

Trial Hearing
WITNESS: CAR-OTP-P-3114

(Open Session)

ICC-01/14-01/21

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Mahamat Said Abdel Kani - ICC-01/14-01/21
5 Presiding Judge Miatta Maria Samba, Judge María del Socorro Flores Liera, Judge
6 Sergio Gerardo Ugalde Godínez and
7 Judge Keebong Paek
8 Trial Hearing - Courtroom 2
9 Tuesday, 17 September 2024
10 (The hearing starts in open session at 9.43 a.m.)
11 THE COURT USHER: [9:43:38] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE SAMBA: [9:44:04] Good morning, everyone.
15 Madam Court Officer, can you kindly mention the case.
16 THE COURT OFFICER: [9:44:09] Good morning, Madam President, your Honours.
17 The situation in the Central African Republic II, in the case the Prosecutor versus
18 Mahamat Said Abdel Kani, case reference ICC-01/14-01/21.
19 And we are in open session.
20 PRESIDING JUDGE SAMBA: [9:44:26] Thank you very much.
21 Can I ask for representation, starting with the Prosecution, please.
22 MS MAKWAIA: [9:44:33] Good morning, Madam President, your Honours.
23 Appearing for the Prosecutor this morning, myself, Ms Holo Makwaia, Mr Kamran
24 Choudhry, and Ms Sanyu Ndagire. Thank you.
25 PRESIDING JUDGE SAMBA: [9:44:46] For the victims, Ms Pellet.

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1 MS PELLET: [9:44:51](Interpretation) Thank you, Madam President. The victims
2 are represented by Adeline Bedoucha and myself, Sarah Pellet, counsel OPCV.

3 PRESIDING JUDGE SAMBA: [9:45:03] Thank you very much, Ms Pellet.
4 For the Defence, Ms Naouri, please.

5 MS NAOURI: [9:45:10](Interpretation) Thank you, Madam President. Good
6 morning.

7 To my right, Mr Jacobs, and beside him Capucine Banet. And as for myself, I am
8 Jennifer Naouri, lead counsel representing Mr Said.

9 PRESIDING JUDGE SAMBA: [9:45:23] Thank you very much.
10 And for the record, I do take note that Mr Said is in court with us.

11 A very good morning to you, Mr Said. I hope you rested well.

12 MR SAID: [9:45:34](Interpretation) Yes. Good morning, Madam President.

13 PRESIDING JUDGE SAMBA: [9:45:37] Good morning.

14 Good morning, Mr Witness. I hope you had a restful night.

15 WITNESS: CAR-OTP-P-3114 (On former oath)

16 (The witness speaks English)

17 THE WITNESS: [9:45:42] Good morning, your Honour. Thank you. Yes.

18 PRESIDING JUDGE SAMBA: [9:45:45] Good. Now we're going to continue with
19 your testimony and the Defence will put questions to you. And just to remind you
20 that you're still on oath to tell the truth to this Court.

21 Defence Counsel, Mr Jacobs, you may start putting questions to this witness, please.

22 And also let me remind you all about the need to talk slowly so that we help the
23 interpreters.

24 We're in open session. Thank you.

25 MR JACOBS: [9:46:39](Interpretation) Thank you, Madam President.

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1 QUESTIONED BY MR JACOBS:

2 Q. [9:46:46] Good morning, witness.

3 A. [9:46:47] Good morning.

4 Q. [9:46:48] My name is Dov Jacobs and today I'll be asking you some questions on
5 behalf of the Said Defence team.

6 As the presiding judge has reminded us, we'll try to speak not too quickly. So if you
7 could answer slowly when I put questions to you, and I'll try to do the same. And if
8 things are moving a bit too quickly, I will make a hand gesture. So I may be making
9 a bit of a hand gesture if the transcript -- the transcribers, rather, are slowing down or
10 the interpreters are having trouble. Is that all right?

11 A. [9:47:33] Yes, I understand. That's great. Thank you.

12 Q. [9:47:39] Thank you.

13 I'd like to try to stay in open session as much as possible, particularly when it comes
14 to general questions about methodology. But if you'd like to give us details about a
15 particular witness or a particular incident, don't hesitate to tell us so and we will go
16 into private session.

17 A. [9:48:02] I understand. Thank you.

18 Q. [9:48:06] I'd like to begin with a number of investigative activities and ask you
19 about the methodology that you use.

20 The first thing is the prior -- the screening notes, the prior activities, or -- you took
21 part in a number of preliminary interviews with a number of witnesses, didn't you?

22 A. [9:48:41] Yes, I did some screenings. I wouldn't call them preliminary
23 interviews, but I did screenings, yes.

24 Q. [9:48:57] Very well. It's just that the translation in French is "*entretiens préalable*".
25 That's the usual expression, so that's why I used that expression.

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1 Now, is there a document that sets out the methodology to be followed to conduct a
2 screening?

3 A. [9:49:19] There was for a time something called "Operational Manual", and
4 I believe that lays out the -- the conditions for a screening.

5 Q. [9:49:40] Very well. And when you mention prerequisites, could you give us
6 any examples of -- any conditions that are provided for?

7 A. [9:49:54] Sorry, I don't understand. The prerequisites, as in -- I didn't mention
8 prerequisites, I don't think.

9 * Q. [9:50:06] I was reading from what appears on my transcript in French. There
10 was an operational manual, you say, and it set out the conditions for a screening. So
11 I was asking you what are those conditions for a screening?

12 A. [9:50:24] So, in general terms, a screening is a -- let's say, a series of questions
13 designed to establish whether somebody has information of value to the inquiry and
14 whether that statement is necessary. So, for example, it's trying to establish if
15 somebody is in a certain location at a certain time and hence saw something, or if they
16 have information about other information that might be valuable. So it's an
17 attempt -- obviously, we deal with many, many people. It's an attempt to work out
18 where best to put our resources. So, for example, you could screen somebody that
19 you think knows something and you could establish actually that they weren't
20 present at the scene but they maybe heard this information from someone else. In
21 that occasion, then you'd go to the person that was at the scene rather than continuing
22 with the screening.

23 Q. [9:51:33] Very well. Now, just so that we can understand the approach that the
24 Prosecution takes. So, several -- there are different kinds of documents. You have
25 reports that set out contacts with a particular person that provide information about

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1 such conversations. Sometimes you have screening notes.

2 And I would like to ask you this: What justifies preparing a true screening note or
3 just a report that merely says that we spoke to a particular person who told us
4 something in particular? Is there a difference in methodology between these two
5 options?

6 A. [9:52:20] I wouldn't say there's a particular difference in methodology. A
7 screening, as I said, is normally - because we're speaking to somebody to establish if
8 they have other information that we want to gather - other notes about meeting
9 people, say in terms of collecting material, they sometimes go and investigate a report.
10 But to some extent that decision - what piece of paper it goes on - is a matter of
11 discretion for the investigator. The important thing is obviously that regardless of
12 what piece of paper it goes on, it's a true and accurate reflection of what was
13 discussed and what was said.

14 Q. [9:53:14] Very well. Indeed. In terms of -- I'm sorry, I'm just waiting for the
15 transcript to catch up.

16 Are screenings recorded?

17 A. [9:53:41] So, every time somebody conducts a screening, they should make a
18 record of it and it should be put into our registration system as potential evidence.
19 Oh, forgive me, sorry. You mean audio recorded. No, they're not.

20 Q. [9:54:04] Thank you. I was going to specify that point. I meant an audio
21 recording or a video recording.

22 So the reports from the screening notes are based on what, if there's no recording?
23 What are they based on?

24 A. [9:54:22] They're based on the recollection of the investigator concerned, who
25 normally has made a record of that in written form somewhere.

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1 Q. [9:54:44] Very well. So if I've understood correctly, there are written notes in
2 the system and those written notes form the basis for the screening notes; is that
3 correct?

4 A. [9:54:58] So it depends on the investigator. Some investigators would type
5 stuff directly into the computer. Some investigators would make handwritten notes.
6 But the product that is put into the system is a typed version of the screening.

7 Q. [9:55:29] We have some examples of screenings that were done over the
8 telephone. I'd like to ask you: In such cases, how do you identify the -- how do you
9 verify the identity of the person that you are speaking to?

10 A. [9:55:48] So if the screening's been done on the telephone, we have got that
11 telephone from somewhere. So, for example, if we're following up on a *Commission*
12 *Mixte d'Enquête*, a folio, a dossier, in that the phone number will be attributed to a
13 certain person. We'll phone that person. We'll ask them to identify themselves.
14 And then, again, a screening should be a process where you ask open questions.
15 That person will then give us information and that information is something that will
16 reflect often what's in -- in the dossier. That's how we start establishing whether the
17 person we're speaking to is the person in the note.
18 Obviously we also ask people who they are when we phone them up, and they tell us.
19 That's one way of establishing who people are.

20 Q. [9:56:43] Very well. Does it ever happen that you call someone and you say the
21 person, "Good morning. How are you, Mr X? Are you indeed Mr X?"

22 A. [9:57:06] Yes. And sometimes they say they aren't and sometimes they say
23 they are.

24 Q. [9:57:29] Thank you, Mr Witness.

25 And when you meet a witness or a person of interest in person, do you ask to see a

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1 piece of identity, an identity card or something like that?

2 A. [9:57:44] I can't say that that's done all the time. It depends somewhat on the
3 person. Some people in CAR do not have identification documents. We
4 would -- as I say, it depends as much on the circumstances -- why are we speaking to
5 this person. Is it because we already have a file with documentation from them, like
6 a *Commission Mixte d'Enquête* file, which has an ID document on it. Is it somebody
7 that we're uncertain of their identity. Is it somebody whose phone number doesn't
8 correspond to the person we are speaking to. I wouldn't say that 100 per cent of the
9 time we ask for an identity document to be produced.

10 Q. [9:58:33] And when you ask for an identity card, do you make a copy of it?

11 A. [9:58:40] I think that would be down to the individual discretion of the
12 investigator. If they feel it's necessary, then they would do it.

13 Q. [9:58:54] You said it's according to the discretion of the investigator who decides
14 whether or not it's necessary, so what would justify not making a copy of an ID card
15 for the file or to show to the Defence or to show to a judge? What would justify not
16 making a copy of the ID?

17 A. [9:59:22] If you have no -- if you have no concerns about the identity of that
18 person.

19 In -- forgive me. Obviously, if we do a screening and we establish that the person is
20 somebody who has important evidence that should be before the Court, then we take
21 a statement from them on the understanding that they will testify in court where their
22 identity will be fully established by the Court.

23 Q. [10:00:07] So I understand that, but my question is far more basic, witness. The
24 identity of a person, is that not the basis, the first point, of assessing that person's
25 credibility, the reliability of what that person is saying? I'm trying to understand

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1 this point of view in terms of the method. What justifies this, if there is an identity
2 document, not to make a copy of it for verification purposes? You say it's for the
3 discretion of the investigator, but I would like to understand from the perspective of
4 the profession of investigator what justifies not making a copy rather than making
5 one. That is the basis of the identity.

6 A. [10:00:48] I can't really comment on the individual decision-making of
7 investigators at the time. You'd have to ask them, as in I can only give you in
8 general terms what people do. And in general terms - and the Central African
9 Republic is a different place, perhaps, to other places - identity documents are not
10 something that everybody has. Even when they do have them, they're not
11 necessarily nationally issued documents. It could be something like a student card
12 or whatever. The important thing is that we speak to these people, they give us their
13 account, we investigate their account, and if their account, we believe, is something
14 that the Court should know, we ask them to present themselves in Court where, again,
15 their identity will be fully verified.

16 We do a lot of investigations, but in the end the purpose of the investigation is not to
17 record a statement; it's to allow somebody to give oral testimony in court.

18 Q. [10:02:01] Thank you. So I'm trying to see if the transcript is following. That's
19 the reason why I am waiting a few seconds. Very well.

20 So -- so you confirm that there is no instruction from the investigator or the chief of
21 the investigators to take or not to take the identity document or to make a copy
22 thereof. That is not an order or instruction from the Office of the Prosecutor?

23 A. [10:02:35] That's correct, yes.

24 Q. [10:02:49] Very well. So without revealing -- well, I'll put a question, a general
25 question, about methodology. So when investigators don't speak the language of the

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1 person who you are speaking about, how are the interpreters selected, witness?

2 A. [10:03:14] Again, I can speak in generalities. We have a language services unit.
3 They employ interpreters. I believe they have to have -- they go through some sort
4 of testing process and then an induction process to understand our processes and
5 how we work. But I don't have any more insight than that.

6 Q. [10:03:43] Very well.

7 So, you don't know if there is a security screening to find out what these people could
8 have been doing in 2013, * if they participated in the conflict, or what their political
9 opinions were?

10 A. [10:04:08] I think -- again, I can only speak about all staff in the OTP. From
11 what I understand, all staff in the OTP are vetted. That staff, I think consultants or
12 contractors - I don't know what interpreters fall under - would be similarly vetted to
13 establish whether they pose -- well, whether they have a past history like that. And
14 obviously, yeah, that's all I can say.

15 Q. [10:04:50] Very well.

16 Thank you, witness.

17 So, still with regards to the screenings, do you discuss with the witness the source of
18 your contacts, if you have a precise example, but here I'm asking you in a general
19 way -- well, "I'm speaking to you because so and so said this, we're speaking to you
20 because a certain person said this", et cetera?

21 A. [10:05:42] So, it depends somewhat on the source. Normally, certainly, if it's
22 somebody else, we never discuss the source. So, if Mr X has told me, "Oh, you
23 should speak to Mr Y", we don't tell Mr Y that, because it could put Mr X at risk, yeah.
24 We have Article 68 obligations, so we do not reveal that.

25 If it's a document, for instance, again, if I talk about a *Commission Mixte d'Enquête* or a

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1 *Commission Épisiscopale Justice et Paix*, again, we don't discuss it up front because we
2 don't want to affect that person's story, their account. But we would often say,
3 "Oh" -- at the end, we would say, "And we have this report, that's why we came to
4 you".

5 So it depends very much on an assessment of whether giving that information would
6 cause a risk for somebody and also whether it would cause, let's say, an issue of
7 integrity in terms of the evidence collected.

8 Q. [10:07:05] Thank you very much, witness.

9 Now, you spoke about the integrity of the evidence gathered or the integrity of the
10 information collected. How do you assure the -- how do you ensure the
11 confidentiality where it concerns the screenings?

12 A. [10:07:42] Sorry, I don't really understand the question. Confidentiality in terms
13 of our meeting with the person, or...

14 Q. [10:07:58] Well, you were stating that you didn't reveal the name of the person,
15 the source person. But as you know, Bangui is a small town where things are known,
16 so I wanted to know how do ensure when you meet somebody in person, a potential
17 witness, how can you ensure that this person doesn't speak to other people about it,
18 that nobody else knows about this?

19 A. [10:08:34] In terms of where we meet them and how we do that, I can discuss
20 that perhaps in private session. In terms of how we can assure that other -- some
21 people don't speak to other people, we ask them not to. We don't have control of
22 them. They're capable of doing that if they so wish. We counsel them not to, and
23 quite strongly.

24 Q. [10:09:07] I don't know if you want to give some clarifications.

25 Maybe we could go into private session, your Honour.

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1 PRESIDING JUDGE SAMBA: [10:09:15] Mr Witness, do you have anything more to
2 say in respect of the answer you gave?

3 THE WITNESS: [10:09:20] Your Honour, I'm not sure if the question is about how
4 we meet people and where and those sort of things in terms of controlling the
5 confidentiality of our meetings or it's purely about output of the meetings. If it's
6 about how we meet people and where then that would have to be in private session,
7 or I'd request that it be in private session.

8 PRESIDING JUDGE SAMBA: [10:09:41] Madam Court Officer, can we go into
9 private session please.

10 (Private session at 10.10 a.m.)

11 THE COURT OFFICER: [10:10:02] We are in private session, Madam President.

12 PRESIDING JUDGE SAMBA: [10:10:06] Mr Jacobs, I ask that you put your question
13 that you require an answer to, please.

14 MR JACOBS: [10:10:17](Interpretation) Thank you very much, your Honour.

15 Q. [10:10:18] So my question, witness, is: In terms of materials and the place of
16 meeting, how do you ensure the confidentiality of these meetings?

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. [10:11:52] Thank you. As we're in private session, I will take the opportunity to
6 ask for a precise question about screening.

7 Court officer, if you could show item -- tab 31, please. CAR-OTP-2041-0067.

8 THE INTERPRETER: [10:12:25] 70, corrects the interpreter, CAR-OTP-2041-0070.

9 MR JACOBS: [10:12:42](Interpretation) Thank you, court officer.

10 Q. [10:12:43] Do you see the document, witness?

11 Yes, it shouldn't be --

12 MR JACOBS: [10:12:46](Interpretation) Oh, we're in private session, so -- so I was
13 just saying, we shouldn't show it to the public, but we're in private session anyway, so
14 it doesn't matter.

15 Q. [10:12:58] Do you see the document, witness?

16 A. [10:13:00] Yes, I do.

17 Q. [10:13:01] So we can see here that it's a screening note. And if we could go to
18 the following page, please, 0071. That's it. So we can see that the person screened
19 is (Redacted) with a pseudonym which has not yet been attributed. We see person
20 present -- "(Redacted)". And then we have the name of an investigator, is redacted;
21 the witness, (Redacted); and then we have (Redacted) who is also a witness,
22 (Redacted), who translated in Sango for (Redacted).

23 A. [10:14:04] Yes, I can see that.

24 Q. [10:14:06] So in a case such as that, you can see that there's a third party; so

25 (Redacted), who is present, with the witness. So what justifies the decision to have a

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1 third party or not -- (Redacted) who is present

2 at this moment?

3 A. [10:14:37] I don't think I can really explain why the investigator in that case

4 decided to do that. I can speculate. I don't know (Redacted), the witness, is, and,

5 perhaps -- well, in fact, I won't speculate. I -- I don't know. Is there -- maybe if we

6 read down, there might be more information.

7 Q. [10:15:17] Yes, we can scroll down, yes.

8 A. [10:15:22] And further, please. And please --

9 Q. [10:15:35] If we could scroll down a bit further to be able to read the rest.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Could we stop there, court officer.

15 So there you see, witness, we can see a note -- I'm going to come back to that:

16 (Redacted)

17 (Redacted)

18 (Speaks English) (Redacted)

19 (Redacted)

20 (Interpretation) So I have several questions to put to you, witness.

21 We can see here that this is a question of language, but it would seem to me that you

22 have interpreters, so why not use an interpreter on that day? That's my first

23 question.

24 A. [10:16:44] I don't know. I wasn't there. But, again, I assume that wasn't -- one

25 wasn't available.

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1 Q. [10:17:00] And my second question with regards to the second part of the
2 sentence, (Redacted) also was screened and he was present during the screening
3 (Redacted). Is this something that would affect the integrity of the screening -- to
4 have both persons present at the same time -- on the same issue on the same incident?
5 I'm sorry, and who speaks for the witness.

6 That's to say, you don't hear what the witness (Redacted) says himself, (Redacted)
7 who is actually saying things. He is speaking for the witness.

8 A. [10:17:51] So, I know the investigator concerned. He's an experienced person.
9 I assume he's made a judgment in this particular case that this is the best thing to do,
10 and he's made a note of it so that the Defence is aware of it, and it's open and
11 transparent.

12 I can't comment -- I actually know this incident, I think. I'd be interested to know
13 how it was referred to us. I believe we had a file on this before the incident, but as
14 I said, this is not standard practice. There are exceptions to any rule. The
15 investigator has made a determination and has recorded it, so for the -- openly and
16 transparently, so that people can see what he did.

17 Q. [10:18:48] Very well. So I'm told, just to be precise, that it says in English, it -- it
18 wasn't made clear (Redacted) was also a witness. So I repeat that (Redacted) became
19 witnesses, so 68(2)(b) in our case --
20 that's the importance of speaking about this.

21 Now, you stated that it was judgment call, I think, in English. But there, too, I'm
22 trying to understand the methodological perspective. So what justifies taking the
23 risk of affecting the sincerity of the testimony of a person with the testimony of
24 another, and it -- which influences -- or (Redacted) influences
25 what (Redacted) says?

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1 So what justifies -- what would justify such a decision?

2 A. [10:19:55] So I think at the top of the document it does say that (Redacted) is a
3 witness. It says it in brackets after his name. If you scroll up.

4 Q. [10:20:07] So this is on the second page, 0071.

5 A. [10:20:18] So there, it says, (Redacted) who
6 translated in Sango (Redacted))"

7 Again, the investigator -- so he's stipulated he's a witness and he's very openly and
8 transparently explained what he did for the information of the Court, the Defence and
9 the Prosecution. Why he did it in those circumstances is not a question I can answer,
10 because I don't know. It's certainly not something we would do as standard, but in
11 these circumstances, often the investigator, who is experienced and knowledgeable,
12 made a judgement call, recorded that judgment call, essentially so that we can have
13 this discussion now.

14 I'd add that the evidence in relation to this incident is not purely the screening notes.
15 There is other evidence in the possession of the OTP which talks about this issue in
16 particular. I'd be interested to see that, and that might shed some light on why the
17 investigator thought that it was appropriate to behave or to do it in this way.

18 My recollection -- but I can't say that for a fact -- is that there was a file either from the
19 *Commission Mixte d'Enquête* or the *Commission Épiscopale Justice et Paix* or AVED or
20 OJED which talked about this incident.

21 Furthermore, I believe we have other witnesses that were also -- I saw a hand gesture.
22 There's other witnesses that also, I believe, were eyewitnesses to this incident and
23 hence give other testimony about it, who were not in the room with (Redacted).

24 Q. [10:22:31] Very well. So we're going to check all of that. But we're going to
25 move on.

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1 A. [10:22:46] If it helps, I can check in the break.

2 Q. [10:22:49] That's very kind, witness. But we're going to carry out a verification
3 thereof.

4 So, I would like to move on to the first investigative document -- or perhaps we'll
5 come back to that after the break.

6 MR JACOBS: [10:23:15](Interpretation) And I think Madam President, we can go
7 into open session.

8 PRESIDING JUDGE SAMBA: [10:23:21] Okay. Madam Court Officer, can we go
9 into open session, please. Thank you.

10 (Open session at 10.23 a.m.)

11 THE COURT OFFICER: [10:23:44] We are back to open session, Mr President.

12 PRESIDING JUDGE SAMBA: [10:23:49] Thank you.

13 Mr Jacobs, please continue with your questions.

14 MR JACOBS: [10:24:03](Interpretation)

15 Q. [10:24:03] So, witness, I'm going to the next phase. This is taking the previous
16 formal statement of a person, and I'm going to come back to certain methodological
17 points with regards to that.

18 Now, to make the link with our discussions that we had previously, we had cases
19 where people directly -- at least, that's what they disclosed to us -- they had a
20 previous statement without a screening note. And I would like to know: What
21 would justify making a screening note to then make a previous statement or to do it
22 without a screening note to then directly make a statement without one?

23 A. [10:25:01] So, I'd need specific examples, but I'm not aware of any case where we
24 did a screening and didn't record it. That wouldn't --

25 Q. [10:25:17] I'm just going to interrupt you there for -- so according to what we

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1 have here, you took the previous or prior statement of this witness.

2 And I can give the pseudonym in open session -- P-0306, P-0562, P-0853, P-1019,

3 P-3039. And for all these witnesses we don't have screening notes. Perhaps they

4 haven't all been disclosed.

5 P-0306, P-0562, P-0853, P-0972, P-1019, P-1575, * P-3039.

6 A. [10:26:11] You'll have to forgive me but I don't know what those numbers relate

7 to. What I can say is that often I interview people without screening them first.

8 And the reason for that would be that I know that the person has information that's

9 important to the case and hence I interview them directly. So to give an example,

10 if -- and this is an exaggeration perhaps, but if there's a murder in a bar, you know,

11 and on CCTV I can see that somebody was there, then I would take a statement from

12 them directly. If there's other people in that bar that I -- I'm not sure if they saw it or

13 not, I'd say, "Did you see what happened?" And if they said yes, then I would take a

14 statement from them. That would be a screening first and then a statement. So it

15 depends very much on the circumstances.

16 I assume those people you mentioned are people that we had information about that

17 they were definitely present or knew something and, hence, we interviewed them

18 directly.

19 To give an example perhaps that's pertinent to this particular case: If Mr X told us

20 that Mr Y was in the same detention cell as him, then we wouldn't necessarily screen

21 that person. We would potentially interview that person directly or we'd do

22 something called screening for willingness, which is purely ask them are they willing

23 to speak to us.

24 Q. [10:27:59] Very well. Well, I suppose that you still do that because, materially,

25 before meeting a person to take their statement you have to speak to them to ask them

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1 if they would agree to meeting you. So I imagine that's something you do
2 systematically anyway.

3 A. [10:28:19] Yeah. Yeah, sorry, I should clarify.

4 So, let's say if somebody's a suspect that needs to be spoken to under 55(2), yeah, we
5 would actually do a screening note that is purely about their willingness to be
6 interviewed later. But of course, yes, before we invite somebody to interview, we
7 have to speak to them first and ask them "Will you come to interview?"

8 Q. [10:28:57] Very well.

9 (Counsel confers)

10 MR JACOBS: [10:29:12](Interpretation)

11 Q. [10:29:13] Thank you, witness.

12 So I'll put the same question again with regards to the verification or checking of
13 people's identity. I imagine that it's the same thing for the screening, so there are no
14 rules that are imposed with regards to asking for the ID, photocopying it et cetera.
15 It's done on a case-by-case basis. Is that the same for screening?

16 A. [10:29:48] Sorry, I think the question is, is that the same for screening. But
17 I think you mean for interview. Yes, it is.

18 Q. [10:30:01] Yes, what I was saying was that it was same thing for screening as it
19 was -- the same thing for the interview as it was for screening. That's what I was
20 saying.

21 A. [10:30:11] That's correct.

22 Q. [10:30:27] So from an investigative point of view, the fact that a person is
23 speaking to you without proving even with a document something less formal, say a
24 student card, so if a person brings no ID when he comes to speak to you, that's not a
25 problem for you?

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1 A. [10:30:51] Again, it depends very much on the circumstances. It's difficult to
2 speak in hypotheticals, but even domestically if somebody comes and says -- comes to
3 the police station and says "I want to report a crime", we don't ask them to produce ID
4 for that. We take a crime report. If we have doubts about somebody's identity, we
5 would do that. But if somebody in good faith makes a complaint to some -- some
6 entity in the Central African Republic, the phone number is on the complaint. Their
7 ID card is attached to the complaint as well. We phone the telephone number and
8 the person answers and they confirm they are who they are, they say they are. That
9 person travels across town to meet us. We take a full statement from them. In that
10 statement they verify the contents of the original dossier after being asked open
11 questions without reference to the dossier, and in that file there's a photo of them and
12 they look like that, then in those circumstances we wouldn't ask for it. But as I said,
13 you'd have to give me tangible examples and I'd have to know the examples you've
14 given me to be able to give you a proper answer to that question.

15 Has there been an instance -- sorry, has there been an instance where somebody has
16 presented themselves in court and isn't who they say they are?

17 Q. [10:32:31] We're in open session, Mr Witness, but the answer to that is yes.
18 This is why I'm putting these questions to you.

19 For the file -- for the file, it was witness P-2573. P-2573.

20 MS MAKWAIA: [10:33:01] Madam President, I object to that characterisation of this
21 witness as being presented as not being the person that the Prosecution has put before
22 the Court as the witness. The Defence has offered no evidence whatsoever to refute
23 this. We object to this question -- to this line of inquiry that is a mischaracterisation
24 of the evidence.

25 PRESIDING JUDGE SAMBA: [10:33:27] And maybe I'll ask -- this person appeared

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1 before the Court, did P-2573?

2 MS NAOURI: [10:33:37](Interpretation) Indeed. That person appeared, and we
3 talked about his birth certificate, for example, and the Defence put questions. The
4 judges put some questions about the person's certificate of birth. The witness said
5 that his -- the birth certificate was accurate, but that certificate had a name that was
6 different to name that he gave to the OTP when he actually was interviewed by the
7 OTP, and it's 2573. I was the one who questioned him. And so this person, 2573,
8 did testify before the Court, saying he was -- Mr Tartempion (phon), just a fake
9 name. And he certified that his birth certificate was authentic, but, yet, on his birth
10 certificate there was another name. The identity documents, his passport as well,
11 were also issued in the name that corresponded to the name on the birth certificate,
12 but when he gave a statement to the OTP he did so using a name that was not to be
13 found on his passport or on other documents. That's a specific example. That is
14 why we are mentioning this person and putting the question to the witness. We
15 have other witnesses for whom things aren't so clear, but we had at least one witness
16 who did come and testify.
17 So this was not a mischaracterisation of the proceedings before the Court. We are
18 before the witness. We are putting the proposition to the witness quite fairly and,
19 ultimately, it will be up to the Chamber to draw the appropriate conclusions. But we
20 have put the evidence to the witness fairly and we are asking the witness to respond
21 to what happened. He -- he asked us, "Did that ever happen?" We said, "Yes, Mr X
22 did appear. His papers seemed to show the name Mr Y." So this is entirely fair.
23 This is entirely fair to the witness.
24 MS MAKWAIA: [10:36:12] Madam President, the Prosecution still maintains its
25 objection. This is the interpretation of the Defence of what it assumes is a person

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1 who's been presented before the Court and is not the person that we assert is. This
2 witness, you may recall, your Honours, when he testified, he explained the different
3 names. He -- he --

4 PRESIDING JUDGE SAMBA: [10:36:37] Yes. If you may allow me. I'm sure the
5 Chamber -- we took note of that, but the Chamber did not come to any conclusion.

6 At least we've not done that, to say that the witness who appeared before us was not
7 the person in fact who was testifying. We did take note of the, you know, the names
8 on the birth certificate and maybe the inconsistencies, but then the witness did explain
9 for the Court why that was so. So at the end of the day it is for us as a Chamber to
10 make a determination. But to say that the person who appeared before us is not the
11 person who should have appeared before us or whatever explanation counsel is
12 giving, I don't think we're at that stage yet of our decision. We are not at that stage
13 yet of our decision.

14 Allow -- allow the witness to carry on. Please put questions to him in
15 cross-examination, that point having been taken note of. Thank you very much.

16 MR JACOBS: [10:37:41](Interpretation) Thank you, Madam President.

17 PRESIDING JUDGE SAMBA: [10:37:52] And in -- sorry, sorry, Mr Jacobs. And, in
18 any event, these are the things, you know, that happen. Normally, I would say,
19 counsel, you know, put questions to the witness. If you're in doubt about something,
20 I mean, you know, you put the question to the witness, "Are you Mr A or you are not
21 Mr A", he'll tell you, "I'm Mr A" or "I'm not Mr A." But the answers that we normally
22 get is that the burden lies on the Prosecution and things like that. But we are not yet
23 at that stage. We'll wait for when we analyse the evidence and everything coming to
24 a determination.

25 Thank you, Mr Jacobs. Please continue.

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1 MR JACOBS: [10:38:36](Interpretation) Thank you, Madam President.

2 Q. [10:38:41] We shall continue, Mr Witness.

3 I do have a question about the taking of prior statements.

4 What justifies the decision to take prior statements in a verbatim form; in other words,
5 everything is transcribed versus a summary? Some prior statements take the form of
6 summaries prepared by the OTP.

7 A. [10:39:20] Sorry, just to clarify. When you say prior statements, you
8 mean -- sorry, it's interpreted screenings.

9 Q. [10:39:28] No. At this stage I'm asking you about statements, prior statements.
10 *En anglais c'est* (Speaks English) "prior recorded testimony".

11 A. [10:39:47] So, I think -- so, when we take two statements from the same person,
12 or...

13 Q. [10:40:01](Interpretation) I'll put my question differently.

14 The witness statement, the formal ones, have two formats. You have some in which
15 everything has been written down -- the name, interviewer 1, interviewer 2,
16 interpreter, the answer, hesitations, answers from the witness. Everything is
17 recorded verbatim. That's the first format. Then other statements, the majority, the
18 vast majority are summaries. They are written by the investigators. What justifies
19 the decision to have either a verbatim record or a summary?

20 A. [10:40:47] So I think there's two criteria that are important for that. The first is
21 that if an interview is being conducted under Article 55(2), as in on somebody we've
22 got reasonable grounds to believe may have committed an offence, then in line with
23 the Rules, that would be audio recorded and it would be transcribed and so you
24 would get a full, transcribed account of that interview, unless the person declines to
25 be interviewed in that manner, as in they prefer you to take a written statement.

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1 Sometimes, the second criteria is sometimes the senior trial lawyer on this case would
2 suggest that a statement should be audio recorded, even of a 55(1) witness, because it
3 might be due to lack of time of people in the field. The handwritten -- the written
4 statement takes a lot longer because you have to read it back. So there would be
5 times where we would do an audio recorded interview of a 55(1) person, but that was
6 often for logistical reasons.

7 Q. [10:42:10] Very well. And when -- when it's a summary, a statement in the
8 form of a summary, and if there's several investigators, what actually happens in
9 practical terms? Who actually drafts the summary for the witness?

10 A. [10:42:37] So, normally what happens is in an interview there would be two
11 investigators. One would be the predominant person asking the questions. The
12 other one would be making notes of what the person was saying in a pretty raw
13 format but as much as possible what this person was saying. Then after the -- let's
14 say, after the day's session or whatever, the investigators would take that format and
15 put it into a statement format, and that would go on day by day. At the end of that,
16 the statement is written and then it is read back to the individual who has made the
17 statement saying -- and they're invited to change, clarify, amend it in any way they
18 want to ensure that the product that is summarised is a fair reflection of what they've
19 told us. And only after that do they sign the statement.

20 Q. [10:43:47] Very well.

21 But you agree with me that in a summary you don't have the interviewer's question.
22 You don't know if the interviewer has put a leading question in order to elicit a
23 particular answer.

24 A. [10:44:10] So the requirement is that a written statement is a -- under 55(1) is
25 written in that way. As to leading questions, the investigators are trained in

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1 something called the PEACE model, which is a model that as much as possible allows
2 a person to give their free account of events to avoid those, and the investigators are
3 all trained to quite a high level not to ask leading questions because obviously it can
4 affect the -- what somebody answers. Whether all investigators do that in the room
5 at the time I can't comment on, but I think they are pretty good at interviewing.

6 Q. [10:45:07] Very well. So there are two points here. One has to do with
7 methodology and the other point has to do with transparency. A few moments ago
8 you said -- and rightly so -- in the screening note you said that the investigator had
9 been transparent and had provided the information so that we could discuss it today.
10 But the problem here is that since we don't have the verbatim recording or account,
11 we can't -- we don't know whether the investigator put a leading question or not, and
12 we can't discuss the matter, we can't determine whether or not it was appropriate to
13 put a leading question. So we can't really assess whether the investigator has done
14 his job properly if we don't have the information.

15 A. [10:46:03] So I think the question you're asking is more about the policy of the
16 office in terms of how they record statements. That is how those statements are
17 recorded. I know that different jurisdictions record these things in different ways.
18 In French jurisdictions, for instance, the procès-verbal process, includes a record of
19 the question asked. In the UK, I know that we don't do that. I think it's different
20 systems. Certainly, as I say, it is a matter of policy of the OTP, that is how we record
21 statements. I -- you know -- and, as I said, I think in an effort to ensure that those
22 statements are properly taken investigators are quite highly trained in how to do their
23 interviews and, you know, encouraged certainly -- not encouraged, trained not to ask
24 leading questions.

25 Q. [10:47:24] Very well.

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1 Court officer, if we could call up another document for the witness and for the
2 courtroom. This is tab 102 on our list of materials. 102.
3 CAR-OTP-2093-11 -- 2093-1142, tab 102.
4 And page 6079, if we could. No, correction: Page 1179, line 1247. Just for the
5 courtroom and the witness, not for the general public, please.
6 Tab 102. Line 1247. Thank you.
7 Now, this is not an identifying passage so I can read it out and I'll specify one point.
8 This is the interviewer -- well, the interviewer here is actually you, sir.
9 I'll read both the English and the French just so that we have a full record. It will
10 be -- take a bit longer but we'll have a full account on the record.
11 I apologise to the interpreters I'll be switching from one language to another:
12 "Interviewer 2: (Speaks English) OK. You mentioned there's a Seleka in charge of
13 the OCRB.
14 ... (Interpretation) You said that there was a Seleka who led the OCRB.
15 Interviewee: Yes.
16 ... You don't remember his name?"
17 Just a moment. I think there's a little bit of copy and paste going on. Very well.
18 I'll read off the screen just to make sure that everything has been said:
19 "Interpreter: Yes.
20 Interviewee: (Speaks English) You can't recollect his name.
21 (Interpretation) Interpreter: You don't remember his name.
22 *Oui*. That's why a few moments ago I'm turning my head. There were
23 many -- there's a lot of such people.
24 The interviewee laughs.
25 ... (Speaks English) I'm trying to remember. There were many of them."

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- 1 (Interpretation) If we could move on to the next page, please:
- 2 "Interviewee: Euh...
- 3 (Speaks English) Interviewer ... Can you remember his rank?
- 4 (Interpretation) Interpreter: His rank, do you remember? Interviewee: Hein?
- 5 Interpreter: His rank?
- 6 Interviewee: Yes, general, yes, it's ...
- 7 Interpreter: Yes, a general.
- 8 Interviewer ... OK.
- 9 Interviewee: General.
- 10 (Speaks English) Interviewer ... I'll make a suggestion and obviously I might be
- 11 wrong.
- 12 (Interpretation) Interpreter: I'm going to suggest a name to you...
- 13 Interviewee: Mm-mm.
- 14 Interpreter: ... I ... maybe it's a mistake.
- 15 (Speaks English) Interviewer ... But is it Mahamat Said Abdel Kani?
- 16 (Interpretation) Interpreter: Mahamat Said Abdel Kani?
- 17 Interviewee: No, it's not him.
- 18 (Speaks English) Interpreter: No, it wasn't him.
- 19 (Interpretation) Interviewer 2: ...
- 20 Interpreter: You know that name?
- 21 Interviewee: Yes, the name, I know it. That's why I am trying to remember.
- 22 (Speaks English) Yes, I know his name, that's why I'm trying to remember it.
- 23 (Interpretation) Interviewer 2: No, no ...
- 24 (Speaks English) ... Do you recognise the name Mahamat Said Abdel Kani?
- 25 (Interpretation) Interpreter: ... the name Mahamat Said Abdel Kani?

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1 Interviewee: No.

2 Interpreter: You know that name?

3 Interviewee: No."

4 Mr Witness, without going into identifying information, if you put the name of
5 someone directly to a witness during an interview, that's a leading question. Do you
6 have a comment?

7 A. [10:53:44] Yes -- yes, I do. When I first started the questioning of this
8 gentleman, I didn't say any name to him whatsoever, and I asked, "Do you know who
9 it is?" I asked him a couple of times, from what I can see.

10 Then on tape, yeah, I said in -- I asked him the question, it's recorded, and I've put it
11 to him. I've also said in the question that I might be wrong. So any interview is a
12 progression of questions. You can go from a very open question to a closed question
13 once of you've established whether the person knows something or not.

14 I might add if this was in a written statement, the practice would be -- and I think you
15 can find examples of it in numerous statements -- that at the end of the statement it's
16 recorded that this -- we're asking, "Do you know this particular person? Do you
17 know this particular person? Do you know this particular person?" and we do
18 proper names. But that's recorded both in a written statement and in this. So, yeah,
19 I also, you know -- in fact I'll stop there. Thank you.

20 Q. [10:55:06] Very well. But, Mr Witness, this is a leading question; yes, no?

21 A. [10:55:12] It's not forbidden to ask leading questions, it's how you structure the
22 interview as a whole, and it is a leading question, yes.

23 Q. [10:55:35] Thank you, Mr Witness.

24 When you question several witnesses -- I'm just making sure whether or not we're in
25 open session.

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1 Now, when you question several witnesses about the same incident, screening or
2 taking a statement, when you've met a first witness, then a second, a third, how do
3 you use the information that you obtain from the first witness, say, when you meet
4 with the fourth? Do you say "We have learned from" or "You were in a cell with"?
5 How do you use that kind of information?

6 A. [10:56:37] We wouldn't use it in the way you described. Again, the important
7 thing is to try to make sure that each statement is taken separately so you're not
8 influencing the witness by your questioning. So you have to be careful. That's not
9 to say that people don't sometimes make mistakes, but certainly what we're aiming
10 for is asking each witness in good faith open questions which they answer which
11 aren't influenced by our previous knowledge of what happened.

12 Q. [10:57:23] Very well.

13 Now in the case of the investigation, if there's a contradiction between two witnesses,
14 what do you do as an investigator?

15 A. [10:57:40] I think it would be easier to discuss with an example, but if two
16 witnesses are disagreeing on something fundamental, then that's something we need
17 to investigate further.

18 Q. [10:58:08] I can give you some examples that we have found on the record,
19 contradictions having to do with dates or locations, but I'm trying to understand your
20 methodology.

21 Now, you say that you need to investigate further. In practical terms what do you
22 actually do? Don't you confront the witness with the inconsistency? Isn't that the
23 way to go about things? How do you investigate further unless you contradict the
24 witness, as I've just said?

25 A. [10:58:48] So, confronting the witness, obviously, would potentially be leading

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1 in itself, so the question is at what stage you may decide to do that, yeah. So if
2 somebody's given me a full statement, it's recorded but there's inconsistencies I want
3 to check with that person, I might -- and I can't -- I would have to look at specific
4 examples -- I might say, without mentioning, probably, the other person, "Are you
5 sure that that date's correct?", yeah -- or whatever the clarification question is. But
6 normally there's other pieces of information. I mean, dates are notoriously difficult
7 to pin down. So if somebody says "I was detained on 13 April" and somebody else
8 says "I was detained on 15 April" and there's some sort of connection between the two
9 that suggests to me that they were detained on the same day, I would start looking for
10 other information potentially that would help to establish a date, maybe a news
11 article that says this is the date that these people were detained or something else.
12 But as I said, dates are not -- dates are something people remember poorly. If it's
13 something very fundamental, then we'd ask -- I'd have to know what the -- the issue
14 is.

15 MR JACOBS: [11:00:17] I see the time, Madam President.

16 PRESIDING JUDGE SAMBA: [11:00:21] Yes, indeed.

17 Mr Witness, we are going to break off here for now and we'll come back at 11:30 to
18 continue with your questions.

19 I rise the Court for 11:30, please.

20 THE COURT USHER: [11:00:41] All rise.

21 (Recess taken at 11.00 a.m.)

22 (Upon resuming in open session at 11.32 a.m.)

23 THE COURT USHER: [11:32:46] All rise.

24 Please be seated.

25 PRESIDING JUDGE SAMBA: [11:33:12] Good morning again, everyone.

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1 Mr Jacobs, please continue with your questions to this witness. Thank you.

2 Don't forget, slow down in answering the questions, five-seconds rule between
3 questions and answers. Thank you.

4 MR JACOBS: [11:33:34](Interpretation) Thank you very much, your Honour.

5 Before starting, I heard during the break that the Prosecution had spoken for one hour
6 and 45 minutes, and given the importance of the subjects which we're taking up with
7 this witness, who will be only one of this type, then, with your indulgence, I believe
8 I would need two -- the two hours initially envisaged, perhaps 15 minutes more.

9 And with the interpretation, French-English, it takes a bit longer, so if we could have
10 perhaps a quarter of an hour more, depending on how things go.

11 PRESIDING JUDGE SAMBA: [11:34:16] Yes, our legal officer did indicate your
12 request to us and it's granted. Let's see how it goes.

13 We are in open session, please.

14 MR JACOBS: [11:34:29](Interpretation) Thank you very much, your Honour.

15 So another point, an administrative point before starting. I forgot to ask for the
16 formal submission of tab 31 on our list of materials. That's CAR-OTP-2041-0070.
17 That's it.

18 Q. [11:35:00] So good morning once again, Witness.

19 A. [11:35:03] Good morning.

20 Q. [11:35:07] Now, we were on the issue of the taking of prior recorded testimony.
21 Where it concerns witnesses who don't speak the same language as the investigator,
22 we have understood there's an interpreter who's present; is that the case?

23 A. [11:35:31] Yes, that's right.

24 Q. [11:35:34] Very well. I'm not going to put the same question to you again about
25 the training of the interpreters. I suppose that it's the same interpreters as you use

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1 during the screening notes?

2 A. [11:35:55] It's the same pool of interpreters used for both, yes.

3 Q. [11:36:10] And we looked at an example a moment ago. Could it be the case
4 that, because an interpreter is not available, the Office of the Prosecutor would use a
5 member of the family or another person than a court interpreter?

6 A. [11:36:37] I think that would depend on the circumstances of what
7 you're -- what we're seeking to achieve. If it's a screening, as you've seen, that that
8 investigator made that decision at the time. If you're talking about a formal
9 Article 55(2) interview of a suspect, no, we wouldn't use a member of the family, that
10 would have to be an interpreter. And the same for a formal statement.

11 Q. [11:37:08] Thank you very much. So in the case, for example, where a witness
12 speaks Sango and you are present, you're speaking English, you explained to us that
13 you write the prior recorded testimony in English, you draft it in English and this is
14 interpreted into Sango; is that correct?

15 A. [11:37:42] Forgive me, I think there's some confusion in terms. Prior recorded
16 interview I believe was audio recorded, we're talking about. So we wouldn't write
17 that, that would be audio recorded.

18 Q. [11:38:08] I don't know if my question was perhaps not clear or whether there
19 was an issue of interpretation. When I'm speaking about *déclaration antérieure*, I'm
20 talking about the witness statement. So the witness statement is something that you
21 write in English and then the interpreter takes the document and reads it in Sango for
22 the person. Have I understood that? Is that what happens?

23 A. [11:38:34] Yes, depending on the language the statement is taken in, it's always
24 read back to the witness in their own language so they can fully understand it. And
25 then the interpreter signs a certificate at the end of the written statement explaining

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1 that they've done that and that the person has fully understood. And then all
2 members, everybody in the room, signs the front page of the statement and initials
3 every page to create a record.

4 Q. [11:39:08] Very well. But in the case of a witness who speaks Sango, when he
5 signs the physical document, that's not a document that he can understand, it's a
6 document in English, he says I recognise that the content is correct, but he doesn't
7 speak about that, he speaks about the interpretation thereof?

8 A. [11:39:30] I'm sorry, I'm getting a little bit lost in the complexity, but the
9 statement is written in English, the interpreter reads it back to the individual in the
10 language that they speak, then the interpreter signs it, saying that they've done that,
11 and then every party in the room signs the written statement which is in English.
12 Again, that's a policy of the office.

13 Q. [11:39:57] Very well. I'll put the question clearly.
14 When the interpreter interprets for the witness, do you record that? Do you have
15 evidence, do you have a record of what the interpreter said to the witness?

16 A. [11:40:21] I don't speak the language the interpreter is speaking, so I don't know
17 what they're saying. The interpreter signs a certificate at the end of the statement
18 saying that --

19 Q. [11:40:32] I'm sorry, Witness, I'm asking you a clear question. Do you have a
20 recording, physical proof that proves that we can check in an independent way, the
21 Judges, the Defence, that it corresponds with -- that what the interpreter says
22 corresponds with what the written document was? That is my question?

23 PRESIDING JUDGE SAMBA: [11:40:55] Yes, Mr Choudhry.

24 MR CHOUDHRY: [11:40:56] Your Honour, I don't wish to throw my learned friend
25 off his flow, but the witness has already, to some extent, answered the question. He

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1 has answered the question that not all witness interviews are audio or visually
2 recorded. So the witness, to this question, has already answered it, in a different
3 matter. Perhaps my learned friend wants to rephrase if I missed the point.
4 PRESIDING JUDGE SAMBA: [11:41:22] Yes, I think he spoke about audio recording
5 witnesses who are maybe, you know, "more important", I'd put in quote, for the
6 Prosecution. Formal witnesses, and there are some witness who are audio recorded.
7 Now his question is to this effect. Obviously, if you -- and correct me if I'm wrong, if
8 you're recording, you choose to record a particular witness, you do not turn the audio
9 recorder off when the interpreter is repeating what is being said in English, every bit
10 of it is recorded. That's the point he's trying to make.
11 But, Mr Jacobs, put the question again, maybe, for him to understand. It's agreed
12 that not all witnesses are audio recorded, as he said.
13 Mr Jacobs, please put your question again so that we can get an answer.
14 MR JACOBS: [11:42:25](Interpretation) Thank you, your Honour.
15 Q. [11:42:33] I'm going to try and explain my question a bit further so you
16 understand it well, Witness.
17 The witness does not speak English or French. We are looking at that situation. So
18 the written document, his witness statement in French or English, he cannot
19 understand that, we both agree on that, do we not? So the only thing that the
20 witness can consent to and say that's correct is the interpreting, it is what the
21 interpreter has said. That's correct, is it not? The interpretation of the written
22 document when he says in Sango, this is what the document says.
23 Now my question is quite simple, how can I check myself what the interpreter said is
24 what is in the document? Is there an audio recording which makes it possible, such
25 as in all criminal proceedings, to check the correctness or veracity of what the

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1 interpreter said is correct and what was consented to is what is contained in the
2 document? Is that clear, Witness? I don't know if it's more clear.

3 A. [11:43:49] Yes, forgive me, I was confused between audio recording and
4 recording. I understand now.

5 If a statement is written, you're absolutely right, it's written in English or French.

6 The gentleman doesn't speak English or French, the interpreter reads that statement
7 to him in the language Sango, and that is what the witness hears and that's what the
8 witness attests to signing when he signs. And as I said, everybody else signs as well,
9 and the interpreter signs to say they've been fair in their -- in what they've
10 interpreted.

11 But I might add that I think you said that in all criminal proceedings that's done.

12 That's not done in all criminal proceedings, as in, we don't -- not all interview
13 statements are -- sorry, not all interviews are audio recorded. There's many cases
14 where they're not.

15 PRESIDING JUDGE SAMBA: [11:44:42] Okay. Mr Witness, may I ask, for those
16 that are audio recorded, would that recording entail the interpretation by the
17 interpreter to the witness? That's what he's getting at. Could you answer that,
18 please.

19 THE WITNESS: [11:45:03] Thank you, your Honour. So, in an audio interview, the
20 audio starts when you go in the room and it stops when everyone leaves. Nothing is
21 not on tape.

22 PRESIDING JUDGE SAMBA: [11:45:21] Thank you very much.

23 Mr Jacobs, I think that's your answer.

24 MR JACOBS: [11:45:36](Interpretation)

25 Q. [11:45:37] So just so we're clear, * where it concerns non-verbatim statements,

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1 you cannot check the interpreting? That is my simple question.

2 A. [11:45:49] No, you can't.

3 Q. [11:45:53] Thank you, Witness.

4 So still on the drafting of witness statements, non-verbatim witness statement, we see
5 almost all the time that there's a structure by themes, or thematic structure thereto.

6 So you have, for example, such and such an incident, a time period, et cetera. So

7 I would imagine that this -- I'm sorry, I'm going too -- when you question a witness

8 and you look at the verbatim statement, it's not as clear, it rarely follows a

9 chronological format that's so structured when you hear a witness in a hearing. So

10 you would confirm that the investigators do restructure it to try and organise what

11 the witness says in a certain way. That's correct, is it not?

12 A. [11:47:15] Yeah. Yes, people very rarely speak in a linear fashion, so once the

13 interview is ongoing, the materials are structured into, as you say, themes, perhaps,

14 or chronological order. Because when people speak they say, "Oh, last Tuesday this

15 happened, actually." Now you put it in order and then it would be read back to the

16 person to confirm that the restructuring is correct.

17 Q. [11:47:45] And during the interview itself, the investigators guide the witness on

18 certain themes, certain questions or certain temporal or certain time frames. That's

19 correct, is it not?

20 A. [11:48:02] So I wouldn't use the word "guide". I think that would create the

21 wrong impression. I spoke about the PEACE model that we use. The PEACE

22 model is a system of free recall, followed by open questions, essentially. So, to take a

23 simple example, you say to somebody "Can you tell me everything that happened

24 since Tuesday till the time you came to speak to us", and that person gives free recall

25 as best they can across that time period. Then often you would break that down into

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1 smaller segments and you would say, "Okay, from Tuesday now, until you went to
2 sleep on Tuesday, what happened that day?" And, again, that would be free recall.
3 Once you have good free recall, you would then seek to ask clarifications and develop
4 each theme. That's how you'd do it on the PEACE. We don't guide the witness.
5 The witness needs to tell us what they want to tell us.

6 Q. [11:49:13] Thank you, Witness.

7 Your Honour, for my next question, I think that it would be prudent to go into private
8 session. I'm going to speak about a particular witness.

9 PRESIDING JUDGE SAMBA: [11:49:37] Okay.

10 Madam Court Officer, can we go into private session, please.

11 (Private session at 11.49 a.m.)

12 THE COURT OFFICER: [11:49:54] We are in private session, Madam President, your
13 Honours.

14 PRESIDING JUDGE SAMBA: [11:49:57] Thank you very much.

15 Mr Jacobs, please continue with your questions.

16 MR JACOBS: [11:50:03](Interpretation) Thank you, your Honour.

17 Q. [11:50:10] Could we show tab 74.5 of our list of materials, which is already
18 formally submitted. This is CAR-OTP-2127-95 -- I'll repeat it, perhaps I was
19 speaking a bit fast. CAR-OTP-2127-9527.

20 And if we could go to the second page, if you'd be so kind.

21 Do you see the document, Witness?

22 A. [11:51:12] Yes, I do.

23 Q. [11:51:16] I wonder if it would not be better to show the English version for the
24 witness. So this would be at tab 74, CAR-OTP-2125-0855, and perhaps that would be
25 simpler.

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1 So you can see, Witness, this is a witness statement and you can see the name of the
2 person who was interviewed.

3 And if we could go down a bit in the document. You can see the names of the
4 persons present and you would confirm that you were present during the taking of
5 this witness statement?

6 A. [11:52:22] Yes, that's me.

7 Q. [11:52:30] Now, if we could go to paragraph 28. I don't know what page it is in
8 the English version. 0859, that's it.

9 Now, you can see, Witness, paragraph 28, the witness says: (Speaks English)
10 "(Redacted) was buried in (Redacted).

11 I know the location of the grave."

12 (Interpretation) Now, Witness, this person came to the hearing and we questioned
13 this person about this. And I'll read the excerpt from the transcript so you can
14 comment on it. And that's the French corrected transcript, and this is page 66,
15 from lines 23. I'm going to read. It's transcript T-42, page 66, from line 23:

16 Question: "Did the investigators from the Office of the Prosecutor ask you to
17 accompany them to identify the grave of (Redacted)?"

18 Answer of the witness: "No. He asked me the question where (Redacted) was
19 buried and I said (Redacted). And he asked me if I knew exactly where he was
20 buried and I answered, yes, of course, I know (Redacted) grave. I know where the
21 grave is. This is something that I cannot forget. And I -- and this is the
22 answer -- this is the answer that I gave when the question was put to me."

23 Next question: "And following this question, to the best of your knowledge, did the
24 investigators take investigative steps to identify the body, the grave and the body,
25 et cetera?"

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1 Answer: "It's true that they asked me the question, and I told them that if they were
2 available we could go together and I would be able to indicate his grave. I know
3 very well where the grave is. They said that there was no problem and they told me
4 that I might be mistaken. And I said, 'No, no, I couldn't be, because I buried himself.
5 I couldn't forget where the grave is.' So telling me that we went to go together but we
6 never carried out such a trip. They said that they didn't have time to carry out such
7 a trip, but I just indicated to them where it was."

8 Witness, would you confirm that you were not or you didn't go to the grave of the
9 victim, did you?

10 A. [11:56:36] No, I didn't. I can explain why I didn't, if you wish.

11 PRESIDING JUDGE SAMBA: [11:56:51] Please explain, Mr Witness. Let's hear
12 you.

13 THE WITNESS: [11:56:55] I think, in this particular incident, I think we took a
14 statement from other people as well relating to the death of (Redacted). To me, the
15 first thing is -- I mentioned right at the start of my testimony that we pursue
16 everything that's relevant. And while tragic, what happened to (Redacted), there
17 isn't, as far as I can make out, a dispute in the evidence that he is actually deceased. I
18 have to make a determination whether finding the body, exhuming it and examining
19 it gives me any information which helps us establish anything further.

20 In this particular instance, (Redacted) was deceased. We knew that. And he didn't
21 have any indication that where he was buried would hold information about how
22 exactly or who exactly -- no, sorry, who exactly killed him. That was the question at
23 issue. An exhumation is a very big thing to do to somebody. It's not appropriate
24 purely to show that somebody is dead. I was satisfied that (Redacted) was dead,
25 (Redacted) was dead.

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1 And I might add that in other instances in this case we did conduct exhumations, not
2 related to this particular defendant, but to other crimes that were committed. So we
3 have to make judgments. In the end we are constrained by our finances and
4 resources. I wish we could investigate every crime that's told to us, but in this
5 particular instance, it wasn't -- I didn't believe it was useful.

6 PRESIDING JUDGE SAMBA: [11:58:32] Thank you very much.

7 Mr Jacobs, continue, please.

8 MR JACOBS: [11:58:45] (Interpretation)

9 Q. [11:58:46] Thank you, Witness. I'm trying to understand what you've told us.
10 Now, you say that it wasn't useful to verify that the person had suffered injuries,
11 wounds attributed to that person. Isn't that the whole point of carrying out forensic
12 analysis? So shouldn't you check that there's indeed a body at that location? An
13 autopsy can be carried out years later. That makes it possible to determine the cause
14 of the death. It makes it possible to corroborate the account with tangible evidence.
15 So I really don't see, methodologically speaking, how you can decide not -- or how
16 you can decide that it would not be necessary.

17 A. [11:59:32] As I said, where I consider it necessary, we've done exhumations.
18 The family has already suffered a tragedy. Exhuming (Redacted) body purely to
19 show that he is deceased is not a proportionate thing to do. As to the manner of his
20 death, the question -- the fundamental question of (Redacted) is: Who killed him?
21 Yeah? And that I'm not going to be able to derive from forensics of an exhumation
22 with a body that was buried and washed by the family prior to burial, and buried not
23 in the clothes that he was wearing at the time and for which I have no comparators
24 forensically. What exactly am I going to recover? DNA from (Redacted) body that
25 shows me who the suspect is? That is not going to happen. I don't know, how

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1 many -- when was the statement taken? 20 -- when was the statement taken?

2 I believe it's 20 -- I think it's 2020, so seven years after events, you think that it's

3 appropriate to exhume this gentleman and examine him for what exactly? I'm not a

4 forensic scientist, but you're not going to recover DNA uncontaminated from a buried

5 body in wet clay soil for that period of time.

6 PRESIDING JUDGE SAMBA: [12:00:50] Just for the record, the statement was taken

7 in 2021.

8 MR JACOBS: [12:01:01] (Interpretation)

9 Q. [12:01:02] Mr Witness, subsequent to your statement, we did not carry out

10 research, but you have worked in international criminal justice for many years and

11 you know full well that forensic exhumations, for example in Srebrenica, made it

12 possible to identify victims' identities years and years after the events, so I don't really

13 understand your answer. Could you give more fulsome explanations. Why did

14 you say that it would not be appropriate to exhume a body years after the events for

15 forensic purposes, for example to check DNA?

16 A. [12:01:52] The bodies at Srebrenica were unidentified and buried I believe in a

17 mass grave. (Redacted) was buried, (Redacted),

18 in a place by the family, so the identification of him is not presently in issue. The

19 question is is (Redacted) dead or not. And this gentleman and other members of the

20 family, and I believe there's a death certificate, say that he is deceased. So there's no

21 issue of identity.

22 The DNA I was talking about is not the DNA of (Redacted). I'm saying -- the DNA

23 I'm talking about, or the evidence, is evidence that would connect us to a suspect. I

24 don't believe, in those circumstances, it's a proportionate inquiry to make, as in I don't

25 understand why I would exhume somebody, whose family has said they have buried

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1 him, to verify that he is in fact dead and that he is who they say he is. Apart from
2 anything, this is not, as far as I'm aware, an incident that's charged against the
3 defendant, and that was also, I believe, a criteria in the decision making around this
4 particular thing.

5 Q. [12:03:24] Very well, Mr Witness. A bit earlier you told us, I didn't quite note
6 this, but you said that sometimes you decide to exhume a body, sometimes not. But
7 in the record of the case we don't have any example, at least not -- nothing disclosed
8 to the Defence, nothing about exhuming bodies, conducting an autopsy after death.
9 Can you give us an example of any such occurrences, exhuming a body, conducting
10 an autopsy after death, any examples?

11 A. [12:04:05] Certainly. As I explained, that wasn't in the investigation into the
12 crimes allegedly committed by the defendant. There were other crimes committed
13 in Bangui where we conducted exhumations, specifically in relation to a location
14 called Colline des Panthères. There, the bodies were unidentified. It was in the
15 newspapers.

16 Q. [12:04:30] I'm sorry, I have a limited amount of time and since this incident does
17 not concern us -- but in this case, there's no example. You said a few moments ago
18 that the cause of death was not a useful matter. If we take another example, another
19 incident, the minibus incident, PK9, the cause of death is very important and is
20 challenged. To our knowledge, there has been no forensic analysis, no attempt to
21 find the bodies and carry out an autopsy to determine the cause of death. Can you
22 confirm that none of these things were done?

23 A. [12:05:16] Sorry, again, with the PK9 incident, my understanding is that the
24 defendant isn't charged in that matter. So we make decisions about what we
25 investigate and what we don't investigate on that basis. A thorough investigation

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1 was conducted of PK9. If we had continued that investigation, exhumations may
2 have been a criteria in that case. But again, before I exhume anybody, I'd like to
3 identify a suspect.

4 Q. [12:05:45] The incident is part of the contextual elements considered as part of
5 this case. We have heard many witnesses regarding this incident. So I believe it's
6 on the record, it's part of the record. My question is simple, yes or no: As part of
7 the general investigations in the CAR, did you do any forensics to find bodies,
8 exhume bodies, conduct autopsies determine the cause of death from a scientific point
9 of view? Did you do any of that, yes or no. I'm talking about the PK9 incident.
10 As part of the PK9 incident, did you do any such thing, yes or no?

11 A. [12:06:31] Yes or no answers are notoriously problematic, but my answer to that
12 would be no, we did not do forensic examinations in the PK9 incident. And, as you
13 yourself said, it related to contextual elements of the crime. The fact is that those
14 gentlemen at PK9 are deceased. We have death certificates, we have hospital
15 registers, we have photographs of them being recovered from the sea -- from the river.
16 We have family members saying that they are dead. So they are deceased. Now,
17 the exact manner of their death, as in were they stabbed to death or shot to death, or
18 whatever, is not something that we have evidence on but it --

19 PRESIDING JUDGE SAMBA: [12:07:12] Do we need to be in private session,
20 Mr Jacobs?

21 MR JACOBS: [12:07:18] (Interpretation) I don't know. I got carried away by the
22 cross-examination. I think let me -- let me look. I think the ...
23 I think we can go back into open session, Madam President.

24 PRESIDING JUDGE SAMBA: [12:07:39] Madam Court Officer, can we go into open
25 session, please.

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1 (Open session at 12.08 p.m.)

2 THE COURT OFFICER: [12:08:01] We are back to open session, Madam President.

3 PRESIDING JUDGE SAMBA: [12:08:03] Thank you very much.

4 Mr Jacobs, please continue.

5 And Mr Witness, could you speak a bit slower.

6 THE WITNESS: [12:08:10] I apologise, your Honour. I will speak very slowly.

7 PRESIDING JUDGE SAMBA: [12:08:15] Thank you.

8 Mr Jacobs, please.

9 MR JACOBS: [12:08:17] (Interpretation)

10 Q. [12:08:21] We were talking about the PK9 incident and the investigation. You
11 say that it was a contextual element and you don't investigate incidents that are part
12 of the contextual elements, you don't conduct in-depth investigations into such
13 matters. Have I understood you correctly?

14 A. [12:08:48] I don't believe that that's what I said. And, no, you haven't
15 understood me correctly.

16 Q. [12:09:09] Allow me to reread the transcript to you in French. Perhaps this will
17 clarify matters.

18 Page 46, line 7. No, page 46, line 6, apologies:

19 As you said yourself, all of that has to do with contextual elements of the crimes.

20 The fact that the people at PK9 died, we have photographs of them, of the bodies
21 recovered from the river. Family members have told us that they were indeed dead.

22 We have all that information that they were stabbed or shot.

23 As you say yourself, that adds to the contextual element. So this would suggest that
24 you treat contextual elements differently to another element. Tell me in what way
25 have I misunderstood you, Mr Witness?

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1 A. [12:10:16] I think you summarised it -- forgive me, I don't have access to the
2 transcript, but I think you summarised to say we don't investigate contextual
3 elements. What we did on PK9 was we did investigate PK9 to the level required to
4 prove that individuals on a minibus were stopped at PK9 by the Seleka, were taken to
5 Camp de Roux by the Seleka --

6 Q. [12:10:44] I'm sorry, Mr Witness, once again, we have a limited amount of time.
7 Sorry to interrupt. I didn't say that you didn't investigate, I said you didn't
8 investigate contextual elements in the same level of depth as other elements. That
9 was what my question was to you.

10 PRESIDING JUDGE SAMBA: [12:11:04] Yes, Mr Choudhry.

11 MR CHOUDHRY: [12:11:06] Your Honour, my learned friend has asked a question
12 of this witness. This is the second time which he has interrupted the witness's
13 answer on account of time. I certainly will not object, should my learned friend
14 require an amount of time, but I think it's fair that if a question is asked, the witness
15 ought to be allowed to answer it so that you, your Honours, can make a full
16 determination on what the witness says.

17 PRESIDING JUDGE SAMBA: [12:11:29] The fact -- the idea is that he is not
18 answering the question that was put by counsel.

19 Mr Jacobs, please put the question again and, Mr Witness, please answer the question
20 put to you.

21 MR JACOBS: [12:11:45] (Interpretation)

22 Q. [12:11:54] Once again, Mr Witness, my question: Am I -- have I understood
23 correctly you investigate things like the cause of death in lesser depth when it's a
24 matter of a contextual element in comparison to incidents that form part of the
25 charges, as you put it?

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1 A. [12:12:17] So, investigation isn't a recipe where you do the same things each time.
2 It depends very much on the circumstances. The PK9 incident was not, for instance,
3 investigated to the same level, as you say, with forensics as certain other elements of
4 the case.

5 Q. [12:12:42] When a person has been questioned by you and is an alleged victim of
6 the charges and alleges certain injuries, did you have a medical expert examine the
7 person to determine whether or not the injuries or the scars were consistent with the
8 account given?

9 A. [12:13:16] So this is difficult for my recollection, but I believe -- well, the first
10 thing is, is that the investigator there would make a preliminary assessment whether
11 it's a lasting visible injury. So if somebody says they have scars - or, I believe there
12 was a project perhaps initiated after my time, that sought to document those sort of
13 things - I think certainly there was one individual who suffered some form of lasting
14 injuries. I -- I think it's P- -- in fact, I -- I won't speculate because I can't remember,
15 but I believe he certainly had a medical examination. So it depends very much on if
16 the injuries are lasting and whether you can still see them.

17 Q. [12:14:10] I've understood that the investigator looks, but the investigator does
18 not have medical expertise, I believe. In other cases at the Court, a medical expert
19 appointed by the OTP was able to examine injuries, wounds, scars.
20 Did you do that in the case of people who were questioned as part of this particular
21 case?

22 A. [12:14:46] Again, and this is from -- again, forgive me, I wasn't prepared on this
23 particular aspect of testimony. I think -- I remember certainly investigators took
24 some photographs themselves, but as you say, they are not medically trained.
25 I think that was an effort to preserve evidence in case the person didn't come back or

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1 for whatever reason we didn't see them again. I believe there were attempts made to
2 document injuries, but I remember a conversation with the forensic science section,
3 but I'm sorry, I can't remember any more than that.

4 As I said, I think there was definitely one witness who was detained at OCRB who,
5 I believe, suffered lasting injuries and I believe he's the subject of --

6 Oh, no? The Defence is shaking their heads, so then I'm wrong about that. I -- I'm
7 sorry. I'm trying to remember.

8 But I believe there's also in that -- I'm sorry, it's difficult. But I think then in that -- in
9 terms of that gentleman, there is medical -- there was a medical examination
10 conducted at the time, or something like that, that showed that he was injured, in the
11 file.

12 Q. [12:16:03] Thank you. Sorry, but the Defence did not --

13 THE INTERPRETER: [12:16:11] Correction.

14 MR JACOBS: [12:16:12](Interpretation)

15 Q. [12:16:13] We were not disclosed any such medical reports. If such a thing had
16 existed, we would have requested such a medical report.

17 Sorry for nodding my head the way I did.

18 A. [12:16:27] That's no problem.

19 Again, your Honour, I can go and check that and come back to the Court and tell you
20 if that thing exists or not.

21 Q. [12:16:38] Thank you, Mr Witness.

22 I'd like us to return to the PK9 incident for a few moments. You mentioned an
23 example with the OTP yesterday.

24 And this was discussed in open court, so I think the question can be put in open
25 session.

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1 You were shown a document and it was document 97, CAR-OTP-2027-1820, and
2 I think we could put it back up on the screen. It shouldn't be shown to the public,
3 though.

4 Can you see the document? Do you recognise it, Mr Witness?

5 A. [12:18:00] Yes, I do.

6 MR JACOBS: [12:18:06] (Interpretation) If we could move to page 1827. If we could
7 scroll down, please, court officer.

8 Q. [12:18:31] Do you see the photograph, Mr Witness?

9 A. [12:18:37] Yes, I can.

10 Q. [12:18:43] Now, French transcript, yesterday's transcript, transcript 110, page 43,
11 line 2. You said:

12 "The first thing was that -- well, there was a body and it was swollen. So I think that
13 there are other photographs of the Oubangui river at that time and you can identify
14 that body, the body in the photograph is the same as the body in the river. That's
15 what we call corroboration."

16 So this gentleman, I won't give the name in open court, that gentleman died and the
17 body came from the river. Agreed?

18 So, once again, you've seen the photograph, you saw how the person is dressed.

19 I'd like to ask for tab 46 on our list, 46, CAR-OTP-2017-0919. And this can be shown
20 to the public, I believe.

21 That is the photograph that we have on the file of the river that you mentioned. And
22 tell me, where do you identify the person? How can you identify that this person is
23 the same person as the one we saw in the other photograph?

24 A. [12:20:40] Forgive me, I think there's other photographs.

25 Q. [12:20:53] Tab 47, please, court officer.

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1 A. [12:20:56] And -- and sorry, just to -- what I meant -- when I spoke yesterday,
2 I was speaking in the context of how we take a lot of information and put it together.
3 It's not solely on an identification.
4 That's the same, I believe, as the last photo.
5 It's not just on the basis of the -- the photographs. We also spoke to the individual
6 that signed -- that was the -- I don't know what it's called, not complainant, the
7 registrant in the death certificate. We also spoke to his wife who said this is the body
8 and it was recovered from the river.
9 So it's not purely the photograph, there's lots of interlinking evidence that gives me
10 that confidence. But again, there's more photos and in one of them I'm pretty sure
11 you can see the gentleman.
12 Q. [12:21:41] We have four photographs that have been disclosed by the
13 Prosecution in this case. If there are others, they have not been put on the record of
14 the case.
15 So 46, 47, if we could please have a look at tab 48, tab 48 up on the screen, please,
16 court officer.
17 A. [12:22:11] If you zoom in on that photograph, the body in the middle, and
18 I believe there is another photograph, but that -- I don't think that's the photograph
19 that the assessment was made on, but that I believe is the gentleman in question.
20 And there's another photo that shows it more clearly. But again, purely from a
21 photograph, I can't say that this gentleman is the same as that gentleman.
22 What I can say is the totality of the evidence we hold suggests that Mr -- sorry, I
23 won't say his name, but the gentleman who is in a BINUCA document has been
24 abducted at PK9, who is in complaints from at least his wife and another relative who
25 have the death certificate, who the family say have been -- has been killed, who the

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1 family have got death certificates for, who is in the register of the
2 Hôpital Communautaire. All those things taken together, the totality of evidence
3 suggests that Mr -- this gentleman was abducted at PK9, was killed and is
4 presently -- well, is -- is dead now.

5 Q. [12:23:33] I've understood what you've said, but the person that you -- the
6 people you mention were not present at the river. This is hearsay. Do you have the
7 testimony of a direct witness who saw the person being taken out of the river or not?

8 A. [12:23:51] Again, I'd have to say I can't really remember. I don't want to
9 mislead the Court. I can check. I think -- I think we do actually have somebody,
10 but that person isn't able to identify the bodies. They -- he -- the person that we have
11 talking about the bodies coming out of the river can't say that that is Mr X. However,
12 I would reiterate whether Mr X is in the river or not, he is deceased. He -- yeah. He
13 is deceased.

14 And the totality of evidence suggests that he is deceased by reason of violence
15 following an abduction of him at the PK9 checkpoint by individuals associated with
16 the Seleka. And if necessary, I -- with the Court's permission, I can go and gather all
17 that information and put it together in a more concrete format for the Court to
18 consider. But what I can't do is continue to answer questions about things I have
19 little recollection of.

20 Q. [12:25:04] That work was already done by your colleagues who presented a brief.
21 That's already been done. It's too late. If that -- thank you for the offer, but the
22 work has already been done and has been brought before the Court.
23 Now you say that you know that the person was killed violently, but since you did
24 not carry out an autopsy, you don't know if that is the case, you don't know the cause
25 of death?

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1 A. [12:25:34] Again, I think the -- again, and I speak from recollection, there are
2 people -- we have at least one witness who talks about the -- an eyewitness to the
3 killing of these individuals. I don't -- yeah.

4 Q. [12:25:57] Very well. I will move on.

5 Now, just to specify one point. Yesterday you told us -- I'm sorry, if you will just
6 allow me a moment. We'll skip over that.

7 I think we can do this in open court. Now, this document can be taken off the
8 screen.

9 Now, in your preparation log, tab 131.1, no ERN number, we just received a courtesy
10 copy, it hasn't been formally disclosed by the Prosecution yet. If that document
11 could be brought up on the screen and shown to the witness, not to the general public,
12 but to the witness.

13 My apologies. I think it would be better to put up the English version of this
14 document, 133, tab 133.

15 A. [12:27:56] It's okay. I can -- it's okay, I can -- that much French I can
16 understand. It's not a problem.

17 Q. [12:28:00] Very well. Thank you for your cooperation, Mr Witness.

18 Line 11 and 12, we see two ERN numbers, CAR-OTP-2044-0734, then *
19 CAR-OTP-2044-0573 -- the document has disappeared.

20 Very well. Now we have the English version. And there's a comment relaying:
21 (Speaks English) "The witness stated that these two documents are the same.
22 Additional information will be in the PRF."

23 (Interpretation) I have several questions for you, Mr Witness.

24 Now, regarding these two documents, you say that additional information will be in
25 the PRF. Could you explain this to us? What does "PRF" stand for, what does it

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1 mean?

2 A. [12:29:15] I think I mentioned it on day one. It's a preregistration form. It's
3 the -- like a coversheet you put on top of the evidence that you book in to the
4 evidence system.

5 Q. [12:29:38] Very well. We don't have the PRF. In Nuix we have the metadata
6 that show that the document comes from the government. Could you confirm that
7 there is no investigator's report that explains how the document was obtained,
8 nothing other than the PRF?

9 A. [12:30:10] I'm sorry, I wouldn't know that.

10 PRESIDING JUDGE SAMBA: [12:30:19] Yes, Mr Choudhry.

11 MR CHOUDHRY: [12:30:21] Your Honours, perhaps the witness could be shown
12 those items so that his answers could be placed in context.

13 PRESIDING JUDGE SAMBA: [12:30:32] Do you have a PRF form that you
14 should -- that you would show the witness?

15 MR JACOBS: [12:30:40] (Interpretation) Your Honour, I would like to, but the
16 Prosecution doesn't normally disclose its documents, so my question is to see if
17 there's an investigative report and I think that my colleague was speaking about the
18 register itself, or the log itself, which I will do in a second when I present the log.
19 But about the way in which they gathered it, we don't have anything that we can
20 present to the witness. We only have the metadata.

21 PRESIDING JUDGE SAMBA: [12:31:12] Yes, carry on with your questions,
22 Mr Jacobs.

23 MR JACOBS: [12:31:16](Interpretation) Thank you.

24 Q. [12:31:18] So, Witness, I'm going to show you the log. Now to facilitate this,
25 we're going to take over the presentation of it. I think it will be shown on evidence

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1 channel 2.

2 PRESIDING JUDGE SAMBA: [12:31:43] We are in open session, right.

3 MR JACOBS: [12:31:50](Interpretation) Yes, your Honour. It's a log register. I
4 don't think there's a problem to show it publicly. I think it can be shown it publicly.
5 We don't have to go into the details of confidential matters.

6 THE COURT OFFICER: [12:32:07] The Defence has the floor, evidence channel 2.

7 MR JACOBS: [12:32:20](Interpretation) Thank you very much.

8 Q. [12:32:24] So, Witness, you can see in front of you, on the left we have the
9 document, CAR-OTP-2044-0734, and then on the right, CAR-OTP-2044-0573. So you
10 have the first page and you say that these two documents are the same in your log.
11 Now, what we have is the impression that it's not the same. We don't have the same
12 marks, we don't have the same tears, we don't have the same paper sticking out.
13 What do you think about that?

14 A. [12:33:01] It is the same document. The register, they filled it in from separate
15 sides. People from -- I believe from the hospital, that died in the hospital, they wrote
16 it in one way, and the people that came to the hospital dead, they wrote it in the other
17 way. So I -- if I had a book, I -- what you've got is this side and this side of the
18 register they've recorded it this way, and then they've recorded it that way. So that's
19 the front -- that's the front of the register or the back, and so 7 -- sorry I can't see the
20 whole number, but one's the front and one's the back of the same register.

21 Q. [12:33:43] Very well. But there is a document on the left which is 148 pages on
22 one side and then there's another one on the right-hand side which is 161.

23 A. [12:34:00] Because they registered different numbers of deaths of people coming
24 to the hospital and dying in the hospital and people who were brought dead to the
25 hospital. But the easiest way would -- you can collect that from the vault and look at

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1 it I'd suggest. As in -- I might be wrong, but I'm -- well, I'm pretty confident.

2 Q. [12:34:22] I don't know if there's a problem with the interpreting, but you say
3 that the two photographs show the same physical document, is that right, the same
4 physical register? Am I right in understanding that?

5 A. [12:34:34] I believe so, yes.

6 Q. [12:34:37] Very well. So I'm going to put my question again.

7 How can it be the case that the same physical document in a PDF, the same
8 document -- the same scanned PDF document now on the one hand can have 148
9 pages and on the other hand can have 161?

10 A. [12:35:01] well, it's -- it's not 148 pages; it's 148 photographs of pages and 161
11 photographs of pages. But if -- if 50 people died -- were brought to the hospital dead,
12 then you'd have 50 entries, and if 400 people died within the hospital, you'd have 400
13 entries. So the number of photographs of the pages would not be the same. But,
14 again, that item is here within the -- within the confines of the court. It can be
15 brought into court and you can establish it would be easier to understand it that way,
16 I believe. I'm not -- yeah.

17 PRESIDING JUDGE SAMBA: [12:35:42] Yes, Mr Choudhry.

18 MR CHOUDHRY: [12:35:43] Your Honour, I'm not sure we're in private session.

19 The material that has come up on the screen contains certain data that may -- should
20 be in private session in my submission.

21 PRESIDING JUDGE SAMBA: [12:35:55] Is it shown to the public, Madam Court
22 Officer?

23 THE COURT OFFICER: [12:35:58] No, it has not been shown to the public for this
24 very reason, Madam President.

25 PRESIDING JUDGE SAMBA: [12:36:03] Thank you very much.

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1 Mr Jacobs, please continue. Hopefully you're watching the time. Thank you.

2 MR JACOBS: [12:36:11] (Interpretation) Yes, I'm trying to advance as fast as possible,
3 Madam President.

4 Q. [12:36:17] Now, Witness, here we can see when you say that it's perhaps the two
5 side -- well, it's a bit difficult for me, I don't have a book in order to visualise it as you
6 have done. So here is the register. So what you tell us is that it's the two sides of it.
7 One photo is the one side and the other photograph is the other side. And so here
8 I'm showing the first page where you have indications of one document and another
9 page which is the other. They're not the same. They should be the same. If what
10 you say is true, then one of the documents will start at the beginning, the other starts
11 at the end, then we should have the same things on the first and last page. I don't
12 know if I'm being clear.

13 A. [12:37:03] I'm sorry. I'm trying to explain. Maybe I'm not doing it well.
14 Perhaps if I could have the -- have the book. But, as I said, that book is here, as in
15 you can look at it and maybe -- well, as I said, I'm pretty confident that that's what's
16 happened.

17 Q. [12:37:25] Very well. So I've taken good note of your testimony. You
18 understand that you have made a statement, or you made an indication of your
19 preparation and I'm trying to check that. So you didn't check the original before
20 saying what you said, that it was the same. You said -- you said it was the same
21 without checking, checking the original, if I understand correctly?

22 A. [12:37:49] I think, as I said, from recollection, I spoke in witness prep and I told
23 them to check the PRF to see if I was right. I think what I said on the witness thing is,
24 if you go back to it, it says, "You should look at the PRF", no? So I'm not making
25 statements without any good cause. I'm saying you should check that.

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1 Q. [12:38:18] Very well, Witness.

2 PRESIDING JUDGE SAMBA: [12:38:37] Before you -- we leave those exhibits, can
3 you confirm, Mr Jacobs, that what you just dealt with, the evidence you just dealt
4 with, are they as in tabs -- tabs -- I mean, tabs 62 and 63 of your binder, the documents
5 we have? Can you confirm that, just for the record?

6 MR JACOBS: [12:39:04](Interpretation) Absolutely, your Honour, tab 62 and tab 63,
7 indeed.

8 Q. [12:39:42] So, Witness --

9 By way of precaution, your Honour, I hope this will be my last series of questions, but
10 I think it's better to go into private session for them?

11 PRESIDING JUDGE SAMBA: [12:40:02] Madam Court Officer, can we go into
12 private session, please.

13 (Private session at 12.40 p.m.)

14 THE COURT OFFICER: [12:40:21] We are in private session, Madam President, your
15 Honours.

16 PRESIDING JUDGE SAMBA: [12:40:24] Thank you very much.

17 Mr Jacobs, please continue.

18 MR JACOBS: [12:40:40] (Interpretation) Thank you, Madam President.

19 Q. [12:40:46] If we could show the witness the CAR-OTP-20 -- so it's tab -- if we
20 show them tab 99. That is CAR-OTP-2093-0963.

21 I think we have to show it evidence 1 for the witness.

22 A. [12:41:29] Yeah, I can see it.

23 Q. [12:41:35] Thank you.

24 So you can see the name -- well, we are in private session, yes. So for the interviewee,
25 (Redacted). Now we can go to the page 0 -- so we can go to the page 0996.

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1 0986, 0986.

2 And that will be line -- I'm starting at line 791 because we have the context:

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 And for reasons of speed, I only read the French, but I will give the full responses in
10 the passage.

11 This is CAR-OTP-2093-0986 and lines 791 to 806.

12 Now, Witness, I have a question. Following this discussion with the witness, did
13 you try to contact (Redacted) in order to try to check this information?

14 A. [12:43:57] I don't know. We may have done. I could have an answer, but I
15 can't answer that now. (Redacted)

16 Q. [12:44:27] Thank you, Witness.

17 Could we now go in the same document to page 1019, please, page -- 1888. And I'll
18 just read the French, but it goes to line 1894.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Witness, same question: Following this exchange, did you check (Redacted)
23 (Redacted)?

24 A. [12:46:00] Again, from recollection, I know that we sent several requests for
25 assistance to (Redacted). I don't know if we sent one particularly on this issue, but

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1 we certainly made some inquiries with (Redacted). Again, I know that -- I believe
2 that we interviewed at least (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. [12:46:44] Thank you, Witness. I have a last excerpt that I wanted to show you
7 by way of follow-up. This is -- we can take this document away. And this is at
8 tab -- it's tab 100 on our list of materials.

9 Thank you, court officer. If we could show page 1040 to give the context.

10 A. [12:47:30] Sorry, can -- may I just add one thing to my last answer?

11 Q. [12:47:33] Please do, Witness.

12 A. [12:47:35] Just in terms of the fact that the Seleka were staying at the hotel, we
13 had that -- we knew that, as in I think we had the hotel register from the time. If that
14 was a query.

15 Q. [12:47:52] Thank you, Witness, for this clarification.

16 Now, this last excerpt which I'm going to read to you is quite long, so I'm just going to
17 read the French parts thereof before asking you questions by way of clarification.

18 So, it goes from page 1040 and it goes from line 516 and that gives you the context.

19 I'm just going to read the French even if you've got the French:

20 "So when was the decision taken to cross the red line and to go towards Bangui?

21 My -- well, first of all we had a meeting at the Catholic church of Sibut.

22 We met there.

23 The international community was there.

24 We also -- we also went there and also certain members of the government.

25 So we came, we had the meeting and the children decided that Bozize did not respect

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1 his commitments.

2 (Redacted)

3 So there was a discussion between the chief of the Seleka -- of the Seleka and the
4 international community.

5 At the end of the day, the international community left at the end of the day.

6 (Redacted)

7 Now you can go on to the next page.

8 (Redacted)

9 (Redacted)

10 So we have a question then:

11 "When you say 'the children', who are you speaking about? Is it the people?

12 No, I'm speaking about the UFDR elements.

13 And afterwards -- and now it's three days afterwards, we also had the radio, which
14 the children were progressing towards the red line. We heard on the radio that the
15 children were progressing towards the red line.

16 Certainly, they got an order, but from whom, I don't know.

17 And you know, on the red line, the international community is here. You cannot go
18 against the international community. If not, you will also be aware."

19 I was waiting for the interpreting to finish.

20 So, Witness, I've got the same question to put to you.

21 * Did you investigate the matter? Did you try to recover the audio recordings that
22 (Redacted) spoke about? He said that he'd heard it on the radio. Did you try and
23 get recordings of these radio broadcasts?

24 A. [12:51:53] I know the tasks were given to the investigators to collect all the audio
25 radio recordings that we could find. I think we tried to collect -- the parameters we

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1 set was basically the national news in both French and Sango for -- I can't remember
2 the exact parameters of the -- the date parameters but we did try to recover those.
3 But I don't know necessarily that he's talking about radio as in broadcast radio. He
4 could be talking about more military radio.
5 But I can also say that what he's saying there is consistent with our investigation.
6 He -- before the Seleka came down to Bangui around 23 March, there were certain
7 Seleka who had joined, become ministers in President Bozize's government. And
8 then, as they say -- as he says there, there's been a -- there's a breakdown, and
9 Mr Bozize is not perceived to be living up to what his promise is, at which point a
10 military element within Seleka puts aside the political, the
11 ministers - (Redacted) - and decides to go down to Bangui. So I think that's
12 consistent with the rest of the -- I believe, yeah, that's consistent -- what he says there
13 is consistent with what we know. Whether it's a real, how can I say, putting them
14 aside and imprisoning them, or whether it was a convenient way to represent the
15 situation, I think we never managed to establish that.

16 Q. [12:53:40] Thank you, Witness.

17 Your Honour, that was my last line of questioning indeed.

18 Oh, I'm sorry, I'm told that I have to formally submit the item 133 -- or tab 133, the
19 preparation log, * and that is ERN 00036924.

20 PRESIDING JUDGE SAMBA: [12:54:13] Thank you very much, Mr Jacobs.

21 Mr Choudhry, do you have any questions in re-examination, please.

22 MR CHOUDHRY: [12:54:19] Your Honour, ordinarily not, however, my learned
23 friend raised two ERNs which concern really the register which is from the ministry
24 of health and suggested that that particular item or those particular items might not
25 be the same item as the witness has testified. My learned friend's questioning

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1 generally relates to the integrity of the investigation and how matters are recorded as
2 well as their accuracy. It would be my submission that as a result of my learned
3 friend's questioning, it's only right that we call for the hard copy -- it's an unusual
4 request that isn't ordinarily made, but that we call for the hard copy of that register so
5 that we can see it in court in the physical format that it was collected in so that your
6 Honours can assess whether those two ERNs are in fact the same document. I may
7 then have some questions to the witness, possibly one or two, in relation to how that
8 document came about and/or its accuracy.

9 But as things stand, the questions that my learned friend put are that it could be
10 suggested that either the recording is erroneous or that the documents aren't the same.
11 I'm not sure -- if your Honours are with me on that, I'm just not sure as to what the
12 procedure is.

13 PRESIDING JUDGE SAMBA: [12:55:55] Well, our duty here is to look at everything
14 to determine to the truth.

15 Yes, Mr Witness, can I hear you?

16 THE WITNESS: [12:55:59] Yes, sorry, your Honour, I'm trying to remember if we
17 have the physical -- if we have the physical register or not, or whether we
18 photographed it and brought it here. So I don't know that. I assumed, sorry, from
19 the photographs, I thought we might have it but I don't know if we have it or not. If
20 the Prosecution know that we have it, then that would be a useful way obviously to
21 resolve the issue.

22 PRESIDING JUDGE SAMBA: [12:56:26] Mr Choudhry.

23 MR CHOUDHRY: [12:56:27] Your Honour, the witness may be right. There may
24 be copies. I would have to confirm because I do recall seeing an investigator's note
25 as to certain registers being returned. If that is the case, then -- your Honour, then

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1 I would ask for some time in order to put certain matters within those registers to
2 assess whether they are the same and/or accurate, as well as perhaps in this particular
3 case, your Honour, because the PRF is relevant, to obtain that, disclose it to my
4 learned friend, to the Defence, and register that for your Honours' review.

5 PRESIDING JUDGE SAMBA: [12:57:05] It is the witness's testimony, is it, that that
6 document as shown you by the Defence which you have as tab 62 and 63, you're
7 saying it's one document and not two?

8 THE WITNESS: [12:57:22] Yes, I think those are photographs taken in different
9 directions in the same book.

10 PRESIDING JUDGE SAMBA: [12:57:31] Okay. Can you -- maybe, Prosecution, if
11 you have something that could help the Court, because he has already said he doesn't
12 think, and you've confirmed that that is the case, that we don't have, you know, the
13 original of that particular document, but whatever you think could help in our
14 determination and you, of course, serve your colleagues on the other side of the bar.

15 MR CHOUDHRY: [12:57:57] Your Honours, what I could do at this stage, but it
16 would require a small amount of time as to whether any redactions are required, is
17 I've been sent the PRF for that document. There's certainly questions I can put to the
18 witness as to the accuracy of the information in the register, but that's not the issue.
19 The issue is whether the documents are the same. There is information in the PRF
20 which suggests that they are, but I don't want to give that evidence, I want that to
21 come from the witness. But I would have to show the PRF to the witness, your
22 Honour, in order to do that. That would require me to move to a different machine
23 because that document hasn't been disclosed because PRFs aren't ordinarily
24 considered to have any evidential value under the Statute.

25 PRESIDING JUDGE SAMBA: [12:58:50] Well, you may. And as I say, whatever

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1 you do, just, I mean, give it to the other side and let's see what we can make of it.

2 And we'll come -- are you suggesting that we call this witness again to talk on those
3 documents?

4 MR CHOUDHRY: [12:59:06] Not at all, your Honour. Your Honour, if I'm given
5 five minutes, I could log on to the computer next to me and perhaps I can pull up that
6 document in front of the witness, your Honours will see the PRF that my learned
7 friend has asked questions about, the witness can read it and questions can then be
8 put as to whether or not they are the same document if those are a copy.

9 PRESIDING JUDGE SAMBA: [12:59:26] Mr Jacobs, please.

10 MR JACOBS: [12:59:28] (Interpretation) Thank you, your Honour. Just a few points
11 that I would like to make. I don't know what order I should put them in, if you give
12 me a moment.

13 Firstly, these two registers were submitted by the Prosecution and we are two and a
14 half years from the date when evidence was to be submitted. If the Prosecution has
15 evidence which makes it possible to justify the authenticity of these documents in
16 their custody, they should have submitted it two and a half years ago. Frequently
17 the Defence makes disclosure requests, PRFs and other sources, other documents
18 which are frequently refused by the Prosecution. And such -- they are used -- their
19 relevance can be seen in hearings later. And in general, with regards to the timing,
20 the Prosecution should have presented the evidence which would make it possible to
21 explain how these registers were obtained a long time ago. And that's the first point
22 that I would like to make.

23 Secondly, so the Prosecution knows that it's contested. Furthermore, the evidence,
24 they've discussed it with this witness during the preparation of these registers, so this
25 is something that does not appear from nowhere in our cross-examination. We are

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1 aware of the exercise that the Prosecution carried out when it was preparing this
2 witness. So if there was evidence to be brought hereto, it's still late for that. But it's
3 not after the cross-examination to be done. So we think that the Prosecution is
4 waking up a bit late with regards to this question.

5 Thirdly, if the document were to be presented now, we wouldn't have time to analyse
6 it or decide what to do with it, whether we wanted to use it during cross-examination,
7 put it on the record, because the Prosecution cannot put it on the record. It's not on
8 the -- its list of materials or -- so we would have to decide what to do with this
9 document once disclosed by the OTP.

10 Thank you, Madam President.

11 MR CHOUDHRY: [13:02:06] Your Honours, my learned friend is incorrect. Those
12 were items that the Prosecution were prohibited from putting to the witness. That is
13 exactly what the Prosecution did. It abided by your Honours' directions in its email.
14 The documents are on the list of evidence, they simply weren't put as a result of your
15 Honours' direction.

16 That's not the issue, though, your Honours --

17 MR JACOBS: [13:02:33] (Interpretation) I'm sorry, sorry to interrupt, but let's be very
18 clear about the interpretation. I'm talking about the PRF. The PRF was never
19 disclosed to the Defence and never appeared on any OTP list of materials. I'm -- so
20 waking up at the end of cross-examination to bring in a document attesting to the *
21 chain of custody of a document obtained seventeen years ago. I'm not -- I'm talking
22 about the PRF.

23 MR CHOUDHRY: [13:03:04] Your Honour, my learned friend is correct in relation
24 to the PRF, that wasn't disclosed because PRFs aren't ordinarily disclosable. The
25 issue here is that my learned friend has put in the question that these documents

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1 aren't the same, that's what's being suggested, and that as a result of that, there may
2 be a flaw in the Prosecution's investigation. My learned friend questioned the
3 witness and it's as a result of that and the witness -- the annex to the witness
4 preparation which relates to the PRF. So the PRF and these documents are now an
5 issue that have been raised by a question that my learned friend put. The simply
6 question is: Are these documents the same or not? And it's my submission that
7 your Honours have a right to determine that issue.

8 PRESIDING JUDGE SAMBA: [13:03:53] Yes, but the witness has himself said during
9 answers to questions put by Mr Jacobs, and even questions from the bench, that those
10 documents are the same. If it is something new that came out from
11 cross-examination, you would be putting the same questions to this witness. Those
12 are documents in the -- during prep, confirmed by the witness during his preparation
13 that the two ERNs are the same. That is the testimony before the Court. So we
14 shall look at it and analyse it according to his explanation, his testimony given to us
15 here. I don't think we need any more -- to deal with that any further, actually.
16 We'll deal with it, we'll deal with the evidence as it is before the Court.

17 His testimony is that the two documents as in tabs 62 and 63 are one and the same
18 document. And he gave further explanations in respect of numbering. He even
19 showed by way of a box that he has in front of him that things were recorded this
20 way and that way. Mr Jacobs also tried to use the legal framework he has on his
21 desk from the bar to explain what the witness was saying and he again went on to say
22 that "This is what I'm saying, we record it this way and that way, but it's the same
23 document". So, you know, I don't think we need to deal with that any further.
24 We'll take it at that. Thank you very much.

25 MR CHOUDHRY: [13:05:22] Thank you, your Honour.

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- 1 PRESIDING JUDGE SAMBA: [13:05:24] And with that we don't have any questions
- 2 for you, Mr Witness. I wish to, on behalf of the Chamber, thank you very, very
- 3 much for, you know, cooperating with us and for your testimony. I wish you well in
- 4 your work. I know, you know, we're all here. Good luck with your work with
- 5 investigations and anything you wish to do that would further your career. Thank
- 6 you very much.
- 7 (The witness is excused)
- 8 PRESIDING JUDGE SAMBA: [13:05:51] I rise the Court for tomorrow, 9:30.
- 9 THE COURT USHER: [13:05:58] All rise.
- 10 (The hearing ends in private session at 1.06 p.m.)