

Trial Hearing
WITNESS: CAR-OTP-P-0306

(Private Session)

ICC-01/14-01/18

- 1 International Criminal Court
- 2 Trial Chamber V
- 3 Situation: Central African Republic II
- 4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard
- 5 Ngaïssona - ICC-01/14-01/18
- 6 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Chang-ho Chung
- 7 Trial Hearing - Courtroom 1
- 8 Thursday, 30 September 2021
- 9 (The hearing starts in private session at 10.49 a.m.)
- 10 THE COURT USHER: [10:49:27] All rise.
- 11 The International Criminal Court is now in session.
- 12 Please be seated.
- 13 PRESIDING JUDGE SCHMITT: [10:49:48] Good morning, everyone.
- 14 Good morning, Mr Witness.
- 15 Good morning, Counsel for Mr Witness, Mr Madoukou.
- 16 Could the court officer please call the case.
- 17 THE COURT OFFICER: [10:50:04] Good morning, Mr President, your Honours.
- 18 Situation in the Central African Republic II, in the case of The Prosecutor versus
- 19 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
- 20 For the record, we are in open session.
- 21 PRESIDING JUDGE SCHMITT: Thank you.
- 22 THE COURT USHER: [10:50:13] I'm sorry. Private session.
- 23 PRESIDING JUDGE SCHMITT: [10:50:18] Yes, indeed.
- 24 But the words are here not decisive, no. I think here it's a technical matter.
- 25 The appearance of the parties, please.

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1 MR IVERSON: [10:50:28] Good morning, your Honours. Maria Berdennikova,
2 Yassin Mostfa, Kweku Vanderpuye and Eric Iverson for the Prosecution.

3 PRESIDING JUDGE SCHMITT: [10:50:36] Thank you.
4 Representatives of the Victims, Mr Fall.

5 MR FALL: [10:50:46](Interpretation) Good morning, Mr President. Today the
6 victims are represented by Mr Enrique Carnero; our assistant, Madam Mouhia Asso;
7 and myself, Counsel Yaré Fall.

8 PRESIDING JUDGE SCHMITT: [10:51:00] Now Mr Suprun.

9 MR SUPRUN: [10:51:02] Good morning, Mr President, your Honours. The former
10 child soldiers are represented by myself, Dmytro Suprun, counsel at the Office of
11 Public Counsel for Victims. Thank you.

12 PRESIDING JUDGE SCHMITT: [10:51:11] Thank you.
13 I turn to the Defence.

14 Ms Dimitri, as always, is the first.

15 MS DIMITRI: [10:51:16] Good morning, Mr President. Good morning, your
16 Honours. Good morning, everyone. Mr Yekatom, who's present in the courtroom
17 this morning, is represented by Mr Gyo Suzuki, Ms Yousra Lamqaddam, and myself,
18 Mylène Dimitri.

19 PRESIDING JUDGE SCHMITT: [10:51:29] And Mr Knoops.

20 MR KNOOPS: [10:51:30] Good morning, Mr President. Good morning,
21 Honourable Members of the Bench. Everyone in the courtroom, good morning.
22 The Defence team of Mr Ngaïssona consists today, on my right side,
23 Ms Chiara Giudici; in the second row, co-counsel Ms Marie-Hélène Proulx; and on
24 my back is Madam Mathilde Couloigner, intern. And Mr Ngaïssona is present in the
25 courtroom.

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1 PRESIDING JUDGE SCHMITT: [10:52:00] Thank you.
2 Before we continue, Mr Knoops - so you can perhaps sit down for a couple of
3 minutes - we'd like to address a matter with regard to our hearings. It is unfortunate,
4 but it's not the fault of anybody that we have problems to fill this evidence block.
5 These are events that -- that cannot be influenced by anybody. We appreciate it a lot
6 that the Prosecution tries to bring in a substitute witness, so to speak. And we
7 would appreciate it also a lot if it would be possible to get some accord with the
8 Defence.
9 We -- we also are contemplating because these are things, as I said, that nobody can
10 foresee and nobody can influence and are nobody -- nobody's fault. But the
11 Chamber is of the opinion that there should be introduced, so to speak, the institution
12 of a standby witness. So witnesses that are not -- we understand and we -- and
13 especially the Defence knows that we have always said bringing in from one day to
14 another and insider a witness, that is not fair to the Defence. I think -- I think we
15 also act like this way and we stand by that.
16 But having, let's say, some crime-based witness that is foreseen for two hours or for
17 half a day or a day or so, that should be no problem. So I -- we really appreciate this
18 because otherwise, the -- the proceedings are unnecessarily prolonged.
19 So I -- that's not -- not a criticism to anybody because indeed it's extremely difficult,
20 these circumstances. And there were unforeseen events, yes. But I think that
21 would be a good idea. Perhaps we -- we do something in writing. The Judges have
22 discussed it. We would think that it's a good idea to have such standby witnesses in
23 case such unforeseen issues with, let's say, witnesses that would take us longer in the
24 courtroom occur. Yeah. I just wanted to flag that.
25 Ms Dimitri.

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- 1 MS DIMITRI: [10:54:11] Mr President, just by way of notice, the day we received the
2 email from Mr Vanderpuye regarding the unavailability of the two witnesses, I
3 immediately took measures to look at the witness list and get from my client
4 instructions. So we proposed to the OTP team Witness 2388. We already
5 approached the Ngaïssona team, who would not have any problem with them.
6 I spoke with Ms Massidda this morning asking her to contact all the LRVs in order to
7 see if we could fill the gap with 2388, because we also want the proceedings to move
8 forward. And so we're doing our best to bring in a witness who -- who's not too
9 burdensome on the Ngaïssona Defence because they're fully engaged in -- in 306.
10 And we would also be willing for this specific witness to waive the motion of 68(3) in
11 order to speed up the proceedings.
- 12 PRESIDING JUDGE SCHMITT: [10:55:04] Thank you very much.
13 This is highly appreciated, I have to say. And it's perfectly clear and that the accused
14 have a right to an expedited trial. So that is -- it -- it's not something that is -- that
15 perhaps the judges want to move forward or something. Of course we do. But
16 there -- there is a legal background for that, yeah, which pertains to the rights of the
17 accused especially.
18 So, yeah, we appreciate that. Perhaps there -- something can be made.
- 19 Mr Vanderpuye, do you have already something you -- you can answer to that?
- 20 MR VANDERPUYE: [10:55:40] What I can tell you -- good morning, first of all,
21 Mr President. Good morning, your Honours, everyone.
22 What I can tell you is that, yes, indeed, we -- we've spoken to the Yekatom Defence
23 and we were trying to work out what is feasible in the circumstances. This is an
24 unusual situation since we've had now three witnesses drop out of this -- drop out of
25 this block, all -- all of whom were unanticipated.

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1 But we're checking to see if there's an issue with the Legal Representatives. I just
2 sent an email actually, just now, because I have also to determine when it is that we
3 can reasonably put the person on.

4 I received a communication just this morning that, given the timeline of events for
5 testing and things like that, we may be -- VWS I think can get the witness on by the
6 14th or 15th. But I understand there's also a resource issue with respect to the
7 availability of Sango translation during that week because of the other proceeding
8 pending before the Pre-Trial Chamber. And we're now going to check to see
9 whether or not the witness can proceed, maybe in French rather than Sango, to see if
10 that can -- that can (Overlapping speakers)

11 PRESIDING JUDGE SCHMITT: [10:56:46] So that is --

12 MR VANDERPUYE: [10:56:48] -- forward. But I'm not sure.

13 PRESIDING JUDGE SCHMITT: [10:56:48] Yeah. Thank you very much,
14 Mr Vanderpuye, for this information. That is quite encouraging, I have to say. And
15 let me also say that it should not be impossible because of internal, meaning Registry
16 things, interpretation things. I think we have to -- as a Court, we have to try the
17 utmost to do everything that this Court can move forward and -- and we can bring
18 witnesses in.

19 Also I find the idea of perhaps switching to French, it depends, of course, on the
20 situation. I don't know the person, of course, I don't know the witness. But we
21 had -- I would not say a couple of, but we had already instances where I thought that
22 it would have been possible perhaps to conduct the examination also in French.

23 I had the impression. Yeah.

24 I understand that witnesses feel more comfortable with Sango. But as I said, I have
25 one or two I have specifically in mind where -- who sometimes switched,

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1 involuntarily so to speak, yeah, to French. And as far as I -- I am not a -- I'm not
2 good in French, but as far as I -- I could tell it was very good and absolute, and they
3 understood everything.
4 But thank you very much for the combined efforts, and I'm quite optimistic that at
5 least we can fill a little bit of the gap. And as I said for the Prosecution, such standby
6 witnesses, crime-based, we -- we have a long list. I don't have to tell you. That
7 would be great if we had -- could bring such witnesses in on short notice. Yeah.
8 Okay. So then we continue -- no, just one for housekeeping matter. We start a little
9 bit later. And we had it last week already that we had two two-hour sessions.
10 I think that might be a good idea today too. So until a quarter to 1, then from 2 to 4.
11 Mr Knoops, if you tell me of course you need another 8, 9, 10 hours, then perhaps
12 I would have to reconsider. But I leave it up to you for -- for the moment to -- to tell
13 us what -- your ideas.
14 MR KNOOPS: [10:59:00] Yeah. Yeah. Thank you, Mr President. Thank you very
15 much.
16 Maybe to give the Court and everyone an idea of my approach, I intend to use part of
17 the first session to finish the question on the annexes. Especially now the
18 instructions of the Chamber were given yesterday to the witness.
19 And then I have six, seven topics left, so I will probably use tomorrow, at least the
20 first session and maybe part of the second session. But I keep in mind that the other
21 team needs half an hour. So it could be possible to finish it tomorrow afternoon.
22 But I need -- I need also probably part of the day tomorrow.
23 PRESIDING JUDGE SCHMITT: [10:59:48] But that speaks of course in favour of not
24 having to extend hours today.
25 So we don't have to extend hours today if I (Overlapping speakers)

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1 MR KNOOPS: [11:00:00] Depends on the pace, Mr President.

2 PRESIDING JUDGE SCHMITT: [11:00:02] No, no, no, it's fine. It's fine. So please
3 proceed, Mr Knoops.

4 MR KNOOPS: [11:00:07] Thank you.

5 PRESIDING JUDGE SCHMITT: [11:00:07] Perhaps -- I would like to address the
6 witness shortly because he might not have understood.

7 MR KNOOPS: Of course.

8 PRESIDING JUDGE SCHMITT: [11:00:10] Mr Witness, you have heard there was
9 some back and forth about issues that mainly did not concern your examination. I
10 apologise for that. Mr Knoops for the Ngaïssona Defence is now going to continue
11 his examination.

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8 PRESIDING JUDGE SCHMITT: [12:44:41] So, Mr Knoops, I think that would be a

9 good time to have the lunch break. Is it okay? Yeah.

10 So, Mr Witness, we will now have the lunch break and we will resume, also for other

11 parties and participants, at 2 o'clock.

12 THE COURT USHER: [12:45:00] All rise.

13 (Recess taken at 12.45 p.m.)

14 (Upon resuming in private session at 2.01 p.m.)

15 THE COURT USHER: [14:01:40] All rise.

16 Please be seated.

17 PRESIDING JUDGE SCHMITT: [14:02:05] Good afternoon, everyone.

18 Good afternoon, Mr Witness.

19 Mr Knoops, you obviously have still the floor.

20 MR KNOOPS:

21 Q. [14:02:31] Good afternoon, sir. I will continue to put to you some statements of

22 the Prosecution witnesses before you, starting with an important witness and --

23 PRESIDING JUDGE SCHMITT: [14:02:54] Mr Iverson is already jumping to his feet.

24 Yes.

25 MR IVERSON: [14:02:58] Well, I don't know if I jumped, but I'll take that

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1 characterisation, your Honour.

2 PRESIDING JUDGE SCHMITT: [14:03:03] You rose.

3 MR IVERSON: [14:03:03] I rose.

4 PRESIDING JUDGE SCHMITT: [14:03:04] Yes.

5 MR IVERSON: [14:03:04] Indeed.

6 I didn't object to the last question posed in this manner to the witness, but I did think
7 it was objectionable. And I want to object before it happens again.

8 To put a -- you can put a question to a witness without actually referring to what
9 someone else said, often. And in the last instance before the break, that was -- it was
10 an obvious way to pose the question without referring to any transcripts. We -- we
11 don't object if Mr Knoops wants to refer the Chamber to a -- a citation which forms
12 the basis of the question, but the question, really, should be posed in a way that
13 doesn't influence or influence the witness about testimony in court. It can be posed
14 just as a proposition and the witness can agree or disagree. And, of course,
15 Mr Knoops is then able later in closing argument, where it's appropriate, to tie these
16 issues together, as counsel does. But to try to do in the courtroom I don't think is
17 appropriate.

18 And in the last example, it brought no information to the Chamber, because,
19 obviously, the witness just said, "Well, if there was a person who said that he wasn't
20 with me, then that person wasn't with me." It -- it didn't make sense. It was
21 illogical.

22 PRESIDING JUDGE SCHMITT: [14:04:35] No, I would not say so. I would say this
23 was an answer.

24 MR IVERSON: [14:04:40] But if he doesn't know who the person is, then the answer
25 can't have any value.

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1 PRESIDING JUDGE SCHMITT: [14:04:47] Yes. Exactly, so.

2 I'm not sure about that.

3 Okay. But I don't want to discuss this with you.

4 Mr Knoops, what I would suggest here, because we have to adapt and adjust to
5 the -- the persons we have in the courtroom and we are questioning. So, indeed,
6 always the Chamber would like to know the reference, but -- yeah. And then you
7 can put the -- the question to this witness in a manner that extracts, so to speak, the
8 factual proposition out of it. And then we can proceed this way.

9 MR KNOOPS: [14:05:29] Mr President, of course I follow the instructions. And
10 I recall that you previously ruled that we can put the witness statement to the witness
11 in the witness box and ask for his comment. And --

12 PRESIDING JUDGE SCHMITT: [14:05:46] It has to -- but it has -- has to be clear.

13 MR KNOOPS: [14:05:48] Of course.

14 PRESIDING JUDGE SCHMITT: [14:05:50] -- to the -- to the witness. It's a matter of
15 wording, yeah.

16 What I want to say by that, it should -- the main purpose is to not confuse the witness,
17 the witness that we have here now. So it is important that if -- you make clear when
18 you put your question to the witness that another witness might have said this.

19 MR KNOOPS: [14:06:12] Yes.

20 PRESIDING JUDGE SCHMITT: [14:06:14] You give the reference. I would not
21 have a problem with that. I've said this. And you can say, "Do you agree with that,
22 or do you stand by your statement?"

23 MR KNOOPS: [14:06:22] Of course.

24 PRESIDING JUDGE SCHMITT: [14:06:23] Or whatsoever.

25 MR KNOOPS: [14:06:24] Of course. Yeah.

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- 1 PRESIDING JUDGE SCHMITT: [14:06:26] So -- and I can also explain it to the
2 witness. It's a long explanation. But -- but you understand what I mean.
3 MR KNOOPS: [14:06:31] Of course.
4 PRESIDING JUDGE SCHMITT: [14:06:32] It depends on the -- the personalities we
5 have to deal with, yeah. And I think we can agree on that.
6 MR KNOOPS: [14:06:38] Thank you. Thank you. Of course.
7 PRESIDING JUDGE SCHMITT: [14:06:40] So what I suggest is, just -- just put your
8 first question to him. And perhaps before he answers, the witness, I explain to him
9 what this means, yeah?
10 MR KNOOPS: [14:06:51] Yeah.
11 PRESIDING JUDGE SCHMITT: [14:06:52] And then we can continue like that.
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 PRESIDING JUDGE SCHMITT: [14:07:41] And perhaps you might have recognised
19 that the Chamber did not object to that.
20 MR KNOOPS: [14:07:45] Right.
21 PRESIDING JUDGE SCHMITT: [14:07:47] Yeah.
22 MR KNOOPS: [14:07:48] And that's why I think with this witness, with this
23 Prosecution witness, which is, by the way, withdrawn, I think it's important that the
24 Defence is entitled to confront this witness with this statement and ask for his
25 comment on this.

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1 PRESIDING JUDGE SCHMITT: [14:08:05] So -- so what we are doing now -- no,
2 we -- we do it this way. I explain the situation to the witness and then you put your
3 questions to him.

4 MR KNOOPS: [14:08:14] Yes.

5 PRESIDING JUDGE SCHMITT: [14:08:15] Yeah.

6 Mr Witness, again, a long back and forth. This is what happens between lawyers.

7 They often do not agree. They try to find common ground then.

8 So what is now happening is it's a little bit what has already been doing by

9 Mr Knoops before -- before the break. There is another witness who has stated

10 certain things, and these -- the -- the Defence is of the opinion that it is not the same as

11 what you said. And the -- the counsel, Defence counsel, also the Chamber, wants to

12 know your opinion on that, if you stand by your statement or what you say to that.

13 You understand that?

14 THE WITNESS: [14:09:25](Interpretation) Thank you, Mr President. I have not

15 come to the Court to lie. I have come to the Court to tell the truth. So I have a small

16 question to ask. I would like to ask the President or ask -- to ask Ngaïssona's lawyer

17 whether his client has told him the truth. Did his client tell him the truth?

18 He himself was the coordinator, the general coordinator of the Anti-Balaka, wasn't he?

19 Please, let the counsel put that question to his client so that the truth may emerge.

20 PRESIDING JUDGE SCHMITT: [14:10:29] Mr Witness, it's -- first of all, it's not up to

21 you to ask what counsel has to do and to ask the judges what the judges have to ask

22 counsel what to do.

23 And, secondly, the accused does not have to answer anything. And, firstly,

24 the -- counsel does not have to question the -- the accused anything. So we -- we

25 leave -- leave it at that.

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1 So what we do now until the end - and it's not so far to go any more, I would
2 assume - is that you simply answer the questions. And the background what I told
3 you was that you can imagine that this Chamber in such a case hears a lot of
4 witnesses. You are not the only one, you can imagine that, so. And we have also
5 witness statements on the record, a lot of statements. And perhaps you can also
6 imagine that perhaps not all tell the same story like you do. And we all sit here and
7 try to figure out what really has happened and that is the background.

8 So when Mr Knoops now asks you questions about other witness statements, simply
9 tell the Court, this Court, if you -- if this is true, what -- what this other witness said,
10 or if you stand by what you said. Yeah? You understand that? This is the only
11 thing. I just want to explain to you what's going on here so that you are not left in
12 the dark.

13 THE WITNESS: [14:12:20](Interpretation) Okay. Thank you, Mr President. I have
14 understood what you have said clearly, what you have told me, and I am ready to
15 answer all your questions.

16 PRESIDING JUDGE SCHMITT: [14:12:39] Thank you.

17 THE WITNESS: [14:12:42](Interpretation) But I did not fully understand the
18 question that I was asked previously, and that is why I reacted in the manner in
19 which I did.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 That is all I can say on that point, Mr President.

4 PRESIDING JUDGE SCHMITT: [14:13:52] So, Mr Witness, if you -- if what I have

5 said initially was not clear enough, I apologise

6 for that, but you have obviously understood now.

7 And please be aware that counsel will put similar questions like the one you have just

8 answered to you and simply answer them to the best of your knowledge and

9 truthfully in the future too.

10 So, Mr Knoops, I think we can start from there.

11 MR KNOOPS: [14:14:22] Thank you. Thank you, Mr President.

12 Q. [14:14:24] And thank you, Mr Witness, for your willingness to -- to answer the

13 questions.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE SCHMITT: [14:15:13] Mr Iverson.

19 MR IVERSON: [14:15:14] Your Honour, this is exactly what the Prosecution is

20 objecting to (Overlapping speakers)

21 PRESIDING JUDGE SCHMITT: [14:15:16] I understand.

22 Mr Witness --

23 MR IVERSON: [14:15:18] Can I please.

24 PRESIDING JUDGE SCHMITT: [14:15:21] Yeah.

25 MR IVERSON: [14:15:21] It must be said that I don't think it's even proper to refer

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1 to this person as a witness, because they are not being called as a witness, unless
2 they're being called as a witness by the Defence or by the Court.
3 And also, the information contained in the citations that Mr Knoops is citing is not
4 evidence, and it can't be evidence unless that person is called to testify or that
5 evidence -- or that information goes through the eye of Rule 68. It's not before the
6 Court. That information is simply not before the Court as evidence and the person
7 hasn't testified and is not a witness.

8 PRESIDING JUDGE SCHMITT: [14:15:59] But nevertheless, I -- I won't see a
9 problem to say -- so -- to say there is a witness -- a statement of a potential witness,
10 but we can -- we can put this into prospective then in the end. There's a statement of
11 a potential witness in this Court who has said the following. And then you read this
12 out, Mr Knoops, to the witness. And the witness can -- can answer, can say, "No,
13 this is not true," or "This is true," or -- why not?
14 Please, Mr Knoops.

15 MR KNOOPS: [14:16:33] Yes. I never suggested this is evidence. It's a witness
16 who was withdrawn by the Prosecution. That's correct.

17 Q. [14:16:46] Now, Mr Witness, there is a statement given by an individual during
18 the course of the investigation by the Prosecution.

19 PRESIDING JUDGE SCHMITT: [14:16:55] Yeah. Okay. That is correct now, one
20 hundred per cent correct. Yeah.

21 MR KNOOPS: [14:17:00] If -- if the Prosecution wants to deal with semantics, okay,
22 we can deal with semantics.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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14 (Redacted)

15 (Redacted)

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18 (Redacted)

19 MR KNOOPS: [14:35:12]

20 Q. [14:35:14] Then I have just a last question for -- on this topic to the witness,
21 which relates to tab 43 of our binder, which is the transcript of a Prosecution witness
22 who testified before this Court, P-2251, and the transcript is of 7 June 2021. That's
23 the reference number T-043, English version on page 14, one four, starting at line 16,
24 going to page 15, lines 1 till 8.

25 Mr Witness, a Prosecution witness came before this Court and testified the following,

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1 line 16 till 19:

2 "As I told you, the supreme chief, well, there was no supreme chief. There were a
3 multitude of chiefs. And what I can say is that Konate is the one who was leading
4 up everything. He was the most senior and highly ranked soldier."

5 And then the question is put to this witness: "Who did Konate report to?"

6 PRESIDING JUDGE SCHMITT: [14:37:45] Which you objected to.

7 MR KNOOPS: [14:37:47] Indeed. Very well observed, Mr President.

8 PRESIDING JUDGE SCHMITT: [14:37:53] I think it's enough -- it's enough if you
9 cite on the next page the answer.

10 MR KNOOPS: [14:38:00] Yeah, indeed. Because Mr Leddy, the Prosecution counsel,
11 reformulated the question somewhat. But more interesting is, I think, the answer of
12 the witness.

13 Q. [14:38:12] So, sir, the question to this witness was: To whom did Mr Konate
14 report to? And the answer was: "Konate did not report to anybody. As I told you,
15 there was no communication network in Gobere. We were in the bush and it was
16 impossible to call anyone."

17 And my question to you is, is it correct that there was no possibility to communicate
18 by phone to anyone during the events you described?

19 PRESIDING JUDGE SCHMITT: [14:39:41] Mr Iverson, the witness may answer the
20 question.

21 MR IVERSON: [14:39:46] Well --

22 PRESIDING JUDGE SCHMITT: [14:39:48] Mr Witness, there is this other witness
23 who said Konate did not report to anyone, so -- and it's the same exercise we did
24 before. The question to you is if you hear that, is this witness correct? Is this
25 right -- is this witness right? Or what do you say to it?

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1 MR IVERSON: [14:40:08] With respect, your Honour, that's not what I'm objecting to.
2 I mean, the answer involves a different locality. I just -- I mean, I want to make clear
3 that the Prosecution has a standing objection to this whole line of questioning, but in
4 particular this one has -- it has nothing to do with the witness because they're talking
5 about a different locality. I just don't understand how this witness is expected to
6 provide this Chamber with any intelligent information about a locality where it's not
7 clear that he was at all. And so my fear is that these types of questions with all this
8 extraneous information will lead the witness into error.

9 This question, for example, could simply be asked, it wasn't possible to communicate
10 by phone where you were; is that right, sir?

11 PRESIDING JUDGE SCHMITT: [14:41:02] Yeah, but -- actually, I don't agree here.
12 If we split it up at least. So the first question, Mr Witness, do you -- to your
13 recollection, did Konate report to anyone or not.

14 THE WITNESS: [14:41:46](Interpretation) Yes. His superior at the time was
15 Edouard Ngaïssona. They exchanged ideas together and decided together that we
16 should come to Bangui. So he reported to somebody.

17 PRESIDING JUDGE SCHMITT: [14:42:10] How?

18 THE WITNESS: [14:42:15](Interpretation) That is the answer that I can give to that
19 question. (Overlapping speakers) Yes, he had a superior. He reported to someone.

20 PRESIDING JUDGE SCHMITT: [14:42:30] How did Konate communicate with his
21 superior? By which means?

22 THE WITNESS: [14:42:59](Interpretation) (Redacted)
23 (Redacted)

24 (Redacted) It was Konate who had a telephone and he exchanged with the
25 chief and then he would tell us what they had said between the two of them. That is

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1 what happened. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

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10 MR KNOOPS: [14:44:23] Yes, Mr President. But -- but I want to put on the record

11 that the qualification of the question by the OTP is -- is not correct, because if you

12 read the full answer of P-2251, you will see in the lines 4 till 8 that he is speaking

13 about communication in general in the bush and that they were in circumstances that

14 people had to go between the camps to communicate. So this witness is just -- not

15 just speaking about Gobere. So I -- I think the summarisation of the question by the

16 OTP is --

17 PRESIDING JUDGE SCHMITT: [14:45:03] We have -- yeah, we don't -- we don't

18 have to -- to say --

19 MR KNOOPS: [14:45:05] Yeah.

20 PRESIDING JUDGE SCHMITT: [14:45:07] -- revert to that.

21 The only thing that -- that remains that we could ask the witness is, you have heard

22 that this other witness has said there were parts -- in Gobere he mentions specifically,

23 and the bush, that there was no communication where you were, and to your

24 experience, to your recollection, was communication possible? Communication by

25 telephone, I mean.

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11 (Redacted)

12 MR KNOOPS: [14:47:33] Yeah.

13 Q. [14:47:34] So to finish this topic, sir, just that we are clear on your evidence, so

14 it's your evidence today that Mr Ngaïssona was able to command military officers

15 with phones in the bush while he was not in the Central Africa? Is that what you're

16 saying to this Court?

17 A. [14:48:36] Thank you, Mr President.

18 I think that Douala is a border town, or a town which is in contact with the Central

19 African Republic. Someone who is in Douala can communicate with somebody who

20 is in the CAR. I'm talking about what I know. This was not only when we were in

21 the bush. But when we arrived Bangui, we met, and he kept the command and the

22 coordination of the Anti-Balaka right up till the end.

23 That is the answer that I can give to you. I have nothing further to add. Thank you.

24 That is the answer that I can give to the question that was put to me. Thank you.

25 (Redacted)

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17 (Redacted)

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21 (Redacted)

22 (Redacted)

23 (Redacted)

24 THE WITNESS: [15:07:26](Interpretation) Mr President of the Court, please

25 understand that I have not come here to distract the Court. I have come to tell you

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1 the truth. So from the very beginning of my testimony I have consistently said the
2 same thing. Konate was with us behind the hill. Ngremangou at that time was in
3 Boeing, in charge of the base that was at Boeing. And after orders to attack were
4 received on the 5th, the orders came from Konate, but he too received those orders
5 from someone else. That is how we came down after we received the orders to
6 attack the Seleka.

7 Now, as for Konate, he was in charge of Kasai and Ngremangou was in charge of
8 Boeing. That is how it was.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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10 THE WITNESS: [15:11:53](Interpretation) Okay. Thank you. Mr President, please
11 understand that which I'm telling you. We were behind the hill with Konate. At
12 that time, Ngremangou was in Boeing where his base was located. And then from
13 the 1st, we received orders and Konate and Ngremangou agreed among themselves,
14 they talked and they shared the information. Konate shared the information. So
15 we prepared for the attack before the chief arrived. (Redacted)

16 (Redacted)

17 And Ngremangou also from his base was able to communicate with Konate and they
18 asked us to attack according to the plan.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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12 MR KNOOPS: [15:19:31] Mr President, also here with this question I think I will
13 save my comment.

14 Q. [15:19:40] Going to the next topic, sir. You testified before this Court - and that
15 was on 29 -- 27 September and it's the real-time version on page 44 and 64, page 44,
16 lines 3 till 6 and 20 till 22 - that Mr Ngaïssona arrived in January from abroad and
17 landed in Bangui.

18 Can you recall what you told the investigators in 2019 about the arrival of
19 Mr Ngaïssona?

20 PRESIDING JUDGE SCHMITT: [15:21:45] I think, Mr Knoops, you can put the
21 statement to the witness and --

22 MR KNOOPS: [15:21:51] Yes.

23 PRESIDING JUDGE SCHMITT: [15:21:52] -- there seems to be an inconsistency, and
24 address this directly, I would suggest.

25 MR KNOOPS: [15:21:59] Yeah, Mr President. I have the feeling that I just can put

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1 questions with this without getting answers.

2 PRESIDING JUDGE SCHMITT: [15:22:06] No, no, but just read (Overlapping
3 speakers)

4 MR KNOOPS: [15:22:07] Yeah. There are two portions, Mr President --

5 PRESIDING JUDGE SCHMITT: [15:22:11] Please put one after the other.

6 MR KNOOPS: [15:22:15] Of course, yeah.

7 Q. [15:22:16] Mr Witness, in 2019 you told the investigators about the arrival of
8 Mr Ngaïssona the following -- that's CAR-OTP-2118-4976, that's the document
9 number, at 4978 reading through 4979. That's the first portion. Starting at line 55
10 till 79 on page 4979.

11 (Interpretation) "... had come and set up. Ngaïssona settled here before Mokom
12 arrived."

13 (Speaks English) Question: (Interpretation) "Okay. And after the attack of
14 5 December, how many days thereafter did you see Ngaïssona?"

15 (Speaks English) Answer: (Interpretation) "You know, during the fighting, officers,
16 it is difficult to see them or meet them face to face. So after the fighting, I think it
17 was about two weeks after that he came. Two weeks after the fighting that he came.
18 I recall that he came, when -- when he came, the Seleka who were in Combattant had
19 not yet left the area. So he came while fighting was still ongoing."

20 (Speaks English) So in your statement you give in 2019, you suggested to the
21 investigators that two weeks after the attack of 5 December Mr Ngaïssona arrived in
22 Bangui. Can you recall making this statement?

23 A. [15:25:25] Thank you, Mr President.

24 I think that what I am saying is that I stand by what I have said as having been my
25 experience. Fighting between the Seleka and the Balaka did not end on 20 January.

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1 The question was put to me by the investigators and I told them that the fighting had
2 started and lasted until January and that it was in January that our leader, our
3 superior arrived when he came in the month of January into Boy-Rabe. When he
4 came to his -- to his place in Boy-Rabe, fighting was still ongoing. And at that time
5 he was protected and he was installed at his home. Fighting was still ongoing. The
6 fighting had not yet finished in the month of January. So fighting was still ongoing
7 when he arrived.

8 So he didn't come after the fighting. No. There might have been a typing error or a
9 writing error or something of that nature. What I am telling is what I experienced
10 and that is the testimony I'm bringing to you today and the answer that I'm providing
11 to the President of the Court. Thank you very much.

12 Q. [15:27:13] Speaking about writing errors, there's a second portion in your
13 statement given in 2019, which is recorded, by the way. It is a recording of what you
14 literally said to the investigators in 2019. And you were questioned on this topic for
15 the second time.

16 And that's CAR-OTP-2118-4980, at page 4985 and 4986, starting from lines 153 till 187,
17 at page 4978.

18 And, sir, please listen to what you told again the investigators at that time.

19 (Interpretation) "... what I wanted to say is that when we started fighting on
20 5 December, it was two weeks from the fighting that he came. Not after. So it was
21 in December while we were fighting. Two weeks into the fighting, he arrived."

22 (Speaks English) Question: "Okay." (Interpretation) "So two weeks into the
23 fighting he arrived. When did he arrive? In December?"

24 (Speaks English) Answer: (Interpretation) "Fighting was ongoing when he arrived
25 and that was in December."

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- 1 (Speaks English) Question: (Interpretation) "Do you celebrate Christmas?
2 Yes, I know."
3 (Speaks English) Answer (sic): (Interpretation) "And that night, did you celebrate
4 Christmas?"
5 (Speaks English) Answer: (Interpretation) "Christmas? It was at that time. We
6 were fully engaged in fighting."
7 "At Christmastime?"
8 (Speaks English) No, that was the answer of the witness. (Interpretation) "And then
9 it was time for the New Year feasts, right, in January?"
10 (Speaks English) Answer: (Interpretation) "Ngaïssona, did he arrive before or after
11 Christmas?"
12 "I cannot lie to you. Well, we were engaged fully in fighting, so I do not remember
13 whether it was after Christmas or before the Christmas feast. I cannot say which one
14 is the truth."
15 (Speaks English) Question: (No interpretation) Sorry, not a question.
16 Answer: (Interpretation) "Well, I stand by the position that he arrived while we
17 were still fighting in the month of December itself."
18 (Speaks English) Question: (Interpretation) "I am putting this question to you
19 because I have information that he arrived in the month of January."
20 (Speaks English) Answer: (Interpretation) "That is a lie. I told you that we were
21 fighting, that there was another battle in January against the Chadians. When that
22 fighting started, he was already there."
23 (Speaks English) End of citation.
24 So, sir, the investigators insisted several times repeatedly on the arrival of
25 Mr Ngaïssona, even gave the reference to Christmas and even suggested to you that

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1 he arrived in January because that was their information. You said it was a lie. So
2 on several occasions, which is recorded - it's not a transcript failure - you said in 2019
3 that Mr Ngaïssona arrived in December in Bangui. And now you have changed
4 your statement during the course of this trial, making it January, and I put to you that
5 you changed your statement because you knew full well before you came to this court
6 that Ngaïssona was in December not in Bangui. And the Court knows full well,
7 based on our information, that Mr Ngaïssona was in December outside the Central
8 African Republic.

9 So, Mr Witness, I put to you that you changed your statement to the month of January.
10 You never spoke about arrival in January in 2019. And only after you were informed
11 that that statement could not be correct, you changed it today during this trial. And
12 I give you a chance to revisit your statement.

13 A. [15:33:47] Thank you, Mr President.

14 I did not change my statement. When the fighting was ongoing, and ever since I
15 started testifying before your Court, I have always stood by my statement and I
16 always told you the truth. I told you what I saw, what I heard and what I
17 experienced. So that is how I can answer that question. Thank you.

18 MR KNOOPS: [15:34:44] Mr President, I still observe that this witness is not replying
19 to the questions why it's a clear change of statement. The answer is why did he
20 change his statement? Why did he say in December twice --

21 PRESIDING JUDGE SCHMITT: [15:35:02] So if you perhaps allow me an attempt, so
22 to speak.

23 Mr Witness, Mr Knoops read a long passage of your interview with the Office of the
24 Prosecutor from 2019 to you. From this passage, one could get the impression that
25 you were sure that Mr Ngaïssona already in December 2013 was in Bangui, arrived in

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1 Bangui. During the course of this hearing before this Court, you said it was
2 January 2014. Do you have an explanation for that or can you clarify that?

3 THE WITNESS: [15:36:28](Interpretation) Mr President, I do not see any
4 contradiction in what I said. We started fighting the war in the month of December,
5 right up until the month of January. We were in the middle of the war when he
6 arrived.

7 If I expressed myself in that way, well, I do not know. If you read something else in
8 my statement, this can be attributed to the person who noted it down.

9 But I recall one thing, I recognise one thing, he landed when we were still involved in
10 the fighting. I cannot contradict myself. This is the version that I have given ever
11 since the beginning of this trial. I have not contradicted myself. I am telling you
12 what I know.

13 PRESIDING JUDGE SCHMITT: [15:37:36] Yeah, you have to (Overlapping speakers)

14 MR KNOOPS:

15 Q. All right. Next question --

16 THE WITNESS: [15:37:40](Interpretation) We were still fighting the war when he
17 arrived.

18 PRESIDING JUDGE SCHMITT: [15:37:45] Thank you. You have to (Overlapping
19 speakers)

20 THE WITNESS: [15:37:48] (No Interpretation) (Overlapping speakers)

21 MR KNOOPS:

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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11 (Redacted)

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15 (Redacted)

16 MR KNOOPS: [15:43:29] Yes.

17 Q. [15:43:31] One other question, sir, on the contact with Mr Ngaïssona is the

18 following: In your evidence given on 27 September before this Court - and that is

19 real-time English version, page 40, four-zero, lines 12 till 22, you did say the

20 following:

21 (Redacted)

22 (Redacted)

23 Answer: "Yes. Ngaïssona said he was chief, the general coordinator of the

24 Anti-Balaka group. That is the name that he gave to the group Anti-Balaka because

25 we had started fighting with machetes and sticks and so on, so we have more of

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1 edged weapons. And so he said -- he gave the name Anti-Balaka and ... introduced
2 himself as the general coordinator of the Anti-Balaka. That is what he told us." End
3 of quotation.

4 Sir, this is your evidence given before this Court.

5 Now, I'm not going to ask you what you can recall from your statement, but I put to
6 you that in your statement given to the Prosecution investigators in 2019, and that's
7 CAR-OTP-2118-4836 at 4839, lines 91 till 112 on page 4840. Let me just -- one second.

8 Yeah.

9 Sir, you said the following to the investigators in 2019, line 91:

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Speaks English) So, sir, when you listen to this statement, which was recorded also
17 2019, these were your own words. You said at that time nothing of the nature you're
18 telling this Court now during this trial, that Mr Ngaïssona introduced himself as the
19 general coordinator, right?

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. [15:49:45] Mr President, what counsel is saying, in fact, I really do not
5 understand it very well. I do not understand him. I know who is my chief. I
6 know who is the general coordinator. It was Mr Edouard Ngaïssona who had us
7 come to Bangui. I'm not telling you anything else.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 THE WITNESS: [15:50:54](Interpretation) That is how he stayed in the position of
13 the general coordinator of the Anti-Balaka. And at the end, he was finally arrested
14 and transferred to the ICC. I know that. I do not know any other person who was
15 the chief, that is apart from Ngaïssona. He was the one who was the general
16 coordinator. And it is because of that that he is with you today. Why should I
17 change my statement? There are no contradictions in my statement. I do not see
18 any contradiction. I believe that I am answering to the same questions. I do not see
19 any contradictions. I said the same thing to the investigators of the OTP and I stand
20 by my statement.

21 Now, the coordinator of the Anti-Balaka, there weren't two of them. It was Edouard
22 Ngaïssona who was our leader and everyone knows about it. The entire population
23 knew about it. All the population of the CAR knew it. And today if I come to lie,
24 what would I gain? What would I gain by accusing him? We are telling the truth.
25 I think the issue here regarding our country, we, who are speaking, we have to speak

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1 the truth. I do not know anyone else. I cannot lie.

2 That is how it is, Mr President. That is the answer that I can give. Thank you.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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7 PRESIDING JUDGE SCHMITT: [16:00:54] Mr Knoops and to everyone else, it's

8 exactly 4 o'clock. Although we started late, it was a long day, if I may say so.

9 Do -- is your estimate still the same for tomorrow, Mr Knoops?

10 MR KNOOPS: [16:01:11] Yeah, Mr President. I have just one small question to

11 finish this topic, and then for tomorrow I probably most likely need the first two

12 hours, maybe half an hour from the second two hours, but that will be maximum.

13 PRESIDING JUDGE SCHMITT: [16:01:28] Yeah, fine, fine. Of course you know

14 better. This small question, as you say, please put it to the witness and then we

15 finish.

16 MR KNOOPS: [16:01:36] Yeah.

17 Q. [16:01:37] Sir, so you agree that in 2019 you never said to the investigators that

18 Mr Ngaïssona gave the group the name "Anti-Balaka"?

19 A. [16:02:26] Thank you, Mr President. We are before the Court to tell the truth.

20 He was the general coordinator of the Anti-Balaka and everything that we did was

21 under his authority. That was what he was used to doing and he was the one who

22 was managing us. This is why I am telling it in this way. I don't know whether

23 there is an error that slipped in because to err is human. But as far as I'm concerned,

24 I am giving you a true account of the events experienced by myself. That is what

25 I can tell you in answer to the President of the Court so that he should appreciate.

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- 1 Q. [16:03:26] Thank you, sir.
- 2 PRESIDING JUDGE SCHMITT: [16:03:28] Thank you, Mr Witness. This concludes
- 3 the hearing for today, also to all the other participants.
- 4 We reconvene tomorrow at 10.15 this time. Okay.
- 5 THE COURT USHER: [16:03:43] All rise.
- 6 (The hearing ends in private session at 4.03 p.m.)