

Trial Hearing
WITNESS: CAR-OTP-P-2232

(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 Maria del Socorro Flores Liera and Judge
6 Sergio Gerardo Ugalde Godínez
7 Trial Hearing - Courtroom 2
8 Thursday, 29 August 2024
9 (The hearing starts in open session at 9.34 a.m.)
10 THE COURT USHER: [9:34:36] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SAMBA: [09:35:03] Good morning, everyone. Madam court
14 officer, can you kindly mention the case.
15 THE COURT OFFICER: [9:35:14] Good morning, Madam President, your Honours.
16 The situation in the Central African Republic II, in the case the Prosecutor versus
17 Mahamat Said Abdel Kani, case reference ICC-01/14-01/21.
18 We are in open session.
19 PRESIDING JUDGE SAMBA: [09:35:24] Thank you very much.
20 Can I ask for representations, starting with the Prosecution.
21 MS MAKWAIA: [9:35:32] Thank you, Madam President. Your Honours, good
22 morning.
23 For the Prosecution this morning, Alessia Vitiello, Kamran Choudhry, Thomas
24 Bifwoli, Thomas Laugel, and myself, Holo Makwaia.
25 PRESIDING JUDGE SAMBA: [09:35:43] Thank you very much, Ms Makwaia.

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1 Ms Pellet for the victims, please.

2 MS PELLET: [9:35:54] Thank you, Madam President.

3 The victims are represented by Tars Van Litsenborgh and myself, Sarah Pellet,
4 counsel OPCV.

5 PRESIDING JUDGE SAMBA: [09:36:01] Thank you, very much, Ms Pellet.

6 Mr Jacobs for the Defence, please.

7 MR JACOBS: [9:36:12](Interpretation) Good morning, Madam President.

8 Elina Legat is beside me. And seated behind me, Maya Ley-Robertson. And as for
9 myself, I am Dov Jacobs, counsel for Mr Said.

10 PRESIDING JUDGE SAMBA: [09:36:24] Thank you very much, Mr Jacobs.

11 And for the record, I note that Mr Said is here in court with us. A very good
12 morning to you, Mr Said. I hope you rested well.

13 MR SAID: [9:36:38](Interpretation) Yes, good morning, Madam President.

14 PRESIDING JUDGE SAMBA: [09:36:40] Good morning.

15 We are informed that the Prosecution has some information for the court.

16 Mr Prosecutor, can we hear you, please.

17 MR CHOUDHRY: [9:37:00] Thank you, Madam President, your Honours.

18 Your Honours, the Prosecution raises an issue now so as to give the Defence an
19 opportunity to use what the Prosecution will propose should be admitted into the list
20 of evidence during its cross-examination of the witness.

21 Your Honour, the Prosecution essentially makes an application pursuant to
22 Regulation 35 of the Court to admit three items of evidence to the list of evidence in
23 this case.

24 Yesterday, this witness testified about phone calls that he made to a friend. He
25 provided numbers in relation to both his own number and that of the individual

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1 whom which he contacted.

2 Your Honours will be aware that call data records for each witness have been
3 disclosed to the Defence and have, in fact, been used in relation to other witnesses by
4 the Defence in this case.

5 On this occasion, two of the items in relation to this particular witness were disclosed
6 on 28 November 2022. And the ERNs for that I will provide at the end.

7 But, essentially, your Honours, what the Prosecution are seeking to do is to admit the
8 call data records for this particular witness.

9 The Prosecution submits that in accordance with Regulation 35, there is no prejudice
10 to the accused, and that is because they have been on notice of these records, and that
11 it is in the interests of justice and in pursuit of the Chamber's determination of the
12 truth.

13 Your Honours had certain questions or put certain questions to the witness. These
14 call data records would assist your Honours in making a determination.

15 Your Honours, I can provide the ERNs for each of those documents that the
16 Prosecution seeks to admit, but at this stage that is the submission of the Prosecution.
17 PRESIDING JUDGE SAMBA: [9:39:07] Mr Choudhry, you referred to two of those
18 items disclosed on 28 November, you say, 2022, but you're talking about three items
19 that you want to deal with now. What's the third item?

20 MR CHOUDHRY: [9:39:25] The third item, your Honour, is the actual source data
21 from Orange. So it is the raw data that was provided by the telephone company to
22 the Prosecutor and that has been disclosed to the Defence as well, albeit that was
23 disclosed this year.

24 PRESIDING JUDGE SAMBA: [9:39:43] When this year?

25 MR CHOUDHRY: [9:39:44] In August, on 23 August 2024.

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1 And what the Prosecution submits, your Honours, is that the analysis of that raw data
2 was provided to the Defence in 2022 and that in addition to that analysis the
3 Prosecution would also seek to submit the raw data which would assist in
4 understanding that analysis.

5 PRESIDING JUDGE SAMBA: [9:40:14] Thank you. Do you have anything more to
6 say?

7 MR CHOUDHRY: [9:40:18] No, your Honour.

8 PRESIDING JUDGE SAMBA: [9:40:19] Mr Jacobs?

9 MR JACOBS: [9:40:21](Interpretation) Thank you, Madam President.

10 At this stage, it's difficult for us to provide a detailed response. We don't have the
11 ERN numbers. We haven't had the time to look at the items and how long the
12 Prosecution has had, so we really can't respond spontaneously.

13 Perhaps the Prosecution could make a written request after the witness has left.

14 Now, two general remarks all the same: First of all, the fact that we received
15 disclosure of an item does not mean that we necessarily analysed it as an
16 incriminating item.

17 Just because we were disclosed something a year or two ago -- I mean, our principle is
18 that the Prosecution has deemed it not to be an incriminating item, so we deal with
19 that in a certain way. So this is not an argument. The Prosecution cannot say that
20 we have had the item for six months or a year. If the Prosecution has said that it's
21 a 76 item, that's the first -- correction, 77 regulation item.

22 Secondly, the third document, if I've understood correctly, was disclosed in August at
23 our request. Before the witness arrived, we asked for disclosure from the OTP. We
24 thought it was relevant. It had not been disclosed to us and in that context the raw
25 data was disclosed to the Defence.

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1 Once again, the Prosecution had that item and the Prosecution decided not to use it
2 and, now, spontaneously - well, once we see a written request, perhaps, but right now
3 we are having a hard time understanding why this request has been made at such a
4 late date.

5 I would imagine that this has to do with telephone contact by the witness with other
6 people, and the CDR is available to the Prosecution and that has been the case for
7 several years.

8 The witness has been on the list of Prosecution witnesses for three years, so we are
9 having a hard time understanding how it is that after examination-in-chief, the
10 Prosecution is suddenly making this request.

11 That's our preliminary response. We would need to have the ERN numbers so that
12 we can look at the items more closely.

13 Thank you, your Honour.

14 PRESIDING JUDGE SAMBA: [9:43:40] Mr Choudhry, in respect of the requirements
15 for Regulation 35, what are the exceptional circumstances that made it impossible for
16 you to make the request for variation of time limit in respect of these particular
17 documents?

18 MR CHOUDHRY: [9:44:09] Your Honour, in relation to this particular document, I
19 will provide the ERNs. The simple answer is that the witness testified only
20 yesterday and gave his evidence on this subject only yesterday in relation to that.
21 That wasn't, your Honour, in all honesty, something that the Prosecution anticipated
22 the witness giving evidence of, however, pursued that line of questioning subsequent
23 to the witness volunteering information as to him contacting a friend. So that is
24 what has prompted this information.

25 In relation to the ERNs, I provide those for my learned friend. The first is 00000704,

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1 00000705 and CAR-OTP-2112-1449. So those are the ERNs.

2 In relation to my learned friend's submissions as to whether this has been, in effect,
3 dumped on them, whether they have reviewed it, my learned friend has indicated
4 that they in fact requested the raw data. That's the source material for the two
5 reports which were provided to the Defence in 2022.

6 But in direct answer to your Honours' concerns, whether this could have been
7 anticipated, whether there is good cause, it is simply that the witness testified only
8 yesterday and this information assists the Chamber in making an assessment of what
9 the witness said yesterday.

10 In terms of the real concern as to Mr Said and his Article 67 rights, it's a question of
11 whether he's prejudiced in any way by the admission or submission of this evidence;
12 and, in the Prosecution's submission, he cannot be, because the information which the
13 Prosecution are seeking to submit was provided in 2022. And it would be the
14 Prosecution's submission that the Court ought to look ultimately at the interests of
15 justice and whether the submission of evidence is fair and whether it assists in the
16 determination of the truth, and it's the Prosecution's submission that these items do
17 that.

18 PRESIDING JUDGE SAMBA: [9:46:31] You had -- did you have that call log in your
19 hand yesterday when you were leading the witness in-chief?

20 MR CHOUDHRY: [9:46:44] No, your Honour. What I did have was a statement
21 which your Honours had portions of it redacted. That's an indication as to whether
22 the Prosecution anticipated whether it was going to be of use or not in this courtroom.

23 PRESIDING JUDGE SAMBA: [9:46:58] Now, we have no doubt that, you know, if
24 we have that document in hand, you know, it will help, but -- it will help the
25 Chamber in making a determination eventually.

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1 What I want to ask you is the friend you are talking about, are you talking about the
2 friend he said he contacted in respect of weapons?

3 MR CHOUDHRY: [9:47:23] It's exactly that, your Honour, and it's the number that I
4 sought to confirm in private session. There was a -- there was a friend that he
5 contacted and another individual with which he made arrangements in relation to
6 weapons, and it is the latter. I can specify more directly if -- your Honours, if we
7 were to go briefly into private session.

8 PRESIDING JUDGE SAMBA: [9:47:49] No, I think we understand very well. But,
9 you see, when you -- in your first submission you were concerned about the Defence
10 maybe wanting to put certain questions to the witness. Now that, you know, they
11 have an opportunity to cross-examination the witness --

12 MR CHOUDHRY: [9:48:06] Yes.

13 PRESIDING JUDGE SAMBA: [9:48:06] -- they want to put questions to the witness
14 in respect of, you know, those that -- I'm not saying that they will, but just in case they
15 want to.

16 MR CHOUDHRY: [9:48:14] Your Honour, the reason the Prosecution raises this, as
17 opposed to making a written submission subsequently, is purely as a matter of
18 fairness. It may well be that this is an opportunity for the Defence to use any
19 material that is submitted in questioning to the witness. So it's to the benefit of
20 Mr Said as opposed to making a submission in writing after this witness's testimony
21 has been completed.

22 PRESIDING JUDGE SAMBA: [9:48:44] I think what would be fair in this
23 circumstance is to ask that you do something in writing and we'll allow the Defence
24 to respond to it, and we shall give a ruling on its admissibility.

25 Thank you very much.

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1 MR CHOUDHRY: [9:49:04] Thank you.

2 PRESIDING JUDGE SAMBA: [9:49:05] Madam Court Officer, can we have the
3 witness in, please.

4 (The witness enters the courtroom)

5 PRESIDING JUDGE SAMBA: [9:50:30] Good morning, Mr Witness. I hope you
6 rested well.

7 WITNESS: CAR-OTP-P-2232 (On former oath)

8 (The witness speaks Sango)

9 THE WITNESS: [9:50:38](Interpretation) Good morning. Yes, I did rest well.

10 PRESIDING JUDGE SAMBA: [9:50:43] Now we're going to continue with taking
11 your testimony and I'm going to ask Defence counsel for Mr Said to put questions to
12 you in chief, but I wish to remind you that you are still on oath to tell the truth to this
13 Court and nothing but the truth.

14 So, Mr Jacobs, I invite you to put questions in cross to this witness. And we are in
15 open session, please.

16 MR JACOBS: (Interpretation) [9:51:19] Thank you, Madam President.

17 Madam President, before beginning cross-examination, and in accordance with the
18 Decision on the Conduct of Proceedings, I wish to inform the Chamber that
19 subsequent to the examination-in-chief we have made a few adjustments to our
20 cross-examination. We will try to respect the time limits as much as possible, but we
21 may require a few extra minutes. In any event, I will do all I can to conclude today,
22 but I may go a little bit past the time allotted, with your leave, of course, your
23 Honour.

24 PRESIDING JUDGE SAMBA: [9:52:33] Yes, certainly. Thank you. Let's try and
25 see how much you make of the time, the time left.

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1 MR JACOBS: [9:52:50](Interpretation) Thank you.

2 QUESTIONED BY MR JACOBS: (Interpretation)

3 Q. [9:52:51] Good morning, Witness.

4 A. [9:52:52] Good morning.

5 Q. [9:52:52] I am Dov Jacobs and today I will be putting some questions to you on
6 behalf of Mr Said's defence team.

7 As the Prosecutor explained to you yesterday, and by the Chamber and the Presiding
8 Judge, everything is being recorded here in the courtroom, typed out, so to speak.

9 We have the transcript here, right here, right on the screen, and also interpreters, so
10 it's important for us to speak slowly and to pause -- if you could pause for
11 five seconds after my question before you give your reply and I will try to do the
12 same. And that way we will be able to cross-check everything that is said and
13 placed on the record.

14 Is that all right with you, Mr Witness?

15 A. [9:53:46] Yes, I've understood.

16 Q. [9:53:54] Very well.

17 Madam President, I believe we'll have to go into private session for my initial
18 questions, with your leave.

19 PRESIDING JUDGE SAMBA: [9:54:03] Certainly.

20 Madam Court Officer -- well, sorry, Madam Court Officer, let me just give a short
21 instruction before we move on.

22 In respect of our earlier discussion, can I ask the Prosecution to put in their request by
23 close of business today.

24 MR CHOUDHRY: [9:54:27] Yes, your Honours. That's the intention.

25 PRESIDING JUDGE SAMBA: [9:54:29] Okay.

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1 And Defence, we require a response by close of business tomorrow - thank you very
2 much - in respect of our earlier discussion.

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

4 (Private session at 9.54 a.m.)

5 THE COURT OFFICER: [9:54:55] We are in private session, Madam President.

6 PRESIDING JUDGE SAMBA: [9:54:58] Thank you.

7 Mr Jacobs, thank you.

8 MR JACOBS: [9:55:02](Interpretation) Thank you very much, your Honour, and we
9 have taken good note of the deadline.

10 Q. [9:55:13] Mr Witness, I have a few questions for you, very quickly, about your
11 passage through life, so to speak.

12 Where were you born, Mr Witness?

13 A. [9:55:26] I was born in Bangui.

14 Q. [9:55:33] In which neighbourhood?

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [9:57:06] Yesterday you told us that you stopped school at one particular point

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1 in time. (Redacted)
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23 Q. [10:06:25] Now, Madam Courtroom Officer, could we please show tab 21 on our
24 list of material, CAR-OTP-2100-2668. And it can be shown to the witness.
25 Mr Witness, can you see that document?

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1 A. [10:07:03] Yes, I can see the document.

2 Q. [10:07:04] It's written, "Mobilisation and Sensitisation - Composition of the

3 Bureau".

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 A. [10:10:05] I believe that the COCORA movement was already -- well, it was

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1 under way in 2012. (Redacted). When the Seleka started its rebellion, they started
2 to mobilise the youth in order to protest against the Seleka rebellion. They worked
3 until 2013.

4 Q. [10:10:34] Very well, Mr Witness. That's very useful.

5 Could we please remove the document and I request that it be formally submitted,
6 that's tab 21 on our list of material.

7 And let me give you the reference again: CAR-OTP-2100-2668.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 A. [10:11:49] No problem.

15 MR JACOBS: [10:11:56](Interpretation) Could we please move into open session,
16 Madam President.

17 PRESIDING JUDGE SAMBA: [10:12:00] Yes.

18 Madam Court Officer, can we go into open session, please.

19 (Open session at 10.12 a.m.)

20 THE COURT OFFICER: [10:12:12] We are in open session, Madam President.

21 PRESIDING JUDGE SAMBA: [10:12:14] Thank you.

22 Mr Jacobs, please continue.

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

24 Q. [10:12:29] You spoke to us yesterday, Mr Witness, about the creation of the
25 Anti-Balaka. You spoke about self-defence groups. Can you confirm that the

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1 self-defence groups in the villages, they wanted to protect themselves from the
2 Zaraguinas, that is to say banditry, generally speaking?

3 A. [10:13:00] No. Those who were called the Anti-Zaraguinas were another entity
4 entirely. They started under the reign of President Patassé and they were fighting
5 against those who cut off people's roads. The Anti-Balaka started when the Seleka
6 came into being. I would say that it was the Seleka who gave rise to their creation.
7 Had the Seleka not come to power, the Anti-Balaka would have not come into
8 existence.

9 In 2003 there was a rebellion and then the Seleka took over the country and they cut it
10 up. That is why each population from each village rose up in order to oppose the
11 exactions of the Seleka.

12 Q. [10:14:04] So, Mr Witness, I'm going to be reading you an excerpt from your
13 prior statement.

14 So that's tab 1.3 for the French version and 1 for the English version. *

15 CAR-OTP-2107-6147. So paragraph 54, page 6156.

16 So you say in this paragraph, I'm going to be reading the beginning of it:

17 "In the villages, self-defence groups had already been forming to protect the
18 population. They were created to fight the high robbers -- highway robbers and
19 were called Anti-Zaraguinas. For example, the group of Andjilo existed already
20 before. Other groups like the ones of 12 Puissance, Corporal Inga and Samy Bawa
21 were created at a later stage."

22 So my question, Mr Witness, I have understood what you said about the Anti-Balaka
23 under the Seleka, but my question is different. The phenomenon, the fact that there
24 are self-defence groups in African villages did not come into being, they did not come
25 into being when the Seleka came along, they came into being in order to fight the

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1 highway robbers, did they not?

2 A. [10:15:59] When I provided my statement, I said that I talked about Andjilo as
3 an individual and not his group. He was one of the Anti-Zaraguinas. And then he
4 joined the Anti-Balaka. And the various groups that were set up was subsequently.
5 We're talking here about a reaction to the exactions of the Anti-Balaka.

6 I'm going to give you an example. {ICR: (Redacted)}

7 (Redacted)

8 (Redacted)}

9 PRESIDING JUDGE SAMBA: [10:17:04] Mr Witness, we're in open session, so I'm
10 going to ask that you stop naming names. If you want us to go into private session,
11 we can do that. Do you want us to go into private session, Mr Witness?

12 THE WITNESS: [10:17:28](Interpretation) Yes, I would like for us to go into private
13 session, please.

14 PRESIDING JUDGE SAMBA: [10:17:33] Madam Court Officer, can we go into
15 private session, please. Thank you.

16 (Private session at 10.17 a.m.)

17 THE COURT OFFICER: [10:17:39] We are back to private session, Madam President.

18 PRESIDING JUDGE SAMBA: [10:17:51] Thank you very much.

19 Mr Jacobs, please continue.

20 MR JACOBS: [10:18:03](Interpretation) Thank you, Madam President.

21 Q. [10:18:04] Now, Mr Witness, you can continue, we are now in a closed session.

22 I have understood, once again, what the situation was in 2013, as you describe it.

23 However, once again, my question was a little different in nature. You did answer it,
24 the fact that there were self-defence groups in existence beforehand and you said that
25 the self-defence groups of 2013 were not the same; is that what you are testifying to

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1 today?

2 A. [10:18:32] I never said that the Anti-Zaraguinas subsequently became
3 Anti-Balaka. The Anti-Zaraguinas were fighting against the highway robbers who
4 looted the goods of the traders, and that movement had been in existence since under
5 Pattasé, so that's 1988-1992. That group was already in existence then.

6 Most of the Anti-Zaraguinas were Peuhl, but the Anti-Balaka came into existence
7 because of the exactions committed by the Seleka. It was the Seleka that gave rise to
8 the creation of the Anti-Balaka. Had the Seleka not looted, we would not have had
9 such a situation. You see that in 2003, when there was a *coup d'état*, there was no
10 group, no self-defence group in existence because after that rebellion there was no
11 exactions committed, like it was the situation with the Seleka.

12 The Seleka took power and they gave rise to the Anti-Balaka group because of the
13 exactions that they committed.

14 Q. [10:20:12] You say to us that there was a *coup d'état* in 2003, because after that
15 rebellion there was not -- no exactions like those committed by the Seleka. You're
16 saying that under the presidency of Bozizé, under Francois Bozizé, there were no
17 exactions committed? Is that what you are telling us today?

18 A. [10:20:36] I didn't talk about Bozizé's regime; I talked about the taking of power
19 during that rebellion. Two or three weeks later, calm returned and the population
20 was living peacefully. One cannot compare this with the Seleka rebellion; and, if
21 I remember correctly, it was four months after the taking of oath. The exactions
22 continued, the Seleka exactions continued from the moment when the oath was taken
23 by Djotodia until he resigned. Had they taken power and lived in symbiosis with
24 the population, we would not have lost the members of our family the way we did
25 and (Redacted). They did not re-establish peace. They did not install peace. They

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1 rose up to defend themselves and that is how the Anti-Balaka movement came into
2 existence.

3 Q. [10:21:49] Very well, Mr Witness. My question was not at all concentrating on
4 the Seleka. It was -- it had a bearing on what happened under Francois Bozizé.
5 Now, your position today, are you saying that throughout the 10 years under
6 Francois Bozizé, no crimes were committed by Francois Bozizé and his -- and his
7 government against the civilian population, against political opponents? Is that
8 what you're testifying to today?

9 A. [10:22:25] No. I do not know of any wrong that was being done. The
10 population was living peacefully, salaries were being paid, schools were functioning
11 normally. There was no looting, there were no killings, and that is what I am aware
12 of. But as regards any other actions, any other exactions, I am not aware of that.
13 What I do know is that nobody would come and rape or loot or commit any exactions
14 upon a member of one's family.

15 Q. [10:23:13] Thank you, Mr Witness.
16 So I'm going to be moving on to another topic now, so these are questions of -- that
17 are general in nature, so I do believe that we can move into open session,
18 Madam President?

19 PRESIDING JUDGE SAMBA: [10:23:34] Mr Witness, we are moving again into open
20 session, so be mindful of making any statement that will reveal your identity, or that
21 of your family or loved ones.

22 Madam Court Officer, can we go back into open session, please.

23 (Open session at 10.24 a.m.)

24 THE THE COURT OFFICER: [10:24:05] And we are back to open session,
25 Madam President, your Honours.

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1 PRESIDING JUDGE SAMBA: [10:24:07] Thank you very much.

2 Mr Jacobs, please.

3 MR JACOBS: [10:24:19](Interpretation) Thank you, Madam President.

4 Q. [10:24:21] Now, Mr Witness, you talked to us yesterday about a number of
5 events, of attacks during the time frame we are talking about. I don't want to hark
6 back to that specifically, but I want to place in time things as specifically as we
7 possibly can. It's important for us, as you saw with the questions put to you
8 yesterday, we need to really locate things or situate things in time. I'm going to
9 come back on these questions in order to move forward as fast as possible.

10 Now, you explained to us that the Anti-Balaka movement came into being after the
11 failure of the attack upon the swearing-in ceremony of Djotodia; is that correct?

12 A. [10:25:05] That is correct.

13 Q. [10:25:09] So I'm going to provide you with a reference for the record. So
14 transcript T-102, page 32, lines 10 to 25, for the record. That is the French transcript,
15 let me specify that.

16 Now, with regard to the date of this event, you say that you no longer recall precisely
17 when it occurred.

18 Now, Madam Courtroom Officer, could we please bring up tab 36 on our list of
19 material, CAR-OTP-2050-0989. That can be shown both to the witness and to the
20 public. It is a press article. It has already been submitted, let me say that up front.
21 It is an article dated 20 August 2013. And if we look at the first paragraph of that
22 article, if we can scroll down somewhat, please, we see: "Over the last three days the
23 quartier Boy-Rabe" ...

24 THE INTERPRETER: [10:26:44] Counsel needs to slow down or we need to zoom in,
25 please. We need to zoom in so the interpreter can actually see the paragraph that

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1 he's quoting from at great speed. Thank you.

2 THE COURT OFFICER: [10:26:50] (No interpretation)

3 MR JACOBS: [10:26:59](Interpretation) Thank you, Madam Courtroom Officer. I
4 realise I was going a little bit too fast. Could the document please be zoomed in on
5 paragraph 3. Thank you.

6 Q. [10:27:08] So: "Over the last three days, Boy-Rabe neighbourhood in the
7 north-east of Bangui is being monitored by Seleka patrols, the former rebellion that is
8 now in power since the *coup d'état* of last March. Approximately 10 vehicles from
9 the police have arrived in the neighbourhood. This deployment took place on the
10 day when the self-proclaimed president, Michel Djotodia, took the oath. That is, the
11 Sunday, 18 August. The day before, gunfire had been fired in the neighbourhood."
12 So, Mr Witness, can you confirm that that is the events you were talking to us
13 about -- that is to say, the investiture of Mr Djotodia on 18 August 2013?

14 A. [10:28:36] Djotodia took the oath on 18 August 2013 and the event occurred on
15 18 August at 3 o'clock in the morning. But, if you want, we can go into private
16 session for me to be able to provide you with further details.

17 Q. [10:28:55] Yes, indeed.

18 MR JACOBS: [10:28:55](Interpretation) Madam President, could we please go into
19 private session.

20 PRESIDING JUDGE SAMBA: [10:29:02] Madam Court Officer, can we go into
21 private session, please.

22 (Private session at 10.29 a.m.)

23 THE THE COURT OFFICER: [10:29:11] We are in private session, Madam President.

24 PRESIDING JUDGE SAMBA: [10:29:19] Yes. Mr Witness, we are listening.

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

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22 THE INTERPRETER: [10:48:22] Message from the interpreters: If the five-second
23 rule could be enforced, many thanks.

24 PRESIDING JUDGE SAMBA: [10:48:34] So, Mr Witness, may I remind you, you wait
25 for the question before you give the answer, and you talk a bit slower so that the

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1 interpreters can get every word that you say.

2 Mr Jacobs, do you want tab 36 submitted formally?

3 (Discussion between the Chamber and the court officer)

4 PRESIDING JUDGE SAMBA: [10:49:06] It's already submitted. The court officer
5 says it's already submitted.

6 THE COURT OFFICER: [10:49:07] Yes. I confirm on the record it's already
7 formally submitted through Bar table motion, your Honours.

8 PRESIDING JUDGE SAMBA: [10:49:12] Okay. Thank you very much. Mr Jacobs,
9 continue, please.

10 MR JACOBS: (Interpretation) [10:49:26] Thank you, Madam President.

11 (Redacted)

12 (Redacted)

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10 MR JACOBS: (Interpretation) [11:00:19] I was going to ask a follow-up question, but
11 I see the time, Madam President, and I think my follow-up question might take some
12 time, so this might be a good moment for our break.

13 PRESIDING JUDGE SAMBA: [11:00:27] Mr Witness, we are going to take a short
14 break. We'll come again at 11.30 to continue with your testimony.

15 So I rise the court for 11.30, please.

16 THE COURT USHER: [11:00:38] All rise.

17 (Recess taken at 11.00 a.m.)

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

19 THE COURT USHER: [11:32:09] All rise.

20 Please be seated.

21 PRESIDING JUDGE SAMBA: [11:32:35] Good morning again, everyone.

22 Mr Witness, we are going to continue with your testimony by cross-examination by
23 Mr Jacobs, Defence counsel.

24 Mr Jacobs, your witness. We are mindful of your promise, Mr Jacobs, and we hope
25 you leave us some minutes so that we could consider questions, if at all we want to,

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1 from the Bench.

2 Your witness, please.

3 MR JACOBS: [11:33:16](Interpretation) Thank you, Madam President.

4 And, yes, indeed, I am carrying on to do my -- aiming to do my best to finish as soon
5 as possible.

6 Now, are as we are in open session, I believe that for the rest of my questions now we
7 need to move into public -- private session, please.

8 PRESIDING JUDGE SAMBA: [11:33:37] Okay.

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

10 (Private session at 11.33 a.m.)

11 THE COURT OFFICER: [11:33:48] We are in private session, Madam President.

12 PRESIDING JUDGE SAMBA: [11:33:52] Mr Jacobs, your witness, please.

13 MR JACOBS: [11:33:57](Interpretation) Thank you.

14 Q. [11:34:06] Now, hello again, Mr Witness.

15 A. [11:34:09] Thank you.

16 (Redacted)

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17 So I think that for the next series of questions we could move into open session,

18 Madam President, because we're going to be situating attacks without talking about

19 the specific role of the witness.

20 PRESIDING JUDGE SAMBA: [11:51:55] Okay.

21 Madam Court Officer, can we go into open session, please.

22 (Open session at 11.52 a.m.)

23 THE COURT OFFICER: [11:52:11] We are in open session, Madam President.

24 PRESIDING JUDGE SAMBA: [11:52:14] Thank you very much.

25 Mr Jacobs, your witness, please.

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1 And, Mr Witness, please be mindful of saying anything that would expose you.

2 Mr Jacobs, your witness, please.

3 MR JACOBS: [11:52:37](Interpretation) Thank you, Madam President.

4 Q. [11:52:41] Now, Mr Witness, I'm going to come back to the exercise that we were
5 conducting before we moved into private session. You mentioned on a number of
6 occasions yesterday an attack upon Ndjo and you no longer recalled the date of said
7 attack. Do you remember that?

8 A. [11:53:04] Yes.

9 Q. [11:53:08] I'd like to quote to you an excerpt from your private -- public
10 testimony in open session in another case. I'm referring you to item or tab 4 on our
11 list of material.

12 So, I haven't written down the English version. I do believe it's tab 3. But I don't
13 have the specific reference in terms of page and line. But in the French version it's
14 CAR-OTP-00036367 at page 54. And here you say: "The attack on Ndjo took place
15 a short time before the attack of 5 December."

16 That's what you said in another testimony that you gave.

17 Can you confirm what you said at the time.

18 PRESIDING JUDGE SAMBA: [11:54:20] Thank you, Mr Court Officer.

19 Now, Mr Jacobs, can you go over that again so that the witness can get the question
20 again.

21 The document was not on his screen. Now it is. So go over the question again,
22 please.

23 MR JACOBS: [11:54:39](Interpretation) Absolutely.

24 Q. I'm going to put the question to you again. We're talking about the attack on
25 Ndjo. I'm not going back to the substance of the attack. We're just trying to locate

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1 it in time.

2 In your testimony in another case you said that the attack on Ndjo took place shortly
3 before the attack of 5 December. And I just wanted to know whether this refreshes
4 your memory and whether you can confirm this temporal framework?

5 A. [11:55:18] I said that the attack on Ndjo occurred before the attack of 5 December
6 and not a few days before.

7 Q. [11:55:47] All right. But when you say "not a few days before", so the attack of
8 5 December was on 5 December, so did that attack occur in the month beforehand, in
9 the month of November? We just need to have an idea. Even if you don't
10 remember the specific date, we'd like to locate this. Is it a few weeks? Is it more?

11 A. [11:56:21] I can't remember whether it was a few weeks or a few months before.
12 But I do know that that attack took place before the attack of 5 December, because
13 the attack of 5 December was the major Anti-Balaka attack.

14 Q. [11:56:50] Thank you, Mr Witness.

15 Now, just for the Chamber I'd like to give you the English version, the English
16 reference. So it's tab 3, page 55, lines 19 and 20. That's the English version of what I
17 just quoted from, from the transcripts.

18 Thank you, Mr Witness. You just tell us what you remember, no problem at all.

19 Now, you also spoke to us about an attack on Bozoum, and I'll give the reference of
20 the transcript.

21 Transcript T-102, real-time French, page 25, lines 3 to 8. And, again, another excerpt
22 from transcript T-102, real-time, page 28, lines 10 to 20.

23 And you weren't able to give us a precise date, so I'm going to try and move forward
24 on this point and come to a little bit more of a clarification.

25 Now, Madam Courtroom Officer, could we please bring up tab 38 on our list of

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1 material. CAR-D33-0014-1078. Which is a public document and it can be shown to
2 both the public gallery and to the witness.

3 So, can you see the document, Mr Witness?

4 A. [11:59:18] Yes.

5 Q. [11:59:25] So this is an article dated 20 December 2013 from RFI entitled
6 the "CAR: the African force is targeted in Bangui".

7 I'm not going to read the entirety of the article, but could we please go to the next
8 page, so that's page 1079.

9 Thank you, ma'am.

10 We can see a title here, "Calm returns to Bozoum" and I'm going to read out
11 the passage in question:

12 "Like other towns in the Central African Republic, Bozoum, located in the north-west
13 of the country, was the scene of a major offensive by Anti-Balaka militia on
14 6 December last. The violence claimed 38 lives and led to 9,000 people being
15 displaced: 6,000 went to the Catholic mission, and 3,000 people went to a location
16 close to the mosque.

17 FOMAC's intervention, two days later, was sufficient to end these killings."

18 Now, Mr Witness, is this the attack upon Bozoum that you told us about yesterday?

19 A. [12:01:38] No, no it's not.

20 Q. [12:01:51] Very well. Thank you, Mr Witness.

21 I would like to request formal submission of this item, tab 38 on our list of materials.
22 CAR-D33-0014-1078.

23 Now, court officer, could we move to tab 39, please, on our list, CAR-D33-0014-1081,
24 tab 39.

25 PRESIDING JUDGE SAMBA: [12:02:33] Yes, Mr Choudhry.

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1 MR CHOUDHRY: [12:02:37] Sorry, your Honours. I was just conferring with
2 learned counsel.
3 My learned friend seeks to put to the witness statements that the witness has given
4 previously in another case as to the sequence of events and the dates of various
5 attacks. In fairness to the witness, statements are not -- or evidence, as such, is not
6 meant to be a memory test. There are statements that the witness has made to
7 the Office of the Prosecutor in 2019 which does set out the locations that my learned
8 friend refers to. It's the Prosecution submission that it's only fair that if my learned
9 friend does wish to question the witness as to dates as to what he said yesterday, as
10 well as perhaps in testimony in another case, that the witness is also given an
11 opportunity to comment on a statement that was made when the events were more
12 fresh in his mind than they were subsequently.

13 PRESIDING JUDGE SAMBA: [12:03:35] Mr Choudhry, these are new issues coming
14 up, and if you want the witness to clarify that, you have an opportunity to do so in
15 re-examination. The counsel is directing his cross-examination in the way he has
16 planned it and the way he wants to. I am sure you wouldn't expect him to -- or you
17 wouldn't accept directions from him when you're leading the witness. So allow
18 the -- allow Mr Jacobs to carry on with the cross-examination and if you see any
19 reason for re-examination, you're welcome to do so. Thank you very much.
20 Mr Jacobs, please continue.

21 MR JACOBS: [12:04:25](Interpretation) Thank you, Madam President.
22 Now, in the meantime, the document has been placed up on the screen, tab 39 on our
23 list of materials.
24 Q. [12:04:41] You can see that this is an article from Radio Ndeke Luka,
25 4 January -- dated 4 January.

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1 Could we scroll down, please.

2 Yes, good.

3 We can see that it's dated 4 January 2014. "Central African Republic: Security
4 situation tense in Bozoum".

5 If we could scroll down a bit more, please, first paragraph. Thank you very much,
6 Madam Court Officer.

7 I'll read out a passage for the record:

8 "A series of clashes between 'Anti-Balaka' members and elements of the Seleka rebel
9 ex-coalition led to the death of at least 70 people in the town of Bozoum. A situation
10 that has led to the displacement of more than 3,000 people to Saint-Michel's parish in
11 the town. Father Aurelio Gazera, the parish priest, has told us this - quote - 'We find
12 ourselves with 3,000 refugees at the Catholic mission, others have scattered into
13 the bush. The town is practically empty, there are only heavily armed Muslims who
14 have remained and who are walking about, this is a huge problem. We also fear
15 the attack of the 'Anti-Balaka'. There are many of them surrounding the town. At
16 first, there were attacks by the 'Anti-Balaka' on 6, 23, 25 and 31 December 2013.
17 A total of 70 people died and many people were injured'."

18 So, Mr Witness, according to this article, someone has made mention of a number of
19 attacks upon Bozoum - 6, 23, 25 and 31 December 2013 - after 5 December 2013, but
20 not before the 5th. Do you have any comments?

21 A. [12:08:13] Yes. Those attacks occurred after the Anti-Balaka attack at the
22 gendarmerie of Bozoum. The Seleka drove them out and they found themselves in
23 Gobere. From Gobere, they left and later they attacked Bozoum. It was the first
24 self-defence group that tried to attack the gendarmerie there and the Seleka drove
25 them out. And that was before 5 December.

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1 Q. [12:09:01] Very well, Mr Witness. Duly noted.

2 I'd like to request formal submission of this item of evidence. And just as a reminder,
3 tab 34, CAR-D33-0014-1081 -- tab 39.

4 Madam President, for my next question I believe we will have to go into private
5 session.

6 PRESIDING JUDGE SAMBA: [12:09:47] Madam Court Officer, can we go into
7 private session, please.

8 (Private session at 12.10 p.m.)

9 THE COURT OFFICER: [12:10:01] We are in private session.

10 PRESIDING JUDGE SAMBA: [12:10:03] Thank you very much.

11 Mr Jacobs, continue your questions, please.

12 MR JACOBS: [12:10:12](Interpretation) Thank you.

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5 Now, if we could go back to the first page. Thank you.

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12 PRESIDING JUDGE SAMBA: [12:13:47] I don't think he said anything further.

13 But, Mr Witness, do you have any comment on this document?

14 (Redacted)

15 (Redacted)

16 (Redacted)

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25 MR JACOBS: [12:18:47](Interpretation) Yes. Very well. The number is not

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1 recorded properly today.
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12 MR JACOBS: [12:22:40](Interpretation) Thank you, Madam President.

13 Indeed, I don't think I can provide greater clarification because I do not have

14 the unredacted version of the prior statement. Just to make things easier, now

15 yesterday the Prosecution, I suggested that they put up the unredacted version and

16 we could all see the number that was provided. I don't know if that's technically

17 possible. That might be the best approach. That way we would all be able to see

18 the telephone number and we would not be trying to correct a transcript on the basis

19 of something that was said yesterday. Other than that, I can't provide any further

20 information. I hope I'm being clear.

21 MR CHOUDHRY: [12:23:34] Your Honour, my learned friend is correct. I've just

22 been informed that there was a -- because of the size of the file, there was a challenge

23 to disclosing that to the Defence.

24 What I propose to do is to do exactly what my learned friend has done and to display

25 that on our screen.

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(Private Session)

ICC-01/14-01/2

1 PRESIDING JUDGE SAMBA: [12:23:53] Please go ahead.

2 THE COURT OFFICER: [12:23:54] I suggest that you send -- to send us maybe by
3 email as attachment, if it fits the format? No, it doesn't. Okay, so we're going to
4 give you the floor, then, when you're ready, so you can display it from
5 the Prosecution bench.

6 (Pause in proceedings)

7 MR JACOBS: [12:25:01](Interpretation) Your Honour -- ah.

8 I was going to suggest that we continue and we return to this particular issue.

9 THE COURT OFFICER: [12:25:22] I'm sorry to interrupt. Just to confirm that
10 the Prosecution has the floor, evidence channel 2.

11 PRESIDING JUDGE SAMBA: [12:25:39] Yes, continue, Mr Jacobs.

12 Thank you very much, Mr Choudhry. Thank you very much.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Now, yesterday you told us about an event -- (Redacted)

25 (Redacted).

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1 This is transcript 102, page 61, line 4.

2 I'd like to clarify one point. Can you confirm that this event occurred in July 2014?

3 A. [12:27:55] Yes, I confirm that. July 2014.

4 Q. [12:28:00] Very well. That was just a clarification because that was something
5 that did not quite come out of yesterday's questioning.

6 PRESIDING JUDGE SAMBA: [12:28:12] Yeah, Mr Jacobs, before you go on. Maybe
7 if I could ask the witness, dealing with the number for -- are we in -- we are in private
8 session, are we, Madam Court Officer?

9 THE COURT OFFICER: [12:28:28] Indeed, Madam President. Private session.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE SAMBA: [12:29:30] Okay. Okay. Thank you very much.

18 That's all I wanted to clarify.

19 Mr Jacobs, please continue.

20 MR JACOBS: [12:29:44](Interpretation) Thank you.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 THE INTERPRETER: [12:30:42] Corrects the Sango interpreter.

2 MR JACOBS: [12:30:45](Interpretation)

3 Q. [12:30:46] So when you say "after the incident", you're talking about the incident
4 concerning you in July 2014, are you not?

5 A. [12:30:55] Yes, indeed.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. [12:32:24] Very well, Mr Witness. Thank you.

13 Now, do you remember the first time that you met with the investigators of the OTP
14 of the International Criminal Court?

15 A. [12:32:43] It was in Bangui. Our first meeting took place in Bangui.

16 Q. [12:32:57] Do you remember the date?

17 A. [12:33:02] No, I no longer recall the date. It was, if my memory serves me
18 correctly, in 2018.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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6 (Redacted)

7 (Redacted)

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12 (Redacted)

13 Q. [12:51:31] Thank you, Mr Witness.

14 That was my last question for the witness, Madam President.

15 PRESIDING JUDGE SAMBA: [12:51:37] Thank you very much, Mr Jacobs.

16 And, Mr Choudhry, do you have questions for this witness in re-examination, please?

17 MR CHOUDHRY: [12:51:47] Your Honour, I do realise that we have 10 minutes to

18 spare. The reality is, is given the nature of this witness's evidence and certain items

19 that we would like to go over, the Prosecution would request time to consider

20 whether it does have any re-examination questions for the witness.

21 The Prosecution will spend that time efficiently, in providing your Honours with

22 the filing that your Honours has asked, as well as verifying the transcripts today so

23 that it can consider whether it has any re-examination questions.

24 PRESIDING JUDGE SAMBA: [12:52:28] That's noted.

25 To be very fair with also the Defence, this witness will come in tomorrow. When we

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1 start at 9.30 I'm going to give five minutes to the Defence to go over everything that
2 they have said again and put questions to this witness, if they want to. Then you'll
3 put your questions in re-examination, if you want to.

4 I think that's but fair. Because I'm sure that if the Defence knew that you were not
5 going -- or we were not going to conclude with this witness today, maybe they have
6 other questions to ask.

7 So I'm going to ask Mr Witness -- do you have anything else to say, Mr Choudhry?

8 MR CHOUDHRY: [12:53:12] Just that I'm grateful, your Honour.

9 PRESIDING JUDGE SAMBA: [12:53:15] That's okay.

10 Can we go back into open session, Madam Court Officer.

11 (Open session at 12.53 p.m.)

12 THE COURT OFFICER: [12:53:30] We are back to open session, Madam President.

13 PRESIDING JUDGE SAMBA: [12:53:38] Thank you very much.

14 Mr Witness, we're going to adjourn and we'll come back tomorrow, in the event that
15 the Prosecutor has any question for.

16 So I'm going to ask again, like I did yesterday, that you do not discuss your testimony
17 here today or yesterday with anybody when you leave this courtroom. You'll still be
18 on oath when we meet again tomorrow. Is that clear?

19 THE WITNESS: [12:54:16](Interpretation) Yes, that's very clear, Madam President.

20 PRESIDING JUDGE SAMBA: [12:54:19] Thank you very much.

21 So I rise the Court for 9.30 tomorrow. Thank you.

22 THE COURT USHER: [12:54:24] All rise.

23 (The hearing ends in open session at 12.54 p.m.)