr Gbagbo. Maître Jacobs or
- 7 Maître Altit. I learned that Mr Jacobs is ...
- 8 MR JACOBS: [15:01:52] (Interpretation) Thank you, Mr President, your
- 9 Honours.
- 10 QUESTIONED BY MR JACOBS: (Interpretation)
- 11 Q. [15:02:00] Good afternoon, Mr Witness.
- 12 A. [15:02:03] Good afternoon.
- 13 Q. [15:02:05] My name is Dov Jacobs, and I'm going to ask you questions on
- 14 behalf of the Defence team of Laurent Gbagbo.
- 15 This morning you stated to the OTP, and I quote transcript page 14, from line 2.
- 16 The question asked you was:
- 17 "Now, regarding professional experience, were you declared an expert before any
- 18 tribunals?"
- 19 Your answer: "When I was a ballistics expert" - it's a realtime transcript, a little
- 20 difficult to read - "at the research institute of the gendarmerie in Paris, I was
- 21 certified as an expert by several magistrates under Article 68 of the French penal
- 22 code, and I produced several expert reports."
- 23 This 100 reports, did you write them as a gendarme, in your capacity as a
- 24 gendarme?
- 25 A. [15:03:30] Let me begin by -- correct the transcript. It is the criminal

1 investigation institute of the gendarmerie.

2 Now, regarding French magistrates, I intervened as a private individual, so as

3 Mr Laroche, expert in ballistics, not as a squadron commander. The particularity

4 was that in case of expertise problems, the gendarmes would provide the resources,

5 but we were totally responsible for our reports and conclusions.

6 Q. [15:04:30] But at the time you were a gendarme?

7 A. [15:04:33] Yes, I was chief of squadron, rank of colonel in the gendarmerie.

8 Q. [15:04:46] Your answer -- you mentioned Article 158, and you said that you

9 were appointed as expert in the investigation level. Did you ever testify?

10 A. [15:05:04] Yes. Most of the cases I dealt with involved homicides or multiple

11 homicides. And following the expert reports that were written, there were judicial

12 committees and then these were followed by testimonies.

13 Q. [15:05:36] Thank you. To be appointed expert at the investigative level, is it

14 necessary to be admitted in the roster of experts in the court?

15 A. [15:05:53] To my knowledge, no. In the ballistics department, we had two

16 levels of technicity, the level of technician and the level of expert. To be an expert,

17 one had to fulfil conditions at the level of the laboratory so as to be declared an

18 expert in the laboratory in a specific domain.

19 Q. [15:06:25] And were you, yourself, a member on the list of experts at the Court

20 of Cassation?

21 A. [15:06:36] No. I was not on the list of the Court of appeal or cassation.

22 In 2006, when I joined the investigation committee of the UN in Beirut, that is when

23 the laboratory started registering their experts at the Court of Cassation.

24 I can mention Mr Thierry Subercazes who drafted a report. We arrived at the

25 same time at ICJ, early in 2000, and he was registered on the list of experts at the

1 Court of Cassation.

2 Q. [15:07:37] On the basis of your experience in the national jurisdictions, do you
3 know whether a salaried individual could be used as an expert?

4 A. [15:07:54] I cannot tell you.

5 MR MACDONALD: [15:08:00] Your Honours, I think this line of questioning is
6 not --

7 PRESIDING JUDGE TARFUSSER: [15:08:02] Now.

8 MR MACDONALD: [15:08:02] Sorry.

9 I think this line of questioning is not of relevance to this, these proceedings.

10 MR JACOBS: [15:08:08] (Interpretation) The witness said he does not know, so I
11 will proceed.

12 Q. [15:08:16] This morning you told the OTP, at the end of his questioning, and it
13 is page 60, from line 20:

14 "I never went to Côte d'Ivoire. Before that, I worked only in a case in a court in
15 Paris for -- in a case which a soldier, a French soldier had misused his weapon and
16 inadvertently killed his colleague."

17 And further down, page 61, line 4, you added:

18 "We intervened in cases in our various domains of expertise."

19 First question, when you say "they", who are you referring to?

20 A. [15:09:30] When I said the word "on," I was talking about the ballistic experts
21 of the ballistics department.

22 Q. [15:09:43] Just to be clear, which institution of the IC --

23 A. It is actually the Institute of Criminal Research of the National Gendarmerie.

24 Q. [15:10:06] Thank you. When did this incident take place that you are talking
25 about?

1 A. [15:10:15] I would say around 2004-2005, but I cannot be precise. In any case
2 it was between 2000 and 2006, and it seems to me that it was after I completed my
3 master's, that is between 2003-2006.

4 Q. [15:10:47] So as to understand better, these were two soldiers and one killed
5 the other in Côte d'Ivoire, the incident took place in Côte d'Ivoire?

6 A. [15:11:02] Yes. I believe there were two of us, co-experts. These were two
7 service colleagues and there were armoured vehicles. One of the soldiers during
8 the normal practice of going into service, there was a bullet that was fired which
9 killed his colleague on the torret, that is in a vehicle in front of his.

10 Q. [15:11:45] Was one of them a gendarme?

11 A. [15:11:50] Absolutely not. As far as I remember, it was a regiment of the
12 French army. I -- it was a regiment of the French army. I do not remember the
13 name, but it was not a gendarmerie unit.

14 Q. [15:12:21] Thank you. Did you intervene as expert before international
15 criminal jurisdictions?

16 A. [15:12:36] With regard to international criminal jurisdictions, I produced
17 several expert reports, 300 for the Special Tribunal for Lebanon, but so far I've not
18 yet been called to testify before that jurisdiction.

19 Q. [15:13:06] I would like to display a document. I think the Registry can
20 display that document, it is CIV-D15-0004-2548. It is a request for the Defence of
21 the STL. And I would like us to go to page 2555.

22 MR MACDONALD: [15:14:04] If you allow me just a second. I'm just wondering
23 if this can be shown publicly considering we're using pseudonyms, or if this topic
24 can be broached in public session? If you allow me just a second so I can find the
25 document.

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- 1 PRESIDING JUDGE TARFUSSER: [15:14:16] Pseudonyms for what?
- 2 MR MACDONALD: [15:14:18] I think it is an ex parte or confidential filing in
3 itself or the -- who's who in those proceedings.
- 4 MR JACOBS: [15:14:24] (Interpretation) It is a document that we sourced
5 publicly on the site of the STL, so I don't see any problem with displaying it
6 publicly.
- 7 PRESIDING JUDGE TARFUSSER: [15:14:41] Please go ahead.
- 8 MR JACOBS: [15:14:50] (Interpretation) Can we go to the bottom of page 32, and
9 I quote in English:
10 "Such a change in the mode of testimony."
- 11 PRESIDING JUDGE TARFUSSER: [15:15:15] Page 32? Footnote 32, okay.
- 12 MR JACOBS: [15:15:20] (Interpretation) I will quote in English:
13 "Such a change in the mode of testimony already occurred when Xavier Laroche,
14 the former OTP forensic coordinator, was reclassified as a fact witness after having
15 been initially listed as a proposed expert witness."
16 (Interpretation) If I understand correctly, you were scheduled to testify as an
17 expert, but later on you were reclassified as a factual witness. Can you describe to
18 us what happened and the reasons which led to that change?
- 19 A. [15:16:26] I believe that, to understand better, the question should be asked to
20 the trial attorney who was in charge of that part of the trial. What I can say is that
21 following the trials to reconstitute the assassination of Hariri, and I designed it, I
22 coordinated it and produced a report, there were several elements which supported
23 the thesis of the prosecutor. And the trial attorney did not find it necessary to
24 present those tests, that is why I -- after that it was proposed that I become a factual
25 witness. So for further information you can ask that trial attorney in question.

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1 Q. [15:17:52] But I suppose that when you are called to appear as an expert, you
2 discuss these issues, the details with the person commissioning you. Didn't you
3 discuss those issues with the responsible individuals at the STL?

4 A. [15:18:19] Yes, I did, in fact. Even for the current report, there was no
5 problem a priori for me to be listed as an expert in that case.

6 Q. [15:18:37] Thank you. Apart from your work at the STL, did you carry out
7 missions for other international tribunals before coming to work at the ICC?

8 A. [15:19:03] From 17 February 2006 to 28 February 2009, there was an
9 independent commission of the UN in Beirut where I worked in criminalistics
10 which, in fact, was not a tribunal. But after having been loaned by the STL to the
11 ICC, I carried out a mission of investigation of crime scenes in Mali in the case of
12 the Prosecutor against Al Mahdi.

13 PRESIDING JUDGE TARFUSSER: [15:19:58] No this is probably -- this is -- okay.
14 No, I thought this could be confidential, but Al Mahdi is not confidential. Sorry.

15 THE WITNESS: [15:20:11] (Interpretation) And I was on loan from the STL.
16 And as far as I can remember, before joining the ICC -- I want to look at the precise
17 dates.

18 As indicated in my CV, it is page CIV-OTP-0084-4297, in December 2014, I worked
19 for the current case, still seconded by the STL to the ICC, but still I was not formally
20 employed by the ICC because I joined the ICC on 2 February 2015.

21 MR JACOBS: (Interpretation)

22 Q. [15:21:21] Can you explain to us what you mean by "loan" or "secondment"?

23 A. [15:21:30] From an administrative point of view, I was still employed by the
24 STL. I had a contract as a consultant pro bono, that is free of charge, following a
25 request from the Prosecutor of the ICC to the Prosecutor of the STL. But I was still

1 an employee of the STL.

2 Q. [15:22:10] As you stated this morning and a few moments ago, during the
3 drafting of your first report, and we are going to come back to that a little later, you
4 started your mission in December 2014, when you were still in the STL, and you
5 were employed by the ICC in February 2015, before the completion of your work,
6 and at that time you were no longer pro bono; is that correct?

7 A. [15:22:50] Yes. I carried out the field operations while on loan, and at the
8 time of drafting the report, 26 June 2015, I was already an employee of the OTP at
9 the ICC.

10 Q. [15:23:15] So the drafting of this report took place at the same time as your
11 employment at the ICC?

12 A. [15:23:24] I wouldn't say that, because I joined the ICC on 2 February 2015,
13 and there is practically a five month difference between that and the drafting of the
14 report.

15 Q. [15:23:42] But you started the work on the field in 2014 and at the end of the
16 report you were employed. So this is practically the same period.

17 A. [15:23:59] Yes. I passed the tests and the interviews in September, so the
18 administrative process for my employment in the ICC was ongoing. I received an
19 offer some time in November. So I was on loan right up to 31 December. So after
20 that, you had administrative formalities, medical tests, security clearance and so on.
21 That is why I joined the ICC on 2 February 2015. But I passed all the tests and the
22 interviews in September.

23 Q. [15:24:54] Are you registered on the list of experts of the Registrar in the ICC?

24 A. [15:25:09] No.

25 Q. [15:25:12] Is there a reason for that?

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- 1 A. [15:25:17] Simply because I never applied to be on that list.
- 2 Q. [15:25:24] And the Prosecutor never asked you to do that?
- 3 A. [15:25:30] No.
- 4 MR MACDONALD: [15:25:35] Your Honours, if I may.
- 5 PRESIDING JUDGE TARFUSSER: [15:25:38] Mr MacDonald.
- 6 MR MACDONALD: [15:25:40] I'm a bit surprised that we're coming back on a
7 debate that has been ruled by the Chamber.
- 8 PRESIDING JUDGE TARFUSSER: [15:25:45] Me too.
- 9 MR MACDONALD: [15:25:46] Your decision was short but clear.
- 10 PRESIDING JUDGE TARFUSSER: [15:25:48] Yes. I'm a bit surprised. But if you
11 go to somewhere specific, we're not fishing.
- 12 MR JACOBS: [15:26:02] (Interpretation) I'll proceed.
- 13 PRESIDING JUDGE TARFUSSER: [15:26:06] Okay.
- 14 MR JACOBS: [15:26:08] (Interpretation)
- 15 Q. [15:26:11] Mr Witness, this morning you talked about your university studies.
16 I'm not going to come back to that. But can you simply tell us the highest diploma
17 that you obtained?
- 18 A. [15:26:33] I believe the highest degrees are two master's of sciences, in
19 engineering and then in forensic sciences.
- 20 Q. [15:26:52] Can you tell us the domains that you did, that you studied for your
21 research purposes?
- 22 A. [15:27:05] At the Saint-Cyr military academy, apart from military training, the
23 standard military training at the academic level, there are academic courses in
24 mathematics, physics. The fact remains that while following my course in
25 engineering I had specific courses and processing of signals. I did my dissertation

1 at the Elf research institute in France for the development of oil for a Grand Prix
2 vehicle so as to increase the power of the engine depending on the conditions, the
3 weather conditions of the Grand Prix races in which Kawasaki was involved. So
4 my dissertation concerned that process.

5 Now regarding the master of sciences in forensic sciences at the Lausanne
6 University, I did ballistic sciences, I did courses in other domains that led to my
7 master's: Interpretation of fingerprints, criminal analysis and many others. I did
8 my thesis on rocket launchers, Rp250, and other rocket launchers because it was
9 very pertinent in France at the time.

10 Q. [15:29:34] I'm sorry. Let me interrupt for a moment.

11 You have talked about your thesis and you said that since you were already a
12 ballistics expert in your laboratory, you specialized in other domains. At what
13 point did you become a ballistics expert?

14 A. [15:30:20] From memory, I passed the first tests as a qualified person in the
15 laboratory in a few months and became an expert practically at the same time, I
16 think 2003.

17 Q. [15:30:47] So when you say you were already a ballistics expert and that's why
18 you followed other classes in Lausanne, that's not exactly right, is it? You're
19 saying it's when you came back from Lausanne?

20 A. [15:30:58] I cannot tell you exactly when it was, but it was part of the process
21 for me to be qualified as expert within the laboratory, whether it was at the start of
22 my time at Lausanne or at the end, it was certainly something that was pretty much
23 finalised and approved by all the bodies concerned and all of the people who had
24 to take the decision within the IRCGN.

25 Q. [15:31:28] So when you say "approved," I imagine that you received a

1 certificate or something?

2 A. [15:31:35] At the IRCGN, things are organised in such a way as to comply
3 with ISO standards. There is the 17025 ISO standard. I am an expert for that as
4 well. I've audited international laboratories as well. And in the context of that
5 accreditation, the ISO norm, it's clearly stated that all of the training that someone
6 has had required to become an expert has been registered at the IRCGN.

7 If you'd like to take a look at the qualifications and internships that I've carried out
8 in the course of the year, when I joined the IRCGN, 2001, it was university diploma,
9 wound ballistics, I can't really say much about the subject matter of the thesis
10 because it was confidential. And then if you take a look, you'll see certificate for
11 arms specialist, January 2001; certificate for an advanced course in physical metals
12 and toxicology. Then there is another one, February 2001.

13 Q. [15:33:06] Thank you, Witness. Thank you for these clarifications. We can
14 take a look at your CV, but I have a specific question to put to you. Within your
15 institution, if I've understood correctly, it's the institution that received the ISO
16 accreditation or was it you as the individual?

17 A. [15:33:23] I'll try to be clearer on this, because I get the impression you haven't
18 understood. An accreditation is for a method within the laboratory, which means
19 that the laboratory has to comply with the quality standards. And in the
20 laboratory, all training, all tests that the experts have to sit, all of the experts' reports
21 or technical reports carried out by qualified individuals are registered and
22 recorded.

23 And when all of the credits have been submitted for that person to be admitted as
24 an expert, then there is a final interview, and the person is then qualified as an
25 expert within the laboratory.

1 Q. [15:34:09] Thank you. To draft your expert reports that you're talking about,
2 do you follow a particular guide or handbook or protocols, or is there a code of best
3 practices for the different categories of expert report that you've produced?

4 A. [15:34:46] To draft an expert's report, I base myself on what I've learnt, what I
5 learnt when I was becoming an expert at the IRCGN, but also what I learned at
6 Lausanne, because at the institute of criminal sciences -- it's changed its name. It's
7 become the criminal sciences laboratory, and there were a couple of complex cases
8 that we were faced with.

9 Whether that means a real-case scenario, where we have to deal with everything
10 from the beginning to the end, from the scene of the crime through to the testimony
11 before the Court d'assises. And why is it complex? It's because there's more than
12 just two models to trace. So these complex cases in my case were the ballistic
13 elements, the trace of the ear, fingerprints and others.

14 So in the course of the training process in Lausanne, which is one of the few places
15 in Europe that offer a master of science in forensic science, one learns very clearly
16 the best way of drafting an expert report.

17 Q. [15:36:12] And is there such a thing as a written document that you can refer
18 to?

19 A. [15:36:22] I think that you should perhaps obtain the classes and lessons from
20 the masters at the criminal institute. Everything is set out there. As for the
21 expert classes at the IRCGN, there is a sort of a template that exists that allows us to
22 draft the expert reports in a consistent fashion, I would say, and in a logical manner,
23 expert reports that were accepted by investigating magistrates, and that improved
24 over time. But the format was deemed acceptable by the accepting magistrates in
25 France because the IRCGN was created in 1987.

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1 Q. [15:37:21] Thank you. I'd like to go back briefly just to make sure that things
2 are clear as regards the qualification of expert. I want to check that I've correctly
3 understood. Did you receive a certificate made out in your name for any authority
4 at all that says that you by name are recognised or acknowledged as an expert?

5 A. [15:37:48] Well, if you're talking about a certificate in my name, I could give
6 you different orders from the committee of experts where, if you've got an
7 investigating magistrate that specifies this, it's made out in your name because you
8 as an individual are appointed expert in an investigation.

9 But if you mean certificate in the form of a diploma, no. I was on the list of experts
10 at the IRCGN, but I do not recall that at the time we received a diploma or
11 certificate as expert.

12 Q. [15:38:39] So there is no official letter that says that you passed the interviews
13 with flying colours?

14 PRESIDING JUDGE TARFUSSER: [15:38:54] No. There is no -- it's clear. I
15 would invite you now to go to the merits of the report. Thank you.

16 MR MACDONALD: [15:39:01] Yes, because ultimately, your Honour --

17 PRESIDING JUDGE TARFUSSER: [15:39:03] Yes.

18 MR MACDONALD: [15:39:03] -- it's a question for the Chamber to decide --

19 PRESIDING JUDGE TARFUSSER: [15:39:06] I know.

20 MR MACDONALD: [15:39:06] -- recognition of expertise.

21 PRESIDING JUDGE TARFUSSER: [15:39:08] Absolutely. It's a question for the
22 Chamber. Now we have all the material to decide upon this. Thank you.

23 MR JACOBS: [15:39:15] (Interpretation) Your Honour, I'm moving ahead as
24 quickly as I can as regards the testimony of the witness, but this is part of the
25 procedure as we see things.

1 PRESIDING JUDGE TARFUSSER: [15:39:27] I would like you to go to the merit
2 of the report. Thank you.

3 MR JACOBS: [15:39:53] (Interpretation)

4 Q. [15:39:56] I come now to the question of your reports. What information was
5 given to you as regards this case before you drafted your first report?

6 A. [15:40:14] For each report there's a section at the beginning that recalls the
7 facts where the information communicated by the OTP is general in nature
8 concerning the events that took place, because to be quite clear, we as experts do
9 not have the time to dwell on specific elements because we're not just working on
10 one case but on several; and secondly, we don't need to know all of the elements.
11 We just need to know the context, context is essential, as has been recalled during
12 the panel that was held two weeks ago at the international academy of forensic
13 science panel session, and I was there for criminalistics.
14 The expert cannot work in a fuzzy vacuum. You have to go in the field. There
15 are certain elements concerning the facts and context as opposed to facts. The
16 forensic activity in situ can never involve taking all elements from the scene of the
17 crime. You have to know what the relevant ones for the case.

18 So the work that's carried out at the scene of the crime is objective, unbiased and
19 impartial. I've just published an article in the encyclopaedic dictionary of the ICC
20 which was published in the middle of August, and it sets out very clearly the fact
21 that it has to be unbiased, impartial and objective.

22 If I may be allowed to conclude? I have to speak for the scientific truth.

23 Q. [15:42:29] Thank you, Witness. The information concerning context that
24 you're referring to, that was provided to you by your people from the OTP, was it
25 not?

1 A. [15:42:42] Yes. If you read my reports, it states very clearly the same thing in
2 each of the reports, according to the information provided by the Prosecutor and
3 the investigators of the OTP working in Côte d'Ivoire. Then gunshots were fired
4 following events at the carrefour between 16 and 19 December 2010.

5 Q. [15:43:10] So your investigation in situ was carried out on the basis of the
6 information that came from the OTP. You've never carried out any independent
7 research?

8 A. [15:43:21] As I said, it's not up to me to carry out my own investigation.
9 We're working in context. You need a minimum amount of context. Here, it was
10 gunshot was fired between one day and another. That's already giving us a lot of
11 information. Of course, we could seek ballistic elements, but we have the
12 information as to whether we can date events, what sort of reparations have been
13 made, and to be absolutely clear arriving in situ I had no idea of the state in which
14 the different elements were to be found.

15 Once again, and I think it's relatively clear, when we're working on the basis of
16 documentation at the scene of the crime, there is no room for interpretation.

17 We've got the documents of the scene of the crime. We take photos that give us
18 the GPS coordinates, the date, the time, so on. So we take photos. We document
19 what we see and there is no room for interpretation.

20 On others, on reports, for example, the Yopougon mosque on video, there you need
21 a minimum amount of context in order to be able to carry out more specific forensic
22 work, which is investigations of the scene of the crime, and sampling relevant
23 objects.

24 Q. [15:44:57] This morning you said, and you've just repeated it, that you can't
25 turn up at the scene of the crime without the context, because you can't take

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1 samples of everything. You need a context.

2 But if you've got the context that's provided by just one party in the proceedings,
3 then you're only looking for what corresponds to that party. You're not looking
4 for any other elements, which means that inevitably what you referred to as a
5 neutral independent analysis, it's confined by what you've got from the Office of
6 Prosecutor; do you not agree?

7 PRESIDING JUDGE TARFUSSER: [15:45:32] May I say, this is argumentative.
8 This is what you argue out of this. You are to pose questions. The answer is
9 what it was and this is the argument to it.

10 THE WITNESS: [15:45:52] (Interpretation) If I may, I don't think you necessarily
11 heard everything I said this morning. What I said this morning was that we've got
12 the contextual elements, the relevant elements, and of course we're going to take
13 any other elements that we think are relevant, even if it's an element that has not
14 been provided to us in the context of the information provided by the OTP.

15 And to clarify this, let me give you an example. You'll recall this morning I was
16 talking about the loudspeakers outside the mosque in Yopougon. When I said
17 that the expert is working on incriminating and exculpatory, it could indeed have
18 received the loudspeaker could have been hit by a projectile. I said actually that it
19 was impossible to see, to say, whether it was a bullet or projectile or some other
20 element or object that might have caused damage to the loudspeaker.

21 So once again, although we had the contextual element, the expert is working there
22 impartially, unbiased fashion, incriminatory and exculpatory.

23 MR JACOBS: (Interpretation)

24 Q. [15:47:08] You've written a number of reports together with an employee of the
25 OTP. I don't know whether in open session I can give the name, if not I'll go into

- 1 private session.
- 2 MR MACDONALD: [15:47:23] (Interpretation) I'm sorry, I wasn't following.
- 3 MR JACOBS: [15:47:27] (Interpretation) The coauthor for some of the reports is
4 from the OTP. Can I give the name in open session?
- 5 MR MACDONALD: [15:47:33] (Interpretation) If it's not an investigator, certainly.
6 Which report?
- 7 MR JACOBS: [15:47:40] (Interpretation) Which report?
- 8 PRESIDING JUDGE TARFUSSER: [15:47:50] It's P-626, right?
- 9 MR JACOBS: Non.
- 10 PRESIDING JUDGE TARFUSSER: P-500?
- 11 MR MACDONALD: [15:47:52] No. Ms Sabina Zanetta can be mentioned.
- 12 MR JACOBS: [15:47:56] Merci.
- 13 Q. [15:47:58] (Interpretation) So you've drafted a number of reports with
14 Sabina Zanetta. How did you share out the drafting of the report?
- 15 A. [15:48:07] The reports that we co-signed, I with Sabina Zanetta, I drafted all of
16 the reports, I wrote all the reports, if I've not mistaken, because she had other duties
17 to carry out. If I'm not mistaken, she was responsible for the sketch of Abobo, the
18 sketch for the codification of the mosques, Sicogi-Lem, she read the report. It was a
19 peer reviewed carried out, and we co-signed them. But I was the one who actually
20 drafted the reports.
- 21 Q. [15:49:00] Did any other member of the OTP take a look of your reports before
22 they were finalised?
- 23 A. [15:49:07] Absolutely not.
- 24 Q. [15:49:14] When you were discussing certain aspects of your report with the
25 OTP this morning, let me say there were a number of things I'd like to go over again.

1 You don't have to repeat absolutely everything but I have a number of questions to
2 put for clarification.

3 I'll take the reports in chronological order. So the first report that I'd like to
4 discuss with you is CIV-OTP-0076-1952, and it corresponds to the examination of
5 the scene of the crime at the Sicogi-Lem mosque.

6 If I understood correctly, you received your mission statement in 28
7 November 2014. And I'd like to know how you were contacted. What was the
8 procedure that was followed to entrust you with this mission?

9 A. [15:50:56] As far as I can recall, there was a meeting involving the OTP, the
10 head of the forensic science section, that was called the unit for scientific response
11 at the time, l'unité de réponse scientifique.

12 I think Sabina Zanetta and I were there as well to discover whether we available
13 and to find out what the mission would involve for us.

14 The mission was entrusted to us by the OTP. So we had to have a forensic action
15 plan and go ahead with the planning of the mission in acceptable fashion.

16 Q. [15:51:52] But before you received the mission statement, you were contacted
17 to see if you were interested, I would imagine, and you were told something about
18 the mission?

19 A. [15:52:07] I don't think we can say whether I was interested. It's not up to me
20 to choose the missions that I want to carry out. If I'm asked to go on mission to
21 Côte d'Ivoire, I go. If I'm asked to go to Uganda, I go to Uganda. So that's not
22 what it was about. It was a question of practical material organisation to carry out
23 the mission that was asked of us by the Prosecutor.

24 Q. [15:52:32] I have two questions. First of all, in the context of your first report,
25 you were at the STL, and you said you had no means of refusing the mission for the

1 ICC; is that correct?

2 A. [15:52:46] Let me repeat this because apparently you haven't really properly
3 understood. I was lent by the STL. I had a consultant contract. The ICC was
4 pro bono work. So physically I was working at the ICC. I was employed on a
5 contractual basis by the ICC at that time, from November 2014, and then I actually
6 joined the ICC in February 2015.

7 But anyone, if you've got a contract, in this instance, the ICC, you are an employee
8 of the ICC. It doesn't matter who's paying if you've been seconded on loan from a
9 foreign country or from another international jurisdiction. I had an ICC badge. I
10 had keys and physically came to an office at the ICC.

11 Q. [15:53:54] Thank you for that clarification.

12 If I understand correctly then, as employee of the OTP, you had no leeway, no
13 latitude to discuss the instructions you received. So the mission statement -- well,
14 you couldn't refuse the mission or discuss it, you were subordinate to your
15 superiors at the ICC?

16 A. [15:54:19] Obviously when embarking upon a mission at international and
17 national level, there is an exchange, a discussion, because a judge or a magistrate
18 doesn't necessarily know what the scientific and material capacity and capability
19 exists within a section, and what might be the availability of the experts, if there are
20 several who have to go to the scene of the crime, so obviously there is a discussion
21 concerning the material feasibility and the terms of the mission. And for example,
22 the question of taking photos, including aerial shots, in order to give a 360 degree
23 panorama, that was part of our mission. And today it would be producing a 3D
24 model of that particular place.

25 So in the actual drafting of the mission statement, that has to be agreed to by the

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1 expert because the expert has to be able to do what is asked of him.
2 I'm sure you'll appreciate that there's no point in a mission statement being sent by
3 a judge to an expert where technically speaking, scientifically speaking it's
4 impossible to carry out. It would not be acceptable to have an expert saying I'm
5 terribly sorry, but we can't do this from a scientific point of view or for material
6 reasons.

7 Q. [15:56:02] Thank you. In your report on page 1968, if we can go to it, do you
8 need the number? No, I think it's displayed.

9 I quote -- I'm going to quote something mentioned by a Prosecution witness who
10 was in open session because I don't think there's any difficulty making this in open
11 session, paragraph 18. I will give my learned friend time to take a look.

12 MR MACDONALD: [15:57:23] The acronym should be used, your Honour. The
13 pseudonym should be used. That's the pseudonym that appears, why don't we
14 just use the pseudonym.

15 MR JACOBS: [15:57:37] (Interpretation) The witness testified in open session, so
16 I'd like to put questions to this witness about that person. Are you saying that we
17 should go into private session?

18 MR MACDONALD: [15:57:52] (Interpretation) Yes, please.

19 MR JACOBS: [15:57:57] Monsieur le Président.

20 PRESIDING JUDGE TARFUSSER: [15:58:01] No. I think if this was said in open
21 session, it can be said in open session, of course. There is no need to go into
22 private session.

23 MR JACOBS: [15:58:09] (Interpretation) As a precautionary measure perhaps we
24 can go into private session because I don't know whether this precise information
25 was given by the witness in open session, even though that witness testified in

1 open session.

2 MR MACDONALD: [15:58:27] But it's my colleague --

3 PRESIDING JUDGE TARFUSSER: [15:58:28] Let's go into private session for this
4 part.

5 MR MACDONALD: [15:58:30] Yes, I think that's easier.

6 PRESIDING JUDGE TARFUSSER: [15:58:32] Yes.

7 MR MACDONALD: [15:58:33] But they can check that ahead of time when they're
8 quoting from a public or a confidential transcript. I don't have all the references in
9 my head.

10 PRESIDING JUDGE TARFUSSER: [15:58:40] Let's go into private session for a
11 moment.

12 (Private session at 3.58 p.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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Page redacted – Private session

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- 20 (Open session at 4.04 p.m.)
- 21 THE COURT OFFICER: [16:04:50] We are in open session, Mr President.
- 22 PRESIDING JUDGE TARFUSSER: [16:04:54] Thank you.
- 23 Maître Jacobs.
- 24 MR JACOBS: [16:04:57] (Interpretation)
- 25 Q. [16:05:02] During your investigation at the mosque, did you question anyone

1 about whether or not any fires took place at the mosque before 2010?

2 A. [16:05:18] Once again, I'm a criminalistics expert. My goal is not to interview
3 individuals or to collect testimony, my purpose is to collect evidence. It is stated
4 clearly in the mission statement, "take samples and protect any physical evidence."
5 Afterwards, if there is a task related to the dating of certain elements related to fire,
6 I was not requested to carry out such a mission. And in any case, that would go
7 beyond my field of scientific forensic expertise.

8 Q. [16:06:12] So you didn't ask anyone if there had been any work on the mosque
9 between 2010 and 2014, point in time when you arrived at the mosque?

10 A. [16:06:23] Well the person, that is P-433, told us what was actually quite
11 visible. And my colleague, Sabina, I believe asked the question and indeed the
12 mosque had been at least partially repainted, rebuilt or other work without going
13 into the details. The areas where renovation work had been done was fairly -- it
14 was fairly obvious visually speaking.

15 Q. [16:07:08] On page 2020 of your report, and I'll give you a moment to have it
16 displayed.

17 Please, could we have it displayed.

18 You mention what you discussed this morning, you said you found fabric bags that
19 had remnants of books and pages that had been partially burned. Did you ask
20 him where they came from, what the origin was?

21 A. [16:08:23] I believe, and it might have been Sabina who asked the question,
22 but I believe that these bags remained from the fire that had allegedly occurred,
23 and the objects in these bags had been picked up and stored in these bags. The
24 fact -- I believe that these burned books had been kept for religious reasons, but
25 that's all I can say.

1 Q. [16:09:05] Well, what do you mean by that?

2 A. [16:09:07] Well, what I mean is that that's my opinion, given that these were
3 religious books, they were considered as sacred, even if partially or totally
4 destroyed, they were preserved and kept. The books were kept. But, again, this
5 is only an opinion on my part. We examined what was inside of the bags and all
6 of the religious books that were to be found in those bags.

7 Q. [16:09:51] Thank you very much.

8 I'd like to come back to the issue of the transfer of certain samples to the IRCGN.
9 How were contacts established with the IRCGN to organise the transfer of these
10 samples and the expertise that was carried out?

11 A. [16:10:32] Well, if I remember correctly, I contacted the director of the IRCGN.
12 He put me in touch with the various experts or I called them directly, because given
13 that I had worked in that institute for many years, I knew them personally.

14 Q. [16:11:00] So if I understand correctly, you played a role in the choice of the
15 experts who carried out the expertise of these samples?

16 A. [16:11:10] As regards ballistics, and that's how things work, whether you are
17 talking about ballistics or fire residues, it's the director of the IRCGN who receives
18 the request and appoints an expert on the basis of the workload and on the
19 particular expertise of the various individuals. In this particular instance in the
20 case of Theirry Subercazes, who was an expert with the Cour de Cassation, since I
21 knew him personally, I received the approval of the director, I contacted him
22 directly.

23 As regards the fire division and explosives division, the expert, if I remember
24 correctly, was appointed by the director in keeping with the availability of the
25 various individuals.

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1 Q. [16:12:14] Thank you. On the basis of the fire report, and let me give the

2 ERN, CIV-OTP-00 --

3 THE INTERPRETER: [16:12:43] Could counsel repeat the ERN. It was given very
4 quickly.

5 PRESIDING JUDGE TARFUSSER: [16:12:46] Could you please repeat the ERN.

6 MR JACOBS: [16:12:49] (Interpretation) CIV-OTP-0076-1893.

7 MR MACDONALD: It can be shown publicly, your Honour.

8 MR JACOBS: (Interpretation) So on page 1904. Can we say the name of the
9 expert in public? It states that 39 sealed bags were sent to the IRCGN, but only six
10 were analysed.

11 Q. Do you know why only those six were analysed by the expert? Why they
12 only asked him to analyse six?

13 A. [16:13:49] I believe, if I remember correctly, I went to the IRCGN to transport
14 the sealed packages, and following a meeting with the fire expert who was
15 appointed to the case, and given the workload that it represented for the laboratory,
16 because analysing more than 40 samples has a cost, and it's very time consuming, it
17 was decided to analyse only the six relevant samples.

18 I believe we chose them because they came from different places in the mosque and
19 that they were the best adapted to an instrumental forensic analysis.

20 Q. [16:14:58] So you, if I understood correctly, you played a very active part in
21 selecting the samples to be analysed?

22 A. [16:15:08] Yes, indeed. And, in fact, I myself sent the various sealed samples
23 and I sent the numbers to the OTP so that they be included in the official mission
24 statement. There is nothing surprising about that. That's how it works in
25 forensic areas. At national level as well, the judge calls you in, you discuss the

1 technical, financial and scientific feasibility of such an analysis.

2 Q. [16:15:51] In this instance your participation in that other expertise report, in
3 particular, the one on the screen, your name is not mentioned. Did you receive a
4 letter of mission or mission statement, or was that part of your day-to-day work
5 within the OTP?

6 A. [16:16:32] If your question is why my name wasn't mentioned in the IRCGN
7 report, I think you should ask that question to them directly.

8 Q. [16:16:49] You also did not mention your participation in the selection in your
9 own report.

10 A. [16:16:59] Well, if you read CIV-OTP-0076-2073, we wrote the following:

11 "All of these samples except, et cetera, provide clear signs of carbonisation and
12 blackening. Amongst the 40 samples the most -- the 6 most relevant were
13 submitted for further examination" and the numbers are given. I think it's very
14 clear that that is exactly how it occurred.

15 Once again, and to perhaps provide additional further information and proof once
16 again that we were collecting both incriminatory and exculpatory evidence, given
17 the time lapse since the alleged events, and up to the time of the investigation,
18 given the volatile aspect of accelerants, for example, so we had those six relevant
19 samples analysed to be fully relevant.

20 If we had found an accelerating agent in one of those samples, we would have gone
21 a bit further to discover it was the same substance or not or a different substance.

22 But following our advice, the OTP decided not to go any further because these are
23 extremely costly analyses both in terms of money and time.

24 Q. [16:18:59] In your final report, you do not mention the conclusion that you
25 just mentioned, that there was no accelerating accelerant in the samples that you

1 analysed?

2 A. [16:19:14] Could you give me the date of the IRCGN expert report?

3 Q. [16:19:23] 3 March 2015. So before you prepared the final version of your
4 report, before it was finished.

5 A. [16:19:53] Well, on the basis of what I remember, I read that report. I didn't
6 mention it in my own report for several reasons. Number one, I'm not an expert in
7 fire analysis. I'm not an expert in microanalysis as was the case of the expert who
8 drafted the report. And given that this was not part of my mission statement, I
9 did not report on points that were not included in my mission statement.

10 PRESIDING JUDGE TARFUSSER: Mr MacDonald.

11 MR MACDONALD: [16:20:34] But beyond that, your Honour, the information is
12 provided to the Defence. It's disclosed. I sometimes fail to see the relevance of
13 some of the questions that are being asked of that nature.

14 PRESIDING JUDGE TARFUSSER: [16:20:50] Sometimes I fail as well.

15 Please go ahead.

16 MR JACOBS: [16:20:54] (Interpretation) Thank you, your Honour.

17 Q. [16:21:00] Let me come back to your own report, that is CIV-OTP-0076-1952.

18 Thank you. Page 2060, that's the right page.

19 I can see that there is a list of the samples sent off to the IRCGN. And for two of
20 them, CIV-OTP-0073-1136 and 0073-1137, there is a footnote that indicates this
21 sample is not related to the Yopougon crime scene and is part of a separate
22 expertise.

23 Can you tell us a bit more about those samples and why they're mentioned here in
24 the report?

25 A. [16:23:01] Could you be so kind as to put them up on the screen so that I can

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1 be absolutely certain before I respond?

2 Q. [16:23:19] Well, physically, no. It's a sealed sample, so?

3 A. [16:23:32] Well, let me put it differently. Do you have the sample number
4 before it was given an ERN or the PRF that corresponds to the expedition of these
5 samples to the IRCGN? The PRF being the evidence number.

6 Q. I can give you the description given, that we have in Ringtail, but that's about
7 all I can give you.

8 A. [16:24:14] If you would be so kind.

9 Q. [16:24:17] Can I do so in public session?

10 As for the CIV-OTP-0073-1136, this is a sample provided by the ministry of justice
11 on January 9, 2015. And the same thing applies for the other ERN, that is,
12 CIV-OTP-0073-1137.

13 THE COURT OFFICER: [16:24:39] We can display the electronic copy. It is
14 actually already displayed for the 1136 on evidence 1 channel.

15 MR JACOBS: [16:24:44] (Interpretation) Thank you very much.

16 THE WITNESS: [16:25:06] (Interpretation) On the basis of my recollection, this is
17 a sample which came from a different incident in Côte d'Ivoire, in the Côte d'Ivoire
18 case. But without actually looking at the sample or its detailed description, this is
19 not something that I collected myself, but it was sent to the IRCGN for expertise by
20 another department. I don't think it's biological, I believe it's probably pieces of
21 shrapnel that were sent for metallographic analysis. But I'm not -- that's what I
22 remember.

23 MR JACOBS: [16:25:52] (Interpretation)

24 Q. [16:25:53] So these two samples were not part of your mission statement on
25 the Sicogi-Lem mosque. Did you receive a separate mission statement for

1 these -- for you to deal with these two samples?

2 A. [16:26:12] No. I did not receive any particular mission statement for those
3 two samples. Of course, I transferred them because there was another mission
4 statement, which I believe you can consult, which was sent by the OTP to the
5 IRCGN for a complementary analysis. But in order to be efficient, if you will, and
6 to reduce costs, I used the fact that I, myself, was physically going there to transport
7 the sample, so I took those two along. And it was perfectly natural to do so.

8 Q. [16:26:53] Thank you. Very briefly, did you play a role in the selection of the
9 experts from the IRCGN who carried out the analyses, did you contact them
10 yourself, in particular the fire experts?

11 A. [16:27:33] I don't remember given the field of expertise. And this is the rule
12 at the IRCGN, it is the director himself who appoints the experts. And I believe
13 that in each IRCGN report you will find in an annex a letter of appointment which
14 describes the appointment and the name, the precise name of the expert. So I
15 believe I can say I did not intervene in the choice of the expert.

16 Q. [16:28:03] Very well. Thank you. To conclude on the fire report, the ERN is
17 CIV-OTP-0076-1893, page 1902, a little bit further down if we can, it states and I
18 quote:

19 "We would like to indicate that because of the time lag, the major time lag between
20 the actual committing of the events, that is incidents that took place between 25 and
21 28 February 2011 and also between 9 and 11 December 2014, that is a little bit less
22 than four years, negative results do not necessarily mean that there was no
23 accelerant used at the time of the events."

24 To your knowledge, did the expert investigate to determine the precise dates of the
25 events?

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1 A. [16:29:48] Again, and I believe I've already expressed myself very clearly, that
2 it's not the role of the expert to determine the date of the events. This expert
3 received a mission statement. In that mission statement there is information
4 regarding the dates of the alleged event and he sticks to that. The role of the
5 expert is to carry out forensic analysis, but not to investigate information coming
6 from the OTP of an international jurisdiction, at least in my opinion.

7 Q. [16:30:28] So to be clear, this conclusion in the report is based solely on the
8 information sent to the expert by the OTP, that is the fact that there is a four-year
9 time lag?

10 PRESIDING JUDGE TARFUSSER: [16:30:42] You're asking the obvious. Of
11 course. This is obvious.

12 MR JACOBS: [16:30:53] (Interpretation) Your Honour, I see the time. Perhaps
13 this would be a good moment to stop for today.

14 PRESIDING JUDGE TARFUSSER: [16:31:05] Yes.

15 Thank you, Monsieur Laroche. See you tomorrow at 9.30.

16 The hearing is adjourned to tomorrow. Thank you.

17 THE COURT USHER: [16:31:15] All rise.

18 (The hearing ends in open session at 4.31 p.m.)