

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
- 7 Judge Chang-ho Chung
- 8 Trial Hearing - Courtroom 1
- 9 Friday, 1 October 2021
- 10 (The hearing starts in private session at 10.20 a.m.)
- 11 THE COURT USHER: [10:20:19] All rise.
- 12 The International Criminal Court is now in session.
- 13 Please be seated.
- 14 PRESIDING JUDGE SCHMITT: [10:20:48] Good morning, everyone.
- 15 Good morning, Mr Witness.
- 16 Could the court officer please call the case.
- 17 THE COURT OFFICER: [10:20:56] Good morning, Mr President, your Honours.
- 18 The 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 And for the record, we are in private session.
- 21 PRESIDING JUDGE SCHMITT: [10:21:11] Thank you.
- 22 Mr Iverson first for the presence of the Prosecution.
- 23 MR IVERSON: [10:21:15] Good morning, your Honours. Maria Berdennikova,
- 24 Yassin Mostfa, Kweku Vanderpuye and Eric Iverson for the Prosecution.
- 25 PRESIDING JUDGE SCHMITT: [10:21:24] Thank you.

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1 Mr Fall.

2 MR FALL: [10:21:29](Interpretation) Good morning, Mr President. The Legal
3 Representatives team is made up this morning of Mr Enrique Carnero, our assistant,
4 Madam Mouhia Asso, and myself Yaré Fall. Thank you.

5 PRESIDING JUDGE SCHMITT: [10:21:54] Thank you.

6 Mr Suprun.

7 MR SUPRUN: [10:21:56] Good morning, Mr President your Honours. The former
8 child soldiers are represented by myself, Dmytro Suprun, counsel at the Office of
9 Public Counsel for Victims. Thank you.

10 PRESIDING JUDGE SCHMITT: [10:22:03] Thank you.

11 I turn to the Defence.

12 Ms Dimitri.

13 MS DIMITRI: [10:22:06] Good morning, Mr President. Good morning,
14 your Honours. Good morning, everyone. Mr Yekatom, who's present in the
15 courtroom, is represented today by Mr Gyo Suzuki, Ms Léa Benoit,
16 Ms Yousra Lamqaddam and myself Mylène Dimitri.

17 PRESIDING JUDGE SCHMITT: [10:22:21] Thank you.

18 And Mr Knoops.

19 MR KNOOPS: [10:22:25] Good morning, Mr President, your Honours. Everyone in
20 the courtroom, good morning. The Defence team of Mr Ngaïssona today consists of
21 Marie-Hélène Proulx, associate counsel; we have two case managers, on my right side
22 Ms Chiara Giudici and left Barbara Szmatala; and the intern of our office is
23 Madam Mathilde Couloigner.

24 PRESIDING JUDGE SCHMITT: [10:22:48] Thank you.

25 And I also welcome the witness again at the video-link location and I see that his

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1 lawyer Mr Madoukou is also present. Good morning to you.

2 WITNESS: CAR-OTP-P-0306 (On former oath)

3 (The witness speaks Sango)

4 (The witness gives evidence via video link)

5 PRESIDING JUDGE SCHMITT: [10:23:05] I give then Mr Knoops the floor.

6 MR KNOOPS: [10:23:11] Thank you, Mr President.

7 QUESTIONED BY MR KNOOPS: (Continuing)

8 Q. [10:23:15] Good morning, sir. Today this morning I intend before the break to

9 examine a topic on the issue of the alleged "authority". A famous word in this

10 courtroom. It became a famous word during the last few days.

11 Now, Mr Witness, you told us on 27 September of this year in this courtroom that,

12 (Redacted) everyone rose up spontaneously.

13 And I refer the Court to the English real-time transcript, page 29, lines 3 till 10.

14 I will read out the portion again:

15 "I don't want to lie to you. Everyone rose up spontaneously. But I can't give you an

16 estimate because the population had suffered exactions from the Seleka and they rose

17 up spontaneously to fight against [them]. (Redacted)

18 (Redacted) And afterwards, it spread, others joined, but I cannot give you a number,

19 a precise number. The population just rose up in order to chase out the Seleka,

20 the entire population."

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE SCHMITT: [10:26:57] Mr Witness, could you please answer

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1 the question. It's an easy question. You described a spontaneous uprising in your
2 village and the question was if, to your knowledge, at the same time or around
3 the same time there were similar spontaneous uprisings in villages. If you know.

4 THE WITNESS: [10:27:48](Interpretation) Thank you, Mr President.

5 THE INTERPRETER: [10:27:55] Witness's answer inaudible, first part. But witness
6 goes on to say.

7 THE WITNESS: [10:28:02](Interpretation) I am not changing anything. I have
8 already told you what I experienced. So ...

9 THE INTERPRETER: [10:28:15] Message from Sango booth: They can't hear
10 the first part of the answer. Answer continues.

11 THE WITNESS: [10:28:25](Interpretation) But when the Seleka elements came to our
12 village, there was a general uprising by everybody to face up to the challenge.
13 This is the information I bring to the attention of the Presiding Judge and I want to
14 confirm it.

15 PRESIDING JUDGE SCHMITT: [10:28:41] Mr Witness, there was
16 a misunderstanding. Perhaps I have not made it clear enough. It's
17 not -- not -- nobody is questioning -- or Mr Knoops has not questioned that there was
18 this uprising in your village, what you describe. But the question was simply if you
19 have additional information, heard or even observed that in other villages similar
20 things like what you experienced happened. That was simply asking for additional
21 information, if you have it.

22 THE WITNESS: [10:29:40](Interpretation) Mr President, your Honours, yes, that is
23 what happened. Many sons of the soil rose up to fight the Seleka. But I have come
24 here to talk about what I experienced.
25 However, I can go on to say that there was fighting in several other villages. Yes.

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1 So, Ngaïssona, who is the supreme leader, is in a better position to tell you what may
2 have happened in the over villages. I have come to talk about what I experienced
3 myself in my village. So that is the information I want to bring to the attention of the
4 President of the Court.

5 PRESIDING JUDGE SCHMITT: [10:30:35] Mr Knoops.

6 MR KNOOPS: [10:30:38] Thank you.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE SCHMITT: [10:31:14] Wait a second. I don't know if we
13 have -- are still connected. At least we don't have any pictures at the moment.
14 I think this has to be fixed first.

15 (Pause in proceedings)

16 PRESIDING JUDGE SCHMITT: [10:33:27] So it should not take too long so we can
17 stay here and simply wait.

18 (Pause in proceedings)

19 PRESIDING JUDGE SCHMITT: [10:37:04] So the witness is finally back.

20 Mr Witness, there was (Overlapping speakers) as you are aware of, there was
21 a disconnection, so we finally have you on the screen again. Mr Knoops can put
22 the next question to you.

23 Mr Knoops, please repeat the question, obviously.

24 MR KNOOPS: [10:37:23] Yes.

25 (Redacted)

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1 (Redacted)

2 (Redacted) My question now is: The same

3 day you testified about this phenomenon, you told the Court a few minutes later that

4 all the other groups that were coming in to Bangui were manoeuvring under

5 Edouard Ngaïssona's authority.

6 I mentioned before the interruption, Mr President, the reference number. Transcript

7 page 19, lines 12 till 16.

8 Now, sir, my question to you is: If there was a spontaneous uprising around what

9 you testified about two months after the Seleka came, can you explain the Court how

10 did these groups coming under the authority -- became under the authority of

11 Mr Ngaïssona.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 The chief himself is there with you. He is in a better position to give you

21 the explanations. We were given instructions, we received instructions, we came to

22 Bangui. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Pursuant to the Trial Chamber V's Initial Directions, ICC-01/14-01/18-631, dated 26 August 2020, the public reclassified and lesser redacted version of this transcript is filed in the case.

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted) there is evidence before this Court, and I put it now to you, among which
15 from your own former prime minister and Prosecution witness who stated that only
16 after Mr Ngaïssona arrived in January, and it was even April and May 2014,
17 the so-called coordination was only established and the coordination was not
18 operational in January because the situation was too tense.

19 And I will cite from one of the Prosecution witnesses who testified here in open
20 session, your own former prime minister, Mr Tiangaye. And you know what he said,
21 sir? He said during this Court under oath that Mr Ngaïssona "came a little bit later,
22 but ... it was at the very beginning, because the attack of the Anti-Balaka on Bangui
23 was early December and I think he did not become coordinator before that, if I
24 remember correctly, but I cannot give the precise date."

25 And that's, for the Court, it's Defence binder tab 64. The transcript page of the

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1 hearing of Mr Tiangaye is page 16, line 24, running to page 17, pages -- lines 1 till 3.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 And there were other Prosecution witnesses who testified to the same extent.

6 So I put to you that your statement is a fabrication, a simple fabrication which does

7 not reflect the reality. And what do -- what do you say to all those witnesses,

8 amongst which your own former prime minister Mr Tiangaye?

9 A. [10:52:02] Thank you, Mr President.

10 I don't think we have come to the court to insult each other. Please, the lawyer

11 should not insult me. I don't think that he is seeking to discover the truth about

12 what happened. He just wants to disturb me. I have come here to tell the truth.

13 When we arrived in Bangui to fight the Seleka, I did not know -- I did not know

14 where Mr Tiangaye was.

15 Now, you are speaking as if Ngaïssona was not there. If Ngaïssona wasn't there,

16 who is it that provided us with the support to enable us to fight Seleka? Who is it

17 that distributed ammunitions to the Anti-Balaka? How were we able to fight

18 the Chadians and the other Seleka elements if we had not received equipment from

19 someone?

20 It is not normal to come to a court and then insult each other. We are all God's

21 children. We all have to speak with the fear of the Lord in our hearts.

22 I haven't come here to talk about Tiangaye. At the time I did not know -- I did not

23 see him in Bangui.

24 It is Mr Edouard Ngaïssona whom I know to be our leader, our chief. He is the one

25 who gave us equipment that enabled us to fight the Seleka. We were fighting for our

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1 country. So I cannot lie about anybody. You see, there are many people in Bangui.

2 Why did I not mention them? Why did I only mention the one whom I know?

3 That is the truth that I want to tell the Court so that the Court may understand that
4 truth.

5 Q. [10:54:25] Yes. We can all understand the truth, sir.

6 PRESIDING JUDGE SCHMITT: [10:54:30] Mr Knoops, may I suggest something.

7 You might have other witness statements and everything. I would -- I would
8 suggest not -- not to put further statements to the witness and this -- these are simply
9 for submissions. I think what we have learned now is that this does not lead to
10 anything.

11 MR KNOOPS: [10:54:53] Yeah.

12 PRESIDING JUDGE SCHMITT: [10:54:54] Yeah, because what I want to say about
13 that, I was a little bit unspecific now, what former witnesses have said is on the record.
14 And in how far this accords with what this witness says or does not accord with what
15 this witness says is something that is -- can easily be assessed and identified and
16 distinguished.

17 MR KNOOPS: [10:55:19] I will do it different, Mr President. I will -- I will ask
18 the question and I will refer the Chamber to my reference.

19 PRESIDING JUDGE SCHMITT: [10:55:28] That's perhaps also a good idea, yeah.

20 MR KNOOPS: [10:55:30] Without putting all the citations.

21 PRESIDING JUDGE SCHMITT: [10:55:33] That doesn't -- that doesn't -- and
22 the witness feels disturbed. This only -- only leads to -- to -- that he feels
23 uncomfortable and I think it's better to handle it differently.

24 (Redacted)

25 (Redacted)

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1 MR KNOOPS: [11:07:00] *Merci.*

2 Q. [11:07:03] Mr Witness, do I understand your evidence today now that contrary
3 to what you said before, before this Court, that you did receive ammunitions before
4 the Bangui attack? Is that your evidence today, that you received ammunitions
5 before the Bangui attack?

6 A. [11:07:53] Mr President, could you please explain the situation -- could you
7 explain this question to me so that I can answer it properly? Could you rephrase
8 the question, please.

9 Q. [11:08:09] Is it correct, sir, that it's today your evidence that you did receive
10 ammunitions before the Bangui attack?

11 A. [11:08:38] I would like to say before the Court we were fighting with
12 ammunition retrieved from the Seleka, whilst waiting to receive instructions from our
13 chief. When we arrived Bangui under the instructions of our leader, our leader came
14 and started to help us. He provided us with some matériel. I told you that we had
15 ammunition when we arrived in Bangui. We did not arrive in Bangui with empty
16 hands. We had artisanal arms and weapons.
17 We did have some equipment. We had traditional weapons, traditional weapons,
18 that type of thing.

19 Q. [11:09:50] So, so tell us how --

20 A. [11:09:52] I'm fully prepared to answer your questions.

21 Q. [11:09:59] So you're saying he provided us with some matériel. So please
22 explain us what matériel and when this was provided to you before the Bangui
23 attack?

24 A. [11:10:31] Mr President, I have told you, and I repeat, that I do not remember
25 the dates. (Redacted) All I know, that when he returned he provided us with

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1 matériel. That's all. If you ask me questions on dates, then I'm not in a position to

2 help you. That is the answer I can give to the President of the Court.

3 (Redacted)

4 (Redacted)

5 (Redacted)

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7 PRESIDING JUDGE SCHMITT: [11:26:13] Thank you for that clarification.

8 Mr Knoops, do you think we perhaps shall now have the coffee break? Because

9 obviously you still have questions and --

10 MR KNOOPS: [11:26:26] Yeah.

11 PRESIDING JUDGE SCHMITT: [11:26:26] Or do you have already an estimate?

12 MR KNOOPS: [11:26:31] Yeah, I think I will need for sure the second session until

13 the lunch break and maybe some part of it after the lunch break.

14 PRESIDING JUDGE SCHMITT: [11:26:38] Yeah, okay, no problem. We have -- we

15 have talked about that. We have a full day, so there is no problem.

16 MR KNOOPS: [11:26:43] Yeah.

17 PRESIDING JUDGE SCHMITT: [11:26:44] So I think then it makes sense to have

18 now a break --

19 MR KNOOPS: Yeah, maybe --

20 PRESIDING JUDGE SCHMITT: -- until 12 o'clock.

21 MR KNOOPS: [11:26:48] -- Mr President, just to wrap up this -- this point.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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6 PRESIDING JUDGE SCHMITT: [11:28:18] Okay. So we have now the break until
7 12.

8 THE COURT USHER: [11:28:22] All rise.

9 (Recess taken at 11.28 a.m.)

10 (Upon resuming in private session at 12.03 p.m.)

11 THE COURT USHER: [12:03:53] All rise.

12 Please be seated.

13 PRESIDING JUDGE SCHMITT: [12:04:18] Is the video link disconnected for
14 the moment?

15 Okay, good. So the Chamber has deliberated in the meantime during the break, and
16 with regard to the -- one of the last answers of the witness, who cannot listen at the
17 moment, that he would recognise a certain person, would appreciate it if Prosecution
18 were able to produce -- not to produce, of course, to have -- have a photograph with
19 several persons and one of them would be the person. I speak in general. So it
20 would solve the matter for once and for all.

21 And we are forming this in -- so that everybody hears and is aware of that.

22 Not now, at a later -- it can be in the afternoon. And if not, it's not possible. Then
23 we -- and I have already ruled and we stand by that, it is absolutely excluded that it's
24 the same photograph that was the rightful objection by Mr Knoops.

25 MR IVERSON: [12:05:29] Just so your Honour knows what we're working on and

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1 what we intend to do and so that the parties are aware, we're looking for something
2 that would neutrally allow the witness to identify people. We would ask in a neutral
3 way of course (Overlapping speakers)

4 PRESIDING JUDGE SCHMITT: [12:05:48] All sorts of people, preferably and of
5 course not directly, so -- otherwise I would have to interfere of course.

6 MR IVERSON: [12:06:00] Right (Overlapping speakers)

7 PRESIDING JUDGE SCHMITT: [12:06:01] So it's not leading, that is also clear
8 (Overlapping speakers)

9 MR IVERSON: [12:06:02] I understand completely what your Honour is aiming at
10 and what we would do is we would make a motion to add that exhibit to the list to
11 use with the witness. Defence of course would have an opportunity to look at that
12 exhibit, make any objections that they would wish to make, and then we would show
13 the exhibit and ask questions of the witness.

14 PRESIDING JUDGE SCHMITT: [12:06:21] But this all under the condition that it
15 would be possible to have something like that. We will see. We will see.

16 MR IVERSON: [12:06:26] And we don't know that yet, your Honour.

17 PRESIDING JUDGE SCHMITT: [12:06:29] But the judges are on the same page here,
18 we have discussed this extensively now and we would appreciate it to -- to solve
19 (Overlapping speakers)

20 MR IVERSON: [12:06:38] We are feverishly working on it.

21 PRESIDING JUDGE SCHMITT: [12:06:42] Good.

22 Mr Knoops, please continue.

23 MR KNOOPS: [12:06:48] Thank you.

24 Q. Sir, still a few questions on the topic --

25 THE COURT OFFICER: [12:06:50] Mr Knoops, I'm sorry, we have to connect

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1 the first witness first.

2 PRESIDING JUDGE SCHMITT: [12:06:54] Mr Knoops, that was my fault. I

3 prematurely gave you the floor.

4 Okay, but now, Mr Knoops, please continue.

5 MR KNOOPS: [12:07:21] Thank you.

6 (Redacted)

7 (Redacted)

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9 Q. [12:25:20] Sir, I'm now moving to another subject, but just out of curiosity, did
10 you know, by any chance, where in the month December Mr Ngaïssona was,
11 December 2013?

12 A. [12:26:09] Thank you, Mr President.

13 We are just beating about the bush here. I told you that at the time Ngaïssona was in
14 Douala. That is what I heard people saying. And that from Douala he was
15 coordinating activities on the ground. I have already talked to you about Douala, so
16 I really don't understand anything anymore. We have already discussed this issue
17 and you are asking me the same question again over and over. So I know that at the
18 time he was in Douala.

19 Q. [12:27:00] So, sir, to make it clear to this Chamber, it's your evidence today that
20 Mr Ngaïssona in December 2013 gave the instructions from Douala? You can
21 confirm?

22 PRESIDING JUDGE SCHMITT: [12:27:15] He has answered that.

23 MR KNOOPS: [12:27:16] Right.

24 PRESIDING JUDGE SCHMITT: [12:27:17] This is -- this is his testimony, I think.

25 MR KNOOPS: [12:27:20] Just for the Court's information, I direct the attention of

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1 the Chamber to tab -- Defence tab 29, with the itinerary of Mr Ngaïssona with -- from
2 7 December till the 26 December with the confirmed seats in the plane where he went
3 and the locations. And I think, Mr President, that document speaks for itself. Also,
4 the flights are, as the Court sees, confirmed.

5 PRESIDING JUDGE SCHMITT: [12:27:56] Actually, Mr Knoops, this is a very good
6 example of what I said before. It doesn't make sense to confront a witness with that,
7 so simply (Overlapping speakers).

8 MR KNOOPS: [12:28:08] I can give the ERN number just for the record.

9 PRESIDING JUDGE SCHMITT: [12:28:10] That would be good, thank you.

10 MR KNOOPS: [12:28:13] It's CAR-OTP-2124-0949, running to 0951.

11 Q. [12:28:24] Sir, now I'm moving to a different topic and this is your whereabouts
12 about 5 December 2013.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

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16 (Redacted)

17 MR IVERSON: [13:16:39] Sorry, sorry to interrupt. This is actually not an objection,

18 I just want to make an observation on behalf of the Prosecution.

19 I understand what Mr Knoops is trying to achieve with reading out these long

20 citations, but if we allowed this practice to flourish, we could do the same, you know,

21 and every time we got a question we could cite to the Chamber things that

22 corroborated what a witness said. That is best left for closing argument. I don't

23 want to take a hard line, completely ruling out the possibility, but it takes a lot of time

24 and I really question its utility in the courtroom when there's an obvious procedure

25 that's available to counsel for this very purpose, which is closing argument.

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1 Obviously to the extent the Chamber finds it helpful, the Chamber is going to allow it,
2 but my observation is that it takes a lot of time and courtroom time is precious, and so
3 I really question the -- the utility of doing this every single, every single time.

4 PRESIDING JUDGE SCHMITT: [13:17:40] There's a difficult weighing-up process,
5 frankly speaking, because it is difficult, let me put it this way, for -- for a Chamber to
6 prevent the Defence to put certain documents to a witness that might contradict
7 the story of the witness, yeah?

8 What I try to do with regard to the specific circumstances and the specific person we
9 have in front of us here, I actually thought it would expedite with this witness. I
10 would not want actually - and I think, Mr Knoops, Ms Dimitri, you are understanding
11 that - I would not want now to initiate a practice -- a practice where every document
12 that might support the case of one of the parties is put on the record. So if counsel
13 would have understood it this way, I would want to clarify myself for once that it
14 simply with -- in this instant it seems to be very clear that putting something of
15 the evidence that we have to this witness only prolongs unnecessarily and -- and
16 takes even more time as if we do it this way as Mr Knoops is doing it now.

17 So I hope you are a little bit satisfied with this answer. Actually, I -- of course we do
18 not want to have all the evidence on record now. We read it anyway. This is
19 the -- this is -- this is why you submit certain evidence. This is why at a later stage
20 there will be so-called bar table motions, of course.

21 So -- and I know it's a little bit -- I would something an old record on, saying that
22 the Chamber normally really does not escape our attention what is on the record.
23 But in this specific instance I thought it -- how the questioning unfolded, I thought it
24 perhaps better to do it this way.

25 So we understand each other, Mr Knoops.

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1 MR KNOOPS: [13:19:59] Yeah, Mr President. I did understand that it would not be
2 the normal practice because our preference is, to be honest, also Mr Iverson, to
3 confront the witness with specific portions. But I agree this is a specific situation.
4 And with --

5 PRESIDING JUDGE SCHMITT: [13:20:14] And actually yet -- but concretely now, to
6 be more concrete, I think it is okay really to -- I think you only chose the UN report
7 and, you know, you choose this one -- (Overlapping speakers)

8 MR KNOOPS: [13:20:29] The minutes.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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5 We have now the break until 2.30.

6 THE COURT USHER: [13:28:39] All rise.

7 (Recess taken at 1.28 p.m.)

8 (Upon resuming in private session at 2.33 p.m.)

9 THE COURT USHER: [14:33:55] All rise.

10 Please be seated.

11 PRESIDING JUDGE SCHMITT: [14:34:19] Good afternoon, everyone.

12 Good afternoon, Mr Witness.

13 Mr Knoops, you still have the floor.

14 MR KNOOPS: [14:34:26] Thank you, Mr President.

15 PRESIDING JUDGE SCHMITT: [14:34:29] We take it it will not last too long?

16 MR KNOOPS: [14:34:33] Half an hour I try to finish.

17 PRESIDING JUDGE SCHMITT: [14:34:37] Okay, fine, fine. Good.

18 MR KNOOPS: [14:34:39] Maybe 40 minutes but --

19 PRESIDING JUDGE SCHMITT: [14:34:40] Yeah, yeah, yeah. Good.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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8 MS DIMITRI: [15:16:17] I understand, Mr President. And we can reassure you that
9 we have really less than half an hour.

10 PRESIDING JUDGE SCHMITT: [15:16:25] It's not about the time.

11 MS DIMITRI: [15:16:27] It's about the topics.

12 PRESIDING JUDGE SCHMITT: [15:16:29] The topics. I would, perhaps, have one
13 he question, if I were you. But I'm not in your position, so I will not ask it.

14 MS DIMITRI: [15:16:36] No, we carefully evaluated it. We have very few questions.
15 Some about that have nothing to do with -- with Bangui, but more about the *chapeau*
16 elements. And then the second series of question, it was important to us because of
17 previous evidence that was before you in relation to our client. Let's put it that way.

18 PRESIDING JUDGE SCHMITT: [15:17:00] So I understand Mr Suzuki is questioning
19 the witness.

20 You have followed, obviously, the examination of this witness and you know that you
21 have to adapt with the mode of questioning and then how you do that.

22 So -- and, perhaps, please also explain in the beginning that you -- why you are here
23 and what's your purpose. I think you would have done that anyway, but just to
24 encourage you to do it as you have planned.

25 MR SUZUKI: [15:17:29] Thank you for your guidance, Mr President.

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1 QUESTIONED BY MR SUZUKI:

2 Q. [15:17:36] Good afternoon, Mr Witness. My name is Gyo Suzuki and I'm going
3 to ask you some questions on behalf of Mr Yekatom today. I know it's been a very
4 long week for you and I'd like to reassure you that I only have a handful of questions
5 for you.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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11 PRESIDING JUDGE SCHMITT: [15:25:48] Mr Witness, the question was simple.

12 How you survived, so to speak, when you went south. Did the villagers help you

13 with food? So this was simply -- it's no question that in any way impeaches you or

14 says something or implicates something negative to you. It's simply information

15 that counsel wants to know how you got enough food, if the villagers helped you or

16 not. There is nothing negative in this question. So perhaps you -- it was not

17 worded in a way that you -- that you appreciated it correctly.

18 So this -- I think this is the essence of the question. Yeah.

19 So -- and it's not meant in any way negative, as far as I understand it, yeah? So

20 please tell us how did you survive. I'm also interested.

21 THE WITNESS: [15:26:55](Interpretation) Very well, Mr President. Now I

22 understand the question. This is my answer: The local villagers helped us by

23 providing food like manioc, tubers. That is my answer to your question. Thank

24 you.

25 PRESIDING JUDGE SCHMITT: [15:27:21] Thank you. And that is very helpful,

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1 Mr Witness, and that was exactly the information that counsel wanted. Yeah. So

2 it's exactly correct to do it like that. Thank you.

3 Mr Suzuki, please continue.

4 MR SUZUKI: [15:27:35] Thank you.

5 Q. [15:27:36] And thank you, Mr Witness.

6 (Redacted)

7 (Redacted)

8 A. [15:28:15] Not everybody had shoes. Some individuals had shoes, others didn't

9 have the means to buy shoes. It's under these conditions that we moved and

10 marched towards Bangui.

11 That is the answer which I can give the President of the Court.

12 PRESIDING JUDGE SCHMITT: [15:28:41] Thank you, Mr Witness.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. [15:29:23] Thank you, Mr President of the Court, Mr Prosecutor. Yes,

18 the Seleka were better equipped than we were. But we were courageous and we had

19 the support of our traditional amulets. That is what I can tell the President of the

20 Court.

21 Q. [15:29:53] Thank you, Mr Witness.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

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10 (Redacted)

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12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. [15:33:08] Now, I have a few more questions about 5 December. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. [15:34:32] Of course during the fighting the Chadian forces were on the side of

23 the Seleka and so -- and we were also fighting against them.

24 Thank you, Mr President.

25 Q. [15:34:52] Thank you, Mr Witness.

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1 In fact some Seleka were actually disguised as Chadian FOMAC soldiers, weren't
2 they?

3 A. [15:35:23] That is true. That is true. As you have just said, this is really what
4 happened.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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21 (Redacted)

22 (Redacted)

23 (Redacted)

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1 (Redacted)

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10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. [15:42:15] Thank you very much, Mr Witness. Those are all my questions for
19 you.

20 Thank you, Mr President.

21 PRESIDING JUDGE SCHMITT: [15:42:19] Thank you, Mr Suzuki.

22 Mr Witness, we are close to the end, but before we finish, please for a couple of
23 minutes please take off your headphones and I'll let you know when you can take
24 them on again. Yeah? Please do that and then we are close to the finish.
25 So I think we can speak now openly.

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1 You have seen it. I think the Defence you have seen. Are there any objections to

2 that? Simply please tell us, yeah.

3 MR KNOOPS: [15:43:04] I go first or?

4 PRESIDING JUDGE SCHMITT: [15:43:06] Mr Iverson first perhaps.

5 MR KNOOPS: Oh, sorry.

6 PRESIDING JUDGE SCHMITT: Excuse me, it was my fault. I was too quick there.

7 MR IVERSON: [15:43:12] Maybe since we're essentially the moving party, I'll just

8 explain what --

9 PRESIDING JUDGE SCHMITT: Yeah. No, you're right, of course. But it's late

10 and it was a long day, yeah.

11 MR IVERSON: [15:43:19] No problem whatsoever, your Honour.

12 So here's -- just so everybody knows, here's what we intend to do. We have

13 compiled a list of -- or an exhibit with six photos on it. It's a, you know, traditional

14 photo array for identification in court. Prosecution intends to show this exhibit to

15 the witness, ask him to look at each individual carefully and take his time and then let

16 the Court know whether he is able to identify any person within those photographs.

17 And as the Court knows and the parties know, photograph number 2 is the one that

18 the Court is interested in. I don't intend in any way to lead the witness toward any

19 particular photo. I intend to ask it in a very neutral way, just as I have stated it.

20 And then --

21 PRESIDING JUDGE SCHMITT: [15:44:11] Otherwise it would have no value at all.

22 That's clear.

23 MR IVERSON: [15:44:14] No, of course not. And so that's my intent with

24 the -- with that exhibit.

25 And also if I, while I'm up here, just ask that it be marked for identification so it can

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1 be -- have an ERN number at least so it can be identified in court.

2 PRESIDING JUDGE SCHMITT: [15:44:28] Absolutely.

3 Mr Knoops, you have the floor.

4 MR KNOOPS: [15:44:31] Yes, Mr President, thank you. We have fundamental

5 objections to this procedure as now suggested by the Prosecution on the basis of this

6 format and also principally because the first and foremost argument is of course that

7 the witness was confronted with a photo, a frontal photo of the same individual and

8 twice under oath said "I don't recognise that individual."

9 And there is one golden rule in the law of psychology and if you show the witness

10 a second photo of the same person, even in a different composition, every professor of

11 psychology will tell you that the witness cannot differentiate -- the mind of the

12 human being cannot differentiate between the question whether you recognise that

13 individual from the previous photo you saw or from the alleged incident. There is

14 ample jurisprudence and literature that this is a rule which governs actually the law

15 of identification.

16 So our principal point is, and I think, Mr President, you already indicated during

17 the examination when I started with this issue, that a second type of photo

18 identification would definitely be totally useless and even prejudicial. Because you

19 can't have a witness who then recognises that individual from the previous photo and

20 you can therefore not differentiate anymore whether the identification is genuine

21 authentic or not. That's first.

22 Secondly, we are dealing here also with a principle of fair trial point. Showing this

23 witness for the second time the picture, while he already twice under oath said

24 "I don't recognise this individual," and knowing that he's encouraged now to identify

25 an individual -- because he full well knows what the problem is here. He knows that

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1 we're speaking about the individual which was raised in the examination. So he has
2 the name in his mind, so he will guess.

3 And mind you, sir, Mr President, your Honours, the chance that he will have the right
4 choice guessing is 50 per cent with this map. Why I'm saying this, if you look at the
5 six photos before you, you will see that number 1, 3 and 4 wear *gris-gris*. There is no
6 military officer wearing *gris-gris*. So you can discard number 1, 3 and 4. That
7 means that 50 per cent of these photos remain for this witness to guess. And he
8 knows he has to guess because he knows full well that it's about the individual which
9 was discussed during the trial.

10 Now, from the three others, you see that number 5 is of a far much younger age.

11 And if you look at the expert opinion in the STL case, the so-called Oneissi judgment
12 case, you see exactly that the expert on eyewitness identification and photo
13 identification testified in that trial that the age of the person in the photo is a decisive
14 factor. So, and between number 2 and number 5 you see a clear difference in age.

15 PRESIDING JUDGE SCHMITT: [15:48:57] We got your point.

16 MR KNOOPS: [15:49:00] Yeah. Next point, one of the other persons was already
17 on the other photo.

18 And last point, two of the six have facial hair. The rest have no facial hair. One of
19 the golden rules in identification of eyewitnesses is that the photo composition should
20 have the persons with the same facial expression and facial characteristics as far as
21 possible. And now we are differentiating here with two out of the six who have
22 a clear differentiation.

23 PRESIDING JUDGE SCHMITT: [15:49:55] Okay. Yes.

24 MR KNOOPS: [15:49:56] Now, lastly, Mr President, the ICTY chamber in the Limaj
25 case in paragraph 5058, referring to the Oneissi judgment, took into account to accept

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1 or not to accept a photo identification to a witness as the criteria E and F -- and now I
2 have here the paragraph, on the photo board identification the ICTY chamber
3 considers whether, you have some criteria, and two criteria are applicable here, E,
4 whether the witnesses had opportunities to become familiar with the accused prior to
5 his identification, i.e., the person here on the photo sheet, which was previously
6 already confronted to the same witness.

7 And secondly, number F, the procedure in somewhat -- in some way encouraged
8 the witness to make a positive identification, despite some uncertainty or encouraged
9 the witness to identify individual rather than someone else.

10 And that's exactly, Mr President, the problem. This witness is now encouraged
11 because he knows that he has to identify. Secondly, he knows the individual from
12 the previous picture we're speaking about, the four individuals we saw on
13 the picture.

14 And therefore we ask the Chamber not to enter into this procedure because it will
15 create an irreversible prejudice to the accused. It's simply an issue of fair trial.

16 The witness -- the Prosecution had chances during the examination-in-chief to put
17 photos to the witness, which they did, and this witness clearly said twice under oath
18 "I don't recognise that individual we're speaking about."

19 And therefore the 50 per cent chance this guy has now with this sheet is a chance
20 we cannot take because, if you're speaking about finding the truth, that will distort
21 the truth and affect the integrity of the proceedings.

22 It's a matter of fair trial but also a matter of procedural law and application on
23 the -- of the law of psychology. Every expert, Mr President, will say to this Chamber
24 it is totally wrong to put a witness -- confront a witness, the same individual with
25 a second photo sheet.

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1 Thank you.

2 PRESIDING JUDGE SCHMITT: [15:52:52] Isn't everything said already?

3 MR SUZUKI: [15:52:55] Almost, Mr Witness. We would fully support the

4 Ngaïssona -- Mr President, excuse me, we would fully support the Ngaïssona Defence

5 submissions, but we would just add, in relation to his comment about 50 per cent

6 chance, that the individual at number 6 is actually a very prominent Anti-Balaka

7 member. He appears in many images and videos that are a part of this trial and

8 we're aware that he was part of the photo that the witness was shown but in that

9 photo it was on his profile. So with this full frontal photograph, there's a chance that

10 he would be able to just exclude him along with the other individuals that you see

11 on -- on -- on this document, your Honour. Thank you.

12 PRESIDING JUDGE SCHMITT: [15:53:45] Thank you. Any further comment by

13 the Prosecution?

14 MR IVERSON: [15:53:48] Thank you, your Honour. I wasn't anticipating such

15 extensive submissions, especially from Mr Knoops, but as he was talking, I was

16 thinking half of his argument really is invalidated just by way of asking the question.

17 (Redacted)

18 (Redacted) What I intend to ask is, do you

19 recognise any person on this photograph? So that's the first part.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE SCHMITT: [15:55:01] We have now enough. We have enough
4 submissions now.

5 MR IVERSON: [15:55:04] And, of course, you can attach appropriate weight to
6 whatever answer he may give.

7 PRESIDING JUDGE SCHMITT: [15:55:10] Thank you.

8 (Trial Chamber confers)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 So please tell or let the witness know that he puts his headphones on and then we
23 continue, Mr Iverson.

24 And be very careful with your wording.

25 I add -- I add -- perhaps before we do that, I add that indeed and that for the Defence

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1 the probative value of this exercise will be assessed very, very thoroughly. I can
2 assure you that.

3 So --

4 MR KNOOPS: [15:57:04] Mr President, may I just make one remark for the record,
5 sir?

6 PRESIDING JUDGE SCHMITT: [15:57:07] Yeah.

7 MR KNOOPS: [15:57:09] I respect your decision, but my question to the witness
8 today or yesterday --

9 PRESIDING JUDGE SCHMITT: [15:57:18] Now he has the headphones on.

10 I think we --

11 MR KNOOPS: [15:57:22] It was, of course, hypothetical because we already asked
12 this.

13 PRESIDING JUDGE SCHMITT: [15:57:26] Yeah. Okay, good.

14 So, Mr Witness, finally back. So I have to apologise that it took a little bit longer, but
15 you have already recognised that lawyers, counsel and judges have sometimes a lot to
16 discuss.

17 So Mr Iverson from the Prosecution will ask you some further questions and this will
18 be then the end of your testimony.

19 Mr Iverson.

20 MR IVERSON: [15:57:48] Thank you, your Honour.

21 QUESTIONED BY MR IVERSON:

22 Q. [15:57:54] Good afternoon, sir. First, I just want to say you've shown a lot of
23 stamina and pluck throughout the week. I know this takes a lot of energy. So just
24 bear with me, this is almost over.

25 I don't know if the exhibit has a -- has been marked for identification, but if it has, if

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1 that identification could be read out so that it's on the record.

2 PRESIDING JUDGE SCHMITT: [15:58:38] I see at least that all of these images have
3 ERN numbers.

4 MR IVERSON: [15:58:46] That's correct, your Honour. They're -- they've all been
5 previously disclosed.

6 PRESIDING JUDGE SCHMITT: [15:59:06] Can't we then start?

7 MR IVERSON: [15:59:09] Well, I just want to make sure the record reflects -- reflects
8 which exhibit I intend to show the witness. But that can be accomplished, I suppose,
9 even at the end. I just want to make sure that's clear.

10 Q. [15:59:23] So, sir, what I intend to do, I intend to show you a document. It has
11 six photographs on it. I want to ask you to look at each of the six photographs.
12 They are numbered 1 through 6. And take your time. I want you to take -- study
13 each photograph individually. And when you're ready I want you to notify
14 the -- the Chamber whether you're able to recognise any of the individuals depicted in
15 the photographs. And if so, please tell the Chamber which number, if you're able.
16 And if any photograph needs to be enlarged, please let the Chamber know. That is
17 also possible.

18 And, I'm sorry, sir, but I also have to ask you if you're able to clearly see these images
19 or if they're fuzzy or if there are any impediments to you being able to see the images?

20 A. [16:01:04] Yes, I can see the photographs, but they are not clear. If you can
21 kindly enlarge them so that I can see them better.

22 PRESIDING JUDGE SCHMITT: [16:01:17] I am informed that the officer in the field
23 will show the images to him.

24 So these images will be shown to you, and please confirm that what you see then is
25 clear for you, that you have a clear picture in front of you.

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1 Do you see it clearly now? Do you see the images clearly now, Mr Witness?

2 THE WITNESS: [16:02:11](Interpretation) Yes, I do see them.

3 PRESIDING JUDGE SCHMITT: Mr Iverson, then you can put the question.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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5 (Redacted)

6 PRESIDING JUDGE SCHMITT: [16:06:10] Thank you, Mr Witness.

7 Please listen.

8 This concludes your testimony. On behalf of the Chamber, I would like to thank you
9 that you have made yourself available as a witness in these proceedings and that you
10 try to assist us to establish the truth.

11 Also, I would like to thank you, Counsel, Mr Madoukou, who is also close by. And
12 this is -- finishes, as I said, your testimony. This concludes, also, the hearing for
13 today and from the side of the Chamber I would express the hope that we can have
14 other witnesses. I understand that everybody here in the courtroom tries his or her
15 best, but we really would appreciate it. And any update on that
16 of -- Mr Vanderpuye.

17 MR VANDERPUYE: [16:07:13] Thank you, Mr President. Good afternoon,
18 your Honours, good afternoon, everyone. You caught me typing furiously to find
19 out what the situation is with respect to the language issue concerning the next
20 witness. So I'm working on that. My understanding is that's not clear yet. It's
21 probable that me might be able to proceed in French, but I have to check still.

22 PRESIDING JUDGE SCHMITT: [16:07:36] Thank you. And, of course, we would
23 need an ERN number for the last document we have shown and it obviously has one,
24 yeah.

25 THE COURT OFFICER: [16:07:44] Yes, Mr President. The document will bear

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1 number CAR-REG-0001-0002.

2 PRESIDING JUDGE SCHMITT: [16:07:54] Okay. Thank you very much.

3 Ms Dimitri.

4 MS DIMITRI: [16:07:56] Mr President, just one last point. If ever the witness is

5 available but needs Sango, it's important -- needs to speak -- to testify in Sango and

6 that there is an interpretation issue by the Registry and that we can't sit, I will ask

7 your Honours -- because, obviously, as you said yesterday, it's important for my

8 client to have an expedited trial. He's willing to listen in French for that testimony,

9 but I would like, perhaps, the Chamber to try to see with the Registry to avoid further

10 delay in order to be able to provide Sango interpretation for the witness.

11 PRESIDING JUDGE SCHMITT: [16:08:36] I can assure you that this is

12 a -- concurring -- consecutive issue. We are in constant discussing, but we have a lot

13 of cases at the moment where the same language is involved. So it's not easy. So

14 we do -- we do really our best from our side, and we really understand and

15 appreciate it that all of the parties and participants here in this courtroom also do

16 the same.

17 So this, as I said, this concludes the hearing for today. I wish you a nice evening.

18 THE COURT USHER: [16:09:10] All rise.

19 (The hearing ends in private session at 4.09 p.m.)