

1 International Criminal Court

2 Trial Chamber I

3 Situation: Republic of Côte d'Ivoire

4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé

5 ICC-02/11-01/15

6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and

7 Judge Geoffrey Henderson

8 Trial Hearing - Courtroom 1

9 Wednesday, 11 October 2017

10 (The hearing starts in open session at 9.31 a.m.)

11 THE COURT USHER: [9:31:58] All rise.

12 The International Criminal Court is now in session.

13 Please be seated.

14 PRESIDING JUDGE TARFUSSER: [9:32:30] I was told -- good morning. Well, it's

15 the right way to start. Good morning to everybody. I was told that the Office of

16 the Prosecutor wants the floor to introduce a new member of the team.

17 Mr MacDonald.

18 MR MACDONALD: [9:32:48] Yes, indeed. Good morning, your Honours.

19 Thank you. I'd like to introduce in replacement to Ms Chubin, that had left us a few

20 months ago a new team member, Ms Elena Martin Salgado, who will be now assisting

21 the trial team. Thank you.

22 PRESIDING JUDGE TARFUSSER: [9:33:09] Thank you, Mr MacDonald. I wish

23 all the best to the new team member. And so we can start now with the hearing.

24 Before introducing the witness, there is a decision, an oral decision by the Chamber,

25 and it is the oral ruling on the request that witness, the next witness, 584, not be

1 considered as an expert witness filed by the Defence for Mr Gbagbo

2 on 5 October 2017; this is filing 1048.

3 The Defence for Mr Gbagbo recalls that on 3 December 2015 it had indicated that it
4 would challenge Witness 584's qualification as an expert witness, in particular in light
5 of his position as a staff member of the Office of the Prosecutor. By the same token,
6 the Defence for Mr Gbagbo clarifies that it is appropriate that Witness 584 take the
7 stand as a witness with a view to illustrating the various documents he prepared for
8 the Office of the Prosecutor and the methodology adopted.

9 The Prosecutor indicated, by email to the Chamber and the parties on 9 October 2017
10 at 1508 hours, that he would be ready to orally respond to this request by submitting
11 arguments similar to those already submitted in connection with an earlier similar
12 request.

13 In light of the fact that the issue underlying the request has already been repeatedly
14 discussed in these proceedings, the Chamber deems that it is not necessary for it to
15 receive the Prosecutor's oral submissions on the request.

16 The Chamber notes that, as highlighted by the Defence for Mr Gbagbo, the statutory
17 texts of the Court do not set forth a procedure specifically aimed at the assessment of
18 an expert's qualifications, independence, or of the value of their testimony. It is
19 therefore within the scope of a Chamber's discretion to determine the framework
20 within which expert witnesses can be heard and the criteria presiding over the
21 assessment of their testimony. For these reasons, the Chamber finds it appropriate to
22 reiterate its previous practice, and I'm referring to oral ruling 30 May 2017, in
23 transcript 163, page 41, lines 2 to 4 in the English transcript; and 29 June 2017,
24 transcript 168 redacted, page 62, lines 3 to 9 of the English transcript, whereby
25 witnesses indicated as "experts" by the calling party are heard without prejudice

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1 either to the possibility for all the parties to ask questions related to the witness's
2 expertise, or to the Chamber's assessment of the merits of their testimony and/or
3 reports.

4 As also already stated, see oral ruling dated 4 September 2017, transcript 185
5 redacted, page 6, line 11 to page 7 line 3 of the English transcript, the parties are
6 entitled to challenge an expert witness's findings either through their own
7 examination of that witness or, alternatively, by calling their own expert witness in a
8 subsequent stage.

9 Accordingly, the request is rejected. This concludes the oral ruling.

10 And I would like now the court usher to introduce the next witness, for which the
11 Prosecutor has requested two hours, which in order to try to finish the questioning
12 today, would lead to possible extended hours hearing. So it depends very much on
13 the parties if we have extended hours or if we have not extended hours, but it would
14 be good to finish today with the questioning of this witness.

15 (The witness enters the courtroom)

16 PRESIDING JUDGE TARFUSSER: [9:38:49] (Interpretation) Good morning,
17 Mr Baccard.

18 WITNESS: CIV-OTP-P-0584

19 (The witness speaks French)

20 THE WITNESS: [9:39:05] (Interpretation) Good morning, Mr President.

21 PRESIDING JUDGE TARFUSSER: [9:39:08] That was all of my French. Now I
22 turn to English.

23 So could you please, before we start with the questioning by the Office of the
24 Prosecutor, give us your full -- identify your full name and date, place of birth,
25 et cetera. Thank you.

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- 1 THE WITNESS: [9:39:40] (Interpretation) Certainly, your Honour. Good morning,
2 Mr President, your Honours. I wish to also greet the various participants in the trial.
3 My name is Éric Baccard and I was born on 13 September 1952 in Chambéry, France.
4 PRESIDING JUDGE TARFUSSER: [9:39:59] You're a French citizen.
5 THE WITNESS: [9:40:07](Interpretation) Correct, Mr President.
6 PRESIDING JUDGE TARFUSSER: [9:40:09] And, as we know, you're a staff
7 member of the Office of the Prosecutor -- in the Office of the Prosecutor.
8 THE WITNESS: [9:40:23](Interpretation) Correct, Mr President.
9 PRESIDING JUDGE TARFUSSER: [9:40:24] Since when and with which functions?
10 THE WITNESS: [9:40:34](Interpretation) I was recruited by the International
11 Criminal Court, namely the OTP, late in -- 26 October 2004 to coordinate forensic
12 activities within the OTP.
13 PRESIDING JUDGE TARFUSSER: [9:40:55] So you are the leader of the forensic
14 unit in the OTP; is this correct?
15 THE WITNESS: [9:41:13](Interpretation) Yes, that is correct. The exact term is the
16 Forensic Science Unit, which was set up late in 2015 to replace the previous unit, the
17 scientific --
18 THE INTERPRETER: [9:41:35] Inaudible.
19 THE WITNESS: [9:41:37](Interpretation) -- in December 2015. The Prosecutor
20 decided to make changes and turn the unit into a section that includes three actual
21 units; Forensic Unit, that is to say the unit handling forensic matters, autopsy,
22 exhumations, examinations of victims and review of various objects; then we have a
23 Cyber Investigative Unit which handles scientific matters relating to digital evidence
24 collected via computers, for example, data that can be found on the internet or on
25 social networks; and then the third unit, that includes the section is the Imaging Unit,

1 which is responsible for drawing up maps, interpreting or identifying satellite images
2 that are relevant, and also to enhance photographs, videos and related activities, for
3 example, preparing presentations for the Court.

4 PRESIDING JUDGE TARFUSSER: [9:43:03] And just to understand, are you the
5 head of this section?

6 THE WITNESS: [9:43:10](Interpretation) Yes, indeed.

7 PRESIDING JUDGE TARFUSSER: [9:43:11] And yourself, you are a pathologist; is
8 that correct?

9 THE WITNESS: [9:43:22](Interpretation) That is correct, sir.

10 PRESIDING JUDGE TARFUSSER: [9:43:23] Okay.

11 So now I think we have a clear picture, the rest the parties will ask you.

12 Now I come to the language, you know how it works, I just would like to ask you to
13 speak slowly, as you are doing, but not -- try to not overlap with other speakers,
14 especially when you will be questioned in French and you have not the translation.

15 In case you do I will give you a sign just to slow down, not to stop, just to slow down.

16 Now, you are a witness to this case, although a staff member of the OTP, although
17 you are called as a witness, and as a witness you have to say the truth, whatever the
18 truth is, but it must be the truth, your truth. And to that effect I would ask you to
19 read the formula you have in front of you.

20 THE WITNESS: [9:44:46](Interpretation) I solemnly declare that I shall tell the truth,
21 the whole truth and nothing but the truth.

22 PRESIDING JUDGE TARFUSSER: [9:44:52] So thank you very much. You know
23 that not saying the truth is an offence against the Court and as such punishable. If
24 during the questioning you have any problem, any issues, please address them to me
25 and we will try to take care of it.

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- 1 Now if you're ready, I give the floor to the Office of the Prosecutor for his
2 questioning.
- 3 THE WITNESS: [9:45:27](Interpretation) Understood, your Honour.
- 4 PRESIDING JUDGE TARFUSSER: [9:45:29] Thank you very much.
5 Mr Demirdjian, yours, the floor.
- 6 MR DEMIRDJIAN: [9:45:32] Good morning, Mr President. Good morning,
7 your Honours. Thank you. Considering that we do have the standing challenge,
8 I'll spend a few minutes on the background of the witness, and then I'll turn to the
9 reports, so I'll be brief.
- 10 QUESTIONED BY MR DEMIRDJIAN: (Interpretation)
- 11 Q. [9:45:55] Good morning, Dr Baccard.
- 12 A. [9:45:58] Good morning, Mr Prosecutor.
- 13 Q. [9:45:59] I'd like to begin my questioning by asking you a few questions about
14 your academic and professional background. I'll try to be brief. Now, you have
15 told the Presiding Judge that you are an expert in the area of forensics, and we do
16 have a copy of your curriculum vitae, which I would like to have displayed.
17 This is CIV-OTP-0102-0007, tab 13 on our list. If it could be displayed on the screen.
18 Thank you.
- 19 Dr Baccard, is this indeed the updated version of your CV that we have here on the
20 screen?
- 21 A. [9:47:24] I think so. If the Registry could scroll down so I can cross-check.
- 22 Q. [9:47:34] Very well. Could the Registry staff scroll down.
- 23 A. [9:47:42] And the following page as well, please.
- 24 Yes, that is correct.
- 25 Q. [9:47:58] Thank you.

1 Now, if we look at the first page of your CV, we see that in 1987 you became an expert
2 at the court in Grenoble. Are you still on that list of experts?

3 A. [9:48:17] Yes, that is correct.

4 Q. [9:48:22] Could you briefly tell us what other are the criteria for such a status,
5 namely, to become an expert at that court.

6 A. [9:48:34] The criteria are to be found in two different groups, that is to say, first
7 of all, professional abilities, skills through academic qualifications that are confirmed
8 by the council of the order of physicians, namely, university degrees, and the
9 professional body of the physicians association must ensure that the academic
10 qualifications are proper to become a forensic expert.

11 Then the second criteria or set of criteria is experience, experience in these matters.

12 Q. [9:49:27] Very well. We can also see that in December 1999 you were
13 appointed certified expert at the Cour de cassation. I won't really ask you too many
14 questions about, but could you tell us your experience as a forensic examiner was in
15 France before you went to the ICTY?

16 A. [9:49:59] Well, first of all, I was a general practitioner at the very beginning of
17 my career after I earned my doctorate in medicine. Then I continued with my
18 education, specialising in forensics, and I earned a number of postgraduate diploma,
19 university diplomas, so that I could enhance my knowledge of various aspects of
20 forensics science; for example, criminalistique, criminology, toxicology, wound
21 ballistics, crime detection, and another -- I earned a number of diplomas that are to be
22 found in my CV.

23 After I worked as a general practitioner for a while and after I had obtained these
24 diplomas, I focused more and more on forensics, first at the Grenoble University
25 Hospital. And, you see, the special thing about forensics in the world of -- well, in

1 France, is that this area has to do not only with people who have died, but also people
2 who are still living. My work was not only carrying out autopsies but also I had to
3 travel to crime scenes and examine corpses of crime victims or people who had died
4 alone. I also had to assess the after effects of victims, people who had been in car
5 accidents, people who had been assaulted, people who had been victims of
6 malpractice, and I had to establish cause and effect relationships between the causal
7 effects and the actual symptoms of the people in question. And ultimately, I was
8 placed on the list of experts at the Grenoble Court of Appeal.

9 After some years on that list, I was ultimately placed on the domestic list, the list of
10 experts of the Cour de cassation. Have I answered question, is that sufficient?

11 Q. [9:52:57] Very well. Could you tell us in general terms how many autopsies
12 have you performed in the course of your career; do you have any idea?

13 A. [9:53:15] It's a rather grisly count and I really haven't kept track. I tried to
14 determine how many autopsies I had done when I first gave testimony before an
15 international court. I tried to find some sort of number expecting such a question,
16 and I think it must be something close to 5,000 autopsies.

17 Q. [9:53:51] And could you perhaps tell us some of the more high level or high
18 profile cases that you are involved in in France?

19 A. [9:54:01] In France.

20 Q. [9:54:10] Well, I'll try to think of another question. Now, was your expertise
21 called upon at the international level? Judging from the CV this seems to be the case,
22 but could you be more specific? What particular area within your general area of
23 expertise were you called upon for?

24 A. [9:54:37] Well, at the international level I began in 1999. I began working as a
25 forensic examiner during the Mont Blanc Tunnel disaster, and we were able to

1 identify all the victims. And in that particular case, the bodies were very badly
2 damaged by the fire. Then I was contacted by the chief forensics officer of the ICTY,
3 and he wanted to discuss a particular case with me, a case that he was dealing in
4 Bosnia. After that, I took part in a number of exhumations in Bosnia in 1999, Visoko
5 morgue, and also in Croatia at the Zagreb morgue.

6 I applied for a position at the end of the year, namely, chief forensics officer of the
7 ICTY, for Kosovo, and I was chosen. And beginning in the year 2000, I started
8 working for the ICTY as a forensic examiner, and I was responsible for their Orahovac
9 morgue in Kosovo.

10 After that, when the ICTY stopped its direct involvement in exhumations and
11 autopsies, that is to say, late in the year 2000, I was asked to supervise or to monitor
12 various autopsies being done in national forensic labs of countries of the Balkans, in
13 Croatia, and also in the Republic of Macedonia.

14 Q. [9:56:48] Very well. Thank you. Now, you've already explained to the
15 Chamber what your main activities were and what the main activities of the -- your
16 unit here at the Court are. Could you tell us how your unit deals with various
17 mandates entrusted to you by the office of the OTP?

18 A. [9:57:15] Well, we receive requests and they can take various forms. For
19 example, we receive requests that are quite limited, namely, carrying out forensic
20 analyses of portable phones that have been collected by investigators or computers, or
21 we may analyse documents that come into their possession. Other missions are
22 more complex, and we need to deploy a number of scientists to the field, generally
23 speaking. After the request, there is a discussion with the person who has made the
24 request and we are provided with information. After that, we prepare our analysis,
25 so using documents, images from open sources or images that we purchase from

1 various companies or requested from partners such as UNOSAT. After that,
2 preparatory work, an assessment mission is conducted on site. And if, for example,
3 we examine a crime scene, we visit the site, and if corpses are to be exhumed there is a
4 site visit as well.

5 The preparatory work is then done and it's not only scientific preparation, but also we
6 handle logistics. For example, we might be asked to examine crime scenes that are
7 very far away from any particular resources and, thus, we need to travel with the
8 appropriate equipment so that we can deal with any possible circumstances, because
9 we just can't show up in the middle of a desert and we can't have the mission coming
10 to a halt because we haven't thought of a particular instrument.

11 So after we've done that preparatory work, the mission itself begins.

12 Q. [10:00:21] Very well. Within the context of your missions, does your section
13 sometimes have to communicate with external scientific agencies?

14 A. [10:00:37] That's correct. In fact, this happens quite frequently. It is, indeed,
15 difficult for us, given the experts we have within the section and the laboratory
16 equipment that we have acquired, it is difficult for us to cover all aspects of forensic
17 sciences and criminalistics, so quite often we have to resort to external experts for
18 matters that we cannot do ourselves, either because we don't have that experience
19 internally or because the analysis itself requires using extremely expensive equipment
20 which the Court, the OTP does not have the resources to acquire.

21 Another consideration, if I may add, is that some of our missions require the use and
22 recruitment of experts, forensic experts and crime scene technicians or forensic
23 anthropologists, mindful of the scope of the various sites we are required to study.

24 Q. [10:02:17] Very well. Now, within the context of this case, that is the
25 Laurent Gbagbo and Charles Blé Goudé case, which external scientific agents have

1 you communicated or worked with? And please do not go into the details, I just
2 want you to give me a list of those external agencies.

3 A. [10:02:36] Well, off the cuff, I would say Netherlands Forensic Institute, which
4 has the benefit of meeting very high scientific standards of international renown and
5 which are located in the same city as the headquarters of the ICC.

6 We also worked with the Institute of Criminalistic Research of the National
7 Gendarmerie.

8 I believe that UNOSAT, the United Nations agency for satellite imagery, was also
9 contacted. And I think we also worked with the American Association for the
10 Advancement of Science to determine whether there were other satellite imaging
11 facilities available other than those which were available to us.

12 I also think that in the area of advisory services we worked with the European
13 Network of Forensic Institutes to check if they had any available experts who could
14 be deployed to the field with us.

15 And, in addition to that, we have a list of experts who have already worked with
16 international courts, including the ICTY and the STL, Special Tribunal for Lebanon.

17 Q. [10:04:18] Very well. Now I would like to address your expert report for this
18 case. Before I go to the first report I would like you to clarify a little aspect of
19 forensics, because we have heard other experts here basing their conclusions on
20 various autopsies, which is a direct examination of the corpses of the victims. Can
21 you tell us what is the value of an assessment based on documentary evidence?

22 A. [10:05:00] The value of that type of expert assessment is obviously, and I
23 would like to limit myself to the autopsies conducted on the basis of injury reflected
24 in photographs, I would like to say that this is an extremely difficult exercise because
25 photographs can be doctored or Photoshopped and the quality of the images could

1 also be poor or mediocre and, therefore, defining the specific injury would be
2 imperfect. Photographs can also be taken by people who have no scientific training
3 and, therefore, may not reflect the full picture. Quite often also victims are wearing
4 their clothes and, therefore, these attires can hide their injury, and so the direct
5 examination by photographs may be a bit incomplete and, therefore, the probative
6 value, which of course is in the hands of the magistrates or the Judges, would be
7 somewhat limited because of these considerations. And I tried to highlight these
8 points in my report to the extent that I, rather, focused on assessing the absence of
9 incompatibilities and dissimilarities between the various photographs that were
10 submitted and external body examinations conducted by other forensic experts and,
11 therefore, there were significant points to be noted, in terms of the fact that the
12 forensic experts had actually examined the bodies.

13 In the past for the French government, for example, pertaining to a posteriori
14 investigation, it was necessary to provide an opinion to the magistrate regarding a
15 case of fire that we look into such material to come to an opinion; and I think this has
16 also been used internationally in the Milošević case where I was asked to conduct a
17 similar kind of analysis pertaining to the Izbica incident where the victims had been
18 filmed or recorded by a doctor in Kosovo, and several days after the bodies were
19 exhumed by, I don't remember who it was, it must have been the Serbian army or the
20 Serbian forces and the bodies were moved and were, therefore, no longer available.
21 The only material available was, therefore, that video recording which had been used
22 alongside a crime scene investigation conducted by a team from the ICTY in 1999.

23 Q. [10:08:44] So you're referring now to your report, and maybe we could take a
24 look at it, it's document 0084-4416, it's in tab 2 of our list.

25 Before the document is displayed, now, Dr Baccard, can you tell us that this

1 documentary assessment of material is an acceptable method?

2 A. [10:09:23] I would say that this is a rare method. I have had to use it
3 sometimes in France. I have talked about using it at the ICTY. And this method
4 was also used for the first Commission of Inquiry on Côte d'Ivoire where I was a
5 forensics expert on that commission. Now, when it comes to forensics, this method
6 is rare, but it can be used based on photographs taken by the press or by witnesses.

7 Q. [10:10:15] Now, Dr Baccard, do you see the image?

8 A. [10:10:21] Yes.

9 Q. [10:10:22] That's the cover page of your expert report on the death of
10 Mr Diakité Yaya.

11 Let's go to the second page, please. Could we zoom to the top of that document.

12 Thank you.

13 We see that you have included here the letter of instruction requesting that you assess
14 the consistency of the various documents relating to the death of Mr Diakité Yaya and
15 there is a list of items that were made available to you.

16 I would like to draw your attention to items 2 and 3; 2 is the external examination
17 document and the third is a forensics report -- just the first two, rather. I'd like us to
18 look at those first two sets of documents. They were prepared by Dr Botti and Yapo
19 Ette and I would like to ask you whether you met with Dr Botti and Yapo Ette in the
20 course of your work?

21 A. [10:11:48] I met with Professor Yapo Ette and Professor Botti not within the
22 context of this particular expert assessment, but I met them within the framework of
23 the Legal and Forensic Medical Institute in Abidjan, which brings together such
24 experts, and they were responsible for examining the various cases relating to the
25 victims of the violence, and it is this institute that had conducted the exhumations and

1 external examinations of the victims. But for the purpose of this particular report,
2 no.

3 Q. [10:12:36] Very well. We note that, besides these two documents, you also
4 had a funeral document as well as a video and a witness statement. Can you explain
5 to the Court how you proceeded when it came to conducting the mission you were
6 assigned?

7 A. [10:13:05] First of all, I had to view the video to see, without being influenced
8 by what other forensic experts had said, or the report of the witness's interview. I
9 was immediately aware of the fact that only part of the video contained what one
10 could see of the victim, and when it came to the trauma and injury, which was
11 captured on the video, I think this was obvious.

12 Secondly, I had to compare the images on the video and take various components of
13 the various parts, picture by picture, and compare them with the description of the
14 injury in the two reports prepared by Dr Botti and Professor Yapo Ette.

15 Q. [10:14:24] Very well. Now, Dr Baccard, I would like to highlight a few
16 aspects of your report, but I just want to clarify a few points, and I wouldn't take
17 every single line or paragraph of the report.

18 Can we then move to page 4, to the bottom of page 4 of your report. That's
19 paragraph 2.6. Very well. If you look at this point 2.6, point three, the lower limbs
20 of what is referred to here as désaxation anatomique. What does désaxation
21 anatomique refer to?

22 A. [10:15:23] This is a medical term which indicates that the normal
23 anatomy -- because the leg normally has an axis which is straight, and in the case of
24 Mr Diakité Yaya, the video referenced indicates that the victim had a deviation or a
25 an inclined deformation of the lower leg, and therefore there was loss of orientation.

1 And this was also reflected in the certificate following the external examination which
2 indicated that the lower part of the leg had been damaged; that is, the ankle and the
3 foot were no longer connected properly.

4 Q. [10:16:49] Very well. Now, if you go to 0151, at the end of the fourth line,
5 referring to cyphose dorsale, in French. Can you clarify what that means?

6 A. [10:17:06] Well, I should have, given that this is a technical forensic term, I
7 should have provided a footnote to explain what this means. Cyphose is the
8 contrary of lordose, and these are matters which pertain to the lumbar area around
9 the ribs. There is a bend towards the outside in the back area.

10 Q. [10:17:54] Thank you for your answer. I would like us to go to page 5, to the
11 bottom of the page, section 3.1: identification. The third paragraph indicates that in
12 the death document, the height of the person is mentioned on the back of their
13 national identity card as being 1.81 metres, and you say that this is compatible with
14 the value taken during the post-mortem analysis, namely, 178 centimetres. Can you
15 tell the Court what the explanation for this minimum difference in height is, that is,
16 the height on the national identity card and the height from the post-mortem
17 assessment?

18 A. [10:18:52] The difference of 3 centimetres is regularly observed when autopsies
19 are conducted. Several publications on this issue have already been made and the
20 causes are quite clear. Height, to begin with, physiologically, is something that
21 varies throughout life. Now, when it comes to adults, it is said that we lose at least 1
22 centimetre every 10 years, and then our height can also vary from day-to-day,
23 depending on levels of hydration and dehydration and levels of tiredness. One is
24 more tired at the end of the day than early in the day. And height also depends on
25 how one stands; children may tend to lift themselves up in order to look a little taller

1 or otherwise look shorter. Then there are also other traditional causes, namely, that
2 when it comes to identity documents, the heights are not always necessarily taken.
3 They are actually provided by the person applying for an identity card, and generally
4 the height is assessed upward.

5 For these reasons, therefore, there are several approaches to taking heights on the
6 autopsy table. And the most reliable approach is to use a facility that gives a vertical
7 height that is most reliable. But what happens is that when two operators have been
8 requested to take the height of a cadaver, every now and then the results are not the
9 same. That is why there is some measure of uncertainty when it comes to
10 determining height.

11 Q. [10:21:22] Thank you. I would like us to now go to page 6, paragraph 3.3,
12 summary of injuries. I would like you to explain to us in this first paragraph what
13 does cou-de-pied stand for. Insteps.

14 A. [10:21:54] The term cou-de-pied is somewhat related to the ankle, which is an
15 old term, cou-de-pied, which was used previously as the neck of the foot for the ankle.
16 Now, what happens anatomically is to identify the instep as being under the ankle,
17 directly under the ankle. I am not in a position to tell you the exact meaning given to
18 this word by my Ivorian counterparts. But, you see, on watching the video, it would
19 appear that this is slightly above the ankle, rather than specifically at the ankle.

20 Q. [10:23:07] Very well. Let's go to your remarks at page 8, at paragraph 3.3.
21 Here, your first observation is that the victim clearly received medical attention after
22 the incident. And then in the second point you say that there was a chest or thoracic
23 drain. What does this mean and in what type of environment is this kind of
24 treatment provided?

25 A. [10:23:50] I think that here we need to distinguish what happens from country

1 to country, where emergency medicine can differ.

2 In countries where there are ambulances, it is possible to proceed with this chest
3 treatment where possible. But in cases where life is at threat and there is
4 haemorrhage within the thorax that can be sponged out or can be mopped out in
5 order to reduce the pressure on the other organs within the thorax, this can be
6 conducted either on site or in an ambulance.

7 In other countries, Côte d'Ivoire being one of such countries, these type of treatment
8 are only available within hospitals.

9 Q. [10:25:14] Very well. Let me go to the next page, the last page of your report,
10 and in the middle of the page you deal with the topography, so to speak, of the
11 injuries. And then at the bottom of the page you provide your conclusions. Can
12 you tell us what comparisons you are able to make between the visible injury on the
13 video and the injury indicated by Dr Botti and Yapo Ette?

14 A. [10:25:57] The injury reflected on the two documents, namely, the video and
15 the medical records, are injuries that are visible, visible injuries to the lower members.
16 That's obvious. And the injuries are great or significant, as you can see. Then there
17 is the fact that one can cautiously say that there is some injury to the neck because the
18 video doesn't focus on that aspect and, therefore, one cannot see that very clearly.
19 Now, when it comes to any other injury to the buttocks or to the thorax, these are
20 dissimulated because of the position of the victims. So they are not visible.

21 Q. [10:27:00] Very well. When it comes to the identity of the victim, you had a
22 statement from an individual, a witness, who knew this person. You received that
23 information; is that correct?

24 A. [10:27:16] Yes. The clothes also approximately corresponded to the other
25 material and we were guided by colour. We were also guided by compatible height.

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1 And once again, the purpose was to detect any discordances between the materials
2 which would have led to a conclusion that this was not the victim being considered.

3 Q. [10:27:54] Very well. So we see your conclusions at the end of the page,
4 namely, that having examined the various documents, there is no forensic basis on
5 which to question the identity of the victim, being Mr Diakité Yaya, in relation to the
6 forensic conclusions pertaining to the causes and circumstances of his death.

7 Now, having done this, Mr President, I have no further questions for the witness, and
8 I would now like to request that the report and the documents having been referred
9 to by the expert be produced into evidence, except for the statement, which will be
10 dealt with under Rule 68(3) by the relevant witness. So I would like to produce
11 video and document 0084-4416, the external examination document 0083-0072, the
12 external forensic expert report 0083-1350, and report number 0084-2869.

13 And then I would like to move on.

14 I see my learned colleague on his feet.

15 PRESIDING JUDGE TARFUSSER: [10:29:38] Yes, please.

16 MR JACOBS: [10:29:41] (Interpretation) Thank you, Mr President. These
17 documents have been used by the witness in drafting his report and I think that he
18 needs to be shown these documents to determine whether this is the right material,
19 otherwise he would have to -- we proceed through paragraphs 43 and 44.

20 MR DEMIRDJIAN: [10:30:14] Your Honours, the documents are mentioned by
21 ERN in the report. The expert has told us he's seen them. We can waste time and
22 show them one by one, but --

23 PRESIDING JUDGE TARFUSSER: [10:30:24] We will not waste time. It's okay,
24 they're in. Thank you.

25 MR DEMIRDJIAN: [10:30:39] (Interpretation)

1 Q. [10:30:40] Dr Baccard, I would like to deal with your other reports in
2 chronological order. We have three to deal with.
3 Now, the first one I would like to look at is an internal memorandum, 0042-0439; this
4 is number 8 on our list.
5 If we could scroll up to the top of the page please.

6 Dr Baccard, I think you can see that this is dated 5 March 2013. Is that your
7 signature?

8 A. [10:31:30] Yes, indeed.

9 Q. [10:31:31] Very well. Now, the subject is "Visit of Abobo municipal cemetery
10 on 29/11/12 & 03/12/12". And the memo speaks about a trip to the cemetery to find
11 the grave of Bamba Nachamy and you were in the company of the president of the
12 Association des Femmes Martyrs d'Abobo. How did it come to be that you were in
13 the company of that person?

14 A. [10:32:21] Well, I was with an investigator and everything was organised by
15 the investigator.

16 Q. [10:32:28] Very well. And what was the purpose of this visit to the cemetery?

17 A. [10:32:40] As I said earlier, the decision to send staff to the field is always
18 preceded by an assessment and so, you see, first of all, we needed to confirm the
19 location of the grave where the young woman was buried and then, secondly, we
20 needed to assess the technical difficulties, namely, gaining access, the size of the
21 excavation, the depth of the excavation, whether any special preparatory measures
22 needed to be taken.

23 Q. [10:33:40] Very well. And under 1.2 we see, second paragraph -- or bullet
24 point, rather, apparently Mr Bamba had difficulties in locating his daughter's grave.
25 Could you describe how the graves were organised at that cemetery when you

1 visited?

2 A. [10:34:08] Certainly. The cemetery is quite large and it's really nothing like a
3 European cemetery or a north American cemetery. There were a few rows or paths
4 that were not paved in any way, but as soon as you went off of these main paths they
5 were more like paths or trails leading to places surrounded by vegetation. Some of
6 the graves were identified with signs from a funeral home with the name of the
7 person, the date of burial and so on and so forth, but most of the graves were not.
8 The other problem was that there may be a register for the graves but no mention is
9 made of actual location, so that document is really of no particular assistance.
10 During the discussions we had before travelling to the site, Mr Bamba said that he
11 had not actually seen his daughter being buried. And what is more, when he came
12 several months later, it was observed that the funeral sign had disappeared. So, you
13 see, he led us to a number of places that are mentioned in my report, but those
14 locations were not compatible with the date because the funeral signs were dated
15 much before the events or much later. There had been changes. And then he
16 said -- well, first he had indicated one location, and as far as I was concerned there
17 was no, how should I say this? With that amount of information and intelligence we
18 could not proceed with any exhumations, we were not going to exhume several
19 graves without having a specific idea of where the body of the person was.

20 Q. [10:37:01] Very well. So there was no exhumation that day?

21 A. [10:37:08] There was no decisions taken in that regard, there was not enough
22 information. The investigation needed to continue.

23 Q. [10:37:17] Very well. Now, then you said that there was a second visit, if we
24 move on to the following page. So there was the first visit on 29 November, then
25 you went back on 3 December, and you have explained that you went back to assess

1 two areas within the cemetery where unidentified victims had allegedly been buried.
2 Could you explain what the purpose of the second visit was and how you assess these
3 two areas or sections of the cemetery.

4 A. [10:38:00] Indeed. That was after the appointment we had with
5 representatives of the two funeral homes in Abidjan, IVOSEP and INTERFU. There
6 had been some burials done in one place called Carré des Indigents. There were two
7 Carré des Indigents, one for IVOSEP and one for INTERFU. The IVOSEP location
8 was likely to contain the bodies of victims killed during the women's march in Abobo
9 on 3 March. In actual fact, there had been -- there had been electricity, well, power
10 outage, and so, you see, the cold room in the hospital lost power, the bodies were
11 very -- in very bad condition and burial was done quickly. All the corpses were
12 mixed up and, in particular, there were a very large number of unidentified victims
13 amongst those bodies. So we were trying to take stock of the extent of the site and
14 also to discuss a possible strategy to assess whether it was possible or not to locate the
15 victims that we were looking for. And after reading the documents that were
16 provided to us, in particular the list of people who were -- who ended up at this
17 morgue and the refrigeration equipment there failed, and we saw that nearly all the
18 corpses were male, nearly all. And so the special unit and the colleagues from the
19 forensic unit, well, the cost of DNA analysis of several hundred people buried, those
20 costs would have been sky high, so we decided to do some pre-selection on the basis
21 of anthropological information.

22 We conducted a visual viewing of the back of the head, the back of the skull, and also
23 the pelvis in order to determine gender. We were thus able to separate the male
24 victims, who were reburied, and the female victims, either unidentified or, in some
25 cases, corpses for which the gender was not clear, and we conducted DNA analysis of

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1 that sample. That was done by the authorities of Côte d'Ivoire and also by a number
2 of colleagues from Senegal.

3 Q. [10:41:42] Thank you very much.

4 THE INTERPRETER: [10:41:44] Interpreter correction at the end of his reply:

5 And my colleagues from the forensic institute.

6 MR DEMIRDJIAN: [10:41:52] (Interpretation)

7 Q. [10:41:53] Now, you mention a number of photographs. Who took these
8 photographs?

9 A. [10:42:05] I did not take these photographs. I believe there was an
10 investigator with me, and that's always the case for a mission, so the photographs
11 must have been taken by the investigator. I could just -- I could be incorrect, but ...

12 Q. [10:42:22] Very well. Now, you mention that you were with someone. Just
13 a moment, please. Yes, we saw the name of the investigator on the first page, but I
14 will not mention that name.

15 I'd like to now move on to your third, well, the third report, and this is

16 CIV-OTP-0078-0542, this is number 9 on our list. CIV-OTP-0078-0542.

17 Very well. Now, this document is entitled "Forensic Report, Biological Samples for
18 Genetic Analysis, incident of 3 March 2011". I'd like us to go to the next page, to
19 page 2. Now, in the first paragraphs you say that you were given this
20 mission -- correction, these missions to collect biological samples for genetic analysis.

21 And you explained that you took part in these two missions in 2014 and 2015. First
22 of all, could you explain to us what was your specific role during these missions?

23 A. [10:44:23] My role was to check that the exhumations and autopsies met
24 standards, our forensic -- well, our scientific standards, and then secondly, to provide
25 the operators or the experts with the necessary equipment so that they would be able

1 to preserve the biological samples and transport them properly.

2 Q. [10:45:05] Very well. Now, in the introduction to this report you wrote that
3 the authorities of Côte d'Ivoire carried out the exhumation of hundreds of bodies that
4 had been buried in a common grave in the Abobo cemetery. Do you have any idea
5 how many corpses were exhumed?

6 A. [10:45:37] The number of victims exhumed in that area called the Carré des
7 Indigents was far more than what we saw in the documents that we reviewed.
8 People who had been in the morgue, the refrigeration equipment failed. I believe it
9 was more than 400, and I think that Professor Ette could be asked about that. I
10 would say more than 700 victims who were exhumed.

11 Q. [10:46:23] Very well. Now, in the second paragraph of the introduction you
12 say there was an initial screening done to locate the female victims. Did you take
13 part in this screening process? You mentioned that you had suggested that process.
14 Did you take part in the actual screening or selection?

15 A. [10:46:46] I took part in the first day of the screening because the exhumation
16 activities took longer than expected. I wanted to check that the standard procedures
17 were being followed. And I was quite reassured by the professional abilities of the
18 anthropologist who carried out this work, namely, this determination of gender.
19 Then I had to leave because I had to go on another mission to the Democratic
20 Republic of the Congo and I was not able to be present for the entire exhumation
21 process.

22 Q. [10:47:34] Very well. Now, in the third paragraph you state that samples
23 were taken in May 2014 and January 2015. And then you discuss the methodology
24 used. Could you please clarify one term. If we could scroll down to the very
25 bottom of the page, the last sentence begins with the following: "The exhumed

1 bodies were actually quite deteriorated and the samples" -- next page, please -- "the
2 samples were of bone tissue, generally speaking, the middle third of the femoral
3 diaphysis. Could you clarify that word, the femoral diaphysis?

4 A. [10:48:38] The diaphysis is the part of a long bone located between the two
5 extremities, the two ends. That is to say, for the femur, it means the cylinder that
6 corresponds to the thigh.

7 Q. [10:48:58] Very well. In the following paragraph you explain what
8 instruments were used to take the samples, and you state that the samples were
9 transported in a portable refrigerator to the NFI genetics lab. Who actually took
10 these samples to the NFI lab?

11 A. [10:49:21] I did. I was the custodian of the evidence from the time that the
12 samples were collected until they were handed over to the NFI genetics lab.

13 Q. [10:49:47] Very well. Now, mention is made to two missions, 2014 and 2015.
14 When did you actually hand over the samples to the NFI?

15 A. [10:49:58] I no longer recall the exact date. I believe it was the 24th. I'd have
16 to look at my notes.

17 Q. [10:50:09] We'll get there. We'll get there. It is my fault. I should have put
18 the question differently.

19 Now if we scroll to the bottom of the page, I think you can see the date of the first
20 mission, 19 to 23 May 2014. Now, for this particular mission, when did you hand
21 over the samples to the NFI?

22 A. [10:50:35] I think, but we'd have to double-check the actual document for the
23 hand over, it was in 2014. I'll have to cross-check the actual document. 20
24 May 2014, I believe.

25 Q. [10:50:54] Very well. Now, for this first mission we see that a number of

1 people were there on 20 and 21 May in the autopsy room of the Treichville University
2 Hospital morgue. Could you explain the role played by each person present? On
3 the following page, there's a fifth person, Jean-Marc Affian from the funeral home,
4 but here we see four names on this particular page.

5 A. [10:51:32] Well, my role was, as I said earlier, to provide the technical
6 assistance in terms of equipment, including pincers to extract teeth. My Ivorian
7 colleagues did not have such tools. The sterile tubes, the portable refrigerator. The
8 role of Mr Michael --

9 Q. [10:52:11] Perhaps not mention the actual --

10 A. [10:52:15] The following person was in charge of taking photographs.
11 Professor Yapo was with me to take samples, as was the other forensic doctor,
12 Dr Djodjo, and Mr Affian -- I think that name can be mentioned. He was there only
13 to organise the transfer of the bodies and the refrigerated contents to the autopsy
14 room.

15 Q. [10:52:56] Thank you. Now, if we could scroll down to part B, still page 4 of
16 the document. Now, samples were taken at the premises of the special investigation
17 unit. There's the first person -- I won't give the name -- then Captain Touré. Were
18 you there as well?

19 A. [10:53:29] Yes.

20 Q. [10:53:30] Once again, could you explain the role of the various people who
21 were present?

22 A. [10:53:38] Well, if I recall correctly, the family members were summoned in
23 coordination with the person whose name shall not be mentioned, and then there was
24 Captain Touré, and also that was organised through the Association des Femmes
25 Martyrs d'Abobo. On 22 May, Captain Touré organised the actual -- well, the

1 seating, the arrangements for the family members to come. I spoke to all the family
2 members. I introduced myself. I introduced the others. I explained what we were
3 planning to do, what we were intending to do; namely, to collect cells from the mouth
4 by taking cheek swabs so that we could compare DNA taken from the people, from
5 DNA collected from the corpses, so that we could identify the people who had died.
6 And of course we needed to make some adjustments to the scientific explanations to
7 the family members. We needed to reassure them how the examinations would be
8 done. And these people gave consent to cheek swabs being taken from the mucus
9 membranes in their mouth.

10 Q. [10:55:57] Now, at the top of the page we see samples were taken from 20
11 corpses and then we see samples were taken from family members, family members
12 of victims. If we could move on to the following, page there's another mission.
13 This one was in January 2015. And during the mission you took samples at the
14 Abidjan forensics institute and at the Treichville University Hospital morgue. Could
15 you explain the circumstances of this particular mission?

16 A. [10:56:57] If I recall correctly, but I would have to check another report,
17 autopsies were to be done by Dr John Clark and Dr Yapo Ette, and during the
18 autopsies, samples, DNA samples were to be taken. That is why I was present.
19 There were two other bodies and I think that there were some logistical difficulties,
20 and consequently there were two places where the samples were taken.

21 Q. [10:57:50] Very well. And once again, what were the roles played by the six
22 people who are listed here, except for that one person whose name we should
23 not -- just one moment. In this case the second person can be mentioned; I believe
24 you mentioned that name. Please go ahead.

25 A. [10:58:16] My role was to provide the necessary equipment and certain

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1 specialised tools for taking the samples. I also had to ensure the proper handling
2 and storage of the samples and to help Professor Yapo carry out the sampling.
3 You must realise that taking bony tissue out of the femur, for example, it is quite a
4 demanding task, physically demanding, and it's not a normal sort of thing at the
5 Abidjan forensics institute because they do not do DNA sampling in that context, and
6 so several people were needed to collect the samples.

7 Now, Ms Zanetta took notes and photographs; Professor H el ene Yapo and Dr John
8 Clark took part in the autopsies, they did the autopsies with the assistance of
9 Dr Djodjo for all the anthropological information. I believe Dr Djodjo also liaised
10 with the autopsy technician who cleaned the instruments.

11 Q. [11:00:04] Thank you.

12 MR DEMIRDJIAN: [11:00:06] Mr President, I see the time, I have about 20 minutes
13 to half an hour left. I will deal with the annexes after the break and one last report
14 and I will be finished.

15 PRESIDING JUDGE TARFUSSER: [11:00:14] Okay, thank you very much. The
16 hearing -- we have the break now and we come back at 11.30.

17 Thank you very much, the hearing is adjourned.

18 THE COURT USHER: [11:00:24] All rise.

19 (Recess taken at 11.00 a.m.)

20 (Upon resuming in open session at 11.33 a.m.)

21 THE COURT USHER: [11:33:11] All rise.

22 Please be seated.

23 PRESIDING JUDGE TARFUSSER: [11:33:14] Good morning once again. Good
24 morning, Dr Baccard, again. I give back the floor to the Office of the Prosecutor.

25 MR DEMIRDJIAN: [11:33:23] Thank you, Mr President.

1 Q. [11:33:31] (Interpretation) Good morning, Dr Baccard, once again. Now, if
2 we were to go back to your report on the incident of 3 March -- that's
3 CIV-OTP-0078-0542, please. We saw the body of your report. And I would now
4 like us to look at the annex of that report, page 0551, please. I will not look into
5 annex 1, which is your CV, but I'll go to annex 2, where we have informed consent
6 forms.

7 You can see the first one filled out by Mr Bamba Mamadou. I would like us to
8 display the second page, please, the next page. We can see the document is signed
9 on 22 May in Abidjan, and we see your name and signature.

10 Now, I would like to ask you, were these samples collected from relatives of the
11 victims? Or the forms, I'm sorry. The forms were signed by close relatives of the
12 victims; is that correct?

13 A. [11:35:09] Yes, that is correct.

14 Q. [11:35:14] We see a label here with a bar-code. What is that? What does that
15 represent?

16 A. [11:35:24] That is a label. There was a leaflet of several labels corresponding
17 to the various sampling kits that were provided by the NFI.

18 Q. [11:35:43] Very well. So this form was taken on 22 May 2014 in relation to the
19 first mission. Was that label placed on the form while you were in Abidjan or when
20 you returned to The Netherlands?

21 A. [11:36:08] No, it was placed in Abidjan when we were there to collect the
22 mouth samples. It was done at the same time.

23 Q. [11:36:19] Very well. Annex 2 has a number of similar forms collected from
24 close relatives. I'm not going to look at all of them, but let me turn to document 3 at
25 page 0553. Here we see the title form for transmission of ante-mortem samples

1 collected on 22 May 2014.

2 Next page, please. Thank you.

3 We see here a form captioned "Netherlands Forensic Institute" and then there is some
4 data on the form.

5 Now, Dr Baccard, who filled out this document?

6 A. [11:37:22] As far as I can recall, it was the NFI focal point who did so as the
7 samples were being handed in concomitantly.

8 Q. [11:37:36] Very well. If you go to page 0567, well, this page has five pages,
9 and on this page we see two names and two signatures. What can you tell us about
10 this page where you can see the inscription "chain of custody"?

11 A. [11:37:55] The first line shows my signature in relation to the handing in of the
12 samples. And the second line has a mistake in the date, not 14 May, but 24 May,
13 because Madam O'Sullivan signed shortly after I had signed, and then the parties
14 went on to photocopy the chain of custody before I could cross-check. And I only
15 found out subsequently that there was a mistake in the date.

16 Q. [11:38:33] Very well. So let's go back to the first page of this form,
17 page 554 -- 574, rather.

18 Now, here we see a number of figures to the left. What do those figures represent?

19 A. [11:38:59] Those figures correspond to the various numbers on the sampling
20 kits. One sampling kit was used per person sampled.

21 Q. [11:39:16] Very well. Can you clarify, you mentioned Madam O'Sullivan,
22 would that be the focal point you were talking about?

23 A. [11:39:27] Yes.

24 Q. [11:39:28] Now, let's go to annex 4 at page 579. Once again, you have a
25 transmission/reception form, and here we have some samples. Samples of what,

1 Dr Baccard?

2 A. [11:39:58] This form results to post-mortem sampling of biological materials
3 collected from the dead bodies, such as teeth and various fragments of the femur.

4 Q. [11:40:19] Thank you. The labels we see there, were they also provide by the
5 NFI?

6 A. [11:40:30] Yes.

7 Q. [11:40:33] Very well. Let's go to page 582 now. Once again, we see the same
8 names, the same signature, and once again we see the two dates 24 and 14 May. Do
9 you have the same comment to make in that connection?

10 A. [11:40:53] Yes, I do.

11 Q. [11:40:54] Very well. So we have another consent format page 584, annex 5.
12 Please, could we go to that page. Very well. Here we see it's a similar type of form,
13 but here the numbering is in two categories. We have labels under the remarks
14 column, and then we have another type of numbering starting with DZ. What is
15 that first column all about?

16 A. [11:41:38] Well, as you mentioned, it's not a consent form; it is a form for the
17 reception of samples. The first column is a code number provided by the Ivorian
18 forensic doctors. The second column is a description of the type of sampling. And
19 then the third column represents the various labels provided by the NFI.

20 Q. [11:42:17] Please, page 586, which will be the end of that document. Could
21 we go to that page, please. Once again, we see a signature and names, and we have
22 another name. Who is this other person, this Dr D. Eerhart. Who is that?

23 A. [11:42:37] Madam Doris Eerhart is a second focal point of the NFI and she was
24 on duty on that day.

25 Q. [11:42:51] Very well. You also included some photographs in the file on

1 post-mortem collection of samples. I would like us to look at two of these
2 photographs and I have some questions for you in that connection. So let's go to
3 page 588 at the bottom of the page. Thank you.

4 Can you tell us who the two persons on the photograph are?

5 A. [11:43:35] The person to the left is Professor H el ene Yapo Ette and I am the
6 person to the right.

7 Q. [11:43:51] Very well. Now, very well. We have another photograph which I
8 will not deal with, annex 7, but we have annex 8, a photograph on post-mortem
9 collection of samples in 2015. That will be page 596.

10 Please, let us focus on the photograph in the middle. Can you describe to us what's
11 happening here?

12 A. [11:44:39] On this photograph you cannot -- it is not two pairs of hands but
13 three pairs of hands. And the incident happened during our activity when there was
14 a power failure. And the saw which we were using failed, and that is why we had to
15 resort to a mechanical saw to be able to take a piece of the femur. And at that time,
16 the autopsy technician of the institute was assisting us.

17 Q. [11:45:25] Thank you, Dr Baccard. I am done with the report. And I would
18 now like us to look at the last document I want to show you today, which is your
19 mission report, ERN 0084-3939, number 10 on our list of materials.

20 Very well. You can see that this is a report on your mission of 4 to 12 May 2015.

21 And I would like us to go to the next page, please.

22 This report in paragraph 1 talks about a mission to collect samples for autopsies.

23 And there is one part that deals with the collection of samples during the autopsies,
24 and then in a second section you refer to the mistakes identified in

25 Professor Kloosterman report. Now, on this second page in the second part, if we go

1 further down, you explain what the samples are all about, and these are identified in
2 these bullet points. What I would like you to clarify is the following: On the next
3 page, that is page 3, you state that the T-shirts and biological samples were handed
4 over in person to the NFI. Can you explain to us how these samples were
5 transported on that occasion?

6 A. [11:47:33] If I do remember well, the T-shirt, because it was very humid and it
7 contained decomposing fluids, it was put into a sealed bag and held in a paper
8 container so as to avoid any microbes affecting the sample. Then it was sealed.
9 And the usual methodology was applied, namely, the samples were put into plastic
10 bags which were held at minus 18 degrees Celsius temperatures and carried in that
11 environment. And I remember that there were a number of problems when it came
12 to obtaining authorisation from Air France to power the fridge for transportation. So
13 that's why we had to use carbon gas to be able to transport the samples overnight in
14 order to keep the temperatures at acceptable levels so that they do not rise above
15 those acceptable levels. So that was something different when it came to comparing
16 to our regular missions.

17 Q. [11:49:16] Thank you. Then you go on to look at some of the mistakes made
18 by -- in Professor Kloosterman's report, and this was done by email and so on and so
19 forth. I don't really have any questions on those discussions which appear to be very
20 clear.

21 But now let me move on to the annex at page 3945 to conclude. Now here, we have
22 another transmission form from the NFI. Are these the samples that you mentioned
23 in your report, namely, the T-shirt and the other objects?

24 A. [11:50:05] Yes, that is correct.

25 Q. [11:50:10] Very well. If we go to the last page, 3948 of the document, we see

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1 here the chain of custody form, and once again, bearing a date and your signature and
2 Madam Eerhart's signature; is that correct?

3 A. [11:50:30] Yes, that is correct.

4 Q. [11:50:32] Dr Baccard, I want to thank you for answering my questions.

5 And, Mr President, that brings to an end the examination by the Prosecutor.

6 PRESIDING JUDGE TARFUSSER: [11:50:53] Thank you, Mr Prosecutor. In one
7 hour and a half you went through it. Thank you very much.

8 Before giving the floor to the Office of the Prosecutor -- to the Defence for Mr Gbagbo,
9 sorry, I would like to ask you something which I noticed in the first report the
10 Prosecutor was questioning you about.

11 The letter of mission is dated 26/6/2015. In the letter of mission there is the request to
12 you to submit the report no later than 30 June 2016, and the 26th was a Friday;
13 the 30th June was a Tuesday. And your report is dated 26 June, meaning the same
14 day you received the mission, yes, the request for the mission.

15 The first question is, "mission" doesn't mean, I suppose, that you went to Ivory Coast
16 for this?

17 THE WITNESS: [11:52:35](Interpretation) Yes, indeed, Mr President. The "letter of
18 mission" is the term that is used in French jurisdictions, and it could be translated as
19 "letter of instruction".

20 PRESIDING JUDGE TARFUSSER: [11:52:51] So is it not a bit strange that you
21 receive these instructions on the 26th and you sign your report on the same 26th?

22 THE WITNESS: [11:53:17](Interpretation) Yes, Mr President, I realised this upon
23 re-reading the report. I started my work as an expert on the same day on which the
24 first page bore a date that was automatically recorded, and I forgot to change the date
25 at the time I concluded my work.

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- 1 PRESIDING JUDGE TARFUSSER: [11:53:48] So this 26th June would mean 30th
2 June?
- 3 THE WITNESS: [11:53:57](Interpretation) So the 29th or the 30th.
- 4 PRESIDING JUDGE TARFUSSER: [11:54:01] Oui. But still tight, I think?
- 5 THE WITNESS: [11:54:11](Interpretation) That is correct, but I was informed of the
6 urgency and the need to cross-check that data by the OTP, so I worked over the
7 weekend as I often unfortunately do.
- 8 PRESIDING JUDGE TARFUSSER: [11:54:30] Okay. Thank you very much.
9 The floor is to the Defence for Mr Gbagbo.
- 10 MR ALTIT: [11:54:39] (Interpretation) Thank you, Mr President. Mr President,
11 your Honours, Professor Jacobs will be conducting our examination on behalf of the
12 Laurent Gbagbo Defence team.
- 13 PRESIDING JUDGE TARFUSSER: [11:54:52] Thank you very much. Mr Jacobs.
14 Just to inform you that the OTP took one hour and 32. Minutes, 32 minutes, of
15 course.
- 16 MR JACOBS: [11:56:03] (Interpretation) Thank you, Mr President.
- 17 QUESTIONED BY MR JACOBS: (Interpretation)
- 18 Q. [11:56:10] Good afternoon, Witness.
- 19 A. [11:56:12] Good afternoon.
- 20 Q. [11:56:12] I'll be putting questions to you on behalf of Laurent Gbagbo's
21 Defence team. To start with, I would like to talk about some of the reports that you
22 discussed with the representative of the OTP as well as other reports that you drafted
23 in order to obtain clarification and further details from you in relation to your
24 testimony here.
- 25 Now, let me start with the report on the visit to the Abobo cemetery in

1 November 2012. ERN number for the record is CIV-OTP-0042-0439.

2 My first question is as follows: Before you travelled to Abidjan, what information
3 did you have relating to this case?

4 A. [11:57:31] The information available to us had been communicated to us
5 during a meeting with a team, a joint team at the time, which is now referred to as the
6 integrated team.

7 We received explanations, and when I say "we", it is myself and Ms Zanetta. We
8 were informed that there was an ongoing investigation into the incident relating to a
9 demonstration that took place on 3 March in Abobo during which several women had
10 been killed, and that there was an association which brought together relatives of the
11 victims, and that the idea was to ask, to the extent possible, to ask us to proceed to
12 exhumations and forensic medical examinations of the corpses of these victims with a
13 view to the extent possible to provide corroborating scientific information in relation
14 to witness testimonies.

15 For that purpose, the president of that association would be met and that president
16 will take us to the location where her daughter was allegedly buried.

17 Q. [11:59:24] Now, this joint meeting you referred to, it took place before you
18 travelled to Abidjan; is that correct?

19 A. [11:59:30] Yes, correct.

20 Q. [11:59:32] Who was present apart from yourself and Madam Zanetta?

21 A. [11:59:37] I believe that Mr Eric MacDonald was present. I think, I think -- I
22 didn't keep a clear memory of that particular meeting, but ordinarily that is how we
23 proceed. We meet among our investigators, lawyers and senior trial lawyers in
24 order to be given the background to the case, so we cannot just move when things are
25 not clear when we don't have that background information.

1 Q. [12:00:26] Thank you, Mr Witness. A short while ago you mentioned that
2 there was an association, I'm looking at the transcript, an association of the relatives
3 of the victims. Were you given further information about that association, it's name
4 and representatives?

5 A. [12:00:51] I think it is mentioned in one of my reports, Association des Femmes
6 Martyrs d'Abobo, association of martyred women of Abobo, but I cannot be certain
7 about the precise name of that association.

8 Q. [12:01:14] So if I understand you well, this association served as intermediary
9 to you in the field?

10 A. [12:01:25] No. As I explained earlier, I was accompanied by an investigator
11 who apparently had been in contact with that association, its president and other
12 people. There was a meeting organised in a hotel and I had the opportunity to
13 discuss with those two people, however I did not receive any information about the
14 nature of intermediary of these people.

15 Q. [12:02:25] I would like to show you a document, Mr Witness, it is
16 CIV-OTP-0038-0193. It is confidential.

17 I don't know whether it can be shown publicly. I am in the hands of my learned
18 friend in the Office of the Prosecutor.

19 MR DEMIRDJIAN: [12:03:00] (Overlapping speakers) name of an investigator or a
20 staff member, so if we could not broadcast it for the time being. Thank you.

21 MR JACOBS: [12:03:14] (Interpretation) I'm waiting for the document to be
22 displayed.

23 Q. [12:03:18] Well, this document gives an account of your meeting with
24 Mr Mamadou Bamba, 1 December 2012. Is that the meeting that you are talking
25 about?

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1 A. [12:03:44] I think, yes, it includes the meeting in that hotel.

2 Q. [12:04:00] Thank you. I would like to show you a second document, and it is
3 still confidential, and it is CIV-OTP-0038-0192, a redacted courtesy copy was sent to
4 the Chamber yesterday. It is the redacted version which was in fact sent to the court
5 officer.

6 THE COURT OFFICER: [12:05:28] We have found it. It is just being uploaded
7 and takes a bit more time. Thank you very much.

8 PRESIDING JUDGE TARFUSSER: [12:05:39] One could hear only "Thank you very
9 much." One could hear only "Thank you very much" of the court officer, so. No,
10 it's for the record because we have only "Thank you very much."

11 THE COURT OFFICER: [12:05:46] We have found the item requested by the
12 Gbagbo Defence team. It's being uploading right now. It takes a bit more time and
13 is going to be displayed very soon. Thank you.

14 PRESIDING JUDGE TARFUSSER: [12:06:05] No, it's okay.

15 THE COURT OFFICER: [12:06:39] It is currently being displayed on evidence
16 channel 1.

17 MR JACOBS: [12:06:45] (Interpretation) Thank you, madam court officer.

18 Q. [12:06:49] Can you see that document? It is a report produced by you on 8
19 January 2013, and you spoke about meeting with two people. Does that relate with
20 the other people?

21 I don't know whether I can give the name in public?

22 MR DEMIRDJIAN: [12:07:27] (Interpretation) Just to be clear, are you talking
23 about the third person, the investigator, the interpreter?

24 MR JACOBS: [12:07:42] (Interpretation) No, the person that Dr Baccard met with
25 in 2012.

1 MR DEMIRDJIAN: [12:07:49] Your Honours, at this stage there is an exchange on
2 this matter. I think for now if we keep it confidential and in due course we could
3 publicise it (Overlapping speakers)

4 PRESIDING JUDGE TARFUSSER: [12:08:02] An exchange, what kind of exchange?

5 MR DEMIRDJIAN: [12:08:14] Just a moment, your Honours, let me just confer.
6 (Counsel confer)

7 MR DEMIRDJIAN: [12:08:26] Your Honours, this is in relation to the ongoing
8 discussions we're having with the Legal Representative for Victims. This individual
9 is part of that group. And further redactions are being removed, from what I
10 understand. So at this stage I'm not entirely sure of the status of this document, but
11 if we could just leave it confidential and when we file something officially we can
12 remove the redaction -- the confidential status, I apologise.

13 PRESIDING JUDGE TARFUSSER: [12:08:56] Okay.

14 MR JACOBS: [12:09:02] (Interpretation)

15 Q. [12:09:03] So we will not mention the person that you met, but it was the
16 second person you met with in the hotel that you just mentioned a short while ago; is
17 that correct?

18 A. [12:09:13] Yes, and this is in fact mentioned in another report.

19 Q. [12:09:22] Apart from this person -- apart from this report on that meeting
20 there was another one?

21 A. [12:09:32] No. Reports that the OTP gave to me, there is a chronology of
22 these meetings.

23 Q. [12:09:46] Very well. I can see that with this person there was Mr Mamadou
24 Bamba, president of the Association des Parents des Femmes Martyres d'Abobo
25 (APAFEMA), is that the association you were talking about a short while ago?

1 A. [12:10:06] Yes, this is the way he was introduced to me.

2 Q. [12:10:12] And why was he present during this meeting with these people?

3 A. [12:10:22] Counsel, I do not know. I'm a pathologist, I am in charge of
4 criminalistics. So the reason why this person was present can only be given to you
5 by the interpreters. I think he was there as a relative of one of the victims. The fact
6 that both of them there, were there, I think is only a hypothesis on my part. These
7 are relatives that -- whose victims' bodies were buried separately, but this is simply an
8 assumption on my part.

9 Q. [12:11:14] So who organised that meeting?

10 A. [12:11:22] The Office of the Prosecutor represented by its investigators. And
11 the OSU, that was the Operations Support Unit at the time which was in charge of the
12 managing of witnesses, we participated in that meeting to give a scientific opinion
13 and carry out an assessment of the possibility of exhumation.

14 Q. [12:11:58] Thank you.

15 I would like to go to private session for just one single question on this matter,
16 Mr President.

17 PRESIDING JUDGE TARFUSSER: [12:12:08] Let's please go to private session.

18 (Private session at 12.12 p.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Open session at 12.16 p.m.)

4 THE COURT OFFICER: [12:16:51] We are back in open session, Mr President.

5 PRESIDING JUDGE TARFUSSER: [12:16:55] Thank you very much.

6 Mr Jacobs.

7 MR JACOBS: [12:17:15] (Interpretation)

8 Q. [12:17:15] Thank you. I would like to come back to something you said a
9 short while ago so that it should be clear in the transcript. You talked about the unit
10 of the investigators called OSU, and that is on page 50, line 12 of the transcript. Can
11 you tell us what is the OSU?

12 A. [12:17:50] I said that OSU in English is Operational Support Unit. That was
13 the unit within the OTP responsible for operational support. Now, there is another
14 unit called Protection Strategy Unit, which is specifically responsible for witnesses.
15 But at that time OSU was also in charge of witnesses, to book hotels, book locations
16 for interviews, go and fetch witnesses and bring them to the venue of the interviews
17 and to organise the liaison with the UN security forces and to arrange for vehicles to
18 take us to the sites. That was the role of that unit.

19 PRESIDING JUDGE TARFUSSER: [12:19:01] A logistical role.

20 MR JACOBS: [12:19:09] (Interpretation) Thank you.

21 Q. [12:19:10] Now, coming back to the visit of the cemetery, the tomb of Bamba
22 was not identified at that time. Do you know whether it was located afterwards,
23 that is the grave of Nachamy Bamba?

24 A. [12:19:35] I am not sure because I did not come back to this particular point. I
25 think there was indeed an exhumation carried out by Ivorian authorities. I do not

1 know on what basis, but the DNA analyses allegedly did not confirm the identity of
2 the victim, and once more I was not asked to take part in this phase of the
3 investigation.

4 Q. [12:20:25] But the body on which the negative DNA analysis was carried out
5 was exhumed during the exhumations of 2014 that you talked about this morning, or
6 was there another exhumation?

7 A. [12:20:38] I was not present during that exhumation, if that is the point of your
8 question.

9 Q. [12:20:53] Thank you. We will revisit this point later.

10 Now, the second visit to the Abobo cemetery was on 3 December. You mentioned
11 two areas, the IVOSEP Carré des Indigents and the INTERFU Carré des Indigents.
12 Who made it possible for you to identify these two areas?

13 A. [12:21:27] I think the representative of IVOSEP.

14 Q. [12:21:39] Regarding the IVOSEP Carré des Indigents, it is CIV-OTP-0042-0439,
15 on page 0440, and I will quote in English:

16 (Speaks English) "The so-called 'Carré des Indigents IVOSEP' contains unidentified
17 bodies, corresponding in theory to the list we received on 27/04/12 from IVOSEP ..."

18 (Interpretation) You mentioned it in answer to the Prosecutor's answer. Under
19 what circumstances did you obtain this list in April 2012?

20 A. [12:23:06] I think it is necessary to display the bottom of page 2.

21 Q. [12:23:20] That can be scrolled down.

22 A. [12:23:23] I think it was read to us -- it was given to us by IVOSEP, that list, on
23 27 April 2012.

24 Q. [12:23:39] And when you say it was given to you, was it in Abidjan or at The
25 Hague?

1 A. [12:23:44] At The Hague.

2 Q. [12:23:45] So you were present in Abidjan during a meeting at IVOSEP
3 on 27 December 2012?

4 A. [12:23:58] I believe there is a report on that. I'm sorry, Counsel, I'm involved
5 simultaneously in several cases and I have a memory that cannot retain all the
6 substance of the reports that were drafted. It seems to me that I saw a report in
7 which the contents of the missions carried out and all the people involved are
8 indicated and, if possible, I could be allowed to refer to that report.

9 Q. [12:24:59] Thank you, Mr Witness.

10 In your report further down on the same page, and I quote in English:

11 (Speaks English) "In this area, the 5 other victims of the Abobo women demonstration
12 are supposed buried (apparently in zone 1)."

13 (Interpretation) What was the provenance of that information?

14 A. [12:25:40] I think that information came from the investigators.

15 Q. [12:25:57] And did you cross-check IVOSEP documents to be able to confirm
16 that information?

17 A. [12:26:08] I do not quite understand what you mean by checking IVOSEP
18 documents.

19 Q. [12:26:18] In your report you say that for the Carré des Indigents, the bodies
20 there corresponds to a list that IVOSEP is supposed to have given you. I suppose
21 that you looked at that list. So my question is: For the five other victims here, did
22 you verify whether they corresponded to the list that you were given within the
23 framework of your mission?

24 A. [12:26:47] Yes. In fact, I saw that list, but it was mainly unidentified bodies.
25 And as far as I can remember, these were bodies that were totally decomposed

1 following the breakdown of the freezer. So definitely the ones relating to the five
2 victims were not there.

3 Q. [12:27:27] So what was the source of the information given to you by the
4 investigators in that case?

5 A. [12:27:37] Regarding tracing the bodies of the victims, the investigators had
6 established that the victims had been transported to Treichville and they were part of
7 this group of several hundred victims that were stored in those refrigerators which
8 broke down.

9 Q. [12:28:07] And you yourself, you did not meet with any other relatives of those
10 alleged victims when you met with the two people that you talked about later?

11 A. [12:28:19] I met with them during the sampling that was done in the
12 investigation unit, to do the swabbing. But apart from that, I had no reason to meet
13 with them.

14 Q. [12:28:48] Thank you, Mr Witness.

15 Regarding the INTERFU Carré des Indigents, that's page 0442 in your report, you
16 state at the top of the page, and I will quote in English:

17 (Speaks English) "In this area, the unidentified victims of the crisis stored in INTERFU
18 mortuary are buried as well as identified victims in the vicinity, including notably
19 victims of the Siaka Koné market shelling."

20 (Interpretation) What was the source of this information that enabled you to include
21 this sentence in your report?

22 A. [12:30:04] This was information provided to us by the investigators who
23 accompanied us.

24 Q. [12:30:17] Now, this part of the Abidjan cemetery, which you visited in 2012,
25 that was where the exhumations were made in January 2013?

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1 A. [12:30:35] Once again, we did not carry out any exhumations, it was the
2 Ivorian authorities who did that. And I was there during the missions only to assess
3 the feasibility of those exhumations, the technical difficulties. And as written in my
4 report, I didn't investigate, I simply mentioned what information was given to me.

5 Q. [12:31:02] Thank you very much. I just want to clarify matters, and I call for a
6 document. Please, would it be possible for the two documents to be displayed side
7 by side court officer, side by side, split screen please, that way I will not have to call
8 up the previous document. The ERN number I'm calling for now is
9 CIV-OTP-0077-0432.

10 While waiting for the document, may I say that this is the document relating to
11 exhumations and autopsies on the events of 17 March. It addresses the exhumations
12 of 2015 at the Abobo cemetery. I have a hard copy for you if you so desire.
13 I have a hard copy for the witness, please.

14 Mr Witness, you now have the report. Does this jog your memory when it comes to
15 the exhumations I referred to a few minutes ago?

16 A. [12:34:00] Yes.

17 Q. [12:34:03] So let me put the question to you again. The INTERFU Carré des
18 Indigents, which you visited in December 2012, is it the same location at which you
19 conducted exhumations in January 2015?

20 A. [12:34:23] No.

21 Q. [12:34:31] I would like us then to proceed to compare a few items.

22 Now, court officer, in the report to the right, can we go to page 0458.

23 Thank you. And then on the document to the left, can we go to 0446.

24 Let me restate the document, the ERN for the document to the right, 0458.

25 Thank you. Now, I -- well, I'm lost.

1 Now, to the left we have a photograph that was taken in 2015, it's a memorial
2 monument to the victims of the crisis, and then to the right we have the same
3 monument, memorial to the victims. That appears to be the same monument.
4 Now, can we, using the document to the left, go to page 0460 -- no, I'm sorry, to the
5 right, sorry, the document to the right, 0460. Thank you very much.
6 And to the left page 0444. Thank you.
7 Now, what we see to the right is a photograph that you took in 2012 in the area
8 around the INTERFU Carré des Indigents; and to the right in your 2015 report you
9 describe a funeral plate bearing the name Kouakou Koffi INH:13.10.2011, which
10 appears to be the same funeral plate. It would therefore appear that we are looking
11 at the same zone if your two reports are compared?
12 A. [12:38:26] No, Counsel. Your previous question was referring to site ABO 01,
13 which is not the Carré des Indigents, but which is located at another part of the
14 cemetery. The INTERFU Carré des Indigents is an area which is very poorly
15 delineated and I am not aware -- by the way, let me say again that I was not involved
16 in the exhumations which were conducted by the Ivorian authorities. I absolutely
17 did not participate in the exhumations and this should be clear. I was there simply
18 to verify that everything had transpired normally, but I did not participate in the
19 exhumations and I have no mastery of those operations.
20 There were several sites which are described in my report, ABO 01, with five bodies;
21 ABO 02, with five bodies; and ABO 03 with one body. Now, these places are located
22 in different sections of the cemetery, and the one that you are showing now, the
23 memorial, the exhumations that were conducted there were slightly outside the area
24 which we were -- which were indicated to us as being the Carré des Indigents,
25 INTERFU. And, by the way, the area is quite poorly delineated and not clearly

1 identified as well.

2 Q. [12:39:59] Mr Witness, my question, however, was very clear: Were
3 exhumations conducted in 2015 in an area which you visited in 2012? And the
4 answer apparently is yes, if I understand properly?

5 A. [12:40:28] Now, if that is your question then I would say yes.

6 Q. [12:40:33] Thank you. So the bodies that you exhumed, or which were
7 exhumed on that day in your presence, if I am not mistaken, and we will revisit this
8 point subsequently, none of those bodies was identified as being the body of a victim
9 of the incident of 2011. And, sir, which bodies are you referring to, first, second or
10 third sites? None, none of these bodies was identified following DNA analysis as
11 belonging to a victim of 17 March incidents.

12 A. Once again, I was not an expert, I did not follow or monitor this case or this file.
13 And I want to say also that there are some DNA results which I did not see.

14 Q. [12:41:39] Thank you. We will, again, revisit your role in the exhumations
15 of 2015 and the DNA sampling that was done subsequently.

16 This morning in your testimony you said that following your visit to the cemetery
17 you suggested, and I want to find the exact reference, I'm referring to the French
18 transcript, page 27, where you say the following:

19 I suggested, and the approach I suggested to the Special Investigations Unit and to
20 my colleagues of the Forensic Institute, was that the cost for DNA sampling on
21 these -- on several persons would be astronomical, and so this suggestion was made
22 following your visit in 2012, or was it made subsequently?

23 A. [12:43:07] It was made at a meeting of the Special Investigations Unit, but I
24 don't remember the date.

25 Q. [12:43:15] Very well. But approximately, was it in the weeks that followed

1 your trip to Abidjan in 2012, in 2013 or in 2015?

2 A. [12:43:25] I have no recollection of the exact date, but it was after I became
3 aware, or after visiting the site and after becoming aware of the lists that were
4 provided by IVOSEP.

5 Q. [12:43:49] Very well. You talked about a preparatory meeting prior to your
6 trip to Abidjan. Did you receive a mission letter or letter of mission?

7 A. [12:44:06] I don't think so. I had not been designated as an expert in the case.

8 Q. [12:44:20] Thank you.

9 Let me now move to the second report. It is the forensic report on biological
10 samplings relating to the 2011 incidents of 3 March, CIV-OTP-0079-0542 -- 0078,
11 rather, 0542.

12 I just seek to clarify a few points with you.

13 When the Prosecutor was examining you this morning, you talked about
14 exhumations at page 0543 of your report. Now, to be clear, what was your role in the
15 exhumation exercise? A short minute ago you talked to us about your suggestion as
16 to how to proceed, but what was your role in this process?

17 A. [12:46:10] I was an observer.

18 Q. [12:46:12] So you were present on the day of the exhumation you referred to;
19 correct?

20 A. [12:46:27] Well, that exhumation exercise lasted several months. I was
21 present at the beginning when the exhumation exercise began, yes, but as I have
22 already explained recently or should I say a short while ago, I had to leave
23 Côte d'Ivoire to travel to the DRC, so I was only present at the very beginning of the
24 exhumation exercise which was conducted by forensic examiners of the Côte d'Ivoire.

25 Q. [12:47:04] Thank you very much. If you had -- since you had been there at

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1 the beginning, do you have a specific date to mention as to when the exhumation
2 began?

3 A. [12:47:22] I would need to cross-check that. Maybe in January 2014. But I
4 don't have my records with me. And I am, therefore, not able to provide a specific
5 answer.

6 PRESIDING JUDGE TARFUSSER: [12:47:35] Mr Witness, I would have expected
7 that you're prepared, that you have the records with you. I mean, I think this is
8 some -- it is important.

9 MR JACOBS: [12:48:01] (Interpretation)

10 Q. [12:48:01] So you were present at the beginning of the exhumation. Who else
11 from the OTP was present?

12 A. [12:48:10] Ms Sabina Zanetta, forensic officer; and an investigator whose name
13 cannot be mentioned.

14 Q. [12:48:33] When you say that you were there as an observer, now I want to
15 understand the interaction. The OTP did not give any instructions to the Ivorian
16 authorities as to how to proceed in relation to what they were looking for, what had
17 to be conserved, what did not have to be? Were there any discussions with the
18 Ivorian authorities as to how the exhumations should be conducted?

19 A. [12:48:59] As to how the exhumations should be conducted, obviously there
20 were interactions between, between myself and my team and the Ivorian colleagues
21 who themselves carried out the exhumations. Of course there were discussions. At
22 the beginning there was a request for assistance signed by the OTP, which was sent to
23 the Ivorian authorities asking for those exhumations to be conducted.

24 Q. [12:49:44] So the exhumations were carried out at the request of the Office of
25 the Prosecutor; is that correct?

1 A. [12:49:52] I am not in a position to answer that question because I'm not part of
2 the team of investigators on the situation in Côte d'Ivoire.

3 Q. [12:50:23] Thank you, Mr Witness. In your report you indicate that the
4 inhumation -- rather, the exhumation took place at the mass grave known as Carré
5 des Indigents, and we saw a few minutes ago that there are several Carré des
6 Indigents at the Abobo cemetery. Which Carré des Indigents were you referring to
7 in this report?

8 A. [12:50:52] The IVOSEP Carré des Indigents, the second Carré des Indigents,
9 and the INTERFU Carré des Indigents, those two.

10 Q. [12:51:29] Thank you, Mr Witness.
11 Now, when it comes to the bodies that were exhumed, particularly those which you
12 would subsequently examine, do you know whether any forensic analysis or
13 examination had been conducted on those bodies before their burial, before they were
14 buried?

15 A. [12:51:53] I believe that some of them had been forensically examined.

16 Q. [12:52:00] Did you receive any specific information on that point, for example,
17 any external examination reports?

18 A. [12:52:13] I don't think I received any, but maybe some. In any event, not all
19 the reports.

20 Q. [12:52:32] Which ones did you receive?

21 A. [12:52:42] I'm sorry, I don't have a recollection of that point, but in any event
22 maybe I was just shown the reports without that necessarily leading to me drafting a
23 report in that connection.

24 Q. [12:53:07] During that time, when you were analysing things, you worked
25 with Madam Yapo, who was the director of the institute, the forensic institute; is that

1 correct?

2 A. [12:53:21] Yes, we were together at the forensic institute.

3 Q. [12:53:26] You worked personally with her in collecting the samples and
4 conducting the autopsies; is that correct?

5 A. [12:53:32] Yes -- no, no, not for the autopsies but for the sampling, collection of
6 the samples, yes.

7 Q. [12:53:39] So you didn't ask her whether those bodies had been previously
8 examined forensically or whether she had any useful information pertaining to the
9 possible assessment of the bodies?

10 A. [12:53:55] I believe that the concept was well-known that the reports existed
11 and that they had been drafted at the request of the Abidjan prosecutor. And, again,
12 the Office of the Prosecutor here had requested that those reports be disclosed to
13 them, but I did not see the said reports.

14 Q. [12:54:25] To make -- if these reports had been available to John Clark,
15 wouldn't that have been useful in the conduct of the autopsies?

16 PRESIDING JUDGE TARFUSSER: Mr Prosecutor.

17 MR DEMIRDJIAN: [12:54:39] Your Honours, this last question requires the witness
18 to comment on what was made available to another expert. That is irrelevant. And
19 we're getting also into questions --

20 PRESIDING JUDGE TARFUSSER: [12:54:48] But also would it have been possible,
21 useful. Maybe yes, maybe no, but I think it's: Have you had it, or have you not had
22 it. If it had been useful or not is something which I think one cannot answer in
23 abstract, in the abstract.

24 MR JACOBS: [12:55:10] (Interpretation) Mr President, at the beginning you said
25 that the witness had served in that capacity for 32 years as a forensic expert. I'm

1 asking him as a scientist, as somebody from the OTP, whether generally speaking
2 such a document would be useful. It's not an opinion I'm seeking. He's in a very
3 good position to answer whether his expert report would have been better or not if he
4 had been in possession of those reports.

5 PRESIDING JUDGE TARFUSSER: [12:55:43] Well, I didn't say in any case that he
6 served in a capacity of 32 years, so it wasn't me saying this. Of course it's useful. It
7 is a question which has a clear answer. It is a rhetorical question, okay. Thank you.

8 MR DEMIRDJIAN: [12:56:04] Your Honours, I would argue that it is addressed to
9 the wrong expert. It should have been put to Mr Clark.

10 PRESIDING JUDGE TARFUSSER: [12:56:10] Yes. In any case it was a rhetorical
11 question.

12 MR JACOBS: [12:56:34] (Interpretation)

13 Q. [12:56:36] You told us earlier on that the inhumations took place because there
14 was a power failure and that the bodies were decomposing. Now, when bodies are
15 kept in those circumstances, can that affect subsequent assessments when it comes to
16 autopsies and the causes of deaths and so on and so forth?

17 A. [12:57:04] Yes, that is absolutely correct. When the soft tissues begin to
18 decompose and the organs begin to quickly disappear, then it becomes difficult to
19 examine injury on soft tissue. And the answer to my question -- to your question
20 then would be yes.

21 Q. [12:57:28] Did you have any information on how the bodies were kept after
22 exhumation?

23 A. [12:57:37] Um, well, going by what we were told, the bodies were kept at the
24 IVOSEP morgue in conditions that were compatible with international standards
25 when it comes to preserving bodies.

1 Q. [12:57:58] Did you cross-check that yourself?

2 A. [12:58:00] No. Allow me to add, allow me to add that during the visit, the
3 advance trip that we made during which we met various personalities at the ministry
4 of health, IVOSEP, INTERFU and so on and so forth, we visited the mortuaries. And
5 at that time the systems were working properly, but after the exhumations, I did not
6 go to check whether they were functioning well at all times and whether or not there
7 had been any power failures. What I can say, however, is that, following what I saw,
8 the IVOSEP and INTERFU facilities were quite similar to what you can find in other
9 parts of the world.

10 Q. [12:58:56] Thank you. During your first trip in May 2014 you did your first
11 post-mortem sampling. Now, when you looked at the bags, the body bags, were
12 they sealed?

13 A. [12:59:26] That information should be contained in the autopsy reports.

14 Q. [12:59:37] At the time of the autopsy in May 2015, the report indicates that
15 the -- there were no seals on the bags, but I'm referring you to January 2015 when you
16 saw the bodies -- rather, May 2014 when you saw the bodies. I'm sorry, there's a bit
17 of a confusion in my question. Rather, we're looking at the victims of the 10th -- no,
18 rather 3 March, they were sealed. No, no, I'm sorry, they weren't sealed. I just
19 want to make sure that the bags were not sealed at the time of the autopsy in May.
20 But my question is in relation to January. When you take possession of the bags,
21 were the bags sealed or not?

22 A. [13:00:33] I would have to refer to my report. Can you please point me to
23 that section of the report and maybe display it on the screen?

24 Q. [13:00:47] It's the report we're talking about. Do you have a hard copy?

25 A. Maybe I do.

1 Q. Just give me an ERN number: CIV-OTP-0078-0540, and I have a hard copy of
2 the document if necessary.

3 If you go to page 0544 of the report, 0545 below, you can see the list of the samples
4 that were carried out. And if you come back to page 0544 and scroll up, that is the
5 methodology of your report, and there is no indication of what you mentioned. That
6 is why I asked you the question.

7 A. [13:03:00] I cannot answer the question because I do not remember. The
8 bodies were transferred from the IVOSEP morgue to the Treichville morgue in a
9 refrigerator. They were taken to the table by autopsy technicians and opened by the
10 Ivorian pathologists. That is when I intervened. So I cannot answer that question
11 because it is a question to be put to the Ivorians.

12 PRESIDING JUDGE TARFUSSER: [13:03:40] It's 1 o'clock.

13 MR JACOBS: [13:03:42] (Interpretation) One last question.

14 Q. [13:03:46] After having examined the bodies and done the sampling, did you
15 seal them? Did you place any seal on the body bags?

16 A. [13:04:00] No, I did not examine the bodies. I simply did the sampling, and I
17 did not place any seals on the body bags. Those samples were placed under seal, but
18 I did not have any control over what happened afterwards.

19 Q. [13:04:25] And you knew that an expert of the OTP were going -- was going to
20 carry out an autopsy of the bodies later?

21 A. [13:04:34] For those that would have been identified, yes.

22 Q. [13:04:39] From the point of view of compliance with the chain of custody that
23 you talked about previously for the DNA, would you not have been required to
24 ensure that the bodies that you sampled were sealed?

25 A. [13:05:01] I had my own role. The rest was the responsibility of the

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1 authorities in Abidjan.

2 Q. [13:05:10] Are you telling me that the integrity of the investigation was the
3 responsibility of the Abidjan authorities?

4 A. [13:05:18] I did not say that. I talked about the management of the bodies.

5 PRESIDING JUDGE TARFUSSER: [13:05:24] This is the conclusion you're taking.

6 Okay. Now we stop, we come back for, we stop for the lunch break and we come
7 back just after 2.30 for the third session. You have another, more or less, half an hour.

8 You have more or less half an hour.

9 Thank you. The hearing is adjourned.

10 THE COURT USHER: [13:05:49] All rise.

11 (Recess taken at 1.05 p.m.)

12 (Upon resuming in open session at 2.36 p.m.)

13 THE COURT USHER: [14:36:16] All rise.

14 Please be seated.

15 PRESIDING JUDGE TARFUSSER: [14:36:42] Good afternoon.

16 Good afternoon to you, Dr Baccard. We are now going for extended hours. In two
17 hours we finish the questioning by the parties.

18 You share it, in two hours we go to extended hours.

19 The floor is yours.

20 MR JACOBS: [14:37:10] (Interpretation) Thank you.

21 Q. [14:37:15] Good afternoon, Mr Baccard.

22 A. [14:37:20] Good afternoon, Counsel.

23 Q. [14:37:48] Before the break we were discussing report CIV-OTP-0078-0543, and I
24 would like to ask you questions on that. The ante-mortem samples that you took, on
25 page 0545, that you took the samples in the Investigation Unit, why did you take the

1 samples in the Investigation Unit?

2 A. [14:38:29] I am not the one who arranged the logistics for the sampling. I think
3 it simply related to an appropriate location for receiving several persons.

4 Q. [14:38:51] I see that Captain Touré was present during the collection of the
5 samples, what was his role?

6 A. [14:39:03] During the sampling itself he did not play any role. I believe he
7 simply received the people, and after that we and the investigator managed the rest
8 until the victims left -- or, rather, the relatives of the victims left.

9 Q. [14:39:29] And do you know who contacted the victims' families to come for the
10 samples?

11 A. [14:39:38] I suppose that the investigator who was present took care of that, in
12 collaboration with my colleague of the OSU. Maybe the report of Captain Touré is
13 more specific.

14 Q. [14:39:58] Was a representative of APAFEMA present? That is the association
15 we were talking about this morning.

16 A. [14:40:09] In so far as the president of the association was Mr Bamba, who was
17 one of the relatives of the victims. I think he must have been playing that dual role.

18 Q. [14:40:27] Did you meet any person named Yacouba Ouattara during the
19 collection of samples?

20 A. [14:40:36] I believe the list of people whose samples were taken is a limited list.
21 The name does not ring a bell, so I do not know whether that person was there.
22 There were people from the special investigation unit so I cannot be certain whether
23 he was present at any one time or not. I did not know the people sufficiently to be
24 able to identify them.

25 Q. [14:41:11] If we go to page 0564 of your report -- I'm sorry. Let us go to

1 page 0563, before that. We can see that it is an informed consent form, and if we go
2 to the next page, there is the name and signature of the interpreter, Ouattara Yacouba.
3 So that person was present to interpret. Does that refresh your memory?

4 A. [14:42:08] I did not look at the names of the interpreters. I was not in charge of
5 coordinating the interpreters. It was the investigator and the representative of the
6 OSU who were responsible for that.

7 Q. [14:42:27] So if I understand you, no one told you that this person was
8 secretary-general of APAFEMA and not just an interpreter?

9 A. [14:42:37] That is correct, no one informed me of that.

10 Q. [14:42:42] Thank you.

11 During your second trip to Abidjan to collect samples -- and that is page 0546, for the
12 collection of samples -- you indicate that there was DZF1C5, a body identified of that
13 as Sylla Malon, did you locate a bullet in that body during that time?

14 A. [14:43:41] I think in the body bag there was maybe a bullet or perhaps fragments
15 of something.

16 Q. [14:43:55] My question was, did you see any bullet during this collection of
17 samples in January 2015?

18 A. [14:44:12] The body was examined by Professor Clark and Dr Yapo Ette, so I am
19 not the one myself who found that projectile.

20 Q. [14:44:32] Very well. The autopsy report of Sylla Malon, CIV-OTP-0081-0518,
21 which is an autopsy report of May 2016, indicates that the bullet was found at the
22 time of the autopsy and not of the collection of the samples. That's why I'm asking.

23 A. [14:45:11] No, the funeral cloth was removed and my colleague and I focused on
24 the extraction of the sample. That is what I limited myself to.

25 Q. [14:45:33] In your report CIV-OTP-0078-0542, on page 0546, you noted that in

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1 the same body bag you found human remains belonging to a separate individual. So
2 I assume that you must have taken out those remains from the body bag to be able to
3 find out what was there.

4 A. [14:46:07] The forensic doctors who were there looked at the contents rapidly,
5 and that is when we realised that there was more than one individual; there were
6 parts belonging to the body of another individual included.

7 Q. [14:46:50] Do you know what were the conditions of the storage of the body
8 between the sampling of 2014 and the autopsy of 2015?

9 A. [14:47:03] I do not know. I suppose that these bodies were taken back by
10 IVOSEP and stored at the IVOSEP premises. This remains to be confirmed.

11 Q. [14:48:04] Mr Witness, I will ask you for some clarification on the autopsy linked
12 to the events of 17 March 2011. I gave you a hard copy. I do not know whether you
13 still have it with you.

14 So that report is CIV-OTP-0077-0432.

15 On the first page you indicate, and I quote in English:

16 (Speaks English) "On 15 December 2014, the Office of the Prosecutor requested the
17 government of Côte d'Ivoire to exhume the bodies of eight victims supposedly related
18 to the shelling incident of 17 March 2011, to perform their autopsies and to authorise
19 the taking of biological samples for their identification."

20 (Interpretation) Did you take part in this process of requesting the cooperation of the
21 Ivorian government?

22 A. [14:49:58] No.

23 Q. [14:50:07] Even when it contains its substance, because I can see details on what
24 was requested, you didn't have your say regarding what was to be requested given
25 your domain of competence?

1 A. [14:50:26] There were two authors, two of us authors of this report. You can
2 look at the top, myself and my collaborator Ms Sabina Zanetta, so it is quite possible
3 that she could have made proposals in relation to the request made.

4 Q. [14:50:52] My question was different: Since that request related to your
5 domain, your opinion was not sought in relation to that request to the Ivorian
6 authorities?

7 A. [14:51:14] I am not certain. I need to look in the archives to see whether we had
8 a draft of the request or whether there might have been any comments that were
9 made. But I don't have any recollection of that.

10 Q. [14:51:36] This morning you told us that you were working on six different cases.
11 I don't remember the reference. Now during your practice, a request of cooperation
12 that relates to forensic issues does not pass through your unit?

13 A. [14:51:59] Unfortunately that does happen.

14 Q. [14:52:04] Thank you.

15 From your report I understand that you were present during the exhumation which
16 was carried out. Where members of the family or relatives of the dead people
17 present?

18 A. [14:52:41] As far as I can remember, there were a lot of people; there were
19 security people, IVOSEP staff carrying out the exhumations, the employees. There
20 were a lot of people. There was no possibility for me to identify the family members.
21 In any case, I do not remember having been introduced to members of those families.

22 Q. [14:53:15] Did members -- were members of the Special Investigation Unit
23 present?

24 A. [14:53:22] Yes, certainly.

25 Q. [14:53:30] Just to give us an idea, how many people were there

1 approximately, 50, 100?

2 A. [14:53:42] I do not know; 30 or thereabouts.

3 PRESIDING JUDGE TARFUSSER: [14:53:58] (Microphone not activated) corpse,
4 dead bodies, or what? The people? Because you are talking about members Special
5 Investigation Unit and then you ask how many people. We didn't know exactly
6 what, what the reference is, to what.

7 MR JACOBS: [14:54:16] (Interpretation) I was saying the -- I was talking about the
8 people who took part in the exhumation, that is the police security people and so on.

9 THE WITNESS: [14:54:33] (Interpretation) Yes, that is how I understood your
10 question. I do not have a precise number, but I do confirm that there were quite
11 a good number of people. And I would say about 30 people, either observers or
12 people participating actively in the exhumation.

13 MR JACOBS: [14:55:03] (Interpretation)

14 Q. [14:55:04] What do you mean by observers or spectators?

15 A. [14:55:07] People who did not really intervene, just people there to observe what
16 was happening. I am not talking about passers-by, but people who were in some
17 way related to the authorities or to the funeral parlours.

18 Q. [14:55:30] On the basis of which information did the Office of the Prosecutor
19 identify the graves from which the exhumations had to be done?

20 A. [14:55:43] I do not know. This is a question to be put to the investigators
21 because that information was not shared with me.

22 Q. [14:56:07] Now coming back to your role to that exhumation, you say that you
23 were simply an observer?

24 A. [14:56:16] Yes, that is correct, for the exhumation.

25 Q. [14:56:20] And you didn't carry out any preliminary examination of the body?

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1 A. [14:56:27] No. As far as I am concerned, no. My collaborator took notes.

2 I was not one of those in the OTP taking notes, particularly in relation to the -- what
3 was written on the graves, the inscriptions on the graves.

4 Q. [14:57:06] Were you present when the bodies were transported to the morgue
5 after the exhumation?

6 A. [14:57:15] Do you mean along the way? No.

7 Q. [14:57:29] Do you have any information on the conditions of the conservation or
8 preservation of the bodies before the autopsies?

9 A. [14:57:42] No, I have no answer about the storage conditions. I think that they
10 correspond to what was assessed at the beginning of the mission, that is when they
11 came from the funeral homes.

12 Q. [14:58:11] Did you have the medical records of the people whose autopsies you
13 were going to carry out?

14 PRESIDING JUDGE TARFUSSER: [14:58:20] Mr Demirdjian.

15 MR DEMIRDJIAN: [14:58:22] Mr President, could we ask my learned friend the
16 relevance of the questioning on a report that, one, the Prosecution is not relying on,
17 this is a Rule 77 report and, two, on bodies which have not been identified? We are
18 not relying on this area of evidence at all, so what is the relevance.

19 PRESIDING JUDGE TARFUSSER: [14:58:38] Yes, but it is about the methodology,
20 I'm thinking. This is, to me, the relevance.

21 MR DEMIRDJIAN: [14:58:47] All right. Let's see where it goes.

22 PRESIDING JUDGE TARFUSSER: [14:58:49] So I do understand it.
23 We have understood it.

24 MR JACOBS: [14:58:58] (Interpretation)

25 Q. [14:59:00] Should I repeat my question?

1 A. [14:59:02] Yes, Counsel.

2 Q. [14:59:05] Did you have the medical records of the people whose autopsies you
3 were going to do, death certificates and so on?

4 A. [14:59:18] I repeat that I did not carry out any autopsy. To my knowledge, if
5 you are referring to the medical records of the people who died, I was not aware of
6 those. If you are referring to the death certificates, for example, you should put that
7 question to the experts. But, generally speaking, I was not involved in that stage of
8 the investigations.

9 Q. [14:59:53] So if I understand you correctly, you were not informed that those
10 bodies were externally examined in 2011?

11 A. [15:00:05] That would be different. Let us understand each other. If you are
12 talking about medical records or reports of external examinations, those are two
13 different things.

14 Q. [15:00:23] My second question had to do with the external forensic reports.
15 Were you aware of such reports?

16 A. [15:00:31] I was aware of reports of external examinations. I don't remember
17 the exact number. More than 200. Ms Yapo Ette mentioned those to me. I don't
18 know whether the victims were amongst those 200 people or more than 200 reports.
19 In any event, the reports were never disclosed and I don't think they were provided to
20 Dr Clark. That point would have to be checked with him, of course.

21 Q. [15:01:11] Now, you say you have knowledge of 200 reports. What do you
22 mean? Did you see them, did you read them?

23 A. [15:01:19] No. As I said, Ms Yapo mentioned those reports. I mentioned
24 those reports in an email or just when speaking to the investigator. And I said that
25 a request should be made of the legal authorities in Côte d'Ivoire because Ms Yapo

1 said that she could only provide them if a request was made by the public prosecutor.

2 And of course she could not make use of them as she wished. And I was not
3 included in the process of obtaining those reports, if they were indeed obtained.

4 Q. [15:02:49] Did you have any exchanges with Dr Clark or Ms Yapo at the time of
5 drafting of the report?

6 A. [15:02:59] Indeed, I think we did talk. Not with Professor Yapo, but with
7 Dr Clark, yes.

8 Q. [15:03:16] Did you verify the reports after they were sent to the OTP?

9 A. [15:03:31] Verify. It seems to me that I brought those reports back, or I had
10 Professor Yapo sign them. It was during a mission.

11 Q. [15:03:48] And did your unit, did you, yourself, have a role or the duty to
12 analyse those reports afterwards?

13 A. [15:03:56] No.

14 Q. [15:04:00] I'm talking about the autopsy reports, just to make --

15 A. [15:04:05] Yes, that's clear.

16 Q. [15:04:25] Thank you, Mr Witness.

17 I'd like to turn to another report that we were looking at this morning. The report
18 having to do with the death of Mr Diakité Yaya, CIV-OTP-0084-4416.

19 If we could hark back to the mission letter that you reproduced on the second page,
20 page 4417. Now, I am not questioning the date of the letter, but did you discuss the
21 substance of the mission letter with Mr MacDonald when it was drafted or before it
22 was sent to you?

23 A. [15:05:57] I don't think so. Reference is made to some documents that I did not
24 have any knowledge of at that time and it was difficult to discuss a mission letter
25 relating to documentary evidence that I didn't have.

1 Q. [15:06:22] Another expert that appeared before this Court, Mr Xavier Laroche,
2 I believe he said that it was quite normal for an expert and the person requesting a
3 mission to speak in advance, to see if it was technically feasible. Was that the case?

4 A. [15:06:41] Indeed, that is customary practice, and that did happen to me in
5 France. I would speak to the examining magistrate about the substance of the
6 mission. With Mr Eric MacDonald, we did not really have many opportunities to
7 speak about expert reports, and in that case I don't think I spoke to him about the
8 content or substance.

9 Q. [15:07:28] Well, I would like to ask my learned friends opposite whether the
10 name of the witness can be mentioned in open court or not.

11 MR DEMIRDJIAN: [15:07:35] Not until the witness testifies, as is the usual practice.
12 Thank you.

13 PRESIDING JUDGE TARFUSSER: [15:07:41] I didn't hear it because you spoke
14 without the microphone. As usual, as practice, I understood. But not (overlapping
15 speakers) --

16 MR DEMIRDJIAN: [15:07:49] (Overlapping speakers) -- of the witness testifies, as
17 usual practice, we don't disclose the name until then.

18 PRESIDING JUDGE TARFUSSER: [15:07:57] Okay.

19 MR JACOBS: [15:08:01] (Interpretation) So if we could go into private session then,
20 Mr President.

21 PRESIDING JUDGE TARFUSSER: [15:08:06] Let's go into private session, please.

22 (Private session at 3.08 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Open session at 3.10 p.m.)
- 16 THE COURT OFFICER: [15:10:17] We are back to open session, Mr President.
- 17 PRESIDING JUDGE TARFUSSER: [15:10:20] Thank you.
- 18 Mr Jacobs.
- 19 MR JACOBS: [15:10:24] (Interpretation) Thank you, Mr President.
- 20 Q. [15:10:30] Yet you did meet with the family members of this person when the
- 21 samples were collected in January 2015. Did you yourself try to identify them, to
- 22 identify the person on the video, or do you know if someone else did that?
- 23 A. [15:10:47] Well, as far as I'm concerned, no. An expert is always restricted by
- 24 the scope of the mission that is entrusted to him. If Mr Eric MacDonald tells me that
- 25 the documents have to do with a particular victim and the name is Mr Yaya Diakit , I

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1 have no reason to doubt his word. And what is more, I don't have the mandate or
2 the skills to carry out an investigation of my own accord.

3 Q. [15:12:10] I apologise, Mr Witness.

4 Now just to understand your reply. You say that you did not have a mandate to
5 question what the OTP tells you.

6 But your mission was to analyse these documents to determine whether it was
7 possible to identify a person, so that means you had to analyse the documents
8 themselves to make sure that they were credible and consistent, not just to take them
9 at face value.

10 A. [15:12:58] Absolutely, Counsel. And indeed that is what I did. I assessed the
11 consistency of the various items that were provided to me; I cross-checked them; I
12 also cross-checked them with the video and with what was said by a friend of the
13 victim. But there was no reason for me to conduct an investigation of my own
14 volition with family members. I don't know whether the OTP did such a thing. I
15 really can't answer. That was not part of my mandate and that was not part of my
16 area of expertise.

17 Q. [15:13:40] Very well. I would like us to have another look at these documents
18 that you analysed, the INTERFU file. CIV-OTP-0084-2869 has been marked
19 confidential.

20 I don't know if I can display it openly.

21 MR DEMIRDJIAN: [15:14:05] (Interpretation) In principle there is no problem
22 showing this particular document openly.

23 MR JACOBS: [15:14:17] (Interpretation) Thank you.

24 If we now move to page 2871.

25 Q. [15:14:41] We see that this is a death certificate that was issued several months

1 after the alleged date of death. Do you know why, when you were talking to
2 Madam Yapo Ette, any reason for the amount of time that went by between the two
3 dates?

4 A. [15:15:03] Yes, indeed, I did notice that there was a difference. There was
5 a delay. And the reason, well, you would have to ask Madam Yapo Ette. I know
6 that they were also very busy, very much under the pressure caused by the events.
7 There was a huge number of victims. These are suppositions on my part. I have no
8 particular clear cut reason to give you.

9 Q. [15:15:38] Well, the date of death is 17 March, and the previous statement of the
10 witness, and I won't mention that person's name, that witness said that the person
11 died two days later. That would be 19 March. So we have these two documents
12 and there's a discrepancy here in terms of the date of death. Did you look into this to
13 try to clear up the discrepancy?

14 A. [15:16:08] No. I saw that indeed there was a difference. On the other hand,
15 the external examinations done by the forensic people there showed that there were
16 signs that care had been provided, for example, a chest tube had been put in, stitches,
17 and that would have been done in a hospital. So I can't rule out the hypothesis that
18 Mr Yaya survived a few hours, or one or two days, and died at the hospital. He was
19 not dead in the video. He was still moving. So most likely he received this
20 treatment in the hospital. That's really all I can say on the basis of the documents
21 that were provided to me.

22 Q. [15:17:31] Now, very quickly, regarding the external medical report,
23 CIV-OTP-0083-1350, and this has been marked as confidential by the OTP.

24 MR DEMIRDJIAN: [15:17:59] Public. That's all right.

25 MR JACOBS: [15:18:09] (Interpretation)

1 Q. [15:18:09] This report shows, on the first page which we see right here on the
2 screen -- if we could scroll down, please, yes -- that the examination was 29 May 2011.
3 And if we look at the last page of the report, if we could zoom in on the date, we see
4 that the report was drafted on 22 June 2015. Do you have any explanation for this
5 four years that went by between the certificate and this report?

6 A. [15:18:49] Myself, no. I do know that subsequent to discussions that we had
7 that there was -- I do know that there was a tremendous delay. She was unable to
8 finish her reports. I think once again that it was -- well, it's a question that really
9 should be put to her directly.

10 Q. [15:19:32] Thank you. Now the other document that you analyse was
11 CIV-OTP-0083-0072.

12 And this was a record of external examination.

13 Could this be displayed on the screen?

14 MR DEMIRDJIAN: [15:20:04] (Interpretation) Yes, that's possible.

15 MR JACOBS: [15:20:13] (Interpretation)

16 Q. [15:20:14] Now, two questions. My first question is this: Did you know why
17 there were two external examination reports?

18 A. [15:20:21] No, but I can provide a possible explanation because that was the case
19 with the ICTY. At the time of the external examination or autopsies, notes would be
20 taken, handwritten reports would be drawn up, and then only later would a typed
21 report be drawn up using -- on a computer. I notice here that this external
22 examination record includes a number of abbreviations that a medical doctor can
23 understand but it would be difficult for a judge or a layman to understand, but it is
24 quite normal in such circumstances to later draft a report that can be read by the
25 person designated.

1 Q. [15:21:27] Thank you.

2 Now, in your report at page 4424 you said, and I quote -- should I provide the
3 number again?

4 This is CIV-OTP-0084-4416. You have written, sir: "The diffuse nature of these
5 injuries" -- and then you list the various injuries -- "point to multiple trauma and" --

6 THE INTERPRETER: [15:22:55] Apologies from the interpreter. He is not able to
7 find the exact passage.

8 THE WITNESS: [15:23:00] (Interpretation) I mentioned an explosion because given
9 the extent of the injuries to the legs and the fact that there are injuries at different
10 locations of the body, this is typical of an explosion. A primary -- primary injury
11 caused by the initial blast and then secondary injuries caused by projectiles.

12 So it's those two things taken together. First of all, there is damage to the chest, the
13 thorax, and -- well, very few -- very little damage to the chest. Just one wound that
14 has been sutured. And given the context of 17 March and the video, all of this seems
15 to be compatible, but I did not write "compatible" because I did not examine this
16 victim. So I stressed that I did not see anything in the results that would allow me to
17 rule out the hypothesis of an explosion.

18 MR JACOBS: (Interpretation)

19 Q. [15:24:25] So if I have understood you correctly, on the basis of your own
20 knowledge of what allegedly happened on 17 March, you wrote that conclusion
21 because neither the mission -- well, the mission letter does not mention such
22 a hypothesis, namely, an explosion.

23 A. [15:24:45] The witness's interview mentioned it clearly and so with the items of
24 information brought to my attention that I had knowledge of the context, the
25 background. A problem that I noticed was the conclusions of Dr Yapo Ette who

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1 spoke of -- who spoke of -- last page, page 1353, of a violent death related --
2 THE INTERPRETER: [15:25:42] Message from the interpreter: The interpreter is
3 not sure what the witness is quoting from.
4 PRESIDING JUDGE TARFUSSER: [15:25:49] We are not sure what you are quoting
5 from, where you are quoting from. Did you read something?
6 THE INTERPRETER: [15:25:59] Message from the interpreter: Could the witness
7 read it out again more slowly, please.
8 THE WITNESS: [15:26:07] (Interpretation) Yes. I made a partial reference to the
9 ERN CIV-OTP-0083-1353. That's the last page of the report from Professor
10 Yapo Ette.
11 PRESIDING JUDGE TARFUSSER: [15:26:37] Interpreters didn't catch it.
12 It is now on the screen.
13 THE INTERPRETER: [15:26:47] Many thanks from the interpreters.
14 THE WITNESS: [15:26:50] (Interpretation) Indeed, I was saying that the conclusion
15 of Professor Yapo Ette said the following, and I quote: "The external examination of
16 the body in a very advanced state of decomposition of Diakité Yaya allows us to
17 conclude from a forensic point of view that this was a violent death in relation to
18 trauma to the thorax, the abdomen, and the limbs caused by projectiles from
19 firearms."
20 Now, this was problematic because, you see, in my experience projectiles from
21 a firearm are different to wounds caused by explosions, grenades or shells, landmines
22 going off, that sort of thing. And so you see, I had advised the senior trial attorney
23 to ask for further information from Ms Yapo Ette because during a conversation with
24 her, she included explosions of shells under the general category of projectiles from
25 firearms. So I think that's a question you could put to them.

1 MR JACOBS: [15:28:36] (Interpretation)

2 Q. [15:28:37] You just said that it would appear that she included the explosion of
3 shells. Was she confusing?

4 A. [15:28:50] Well, I think we can talk about categories here, and she included
5 wounds caused by projectiles from firearms, such as AK-47s or projectiles from
6 shotguns. She also included shrapnel wounds, fragments that come from the
7 explosion of a shell. So I said to Mr MacDonald that he should ask for further
8 information, and I believe that was done, and a certificate or a letter was sent to me,
9 a letter in response to Mr MacDonald, and she confirmed that it should come into that
10 general category of firearms.

11 Q. [15:29:48] Do you have a copy of that letter? Because to my knowledge no such
12 letter was disclosed to the Defence.

13 MR DEMIRDJIAN: [15:29:53] Yes, it was, your Honours.

14 PRESIDING JUDGE TARFUSSER: [15:29:55] Pardon?

15 MR DEMIRDJIAN: [15:29:55] The letters were communicated to the Defence. It
16 was disclosed. Does my learned friend maintain that it hasn't been disclosed?

17 MR JACOBS: [15:30:05] (Interpretation) No, I said to my knowledge. I thank you
18 for clearing up that point.

19 PRESIDING JUDGE TARFUSSER: [15:30:12] Well, I do not know what was
20 disclosed among yourselves, so.

21 MR JACOBS: [15:30:17] (Interpretation) I will proceed. We can clarify later.

22 Q. [15:30:33] Briefly, to your knowledge, were there any other documents relating
23 to Diakité Yaya with the Ivorian authorities?

24 A. [15:30:45] To my knowledge, no.

25 Q. [15:30:57] So you were not informed that there was another INTERFU document

1 in the name of Diakité Yaya?

2 A. [15:31:07] I noted that there were other references, and it seems to me that I was
3 informed that there was some confusion about those records.

4 Q. [15:31:29] In the same vein, you were not given the information that there was
5 another external examination report of a certain Diakité Yaya, not the one that was
6 given to you?

7 A. [15:31:43] No, not during that expert study, but afterwards, I took part in
8 discussions where that report was present.

9 MR DEMIRDJIAN: [15:31:52] Sorry for interrupting my learned friend.

10 PRESIDING JUDGE TARFUSSER: [15:31:55] Yes.

11 MR DEMIRDJIAN: [15:31:56] And for overlapping with the interpreter. Just for the
12 record, your Honours, the letter that was just referred to for my learned friend, the
13 ERN is 0083-1324. This is the letter from Dr Yapo Ette explaining her position on the
14 issue. And the mission order is 0083-1322. And they were both disclosed.

15 PRESIDING JUDGE TARFUSSER: [15:32:23] Okay.

16 MR JACOBS: [15:32:24] (Interpretation) Thank you.

17 Q. [15:32:27] Mr Witness, you have just talked about a meeting where you
18 discussed other issues. Can you hear me? Can you hear me?

19 A. [15:32:45] Yes, yes.

20 Q. [15:32:46] You mentioned a meeting during which other issues were discussed
21 after this report. What meeting was this and when did it hold and with whom?

22 A. [15:32:57] It was not really a meeting as such. These were informal discussions
23 during which I learned that there was a report dealing with serious cranial injuries.
24 In any case, it did not call my conclusions into question, and my report was based on
25 limited materials, and there was no evidence of a skull injury on the video.

1 Q. [15:33:38] The fact that there is another external report with the same name and
2 other conclusions, would that not have called into question the fact that the person in
3 the video was not Diakité Yaya? Didn't that cast doubt on your interpretation?

4 A. [15:34:06] I would have needed to have that document, or rather, I would need
5 to have that document, or at least my own expert report, additional expert report.

6 Q. [15:34:19] One last question: From whom did you hear that there were other
7 documents?

8 A. [15:34:29] I believe that I was discussing with investigators from the joint team.
9 I really do not remember who specifically provided that.

10 Q. [15:34:58] Thank you, Mr Witness.

11 The last part of my questioning I would like to go to private session, with your leave,
12 sir.

13 PRESIDING JUDGE TARFUSSER: [15:35:07] Let's go to private session.

14 (Private session at 3.35 p.m.)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Page redacted – Private session

- 1 (Redacted)
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- 15 (Redacted)
- 16 (Open session at 3.42 p.m.)
- 17 THE COURT OFFICER: [15:42:11] We're in open session, Mr President.
- 18 PRESIDING JUDGE TARFUSSER: [15:42:19] Thank you.
- 19 Mr Jacobs.
- 20 MR JACOBS: [15:42:21] (Interpretation)
- 21 Q. [15:42:24] Two last questions: As a director of the scientific unit, are the
- 22 activities that you have talked about today routine within the framework of a criminal
- 23 investigation?
- 24 A. [15:42:56] Are you referring to criminal investigations in general or
- 25 investigations as carried out here?

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1 Q. [15:43:05] I was talking about investigations of the scientific police, ADN,
2 autopsies and so on.

3 A. [15:43:20] Yes. Everyone is aware of the differences between -- I am talking to
4 you, Counsel. Everybody is aware of the differences between the ICTY, where I
5 supervised more than 1,500 autopsies in 2000 where mass graves were systematically
6 exhumed. And the more measured approach that we have here, it is a question of
7 choice. And I think a case has to be balanced.

8 In the specific case of Côte d'Ivoire, we supervised, we provided advice, we were very
9 partially involved in the conduct of those scientific operations.

10 With regard to the technical and scientific police work, this was carried out by
11 Ivorians. We only carried out limited operations during the collection of samples
12 and so on and so forth and we did not really participate in the investigation of crime
13 scenes as is done elsewhere.

14 Q. [15:44:59] You have just said that those activities are important. As the director
15 of the scientific intervention unit, do you know why the activities in this particular
16 case were done with such a long delay after the events?

17 PRESIDING JUDGE TARFUSSER: [15:45:23] Mr Prosecutor.

18 MR DEMIRDJIAN: [15:45:26] Looking at the English translation just to make sure I
19 have the right terminology, your Honours, we are asking the witness to opine on the
20 timing of investigations, and this is not within the remit of this witness. This is not
21 within his area of expertise, so I think it is really outside of the scope of his testimony.

22 PRESIDING JUDGE TARFUSSER: It seems a general closing question. I --yes.

23 MR JACOBS: [15:45:50] (Interpretation) It seems to me that as the director of the
24 intervention unit, scientific intervention unit he can have an opinion on the timing of
25 criminal expert opinion for it to be effective. I think it is part of his remit.

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1 PRESIDING JUDGE TARFUSSER: [15:46:13] Yes, but I think we can also have this
2 among ourselves, I mean, I would say. It's something which is part of the discussion,
3 I would submit.

4 MR JACOBS: [15:46:30] (Interpretation) Very well.

5 Q. [15:46:35] In that case, one last question: Why is it that the Ivorian authorities
6 were allowed to play such a major role in such a case? Is that routine?

7 A. [15:46:50] It is true that they played a great scientific role for a simple reason, in
8 West Africa the standards of the Ivorian medical community, which has to carry out
9 activities in difficult situations, makes it difficult to be effective. But the Forensic
10 Institute of Abidjan is an excellent institute, to the extent that we found that it could
11 be complementary whenever there was a service lacking; for example, in the case of
12 DNA analysis, we would take Professor John Clark at the international level and he
13 would collaborate with expert opinion at the national level.

14 Q. [15:48:15] Thank you, Mr Witness.

15 MR ALTIT: [15:48:17] (Interpretation) Mr President, this concludes the questioning
16 of the witness by the Defence team for Mr Laurent Gbagbo.

17 PRESIDING JUDGE TARFUSSER: [15:48:28] Thank you.

18 I revert now to the Defence team for Mr Blé Goudé, Mr Knoops.

19 QUESTIONED BY MR KNOOPS:

20 Q. [15:49:07] Good afternoon, Dr Baccard. My name is Alexander Knoops, I'm
21 a lawyer admitted to the Bar of the Kingdom of The Netherlands and counsel for
22 Mr Blé Goudé.

23 And my first three questions will relate to your expertise on the area of wound
24 ballistics. I have noticed that you obtained a university degree in Marseille on
25 wound ballistics in 1994. And my first question relates to a citation from a book

1 which we have uploaded, it's a book which was published in 2011 by the authors
2 Kneubuehl, Professor Coupland, Rothschild and Professor Thali, called Wound
3 Ballistics: Basics and Applications. And based on each citation I will pose
4 a question to you to assist us in applying this position of the book to the case at
5 hand.

6 The first portion relates to document -- it is on our list. Item 59,
7 CIV-D25-0049-000 -- sorry, 0001, page 0021. Again, it's item 59 on our list of
8 evidence.

9 First of all, Dr Baccard, are you familiar with this book, this publication of 2011?

10 A. [15:51:18] I would need to see the cover page with the title and authors.

11 Q. [15:51:24] The cover page is at 0001.

12 A. [15:51:43] Yes, indeed, I know the author of this book, Kneubuehl, at least by
13 name, and during -- when he parted in the wound ballistics course.

14 Q. [15:52:00] Yes. Thank you, Dr Baccard. Would you be so kind to look at
15 page 0021, paragraph 4.3.1. That's the introduction, and I will read the following
16 portions, which runs from line seven or eight from below to the end. It reads:

17 "Given that rifle and handgun bullets have similar masses, this extra energy can only
18 come from a higher muzzle velocity, and indeed, rifle bullets leave the barrel at
19 some 700 to 1000 metres per second, whereas typical handgun muzzle velocities lie
20 between 200 and 500 metres per second."

21 And the chapter continues with:

22 "We have seen that the wounding potential of a bullet depends in part on the energy
23 that the bullet is carrying."

24 I stop my quotation here, and my question to you is: Is this observation to say that
25 one cannot make a linkage between a wound and a specific weapon but, rather, that

1 such a linkage can only be based on the type of ammunition?

2 A. [15:54:26] Counsel, I would like to answer but the answer could be quite lengthy.

3 First of all, I am not an expert in arms and ammunition. But wound ballistics,

4 wound ballistics constitute terminal ballistics. You can define the domain in three

5 parts: First of all, the internal ballistics, what happens in the barrel of the gun, then

6 you have intermediate ballistics in the air, and then you have terminal ballistics.

7 That is, when the projectile hits the target, it becomes wound ballistics.

8 What you have mentioned is just a small part of wound ballistics. The action of

9 a projectile depends on the velocity, on the kinetic energy, and the interaction

10 between the point of contact and the radiation. The bullet or projectile can tumble, it

11 can mushroom, it can do a whole lot of things, so the seriousness of the wound

12 depends on all these factors, so it is much more complex than a paragraph quoted

13 from this book of Mr Kneubuehl, but whose approach is more related to weapons and

14 ammunition.

15 But in wound ballistics we talk about comparative, comparative analysis, so you deal

16 with the penetration of projectile in the tissues, muscles, the corona, which is

17 a complete whole of the structures. And the structure itself is elastic; it absorbs the

18 kinetic energy. There are other structures that retard the velocity, so there are a lot

19 of aspects in wound ballistics. And it is risky to limit that to the velocity of the

20 projectile or some other aspect.

21 Q. [15:57:19] Thank you, Dr Baccard. My question is really, and I will rephrase it,

22 you have a certain wound. You observe a certain wound in a human body. Can

23 you deduce from this wound the type of ammunition which it's fired with and/or also

24 the type of firearm which is used?

25 A. [15:57:52] I would say that it can be done on a case-by-case basis. I cannot give

1 you an answer that is valid for all cases. If you have a gunshot on a flat bone or the
2 skull, you can have an approximation of the calibre of the ammunition with some
3 margin of error. And if you have fragmentation, it may relate to a hunting weapon,
4 for example, so you need to follow the projectile track and see whether the bullet
5 spins or tumbles or whether it mushrooms in order to determine which category of
6 projectiles it comes from.

7 Q. [15:59:07] Thank you, Dr Baccard. We come to this issue in a moment with
8 respect to the second portion of the book. It's the same document, item 59 on our list.
9 It is the same book, Dr Baccard. So CIV-D25-0049-0001, page 0036.

10 Now, Dr Baccard, in line with my previous question, would you be so kind to read
11 with me the portion on this page starting with -- it's in the middle:

12 "There is no visible difference between the wound channel of such a bullet" - referring
13 to precision bullets - "and that of a full metal-jacketed bullet."

14 My question, though, relates to the sentence which follows now:

15 "However, small calibre 5.56 millimetre versions of the same type of bullet are capable
16 of deforming and of creating wound channels similar to those of similar hunting
17 bullets. The only way to be certain as to how a bullet will behave is to conduct
18 experiments."

19 My question to you is, sir: Is this to say this portion of the book chapter, is this to say
20 that even a small-calibre version can create wounds similar to heavy weapons?

21 A. [16:01:20] Mr President, I have a problem in terms of supplying a response.

22 Now there is a quotation here, it's been shortened. The problem, you see, is that
23 wound ballistics is quite complex, and I'm afraid that we could spend the entire
24 afternoon answering such a question. Small-calibre bullets, well, that's just about the
25 diameter. But you have to consider the charge which, for example, a small -- that's

1 extremely complex. Is that charge going to be completely channelled? Is there
2 going to be a hollow tip? It's truly difficult to answer this question.
3 Otherwise, if we open up the entire book and explain the fundamental laws of
4 ballistics, I really don't see. I'm quite willing to talk about a topic that interests me
5 greatly. I was actually the valedictorian of my class when I was studying wound
6 ballistics and I love the topic. But I am not so sure that it will be useful to the
7 proceedings.

8 Q. [16:02:44] Okay. I --

9 PRESIDING JUDGE TARFUSSER: [16:02:45] I understand perfectly and I tend to
10 agree with this.

11 MR KNOOPS: [16:02:49] Yes.

12 Q. I will be very specific then to you. These were my introductory questions.
13 In several reports which were filed by the Prosecution, the term is used,
14 "high-velocity ammunition; high-velocity ammunition." Now, in your professional
15 opinion, Dr Baccard, can this type of ammunition be fired by a variety of calibre
16 weapons and also can this cover a variety of types of ammunition?

17 A. [16:03:43] I can't answer that question. It is far too hazy, vague. Could you
18 try to rephrase your question. Which report are you referring to? Which calibre are
19 we talking about? I can't give a general response. I can share my knowledge about
20 wound ballistics with you, but not necessarily information about ballistics, pure
21 ballistics. So I do have a problem with the question. It's rather imprecise, to my
22 mind.

23 Q. [16:04:21] Well, if you, Dr Baccard, hear the word high-velocity ammunition,
24 when this is used in a report, are you able to make a linkage between this terminology
25 and a specific weapon or type of ammunition?

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1 A. [16:04:51] Major categories of weapons, yes, but that is quite vague. This is
2 quite a broad area.

3 Q. [16:04:59] Thank you. That's your answer.

4 My third question on this book relates to -- it's still the item 59, CIV-D25-0049-0001,
5 page 0037, do you find, Dr Baccard, in the middle of paragraph 4.3.3.2 a reference to
6 the deformation or fragmentation phase of a bullet?

7 And my question to you is: When a bullet hits a body, a human body, does this
8 bullet deform in any way and, if so, can you assist us how such a bullet would have
9 been deformed at that time?

10 PRESIDING JUDGE TARFUSSER: [16:06:35] Well, it depends very much on where it
11 hits --

12 MR KNOOPS: Of course.

13 PRESIDING JUDGE TARFUSSER: -- I would say.

14 MR KNOOPS: [16:06:42]

15 Q. [16:06:58] Let us first start when a bullet hits a bone. What type of deformation,
16 if any, would you expect, as an expert?

17 A. [16:07:01] Counsel, well, first of all, I would ask you what kind of bullet. Are
18 you referring to a full metal jacket bullet? Are you talking about a partially -- a soft
19 point bullet, or a hollow tip bullet?

20 Because, you see, the behaviour of these projectiles are completely different from one
21 another, depending on the very structure of the bullet itself. And if the bullet is
22 homogeneous, that is to say a jacket and then a core of lead, or a projectile fired from
23 Kalashnikovs, where you have a steel core and then a core of lead and then a metal
24 jacket, that kind of bullet behaves quite differently.

25 So, you see, the nature of the wound depends on the structure of the tissue as well

- 1 because initially there is an interaction between the projectile and the place where the
2 projectile strikes.
- 3 For example, a bone will tend to fragment, cause a kind of projectile to fragment.
4 However, if it hits muscle tissue, the projectile, depending on its structure and
5 velocity, may cross through. It depends on the penetration of the projectile.
- 6 A projectile can go through a thigh or an arm without any deformation, but if it goes
7 through a thorax or an abdomen, there will be enough time for the bullet to deform or
8 fragment or switch, depending on the kinetic energy released. It's all extremely
9 complex and it's very difficult to give a theoretical answer to such a general question.
- 10 PRESIDING JUDGE TARFUSSER: [16:09:19] Yes, Mr Knoops, I agree with the
11 witness.
- 12 MR KNOOPS: Yes.
- 13 PRESIDING JUDGE TARFUSSER: [16:09:22] I mean it is very theoretical. And this,
14 on the assumption that the book is right. I am sure you can find a book whose says
15 not the contrary but something different.
- 16 MR KNOOPS: Well --
- 17 PRESIDING JUDGE TARFUSSER: [16:09:33] So we base each other on a book which,
18 well, I don't know, the scientific value.
- 19 MR KNOOPS: [16:09:39] Well, I hope the authors are right in the book. It was, and
20 anyway, a book which was identified also by Dr Clark as a --
- 21 PRESIDING JUDGE TARFUSSER: [16:11:22] It is like with the diets, you know --
- 22 MR KNOOPS: Yeah.
- 23 PRESIDING JUDGE TARFUSSER: -- you have every day another diet and which
24 one is the right one, you know, you never know.
- 25 MR KNOOPS: [16:09:57] Yes.

1 Q. [16:09:58] So may I then put to you the question, Dr Baccard, to be more
2 practical in this case, and not theoretical, in this case there were several autopsy
3 reports where mention is made, merely mention is made of the word "gunshot injury,
4 "gunshot injury". My question to you, sir: Does this terminology reflect that, in
5 your professional opinion, no specific weapon or calibre or type of ammunition could
6 have been detected to link this so-called gunshot injury to any type of weaponry?
7 I cannot be more specific because the word "gunshot injury" is the starting point in
8 several of the reports. There were no details given whatsoever by the authors of
9 these reports, just the word "gunshot injury". So what does this word, the use of this
10 word mean to you from your professional opinion?

11 A. [16:11:28] Obviously the question should be put to the people who wrote the
12 reports, who are completely able to answer and tell you the meaning that they attach
13 to those words.

14 To respond in general terms to your question, indeed, this is a group of wounds that
15 cause trauma and caused by firearms. We also used the expression blessure par
16 projectile d'arme à feu, wound caused by projectile from a firearm. So various
17 criteria can be used to make such a diagnosis.

18 To answer your question about determining what kind of projectile, you must also
19 realise that the condition of the corpse is extremely important because, in the ultimate
20 analysis, the impact of the projectile is found on the soft tissue of the body, but when
21 the corpse is in a state of decomposition you lose information about the projectiles.
22 The impact upon bone, in general terms, you can usually make distinctions
23 depending on the -- well, major categories of projectile; for example, hunting bullets
24 or a spray pattern, so to speak, on bone. Often you find the little bits of lead, the shot
25 within the bones and that makes it much easier to come to a diagnosis.

1 As for the rest, we also have to consider certain aspects, for example, the skull, the
2 entrance wound, the exit wound, the trajectory. These also are clues.

3 As for the rest, afterwards we do have much more information when the autopsy is
4 done very quickly after death, when the soft tissue is still present, when we can
5 measure the part of the -- we can measure the wound, the tunnel before there is any
6 mushrooming or fragmenting. And if we do not have the soft tissue, it's much more
7 difficult to come to any hypotheses about the projectiles.

8 Q. [16:14:33] Is it fair to say, Dr Baccard, that the term "gunshot injury" is reserved
9 for those wounds who cannot be linked to a specific weapon or type of ammunition?

10 A. [16:14:58] I think it's a category of wound that you can include, well, you can
11 give an indication about the nature of the projectile and all the others in comparison
12 to wounds caused by a sharp object or a blunt object and so on and so forth. So it's
13 a category that includes wounds caused by projectiles fired out of firearms.

14 Q. [16:15:33] Thank you, Dr Baccard. I have three final questions. First two
15 questions relate to your first report, that's CIV-OTP-0084-4416 on page 4424. You
16 already received questions from Maître Jacobs on this report on this last page.
17 My question is different: When you drafted this report, sir, did you include any
18 other potential causes for the injury you encountered in the documents of this
19 gentleman apart from the hypothesis of a potential explosion?

20 A. [16:16:56] I did better than that. I left open -- well, in the way I drafted the
21 conclusions, I only issued an opinion about the compatibility. There is no
22 incompatibility. Of course, one can consider other origins, other kinds of explosions,
23 a landmine, a gas explosion, but, well, that too needs to be looked at in context. I
24 gave medical aspects and it is the Judges of the Chamber, the parties to the trial who
25 use this information to come to their conclusions.

1 Q. [16:17:47] Of course, sir.
2 I read with interest your article in 2013 in the Encyclopaedia of Forensic Sciences on
3 the topic of International Courts and Forensic Science. And you refer in this article
4 to the theory of base, which you believe could assist the Chambers before
5 international tribunals in combining different kinds of traces. Now my question to
6 you: Did you have sufficient information with respect to the first report to apply the
7 theory of base in order to weigh several potential hypotheses, and that concerns the
8 explanation of the wounds of the gentleman in question? Or was the information
9 which you were provided with insufficient to apply the theory of base, which is, as
10 you wrote in your article 2013, based on two hypotheses?

11 A. [16:19:09] Well, to return to the report having to do with the death of Mr Yaya, it
12 is certain that I based myself on the documents that were provided to me and that
13 were listed. The mandate I was given to carry out an expert -- write an expert report
14 was to find any possible inconsistencies amongst these documents or discrepancies.
15 I was not asked to make a diagnosis myself of the causes of death or the
16 circumstances of the death. I could not have done that. I, myself, did not examine
17 the victim. I was only asked to assess the documents taken together. And my
18 conclusion was that everything, everything that was reported by -- well, everything
19 mentioned by your learned friend earlier, and, well, the point about the date of death,
20 I'm talking about the certificate of death mentioned on -- well, the date of death on the
21 certificate, the date of death provided by the witness. I have my own explanation,
22 for what it's worth.

23 Other than that, everything was consistent. Amongst ourselves, if we look at the
24 video footage, it was entirely in keeping with what I have seen in other circumstances;
25 for example, the columns of refugees by Serbs in Kosovo, the same kind of wounds.

1 But I did not write that.

2 Q. [16:21:14] In order to have applied this theory of base, you say you had to have
3 examined the body yourself?

4 A. [16:21:30] You are referring to Dr Yaya's report?

5 Q. [16:21:36] No. To your report. Because you say that you cannot exclude the
6 hypothesis of an explosion. As you know, in the theory of base, two hypotheses are
7 compared based on the combination of traces. And my question to you was: Were
8 you able to apply this theory, you said no, because I would have examined the body
9 myself in order to apply the theory of base, in order to ascertain the likelihood of one
10 of two or other hypotheses. That is how I understood your evidence.

11 A. [16:22:33] Well, that is where the scientific value of such an analysis cannot be
12 compared to that derived from the external examination of a corpse or an autopsy.

13 Q. [16:22:55] Clear. Thank you. My next question relates to your answer today.
14 It is transcript page -- English transcript 87, line 25 to page 88, lines 1 to 3, where you
15 say:

16 "In my experience, projectiles of a firearm are different to wounds caused by
17 explosions, grenades, shells and landmines."

18 My question to you is: What would you have expected in terms of difference?
19 What do you mean with the words "those wounds are in my experience different
20 from wounds caused by explosions, grenades, et cetera"?

21 A. [16:23:53] That's a very good question, Counsel, and it is relatively easy to
22 answer it. There are many things that allow you to distinguish between wounds
23 caused by explosions and wounds caused by bullets, firearms. The wounds are
24 quite different; the shapes are different; the masses are different. Generally speaking,
25 unless you are very close to the actual centre of the explosion, there is not a great deal

1 of penetration but there is a great deal of cutting effect and a great deal of damage is
2 done. And there is also first the blast wounds, and then there is the potential of
3 tertiary wounds. The victim is projected himself because of the blast of the explosion,
4 and then the fourth degree of wounds that can occur after that stage.

5 But I will mention the twin towers, for example. The explosion of the tanks of the
6 aircraft was relatively limited in relation to the size of the buildings, yet the maximum
7 of victims was caused by the buildings collapsing and the fires that were caused. So
8 those were the fourth-degree wounds.

9 When it comes to firearms, it's quite different. Projectiles are designed to follow
10 a certain path over a certain distance. They remain stable as they travel through the
11 air because that guarantees an accurate shot.

12 What is more, unless there's a screen or, for example, a chair, there's no fragmentation
13 along the way. The fragmentation occurs within the human body. That is
14 completely different to what we see in other cases. In other kinds of wounds,
15 generally speaking, the fragmentation is before, and then the person has multiple
16 shots, is hit multiple times, then the shrapnel wounds, they are not aerodynamic
17 projectiles, unlike projectiles from firearms. So shrapnel does not penetrate a great
18 deal.

19 So you see, these are quite different kinds of wounds. To answer your question
20 succinctly, I would say -- well, I would say that.

21 Q. [16:26:51] Mr Baccard, in the instant case, in this first report, still on
22 page 0084-4416, you say that one metallic fragment was seen by you which was
23 extracted from the upper arm of the gentleman. My question to you is: Was this
24 piece of -- this fragment, was it only seen by you visually, or was it also
25 microscopically examined at any point in time as far as you know?

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1 A. [16:27:51] Indeed, I wrote in my report that this was during a visit to the
2 Forensic Institute, and one of the doctors, either Professor Yapo or one of her
3 assistants, showed me this metallic fragment that had been extracted. Of course, I
4 did not have a mandate to collect that particular projectile and seize it. I don't know
5 what was done by the investigators thereafter. I did see a fragment, it was shown to
6 me. And I was told that it was extracted from the arm of this victim. That being
7 the case, I merely looked at the fragment without any magnification by the naked eye.

8 Q. [16:28:51] So you didn't see yourself that this fragment came from the body of
9 this person? You were not there when it was extracted from his body? No. And
10 if it would have been an explosion, Dr Baccard, would it have been not more likely
11 that more fragments would have been found in the body of this person?

12 MR DEMIRDJIAN: [16:29:15] Objection, your Honours. Speculative.

13 PRESIDING JUDGE TARFUSSER: [16:29:21] Of course, it is a bit speculative, yes.
14 But please answer from the best of your knowledge and your expertise.

15 THE WITNESS: [16:29:37] (Interpretation) First of all, if the person had been close to
16 the centre of the explosion, the extent of the anatomical damage to the lower limbs
17 would lead one to believe that the shrapnel had gone through the body and had not
18 been halted by the victim's body. Then what happened during the hospitalisation
19 phase, because we must consider that hypothesis of a hospitalisation during which
20 the chest tube was inserted and the stitches were put in. But we do not have any
21 hospital reports or operating room records. We don't know whether other pieces of
22 shrapnel were removed. Were bits of shrapnel found in the clothing of the victim?
23 That's also a possibility in some cases. So we be really can't answer those questions.

24 PRESIDING JUDGE TARFUSSER: Very vague.

25 THE WITNESS: Absolutely.

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- 1 MR KNOOPS: [16:30:48] That's very helpful to the Defence. Thank you,
2 Dr Baccard. Those were my questions. Thank you.
- 3 PRESIDING JUDGE TARFUSSER: [16:30:54] Questioning by the Office of the
4 Prosecutor?
- 5 MR DEMIRDJIAN: [16:30:58] None, your Honours.
- 6 PRESIDING JUDGE TARFUSSER: [16:31:01] Thank you very much. Dr Baccard,
7 your testimony is over. Thank you for having been here. Your way back is not so
8 far, so I wish you a safe way back, nevertheless. And the only thing --
- 9 THE WITNESS: [16:31:17] Thank you, Mr President.
- 10 PRESIDING JUDGE TARFUSSER: [16:31:18] -- which remains for me to do is to
11 adjourn the hearing to 6 November. This also due to the different trials ongoing.
12 We have not enough money to have continuously three trials ongoing, so this is one
13 of the reasons. Thank you very much. The hearing is adjourned to 6 November.
14 Thank you.
- 15 THE COURT USHER: [16:31:47] All rise.
- 16 (The hearing ends in open session at 4.31 p.m.)