

Trial Hearing

(Open Session)

ICC-01/05-01/13

1 International Criminal Court
2 Trial Chamber VII – Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido
6 ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
8 Judge Raul Pangalangan
9 Trial Hearing
10 Thursday, 8 October 2015
11 (The trial hearing starts in open session at 9.59 a.m.)
12 THE COURT USHER: All rise.
13 The International Criminal Court is now in session.
14 PRESIDING JUDGE SCHMITT: Courtroom officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Central African Republic in the case of The Prosecutor versus
17 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
18 Fidèle Babala Wandu and Narcisse Arido, case reference ICC-01/05-01/13.
19 We are in open session.
20 PRESIDING JUDGE SCHMITT: Thank you.
21 We come now to the presentation of the parties and as we started with that yesterday,
22 this can happen in an abbreviated form, to put it this way.
23 Please, Mr Vanderpuye.
24 MR VANDERPUYE: Good morning, Mr President, your Honours. Good morning
25 everyone. We have the same configuration as yesterday, Mr President.

1 MR GOSNELL: Good morning, Mr President. Appearances are the same as
2 yesterday for Mr Mangenda.

3 PRESIDING JUDGE SCHMITT: Mr Djunga.

4 MR DJUNGA: (Interpretation) Good morning, your Honour. I confirm that in
5 fact it is indeed the same as yesterday.

6 MR TAKU: May it please the Court we have today with us -- we have here today
7 our friend Raphaël Goncalves. The rest of the team unchanged.

8 MR KILENDA: (Interpretation) Good morning, your Honour. Good morning,
9 your Honours. Our team has not changed today.

10 PRESIDING JUDGE SCHMITT: Mrs Taylor.

11 MS TAYLOR: Good morning, Mr President, your Honours. We haven't changed
12 either. I would like to thank the Bench though for moving the schedule back in
13 order to minimize the time that Mr Bemba spends in the holding cell. Thank you.

14 PRESIDING JUDGE SCHMITT: Thank you very much for that.

15 Before we start or continue, to put it this way, with the examination of the witness, a
16 short reminder to the parties.

17 The Chamber notes that the only items which are indicated in the eCourt system as
18 formally submitted to date have been P-433's report and its three annexes.

19 The documents listed in the annexes to the Prosecutor's three so-called Bar table
20 motions have already been recognized by the Chamber as submitted and will be
21 reflected as such in the eCourt system in due course. This obviously has not
22 happened, but this will be reflected in the eCourt system.

23 As set out at the commencement of the trial and just to be perfectly clear and for the
24 future to be perfectly clear for any other item used during the questioning of
25 witnesses, the last days that we have experienced, which has not been formally

1 submitted, the Chamber kindly reminds counsel to request such submission in a
2 timely fashion, preferably the same day the item has been used.
3 So this is just to make clear for the future, for the future procedure for any item that
4 the parties want to be submitted they have to apply for that, or they have to say that
5 they want it to have formally submitted and we will decide on this in due course.

6 Thank you very much for this.

7 And then we come to the Arido Defence questioning. Mr Larochelle, I understood
8 yesterday that you said between 20 and 40 minutes. It is of course up to you how
9 you question the witness. I and the Chamber could envisage, for example, one
10 question, that would be of interest for your -- for your client, but of course I won't
11 interfere with that, but I would really like to remind you to keep it as short as possible
12 under the circumstances. I think we understand each other what I mean by that.

13 Please continue.

14 MR LAROCHELLE: We do --

15 PRESIDING JUDGE SCHMITT: To the witness again one reminder. You are still
16 under oath. I understand that you know that, but it's just a reminder that I think we
17 should do when we start again and return to your examination.

18 MR LAROCHELLE: (Interpretation) Thank you, your Honour. I will indeed
19 make an effort to be as brief and concise and precise as possible.

20 WITNESS: CAR-OTP-P-0261 (On former oath)

21 (The witness speaks French)

22 QUESTIONED BY MR LAROCHELLE:

23 Q. Good morning, Witness.

24 A. Good morning.

25 Q. I think we are coming to the end of your testimony. I would ask you to try to

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1 reply in the most precise way possible to the questions that I'm going to put to you
2 and that will make everything much shorter.

3 So I understand that --

4 PRESIDING JUDGE SCHMITT: I think when we come to personal circumstances we
5 have to go into private session.

6 MR LAROCHELLE: (Interpretation) I just wanted to confirm the date, nothing
7 more, date of birth.

8 PRESIDING JUDGE SCHMITT: (Microphone not activated)

9 MR LAROCHELLE: I am.

10 PRESIDING JUDGE SCHMITT: (Microphone not activated) I know that you are
11 mindful of this fact, but since you are acting at the moment, perhaps your attention is
12 not focused on this aspect.

13 MR LAROCHELLE:

14 Q. You were born in (Redacted) is that correct?

15 A. Yes.

16 Q. And during your testimony you referred to the fact that (Redacted)
17 (Redacted); is that correct?

18 A. Yes, that is correct.

19 Q. Do you remember you also spoke about (Redacted),
20 (Redacted), when the Prosecutor asked you questions about this subject? Do
21 you remember what you said?

22 A. I don't remember exactly any more.

23 Q. I'll immediately remind you so you can see the terms in which you described
24 the subject.

25 I would like to use the document from the Prosecutor's list and the tab of those of the

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1 Prosecutor. The first tab I would like to refer to is tab 3, testimony -- statement
2 starting 87-2409, and I'm particularly interested on page 2414 and I'm between lines
3 156 and 184.

4 THE COURT OFFICER: Mr Larochelle, could you please provide us with an ERN
5 number, please.

6 MR LAROCHELLE: (Interpretation) CAR-OTP-0087-2409 and 2414 for the page
7 which I am specifically interested in. I think that should be able to be viewed.

8 Q. So please avoid stating the names which appear in these lines because they are
9 identifying information.

10 PRESIDING JUDGE SCHMITT: I think we continue now.

11 MR LAROCHELLE: (Interpretation)

12 Q. Have you been able to read the document?

13 A. Which lines precisely? I've read 180 --

14 Q. 186. You say that: There were people who wanted to make proposals to us
15 left and right and Bozizé had defected in the army, in the Central African army there's
16 a convention which you cannot get around.

17 And you continue: And it's the technicians -- or, they've been 12 years there.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 And now at line 168: (Redacted). The first message arrived.

22 There are other people who are mentioned. I'm not going to mention their names.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted) And you continue on line 180: (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Do you confirm the content of the statement?

7 A. Of course. It's my statement.

8 Q. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted). What I'm saying is -- I'm just taking an example of the third mutiny, the

12 third mutiny. The general staff of the mutiny, but I think -- so that

13 I'm -- your Honour, I'm not able to develop this, but if we could go into private

14 session I can give names so that I can be very clear.

15 PRESIDING JUDGE SCHMITT: I don't think this, really, I don't think this is

16 necessary. Having in mind that your client is Mr Arido and also having in mind

17 what is on the table insofar, so I think we should really concentrate ourselves on what

18 is really of interest specifically for your client.

19 MR LAROCHELLE: (Interpretation) What counts for my client, your Honour, is

20 who is a soldier, who is an officer in the army, Central African army, and this is the

21 subject that I'm going to quickly explore with the witness. I don't have the intention

22 to spend all day on it, but these are questions which are at the heart of the case.

23 PRESIDING JUDGE SCHMITT: Do you want the witness further to explore further

24 names and so on? Then we would have to go into private session. At the moment

25 I would prefer if you continue with the questioning and let the answer of the witness

1 stand as it is for the moment.

2 MR LAROCHELLE: (Interpretation)

3 Q. Let's try to briefly go through the exercise, Witness. Now, you started to speak
4 about the third mutiny; isn't that correct?

5 A. Yes.

6 Q. So don't mention names. It is not the names which is of interest to us. What
7 was your role yourself within this third mutiny, without giving anybody's name, just
8 in a couple of sentences?

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 What I say -- if you think people who were all around, they will know. I can tell you
15 that. Could we --

16 Q. Were people very close to you involved in the third mutiny? Could we put it
17 like that?

18 PRESIDING JUDGE SCHMITT: I think then we have to go into private session, but
19 I really would appreciate if we not dwell or dwell too much into this subject.

20 *(Private session at 10.16 a.m.) Reclassified as open session

21 THE COURT OFFICER: We're in private session, Mr President.

22 PRESIDING JUDGE SCHMITT: So please, Mr Witness, answer the question of
23 counsel and try to keep it as short as possible.

24 THE WITNESS: (Interpretation) Thank you, your Honour. I'm going to try and
25 be precise and brief.

1 (Redacted)

2 I can give you a very brief insight so you can understand it.

3 (Redacted)

4 (Redacted)

5 (Redacted). I don't know if everything started there, but there was a time, I don't
6 know exactly what happened, the national gendarmerie sent a brigade to arrest the
7 captain at his house where the plot was going on certainly and Mr Congosune (phon)
8 who was a sergeant, he was in the -- in his guard and the gendarme -- they stopped
9 the gendarme, they disarmed them and everything started there. Everything started
10 at that point.

11 PRESIDING JUDGE SCHMITT: I will not allow to continue this further. The
12 witness now tells a story. He has answered the question as that he had personally
13 no involvement in these incidents, and now he tells things from second or third-hand,
14 and I don't see how this is related especially to Mr Arido.

15 You know we have -- I think we are all on the page of the evidence. So please
16 continue with the questioning and --

17 MR LAROCHELLE: (Interpretation)

18 Q. Yesterday --

19 MR LAROCHELLE: We don't have to stay in private session, your Honour. We
20 can go back into open session, unless you want us to continue like this. I don't think
21 that it is necessary though.

22 PRESIDING JUDGE SCHMITT: We can go into open session. And unless your
23 further questions oblige us to go again into private session and back and forth, so if
24 then we go into -- I trust you when you are saying that. So we go into open session
25 again.

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 MR LAROCHELLE: (Interpretation) Now we can go into open session. I don't
23 think it's necessary to stay in private session.

24 PRESIDING JUDGE SCHMITT: Then we go to open session.

25 (Open session at 10.21 a.m.)

1 THE COURT OFFICER: We are in open session.

2 MR LAROCHELLE: (Interpretation)

3 Q. I will continue. I'm going to give you a couple of other extracts which show
4 this in the same tab, ERN CAR-OTP-0087-2216, line 263.

5 So there was a vehicle which had broken down. (Redacted). I
6 went, and when I arrived a week later there was a coup. And what you say at 263,
7 you see, (Redacted)

8 I'll go straight on to my next extract that is in the statement which starts with
9 CAR-OTP-0087-2426, and I'm interested in page 2465, lines 1475 to 1486.

10 Are you there? Can you find it?

11 (Redacted)

12 (Redacted)

13 Do you confirm having said that to the Prosecutor?

14 A. Yes, I said that.

15 Q. (Redacted)

16 (Redacted) Do you confirm that?

17 A. Why did I say that? I can explain that to you. Because you -- you could
18 spend a night -- well, for two nights and then another night people will be fleeing, a
19 week afterwards you're well and you're laughing, and then something suddenly it
20 could break out again, everybody is running away in different ways and then
21 suddenly we've seen things. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted). But the army, I think it's a state of mind. You have to be
2 strong. But it's not really uniforms and stuff like that. You have civilians picking
3 up their weapons. Well, it makes me laugh. And that's what I was talking about at
4 the time.

5 Q. I have a question with regards to something that you said during your
6 testimony in the case of Mr Bemba. Here among tab 26, transcript of (Redacted)
7 and it is in French, page 16.

8 THE COURT OFFICER: (Interpretation) Please could you give us a document
9 number, please, Mr Larochelle.

10 MR LAROCHELLE: (Interpretation) Tab 26 -- well, I've got

11 (Redacted). Can you find it? (Redacted).

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. (No interpretation)

18 PRESIDING JUDGE SCHMITT: Please let Mr Vanderpuye.

19 MR VANDERPUYE: Mr President, can we go into private session, please.

20 PRESIDING JUDGE SCHMITT: (Microphone not activated)

21 MR VANDERPUYE: No.

22 PRESIDING JUDGE SCHMITT: (Microphone not activated) ... then we have to go

23 into private session and redact everything what has been said now in the last couple

24 of minutes. This is of course the problem when we're constantly going in and out of

25 private and closed session. So of course we go into private session.

1 *(Private session at 10.30 a.m.) Reclassified as open session

2 THE COURT OFFICER: We are in private session and the redaction order is being
3 draft.

4 MR VANDERPUYE: Thank you, Mr President. I'd asked to go into private session
5 for two reasons: One is the nature of the responses the witness was giving. The
6 second thing was it appears that he's giving this information, for lack of a better term,
7 out of some frustration because we weren't in private session. So I think it might be
8 perhaps more conducive to an efficient examination to remain in private session
9 particularly to the extent that it may involve his history or his family and those kinds
10 of things, out of abundance of caution.

11 PRESIDING JUDGE SCHMITT: I agree with that.

12 And I also have to say, Mr Larochelle, that this line of questioning makes sense,
13 I understand that, but I would really urge you to try to concentrate it as much as
14 possible.

15 MR LAROCHELLE: Point taken, your Honour.

16 Q. (Interpretation) We are in closed session, Mr Witness. I'm sorry to have
17 pushed you into answering in this way.

18 A. Thank you. I would rather thank you. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE SCHMITT: I think this explains or that answers your question,
9 to put it that way.

10 MR LAROCHELLE: (Interpretation)

11 Q. In what year was that?

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 PRESIDING JUDGE SCHMITT: You see what's happening now we are entering into
17 a discussion between counsel and the witness. Please obey to the order of speaking.
18 This applies also for you, Mr Larochelle, because you interrupted the witness, but also
19 for the witness. I don't want to have discussions between the people who
20 interrogate and the people who are interrogated. So a question please and then we
21 wait these three seconds in mind and then the witness answers.

22 MR LAROCHELLE: (Interpretation)

23 Q. Are we in private session? Yes, we are. (Redacted)

24 (Redacted); is that

25 correct?

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- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

1 Q. Do you confirm that throughout those years, 1996 and at the time of those
2 mutinies, can you confirm that the Central African army was significantly weakened
3 over that period; is that the case?

4 A. I did not belong to the high command of the military to know whether it
5 became stronger or weaker. That is an assessment that can be made by the high
6 command. I was not the chief of general staff. I did not have any hand in the
7 organisation of the army and the army's business is the army's business. That is it.

8 PRESIDING JUDGE SCHMITT: Mr Larochelle, please, it's perfectly clear, what you
9 are asking the witness is to give an assessment and not to answer with respect to facts.
10 So please restrain yourself a little bit. To ask the witness was the military weakened
11 is something that he can -- he answered it in this way, cannot really answer by himself.
12 You ask for a speculation, if you will.

13 MR LAROCHELLE: (Interpretation) (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. But do you know who during the 90s and during those years of mutiny, do you

15 know that in the Central African Republic there were a number of militia as well?

16 Are you aware of that?

17 A. Militia? Well, first of all, it all depends what you understand militia to be. Is

18 it "militia" as defined by Larousse in its specific definition? What is a militia?

19 Q. Have you ever heard per chance mention of the Kodo militia?

20 A. Yes, I have heard about the Kodo. We were told that the Kodo were Chadians,

21 mostly Chadians who were trained in the DRC at the time and who had some

22 problems with the Chadian government and who were operating at the borders

23 between the CAR and Chad. This is the knowledge we had at the time.

24 Q. Without any further comments, just tell me whether you know the Zakawa

25 militia for example?

1 A. Yes.

2 Q. The Karako militia?

3 A. Well, it's a militia or not, but what I know is that -- counsel, please don't be
4 discouraged, counsel. Your -- your reaction sort of discourages me.

5 PRESIDING JUDGE SCHMITT: Please, counsel, I remind you that we are very close
6 to the 40 minutes that you told us you will need for the questioning. And at the
7 moment, to be honest, I see that we are going a little bit astray from what has been the
8 topic and the issue of this witness's testimony. So I would -- I would give you two or
9 three further questions, but then please conclude with the questioning.

10 MR LAROCHELLE: (Interpretation) Mr President, I'm attempting to get brief
11 answers from the witness.

12 Q. Now, yes or no, Witness, Karako militia, do you know about it?

13 A. Yes.

14 Q. Balawa militia?

15 A. Balawa? Please, maybe you want to pronounce the name again. But I know
16 about the Karako militia.

17 Q. Sarawi?

18 A. I don't know whether that was a militia. Sara is an ethnic group. The Sarawi
19 are known as the Sarawi. Whether it's a militia force or not, I don't know, but I know
20 about the Sarawi.

21 Q. Before you left the Central African Republic, can you confirm that there was a
22 mushrooming of various militia and armed groups in the country? Can you confirm
23 that?

24 A. Yes, there was already an ongoing conflict in the country and each party could
25 do whatever they wanted to do. There were some militia here and there, but you

1 couldn't tell who was Sarawi or what other militia. But these were not public
2 groupings that could be identified. We heard a number of names, Karako and so on
3 and so forth, but yes, what I can confirm is that I heard a number of names of militia
4 being mentioned at the time.

5 Q. Can you tell us briefly what the Karako militia was all about? What do you
6 know about the Karako militia?

7 PRESIDING JUDGE SCHMITT: No.

8 MR VANDERPUYE: Mr President, I think the witness has already answered this
9 question and he talked about what he heard about it. He hasn't mentioned anything
10 about knowing anything about it or about having any personal knowledge of
11 anything that counsel -- (Overlapping speakers)

12 PRESIDING JUDGE SCHMITT: Please come to the end of questioning,
13 Mr Larochelle.

14 MR LAROCHELLE: (Interpretation) Mr President, I cannot say everything here
15 and now, but what I can offer is that the setting in the Central African Republic with
16 the emergence of militia and the determination of who was and who was not a soldier
17 is relevant to establishing the truth about the testimony of a witness. I cannot go
18 further than that. But I have three or four more questions for the witness, but
19 I believe that these questions are relevant to what we want to do in relation to our
20 case. Please trust me to be able to do this. I understand that it is difficult to get
21 direct answers from the witness.

22 PRESIDING JUDGE SCHMITT: So I will concede you of three or four further
23 questions, short questions in respect to these militias that you mention and in respect
24 of a possible knowledge, but also with short answers of the witness.

25 MR LAROCHELLE: (Interpretation) Thank you, Mr President. I'm obliged.

1 Q. Now, let me turn to tab 12, 88-1469, page 1490, lines 807 to 813.

2 In that excerpt you said the following to the Prosecutor:

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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25 (Redacted)

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3 (Redacted)

4 (Redacted)

5 (Redacted)

6 THE INTERPRETER: Microphone, please.

7 MR LAROCHELLE: (Interpretation)

8 Q. During your testimony in the Bemba case, let me bring you back to (Redacted)

9 At that time, you made reference to officers of the army. And I want to refer you to
10 your testimony of (Redacted), tab 26, pages 47 and 48, beginning at the bottom of
11 page 47, line 23. I don't know if you're there?

12 This is what you say:

13 (Redacted)

14 (Redacted)

15 The ERN number is the same as previously. ERN ICC-(Redacted)

16 This was your answer:

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. (Microphone not activated)

22 THE INTERPRETER: Microphone, counsel. Microphone.

23 PRESIDING JUDGE SCHMITT: Microphone, please.

24 MR LAROCHELLE: Yes. (Interpretation)

25 Q. That part of your answer, well, can be used for example to talk about

1 Mr Djotodia, who overnight became a colonel; is that correct?

2 A. Yes. When he was in the forest, he was a colonel, but when he became
3 president, he was no longer a colonel. He became a civilian. Maybe if he had not
4 become president, he would have remained at the rank of colonel in the army.

5 Q. What about Miskine, Miskine? We've talked a lot about Miskine, was the
6 civilian who became a general?

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 But he's a general, but I don't know what type of general he is. Now even the other
12 generals talk about it, the other officers talk about it. They still however refer to him
13 as General Miskine. What we know of Miskine is that he was a witch doctor, so to
14 speak, who had some mystical powers which impressed Patassé --

15 PRESIDING JUDGE SCHMITT: Mr Witness, you have answered. You have
16 answered the question.

17 THE WITNESS: (Interpretation) -- who took him into his army and made him what
18 he has become.

19 PRESIDING JUDGE SCHMITT: (Overlapping speakers) Mr Larochelle.

20 MR LAROCHELLE: Yes. (Interpretation) Now let me turn to the page, still
21 hearing of the same date.

22 PRESIDING JUDGE SCHMITT: Do we have a prospect that we are close to the end
23 of this questioning? Yes.

24 MR LAROCHELLE: (Interpretation) Let me now turn to the same transcript at
25 page 55, a little further on, line 23, and we are in private session.

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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 A. I have not read it, but I know that, yes, indeed, that was my testimony.

24 Q. What are you referring to specifically here? (Redacted)

25 (Redacted)

1 A. (Redacted)

2 (Redacted)

3 Q. That's fair enough. So what you're saying is that all of this was a fabrication
4 that you made up during your testimony in the Bemba case; is that the case?

5 A. Well, one had to testify.

6 Q. Witness, I'm trying to understand you. (Redacted)

7 (Redacted) Is

8 that the truth or a lie?

9 A. That was my statement and it is not the truth.

10 PRESIDING JUDGE SCHMITT: I think we have --

11 THE WITNESS: (Overlapping speakers)

12 PRESIDING JUDGE SCHMITT: -- in the last three days we have exhausted this
13 subject. Really, I think we have talked about this subject lengthily and what you
14 want to establish has been said, to put it very cautiously, so I really would -- now
15 would like you to come to the end with this examination.

16 MR LAROCHELLE: (Interpretation) Your Honour, I will now conclude.

17 Q. Now, Witness, at the end of your answer you say that (Redacted)

18 (Redacted); is that true?

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 me as an officer because of my commitment to (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 MR LAROCHELLE: (Interpretation) I'll stop here, Mr President. Thank you.

7 PRESIDING JUDGE SCHMITT: Thank you very much.

8 But allow me, Mr Witness, to ask you one or two questions myself.

9 I think you can give a short answer here. Do you know or have you ever talked to
10 Mr Arido? Mr Arido is in the second line on the left side.

11 THE WITNESS: (Interpretation) It is for the first time that I see it since I arrived
12 here, so I'm also asking myself the question because the name was put to me and
13 I wanted to know Arido, how does he look, what nationality? And I think it's
14 Mr Nève who said, no, this is somebody who is over there. And --

15 PRESIDING JUDGE SCHMITT: I only want to know -- I only want to know from
16 you if you have had any contact ever with the person who has been standing up now.

17 THE WITNESS: (Interpretation) I've never -- I've never seen him and I've never
18 known him.

19 PRESIDING JUDGE SCHMITT: Yes, that's the answer. Thank you.

20 You can sit down. Thank you very much, Mr Arido.

21 So we continue with the Prosecution and we give you the chance for a short
22 re-examination, but by mindful that re-examination does not mean examination.

23 MR VANDERPUYE: Thank you, Mr President. I appreciate the opportunity. I'll
24 try to be as efficient as I can. There is one thing I wanted to note is that the presence
25 of a Rule 74 counsel who was here yesterday is not -- well, he's not here today. I just

1 wondered if he was available to the witness by phone given the Rule 74

2 circumstances.

3 PRESIDING JUDGE SCHMITT: No, we would have -- I haven't said this specifically,
4 but we would have had the possibility in case to call Mr Nève, yes.

5 MR VANDERPUYE: Thank you, very much, Mr President.

6 QUESTIONED BY MR VANDERPUYE:

7 Q. All right. You were just asked whether you had seen Mr Arido before by
8 Mr President and you indicated that you had not. I wanted to ask you this: I
9 believe it was yesterday or the day before you mentioned a Mr Kabongo. And that
10 is at transcript 6 October, page 20, lines 8 to 18.

11 MR VERCKEN: (Interpretation) Your Honour, obviously I have an objection to
12 the -- about the question because here we're clearly going back to the main
13 examination, examination-in-chief.

14 This isn't what you're supposed to be doing now. This reference, if it exists, it was
15 done during your main examination, so you would have had to go back to it then.

16 PRESIDING JUDGE SCHMITT: If this is correct -- if this is correct, please, then
17 concentrate yourself on what has been discussed during the examination of the
18 Defence.

19 MR VANDERPUYE: Yes, I would point out and correct my friend that this name
20 was mentioned during the examination -- cross-examination to be precise of
21 Mr Powles. And the reason for that is -- I see there's some disagreement on that side.

22 MR VERCKEN: (Interpretation) Indeed, I don't agree and I would ask you to be so
23 kind as to provide us with the exact reference thereof.

24 MR VANDERPUYE: I'm corrected. I'll move to a different point.

25 Q. Have you ever seen Mr Kabongo?

1 MR GOSNELL: Objection, Mr President, for the same reasons that were stated by
2 my --

3 PRESIDING JUDGE SCHMITT: (Microphone not activated) Mr Vanderpuye, you
4 said you move to another point, but you have addressed the same point.

5 MR VANDERPUYE: Well, I can explain that one actually, Mr President, because
6 Mr Powles went over the individuals that were present during the course of meetings
7 that were held with Mr Kilolo, and he even played a tape, Mr Djunga played a tape
8 and asked the witness who was present during the course of those meetings. And so
9 I'm revisiting the question of who was present during the course of those meetings
10 because it was dealt with explicitly on cross-examination by the Kilolo Defence.

11 PRESIDING JUDGE SCHMITT: But then please make clear that we are only
12 discussing this in this context that has been brought up by the Defence. Please make
13 this clear.

14 MR VANDERPUYE: Thank you, Mr President.

15 Q. Do you remember being asked questions about who was present during the first
16 meeting that you had with Mr Kilolo --

17 MR DJUNGA: (Interpretation) There was never a question of Mr Kabongo used in
18 our cross-examination. We spoke about a white lady who we didn't name, but not
19 Mr Kabongo, neither in the recording and even less in the questions that we were
20 putting.

21 MR VERCKEN: (Interpretation) I was very careful not to ask that question. The
22 name Kabongo was never mentioned during any cross-examination. I think that the
23 Prosecutor is misrepresenting --

24 PRESIDING JUDGE SCHMITT: To be honest, my recollection is also that this person
25 was not -- not mentioned, so I would -- please, I would like you to move to another

1 point.

2 MR VANDERPUYE:

3 Q. Based on your examination by the Kilolo Defence can you tell the Chamber who
4 was present during the course of the first meeting that you had with Mr Kilolo at the
5 hotel that you indicated?

6 A. I think that during the first meeting I had said the -- that it was the white lady,
7 Mr Kilolo, myself and (Redacted).

8 MR VERCKEN: (Interpretation) I have to interrupt. I am opposed to what's
9 happening. This is a clear violation of the object -- objective of a cross-examination,
10 cross-cross-examination, call it what you want. The Prosecutor can't go back to his
11 examination-in-chief. This is a clear violation. We have taken the decision not to
12 take the -- not to do this and now we're going back to it after the cross-examination.
13 This is unacceptable.

14 MR VANDERPUYE: Unfortunately for my friend he's not alone in this case and the
15 cross-examinations of other accused in this case --

16 MR VERCKEN: (Overlapping speakers)

17 MR VANDERPUYE: -- affect the -- affect the scope of re-direct examination with
18 respect to every other accused in this case. If the accused haven't agreed upon a
19 consolidated defence, that frankly is their problem. But if the issue is raised by one
20 of the accused that affects the interests of another accused and is within the proper
21 scope of re-direct examination as to the given accused, it seems to me that counsel's
22 objection is without any legal foundation aside from histrionics and outrage.

23 PRESIDING JUDGE SCHMITT: First of all, I would very much urge everybody, and
24 especially you, to moderate yourself a little bit and I don't want to have emotional
25 outbursts in this courtroom.

1 You see, I think we have a Bench here who is very serious, very honest and I know
2 that it is much more difficult to have the other role of a party, either for the
3 Prosecution or the Defence, and I know that you are not -- do not agree to everything
4 what happens in this courtroom, but I would really say that, and expect also from the
5 professionalism of counsel, not to have, as I have labelled it, emotional outbursts.
6 So in principle you are right what you are saying. And I -- what I would like the
7 Prosecutor to do is not to come back to things that we have discussed before. And
8 I think we have discussed this, indeed, who has been present during this recording
9 that we had -- that we have heard yesterday.
10 So what I would like from the Prosecutor is to clearly state where he's heading and to
11 make a -- and to ask a question that has not been asked before and that results from
12 what we have discussed during the examination of the Defence.
13 MR VANDERPUYE: Mr President, the point that I'm making, if I may, is that there
14 are two distinct versions of who was present at that meeting. One elicited on the
15 direct examination of the witness, another elicited on the cross-examination of the
16 witness. What I'm proposing to do or trying to do is to clarify which of those two
17 versions is the witness's evidence before this Chamber and if there is in fact any
18 difference between those two versions.
19 PRESIDING JUDGE SCHMITT: I will allow that if you really show me and convince
20 me that there are different versions. To be honest, at the moment you have to -- you
21 have to demonstrate I think what has been said during direct examination. I
22 cannot -- I have not everything in my ear what has been said. I know relatively for
23 sure what has been said yesterday, but I -- so please put the Bench on the page, to put
24 it this way.
25 MR VANDERPUYE:

1 Q. When you were asked questions by the Kilolo Defence as to who was present at
2 the first meeting that you had with Mr Kilolo, who was present during the recording
3 of your statement, did you indicate whether Mr Kabongo was there or not in respect
4 to their question?

5 MR VERCKEN: (Interpretation) Well, I'm forming an objection. My colleague
6 from the Prosecution doesn't respond to your request to be informed prior to the
7 question which he intends to put, exact references of the cross-examination and which
8 would make it possible to see if there's any contradiction.

9 PRESIDING JUDGE SCHMITT: Fair enough. That's true. So I would --

10 MR VANDERPUYE: Page 15 of yesterday's transcripts, lines 2 through 5,
11 ICC-01/05-01/13 transcript 15's, confidential, English version.

12 Question: "I would like to ask you who was present with you during the recording?"

13 Answer: "Myself, Maître Kilolo, the white lady ... I think that during the recording
14 these were the people who were present, but subsequently" Mr Bob -- we're in private
15 session -- "(Redacted) showed up in his suit and then I left."

16 Do you recall giving that answer to that question?

17 A. Indeed. That's my answer.

18 PRESIDING JUDGE SCHMITT: So then this is answered.

19 MR VANDERPUYE: The question is --

20 PRESIDING JUDGE SCHMITT: No. This question is answered then.

21 MR VANDERPUYE: This question is answered. My question is whether -- when it
22 was that he says he saw Mr Kabongo.

23 PRESIDING JUDGE SCHMITT: No, no. Please sit down.

24 I do not understand at the moment where Mr Kabongo comes from. You

25 want -- you want to know who was present during this meeting where we heard the

1 audio recording, and the witness -- we have read out loud to the witness what he has
2 said yesterday, and the witness has confirmed these were the persons present. So
3 this is an answer to this question.

4 MR VANDERPUYE: Yes, Mr President. My point is that there is an -- my point is
5 that there is an inconsistency. If you would allow me to read what he said
6 previously, I can --

7 PRESIDING JUDGE SCHMITT: Yes, I allow that.

8 MR VANDERPUYE: -- explain --

9 PRESIDING JUDGE SCHMITT: I allow that.

10 MR VANDERPUYE:

11 Q. On 6 October, as my learned friends have pointed out, during the direct
12 examination you were asked this question -- and this is at transcript page 20,
13 ICC-01/05-01/13, transcript 14, and I'll read to you from line 8 through let's say line 17.

14 Question: "Then there are just a couple of things I'd like to see if we can to get
15 clarified. You testified in the Bemba case between (Redacted), and what
16 I would like to do or see to do is to get approximate dates concerning your
17 interactions with Mr Kilolo prior to that date. Yes? So can you approximate for us
18 when was it you last saw Mr Kilolo ..." prior to you testifying --

19 MR VERCKEN: (Interpretation) There is no translation, your Honour.

20 MR VANDERPUYE: Sorry, I can start again, or abbreviate the question.

21 PRESIDING JUDGE SCHMITT: Please abbreviate the question, yes.

22 MR VANDERPUYE:

23 Q. You were asked, Witness, about certain dates or the dates as best as you can
24 recall when you met Mr Kilolo.

25 And in answer to that question at line 13 of the transcript I previously cited, you said

1 "I believe" -- well, the question was when did you last see Mr Kilolo before you
2 testified on (Redacted).

3 Your answer was: "I believe it was the day before, or before that. I'm really not
4 specific on that. But the last time I saw him was when I met him. I went to meet
5 him at the hotel. He was not alone. There were two of them, two of them with
6 another individual. I think it's Maître Kabongo whose -- you know, he's got lighter
7 skin, well, in African terminology, brown skin. And he came -- he came to take my
8 statement."

9 MR VERCKEN: (Interpretation) Yes, your Honour, we clearly see that there's no
10 contradiction because in this scenario he answers a question on the last occasion on
11 which he saw Mr Kilolo, while in the first extract that was given and read by the
12 Prosecutor it is the first meeting with Mr Kilolo. So there's no contradiction
13 whatsoever which justifies that my colleague from the Prosecution goes back to clean
14 his work up of two days ago.

15 MR VANDERPUYE:

16 Q. How many statements did you give the Bemba Defence? Or, rather, what
17 statement are you referring to in the passage I just asked you about?

18 A. I don't know exactly which statement, but I did tell you when I went so that
19 I could be taken to the protection unit for the preparations for the hearing. It was at
20 that time that Mr Kilolo came down. I remember it must be the counsel who is over
21 there, I saw him in the evening and I saw him with Mr Kilolo, he took a taxi and they
22 dropped me. We were introduced, I didn't have a discussion with him, and he said
23 that's my colleague Mr Kabongo, I think that's the word he said, Mr Kabongo, he
24 works with me. And then they dropped me and they left and that's it.

25 PRESIDING JUDGE SCHMITT: So I think, Mr Vanderpuye, we move to another

1 point. Indeed, I personally do not see a contradiction there.

2 MR VANDERPUYE:

3 Q. So there was only one statement you gave to the Kilolo Defence -- I mean to the
4 Bemba Defence and that was to Mr Kilolo and to the white lady?

5 A. Yes, I think it's the statement which took time, the statement that we recorded
6 the first day.

7 Q. Okay. I want to ask you a few other questions. You testified yesterday
8 I believe -- at any rate you testified in relation to your cross-examination that you had
9 certain apprehensions about dealing with the Office of the Prosecutor following your
10 testimony in the Bemba trial. Do you remember giving that testimony or that
11 evidence?

12 For my friends that is at transcript page 41, lines 21 through 22, transcript number 15
13 in this case.

14 Do you remember saying you didn't want to talk to the Prosecution, you were
15 reluctant to do that following your testimony in relation to the contact that you had
16 with the Office of the Prosecutor?

17 A. Reticence. Reticence. Well, did I have a reticence to talk with the Office of the
18 Prosecutor? I called (Redacted) occasionally to tell him sometimes, when I had to
19 change the number I would call him to say, "Listen, in this period I had to go, I'm not
20 going to be available." But whether I was reticent or not, that's not by an intention
21 that I used the word "reticent."

22 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, please allow me to say that, that
23 I think also this will not lead to very much because we are now then going into an
24 interpretation what the witness understands under the expression of "apprehension."
25 So this is something which can of course be interpreted and this was a lengthy part of

1 the questioning yesterday. And I have it clearly in my mind what the questions
2 were and of course especially what the answers were. So I don't see -- I don't see
3 where --

4 MR VANDERPUYE: I'm just --

5 PRESIDING JUDGE SCHMITT: -- that could lead us.

6 MR VANDERPUYE: I'm just trying to orient the witness as to my question.

7 Q. And my question was: Do you remember testifying about that?

8 The President remembers that quite clearly. I think we all do. So I would ask you
9 if you could just focus on the question and give a response to the question.

10 So my question is: Do you remember saying that? That's it. You can say yes, you
11 can say no, you can say you -- you can say you would like to have your memory
12 refreshed, but my question is do you remember this discussion in your -- in the course
13 of your testimony?

14 A. Yes, everything -- everything depends on the terms which are used, but I think
15 it's preferable to refresh my memory. Please go ahead.

16 Q. The question was put to you -- it is a very long question and I don't think it's
17 worth going into.

18 You understand, sir, that lying to a court is an offence?

19 A. Yes, I understand.

20 Q. And you lied to this Court, right?

21 A. I don't know.

22 PRESIDING JUDGE SCHMITT: What means "this Court," please?

23 MR VANDERPUYE:

24 Q. The International Criminal Court during the course of --

25 PRESIDING JUDGE SCHMITT: In general, the International --

1 MR VANDERPUYE:

2 Q. -- your testimony --

3 PRESIDING JUDGE SCHMITT: -- Criminal Court in general, or this Chamber or the
4 other Chamber, Trial Chamber III or what do you mean?

5 MR VANDERPUYE:

6 Q. The International Criminal Court during the course of your testimony in the
7 Bemba trial you lied to the Chamber; is that correct?

8 A. Yes, but I told you, I told you, don't forget, that everything comes from my
9 identity -- my identity. There are certain things, I don't know if precisely where, but
10 the experience in the field, the career, or the -- for example when I was present -- I
11 wasn't present, so --

12 Q. You lied about being a soldier of the Central African Republic; is that correct?

13 A. Yes, it was a lie. It was a lie.

14 MR VANDERPUYE: Can we go to public session, please, Mr President, and I'll try
15 to be -- I'll try to be careful.

16 PRESIDING JUDGE SCHMITT: Yes, but I also want to remind you that we are not
17 in a direct examination again. We go into open session, but I see no, no legal basis,
18 to put it this way, to again ask the witness questions that are an issue or a topic for
19 direct examination.

20 MR VANDERPUYE: Mr President, it was brought out in cross-examination the
21 witness had certain apprehensions about meeting with the Prosecution and the
22 reasons for that. This is the reason why I am going into this area. I'll try to be brief.
23 I'm trying to frame my questions as precisely as possible.

24 (Open session at 11.25 a.m.)

25 THE COURT OFFICER: We are in open session, Mr President.

Trial Hearing

(Open Session)

ICC-01/05-01/13

1 MR KILENDA: (Interpretation) If you would allow me, your Honour. I don't
2 want to stop the proceedings, but I do have certain concerns with regards to what's
3 happening here today. Perhaps the Chamber could persuade your fears, but I have a
4 question with regards to the regularity of the proceedings today in light of the lack of
5 presence of Mr Nève. I think before taking the floor the Prosecutor rightly raised the
6 issue of the absence of Mr Nève today. We don't have an explanation for his absence.
7 I don't know if that will affect the regularity of the proceedings. This is a concern
8 that I have. I don't know what you think.

9 PRESIDING JUDGE SCHMITT: (Microphone not activated).

10 MR VANDERPUYE: Thank you, Mr President. As I indicated before, it is my
11 intention to steer very carefully around this issue in terms of revealing the witness's
12 identity. I don't think there is any Rule 74 issue that is implicated here because most
13 of these issues have already been dealt with, secondly, the witness already has
14 protective measures which protect his identity and therefore there will not be a link
15 between the evidence that is elicited in open session and the witness. So I don't
16 think there's any -- any issue about it. And Mr Nève has already dealt with
17 these -- some of these issues already prior to -- prior to today.

18 PRESIDING JUDGE SCHMITT: So I understand that -- yes.

19 MR DJUNGA: (Interpretation) Thank you, your Honour. I think I've understood
20 very well the relevance of the intervention of Mr Kilenda's. A moment ago we were
21 getting the witness to admit that he had lied, and I understand that it's very
22 concerning in the absence of his counsel. Thank you, your Honour.

23 PRESIDING JUDGE SCHMITT: In principle, I agree with both counsel, but only in
24 principle. If you look at the specifics of this case and how it evolved, this answer has
25 been given before and has been elicited by different people who have examined this

1 witness. But the Chamber is mindful of this problem and also reminds all of the
2 parties to be mindful in these last minutes that we give for this re-examination of this
3 issue. And I recall that yesterday, for example, Mr Larochelle intervened. He's
4 not -- yes, he's still there. Yes. He's been hiding. He's been hiding, Mr Larochelle,
5 at the moment. So we are all mindful of that, especially the Bench is mindful of that.
6 And I would really advise Mr Vanderpuye not to dwell into these self-incrimination
7 matters further so we do not have this problem that has been addressed by the
8 Defence. So this is a -- what I wanted to say about that. And please move on and
9 please concentrate yourself on issues that do not affect this problem of
10 self-incrimination of Rule 74.

11 MR VANDERPUYE: Then I think we better go into private session because that's
12 the whole nature of his testimony, Mr President.

13 PRESIDING JUDGE SCHMITT: Then we go into private session.

14 That is -- I think, was something that we should stay now with it, especially in light of
15 the submissions and what the Defence counsel have said.

16 *(Private session at 11.29 a.m.) Reclassified as open session

17 THE COURT OFFICER: We are in private session.

18 MR VANDERPUYE:

19 Q. Witness, before the Office of the Prosecutor came to meet with you, or had
20 contact with you, you had testified in the Bemba trial and you were aware that in
21 testifying to the -- in the Bemba trial you lied about certain things, one of those things
22 was your status as a soldier with the Central African Republic; is that true?

23 A. Yes, but it's that -- I said that it wasn't my true identity. I said that right from
24 the beginning.

25 Q. You lied about the training that you allegedly received as a soldier in the course

1 of your testimony in the Bemba trial; right?

2 A. Yes, but everything goes from beginning. If I'm firstly not a soldier and
3 I -- how am I going to have military training?

4 Q. Okay, so -- so you lied about that. That's clear. You lied about what you
5 allegedly saw in the field as a soldier during the course of your testimony in the
6 Bemba trial; that's true too, isn't it?

7 PRESIDING JUDGE SCHMITT: We are now --

8 MR TAKU: May it please the Court. My Lord, your Honour, I was very
9 comfortable with your wisdom, the wisdom of the Panel, but if I remember well on
10 the day that these proceedings commenced you clearly stated the parameters on
11 which this trial would take place and you stated clearly that this proceedings - let me
12 paraphrase my understanding - is not an attempt, or should not be attempt to
13 undermine the proceedings which are pending before another Trial Chamber because
14 you don't have the jurisdiction to do that. The Prosecutor has the prerogative to
15 bring the witness before the Trial Chamber to recant, that recantation has never taken
16 place, so there is no reason to substantiate this line of questioning, your Honours.

17 PRESIDING JUDGE SCHMITT: Let me put it this way: You know I'm relatively
18 open and outspoken. Also in this objection there is merit. It's -- I do not lightly
19 interrupt you again, Mr Vanderpuye, but I have said this I think the day before
20 yesterday, and I have said this indeed on the first day, we are not going into the
21 merits of the main case. And I do not see this exception that I also have mentioned.
22 And I think counsel are aware. I do not see where you're heading at at the moment
23 and I would really advise you to focus on matters that are directly related to the
24 possible merits, to put it this way, of this case, and that we have mentioned in
25 our -- during the opening day.

1 MR VANDERPUYE: I can be more specific, if that would assist the Chamber.
2 The Kilolo Defence put to this witness that he had certain apprehensions about his
3 contact with the Office of the Prosecutor and the reasons for that apprehension. That
4 was brought out on cross-examination. What I'm addressing with the witness is
5 other reasons why he would have such an apprehension. And the other reasons he
6 might have such an apprehension is because he's aware --

7 MR POWLES: I don't think --

8 MR VANDERPUYE: -- that he committed offences --

9 MR POWLES: Excuse me.

10 MR VANDERPUYE: -- during the course of his testimony in the main case. Those
11 offences and the specific nature of those offences is what I'm eliciting from the witness
12 at this moment.

13 MR POWLES: Your Honour, I just -- I just rise to intervene. I don't think my
14 learned friend should put on -- the witness on notice of what other -- other reasons for
15 his apprehension may be before actually asking the question.

16 MR VANDERPUYE: I'd like to be able to do that, Mr Powles. Thank you.

17 PRESIDING JUDGE SCHMITT: So please continue, but very focused. I will -- I
18 will not allow that you elaborate and dwell into this the merits of the main case. Just
19 you have to really restrict yourself in questioning on this possible motive for
20 apprehension, although I have to admit that I don't see much merit in it at all, but
21 please continue and then I would really urge you also to come relatively closely to an
22 end with that.

23 MR DJUNGA: (Interpretation) Thank you, Mr President. It is true that we raised
24 that question yesterday relating to the witness's apprehensions about meeting the
25 OTP. However, let me specify here that this itself did flow from the Prosecutor's

1 examination where reference was made to the witness's fears. So we were simply
2 developing from the Prosecutor's lead examination when these apprehensions were
3 mentioned. So why revisit an issue that the Prosecutor himself raised and to which
4 the witness has already provided answers?

5 MR VANDERPUYE: I don't want to go around in circles on this but I don't have any
6 specific recollection or neither has my colleague provided a reference to the
7 Prosecution eliciting any information about the witness's fears in meeting with the
8 Prosecution, but to the extent that he concedes that that was an issue that they raised
9 on cross-examination, it seems to me to be germane and actually corroborate the
10 purpose of the re-direct examination in that context.

11 PRESIDING JUDGE SCHMITT: Then what I would allow would, for example, a
12 question in general asking the witness if there are other reasons, or if he could
13 describe the reasons why he had an apprehension talking with the Prosecution, and
14 not putting into the mouth of the witness the answer. I would allow that, but not
15 more now. And this finishes this issue and this item. I don't want further
16 discussions on that now.

17 MR VANDERPUYE:

18 Q. Can you tell the Chamber what were the reasons that you had concerns about
19 speaking with the Prosecution following your testimony in the Bemba trial? As
20 briefly as you can, please.

21 A. My answer is the following: I think that initially I did not understand that to
22 be the question. My understanding was that after having met the OTP did I have
23 any further hesitations about continuing to have that collaboration with them. That
24 was the understanding I had of the question.

25 In any event, let me answer. Initially, what I said is that following my testimony in

1 (Redacted), to my mind, the matter was behind me, all was over. Please remember
2 that I never, and I think I have told you already, and I'm going to repeat myself, the
3 same things that we've been saying over and over, but it looks as if we must all seek
4 to understand the -- the very substance of my -- my answers while I understand the
5 substance of your questions too.

6 What I told you initially, as I was saying, is that at the time of my testimony in the
7 Jean-Pierre Bemba case -- what happened is that the persons who could have
8 contacted me thereafter would have been the Jean-Pierre Bemba's Defence team, that
9 was my expectation, but suddenly I got a call from the OTP and I did not know why
10 they were calling me.

11 That to me was some kind of disturbance because it was disruptive, it prohibited me,
12 so to speak, from continuing my activities and doing my normal business. But my
13 immediate reaction was not to want to meet them. I think I already told you that.
14 But when they insisted, I agreed to meet (Redacted) and his colleagues for the first
15 time in a hotel in the city. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 For all these reasons, therefore, I -- I was afraid. Now, when I went home and I
25 heard someone knock at my door, it was difficult for me to even open the door

1 because I -- I was scared. I hope you can understand that.

2 You see, to my mind, the testimony in the Bemba case was already over, and now it's

3 coming back to haunt me again. And I think that all those who live in Africa can

4 understand the type of thing I am talking about. In fact, there are some people who

5 do not even live in their homes any more when they are under such circumstances.

6 They don't sleep at home. In fact, in my case, at some point I actually had to take my

7 family out of the house because I was afraid that anything could happen to me at any

8 time. Even when I was away at work I was scared. But I am entitled to

9 have -- have my own life.

10 So I was afraid, I was scared and, in any event, I went on to decide to meet them, to

11 have a discussion with them, and that is how we met, that is how we had this

12 discussion and we have come this far to this day.

13 So you must understand why I was afraid, because it is a matter to do with my life.

14 And in fact, I told a team once that you come here, you take your planes and you

15 come here and then you go away leaving us behind with -- with nothing. Now,

16 because we're simply told if anything happens to you, please call us, you know, and

17 sometimes I call and I get the answering machine. Boop boop boop, answer, boop

18 boop boop, answer. And then nobody will answer back.

19 So what happens? Now, this is -- this is how it is. It is all these things together that

20 frightened me. And put yourself in my -- in my shoes. Even if you don't live in

21 Africa, there is insecurity everywhere. Please understand me, this is why,

22 Mr Prosecutor, this is why I was afraid.

23 But when I met you, we went ahead, and now I'm wondering why are we asking this

24 question today. You see, I told (Redacted) that I cannot have a discussion with

25 him in (Redacted). We were standing up, and if he were here he will tell you that

1 when I got to the hotel, they asked me to sit down, and I said, no, I wasn't going to sit
2 down in that hotel. I told them that it would be better for us to meet elsewhere, not
3 in that hotel.

4 I had simply come to meet them and we agreed at that time to meet in (Redacted).

5 And in (Redacted) I felt freer, because I was a lot more comfortable. And that is how
6 we had the discussion in the hotel. I was alone. I could even sit outside freely.

7 (Redacted)

8 So in a nutshell it is for these reasons that I was scared, that I was frightened. And
9 I think I've already mentioned all these thing things to you. Thank you.

10 PRESIDING JUDGE SCHMITT: Yes, I think this has answered the question.

11 MR VANDERPUYE: I agree, Mr President. Thank you.

12 Q. During your cross-examination you were asked questions by, I think it was
13 Mr Powles, about why it is that you told the Trial Chamber in the Bemba case that
14 you did not know or had limited knowledge of (Redacted). You were asked
15 specifically whether it was (Redacted) who told you to hide that information from the
16 Trial Chamber or not to disclose that information.

17 And my question is this -- well, and you indicated how you were surprised by the
18 response -- or surprised by the question and so on and so forth.

19 My question is this: When you testified in the Bemba trial that you had not spoken
20 to (Redacted) and you said that you were surprised by the question itself, did you
21 have an opportunity after that to speak to Mr Kilolo?

22 Now, just to orient you, you talked about that on (Redacted).

23 A. I'm sorry, who did I have the opportunity to talk with and what about, please?

24 Q. Yes. On October -- I'm sorry. On (Redacted), you were asked a question
25 during the course of your testimony in the Bemba trial about (Redacted) and the last

1 time or whether you had spoken to him, and you indicated at that time that you had
2 not spoken to him. And you testified yesterday on cross-examination that you were
3 surprised by that question at the time. Do you remember that, yes or no? That
4 would help us.

5 A. Yes, I do recall that.

6 Q. You were asked by Mr Powles, I believe, if the reason that you did not reveal
7 your knowledge about (Redacted) to the Trial Chamber was because (Redacted) told
8 you not to do so if that comes up. Do you remember that, yes or no? That will help
9 us.

10 A. Yes. Yes, of course. Yes.

11 Q. Did you, after you were asked that question on (Redacted), speak to or
12 have an opportunity to speak to Mr Kilolo about that question?

13 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, what means "opportunity"? Why
14 don't you ask him: Have you spoken to Mr Kilolo afterwards?

15 MR VANDERPUYE:

16 Q. Did you speak to Mr Kilolo after that question was put to you on (Redacted)
17 (Redacted)

18 Thank you, Mr President.

19 A. Yes, but this can be a difficult question for me. What I know is that we called
20 each other and we talked on the phone. But I cannot be specific about the content of
21 what we discussed. It is no longer present in my mind, you know. On (Redacted),
22 yes, we had a telephone conversation, that is correct.

23 Q. Did you speak to Mr Kilolo at any time about what to say if you're asked a
24 question about (Redacted)?

25 MR DJUNGA: (Interpretation) Thank you, Mr President. You would have

1 noticed that it is the same question over and over again. He has answered. And we
2 are wondering what is the purpose of this re-examination.

3 PRESIDING JUDGE SCHMITT: I think -- I also think that the witness has answered
4 this question. And I want to remind everybody in this room of an information that I
5 have been given recently. There are now I think seven minutes left on the tape, so
6 we will have indeed five, six, seven minutes at the maximum until we go to the
7 lunch-break, and after the lunch we will resume with the next witness.

8 MR VANDERPUYE: I'm sorry, Mr President, did you say that the witness had
9 answered the question?

10 PRESIDING JUDGE SCHMITT: I think the witness has answered the question, yes.

11 MR VANDERPUYE:

12 Q. Mr Powles asked you some questions about expenses, certain expenses that you
13 received from the Prosecution as opposed to certain expenses you received from the
14 Defence. Do you remember that question? Did you give an answer to it?

15 A. Yes, I had answered that question.

16 Q. In fact, what he said was he was going to make a comparison between the
17 expenses that you received from the Defence and the expenses you received from the
18 Prosecution. Do you remember that?

19 A. Yes, he put a question to me about money from the OTP and I -- and I answered
20 that question.

21 Q. In respect of that comparison, can you tell the Chamber whether anybody from
22 the OTP, the investigator, the Prosecutor, at any point in time ever told you that if
23 you're asked about this, not to make a mistake and tell the Judge that you received
24 money or expenses from the Prosecution? Can you tell the Chamber that?

25 A. No, no one ever said that to me. I was asked to sign for all sums of money that

1 I received. I had to sign-off the -- for the amounts I received.

2 Q. Did Mr Kilolo ever ask you to say something like that with respect to the money
3 that he gave you, the \$100, the \$600, the laptop computer or the telephone? Did he
4 ever tell you to say something like "Don't tell -- make a mistake and tell the Judges
5 when you testify about that"?

6 A. I think I already answered this question either yesterday or the day before
7 yesterday. He told me that he was giving me that money on his own account and
8 that it was not an official thing and that he -- these were personal gestures that he
9 made towards me. I think, except I'm completely mistaken, I provided this answer
10 before.

11 PRESIDING JUDGE SCHMITT: That is true, so move to another point. I think this
12 was a repetition, too.

13 MR VANDERPUYE: Well --

14 Q. Do you remember what you said in your statement concerning this very
15 question, the statement that you told this Chamber is true, the statement that you've
16 told the Defence is true? Do you remember what you said on this specific question?
17 And if you don't, let me know so I can refresh your recollection.

18 A. Could you specify the period you're referring to and so that I can understand
19 what truth you're mentioning?

20 Q. My question is this: Do you remember what you said in respect of this point,
21 this question in your statement to the Prosecutor? You can say "yes" or "no." If you
22 don't remember, I'll show it to you so you can refresh your recollection.

23 A. I did not quite understand the question the first time around, but, please,
24 I would like you to refresh my memory.

25 Q. Okay, I will do that then.

1 If we could have please in eCourt CAR-OTP-0087-2521_R01. We have --

2 PRESIDING JUDGE SCHMITT: Which page?

3 MR VANDERPUYE: -- it in eCourt now. I would like to go to page 2529.

4 Q. And I want you to take a look at very specifically lines 281 through 283 and
5 focus on line 282 and 283. Let us know when you've had an opportunity to read it.

6 Have you read those three lines, Mr Witness?

7 A. Yes, I have read them, but I think that I already gave the same answer a short
8 while ago.

9 Q. Did Mr Kilolo tell you to never make a mistake and to tell during your
10 testimony that you had received anything from him?

11 A. Yes, that is what I have already said. He told me that this was something
12 coming from him, that it was not official, that it was a personal gesture made towards
13 me. I am repeating myself.

14 PRESIDING JUDGE SCHMITT: We are moving now in circles. I think we can stop
15 this here.

16 MR VANDERPUYE: Very well. Thank you, Mr President.

17 That concludes my redirect examination. And I appreciate your indulgence and
18 patience.

19 PRESIDING JUDGE SCHMITT: Yes, I wanted to say that. This was not the easiest
20 session today, until now. And indeed some of counsel have stretched a little bit the
21 patience of the Chamber, I would say, but it is perfectly clear that under the
22 circumstances this can happen.

23 We will make now the lunch-break and we will resume at 2 o'clock with the next
24 witness.

25 THE COURT USHER: All rise.

Trial Hearing

(Open Session)

ICC-01/05-01/13

1 (The witness is excused)

2 (Recess taken at 11.56 a.m.)

3 (Upon resuming in open session at 2.05 p.m.)

4 THE COURT USHER: All rise.

5 PRESIDING JUDGE SCHMITT: I have been informed that the Prosecution wishes to
6 formally submit documents. I would advise you to please send emails to Trial Chamber VII
7 communications. And I would also indicate to do that if the Defence wants to submit certain
8 documents.

9 Good afternoon, Mr Witness, again. Thank you for being here. You're going to
10 testify before the International Criminal Court as you are well aware of. On behalf
11 of the Chamber, not only of me personally, I would like to welcome you.

12 This Chamber has been established to try the case of the Prosecutor against Mr
13 Jean-Pierre Bemba Gombo and others. You're called to testify to assist us in our
14 search for the truth.

15 You will be asked by the lawyers and probably also by the Judges in this courtroom.
16 In this connection, I would give a little bit of guidance to you. Please listen carefully
17 to those questions. If you do not understand, feel free to ask for the question to be
18 repeated or rephrased. I trust you have understood this, Mr Pluijmers.

19 WITNESS: CAR-OTP-P-0361

20 THE WITNESS: Yes, your Honour.

21 PRESIDING JUDGE SCHMITT: I think somewhere in front of you there must be a card on
22 which is printed a solemn undertaking. I would ask you to please read out the words on this
23 card.

24 THE WITNESS: I solemnly declare that I will speak the truth, the whole truth and nothing
25 but the truth.

1 PRESIDING JUDGE SCHMITT: Thank you.

2 You know, Mr Pluijmers, that you are now under oath. As you have just promised,
3 you have to speak the truth. And I inform you that it is an offence within the
4 jurisdiction of this Court to give false testimony. Do you understand that?

5 THE WITNESS: I do, your Honour.

6 PRESIDING JUDGE SCHMITT: Thank you.

7 Now a few practical matters you should have in mind when giving your testimony because
8 this is a -- we have special arrangements here with interpretation and so forth. I would like
9 to inform you on that. Everything we say here in the courtroom is written down and
10 interpreted into English and French. It is therefore important to speak clearly and to speak at
11 a moderate or rather slow pace. Even counsel and the Judges here in the courtroom have
12 sometimes difficulties with that, but I want to remind you of this fact. We want to make sure
13 that your words can be understood by the interpreters and of course by the rest of us.
14 Please speak into the microphone and only start speaking when the person asking
15 you the question has finished.

16 To allow for the interpretation, everyone has to wait a few seconds before starting to
17 speak. So I recommend to you that when a lawyer has asked a question, please wait
18 a few seconds before answering.

19 If you have any questions yourself, which can happen, you can indicate this by
20 raising your hand. We will then give you the opportunity to speak. I think you
21 have understood all that.

22 THE WITNESS: I have. Thank you.

23 THE INTERPRETER: Message from the English booth. Message from the English booth --

24 PRESIDING JUDGE SCHMITT: I've been informed that the participants have changed a
25 little bit. Please excuse me that I, on first sight, do not grasp fully in how far the presence has

1 changed, but I see of course now turning my eye to the left that something has changed and
2 also I see some persons here on the right. So I would indicate to make it short, that counsel
3 present those who have not been present in the morning.

4 MR VANDERPUYE: Thank you, Mr President. This afternoon I'm here with Olivia
5 Struyven to my right, trial lawyer; and I'm here with Ester Kosova, to my right behind me.
6 These are the new participants as well.

7 I would just add that it doesn't appear that the English transcript is following the
8 proceedings. So I wasn't sure if you were aware of that.

9 PRESIDING JUDGE SCHMITT: And for Defence?

10 MR GOSNELL: Good afternoon, Mr President. For Mr Mangenda this afternoon is myself;
11 Mr Yassir Al-Khudayri, legal intern; and Mr Mangenda.

12 MR POWLES: Good afternoon, Mr President, your Honours. It's essentially the same team
13 as before, but Maître Djunga gives his apologies, he cannot be here this afternoon, and I'm
14 joined this afternoon by my learned case manager, Ms Leuka Groga. Thank you.

15 MR TAKU: May it please the Court. Mr Tibor Bajnovic has joined our team now in the
16 courtroom today.

17 MR KILENDA: (Interpretation) Good afternoon, Mr President, your Honours. Our team
18 has remained intact.

19 PRESIDING JUDGE SCHMITT: I like the word "intact," to be honest.

20 Now, Ms Taylor -- and here I see a new -- another person and that must be the expert, I think,
21 so perhaps you can introduce him too.

22 MS TAYLOR: Yes, it is indeed, Mr President. On the left is Mr Duncan Brown and, sitting
23 next to him is Ms Yuqing Liu. Thank you very much.

24 PRESIDING JUDGE SCHMITT: So we also welcome Mr Duncan Brown in the courtroom.

25 So I want to address some procedural issues that are related to this testimony, which basically

1 is to remind you what has been said before, meaning I recall our earlier decision in respect of
2 the testimony of Mr Pluijmers in which we ruled that he will be examined in the following
3 sequence:

4 First, the Prosecution will be permitted to ask questions about background and qualifications;

5 Second, once these questions have been completed, before turning to the discussion of the
6 report of the witness, the Defence team will be allowed to question the witness on the same
7 matters;

8 Third, following this questioning, the Defence teams may then, if they wish to do so, orally
9 challenge the qualifications of the witness or the overall relevance of his anticipated testimony;
10 and

11 Fourth, the Chamber will then rule on whether the witness may testify as an expert in this
12 case. If he is allowed to testify, then the Prosecution's examination of the witness will
13 continue.

14 Thereafter, should possible receipt of the translations referenced in the report of the
15 witness meaningfully change the Defence's position on his qualifications, the Defence
16 may request reconsideration.

17 With these preliminary remarks I think finished, we can now start the testimony of
18 the witness.

19 Prosecution, you have the floor.

20 MS STRUYVEN: Thank you, Mr President.

21 QUESTIONED BY MS STRUYVEN:

22 Q. Good afternoon, Mr Pluijmers. My name is Olivia Struyven, and I will be asking you
23 questions today on behalf of the Prosecution.

24 As the Judge has explained to you, we will first address your background and -- your
25 identity and your background before the Judges will make a determination whether

1 you qualify as an expert in telecommunication analysis.

2 Moving to your identity, could you give us your full name?

3 A. My full name is René Pluijmers.

4 Q. When and where were you born?

5 A. I was born on 15 October 1961, in Rotterdam, Netherlands.

6 Q. And where do you currently reside?

7 A. Currently I live in Rotterdam, Netherlands.

8 Q. Mr Pluijmers, I would like to briefly ask you about your education. When and from
9 where did you obtain your university degree?

10 A. I studied at Delft University of Technology, starting in 1980 and graduating with a
11 master's degree in 1987.

12 Q. During your studies, did you focus on any particular area?

13 A. The first three years were quite general, a lot of mathematics and physics, but during
14 my third, fourth and fifth year I specialized in telecommunications.

15 Q. Did you conduct any particular research during that period?

16 A. I did my graduation work, which was research on mobile data communications. And
17 after graduating, I worked as a temporary researcher for the department of
18 telecommunications in Delft's University of Technology. And I completed a paper on my
19 thesis work and it was published in electronics letters in 1987.

20 Q. Now, following your studies, I understand that you spent some time in the military?

21 A. I've been a conscript in the military from January 1988 until April 1989. After a basic
22 military training, I was a teacher at the Royal Military Academy, in Breda, The Netherlands.

23 Q. And can you clarify what subjects you were teaching?

24 A. I was teaching to first year's cadets at the military academy, and third year cadets,
25 mainly of the army, the signal corps, and the air force, the electronics corps. To the young

1 cadets I was teaching basic electronic theory. To the third year students, third year cadets I
2 was training radar technology and electronic warfare.

3 MS STRUYVEN: Your Honours, I see that the French transcript is not following. Should I
4 pause for a moment?

5 PRESIDING JUDGE SCHMITT: Yes, please pause for a moment until we -- I get the
6 information that it is on the screen again.

7 THE INTERPRETER: Message from the interpreters, from the French booth: Could counsel
8 please be requested to observe a pause between question and answer because the French
9 booth needs to keep up. Thank you.

10 MS STRUYVEN: I will. Thank you.

11 Q. Now moving to your occupation, what is your current occupation?

12 A. I'm working as a freelance telecommunication consultant. And currently my client is
13 next door, KPN at Maanplein. And I'm focusing on project management on
14 telecommunications related information technology.

15 Further to that, I have -- I've been associated with the Nationaal Forensisch
16 Onderzoeksbureau which is private company in The Netherlands focusing on
17 telecommunications forensics.

18 Q. I will ask you questions about those two areas separately. So I'll start with the -- your
19 work as a telecommunications consultant.

20 Could you explain to the Chamber how long you've been working in the area of
21 telecommunications?

22 A. I started working in telecommunications back in 1989. My first employer was KPN.
23 And I joined the mobile department. During my career with KPN until 1996, I've been
24 responsible for the deployment of the analogue mobile network and also the introduction of
25 the GSN network in The Netherlands from KPN back in 1994.

1 During that time, I've been manager, radio network planning, which means I had a
2 team with people that should find on a computer-aided system the right places for the
3 transmission system, the masts of the GSM network.

4 After KPN I joined Andersen Consulting, as they were called back then. Currently
5 they're called Accenture. I was introduced in Accenture as an experienced hire and,
6 together with more experienced hires, I would join local project teams, for instance in
7 Italy, in Rome, in Budapest to increase the telecommunication knowledge of the local
8 teams providing services to their clients.

9 After Accenture in 1999, I was approached by a previous KPN colleague who had
10 started his own consultancy in The Netherlands and he asked me to join his small
11 consultancy. That's what I did in 1999. And I'm still shareholder and director of
12 that consulting company, which is named Quar.Tel Consultancy. It's also on my CV.

13 During my time with Quar.Tel, I had several assignments both in The Netherlands
14 and abroad focusing mostly on the deployment of mobile telecommunications
15 infrastructure. An example, I've been working in Indonesia with mobile telecom
16 operator Telkomsel to improve the capacity planning process to keep the network
17 growing with the customer base.

18 And I've had several assignments in Belgium with BASE mobile operator, focusing on
19 improving the quality of the mobile network in Belgium, the BASE network.

20 Also been a programme manager for the deployment of the 3G network, the UMTS network,
21 working with ZTE, a Chinese vendor of mobile telecommunications equipment, merely as a
22 liaison between BASE and the Chinese vendor organisation to have some European presence
23 with the Chinese team.

24 So basically that describes a little bit my background in telecommunications.

25 Q. Now, when you were working with the external company, you gave the example of

1 BASE, you gave the example of Telkomsel and you gave other examples. Were you required
2 to analyse telecommunications data?

3 A. "Data" is a very broad term obviously. If you refer to call detail records, sometimes we
4 analysed call detail records for instance to see why there was a large cut-off rate at specific
5 base stations. So a lot of problems, breaking of connections. We would analyse the call
6 detail records to find out why.

7 Q. Now, you mentioned several companies. Am I correct in understanding that these
8 companies were not all situated in The Netherlands?

9 A. That's right. BASE is situated in Belgium. It's a Belgium mobile operator. It used to
10 be a daughter company of KPN.

11 I've worked with Telkomsel, in Indonesia, and I worked with ZTE, which was in
12 Belgium as well and sometimes back in Shenzhen, in China.

13 Q. And did you have a chance to analyse call data records from different countries?

14 A. Most of the call detail records I've examined is for the NFO, the Nationaal Forensisch
15 Onderzoeksbureau in different criminal cases. I've been involved with the NFO since
16 March 2012. I examined about 20 cases. Most of the cases contained call detail records from
17 The Netherlands, but some of the cases also contained foreign call detail records; for instance,
18 from BASE, Mobistar and Proximus, the three Belgian mobile operators.

19 Q. I will now ask you a few more questions about your functions at the Nationaal
20 Forensisch Onderzoeksbureau. First of all, can you briefly explain to the Chamber what is
21 the NFO does -- or, what it does?

22 A. In The Netherlands we have the NFI, which is the Nederland Forensisch Instituut. It's
23 part of the Department of Justice. The NFO is a kind of private counterpart of the NFI,
24 basically providing services to courts, police teams, investigation teams and lawyers to
25 support their case.

1 In most cases, I'm assigned by the investigative magistrate mostly in appeals to give a second
2 opinion of the telecommunication proof that was collected, convictions that were made based
3 on those proof during the first session in court.

4 Q. Before I go back to the examples that you already gave, on what basis did you become a
5 member of this Nationaal Forensisch Onderzoeksbureau or NFO?

6 A. A colleague of mine has been an expert witness in several criminal cases. He was
7 contacted when the previous telecommunication expert of the NFO passed away. And this
8 colleague didn't want to do everything on his own, so he introduced me to the NFO.
9 Basically the way we work is when I do the examination, he gives a review and the
10 other way around to prevent tunnel vision on the subject.

11 So actually, I was introduced to the NFO by a former colleague of mine from KPN.

12 Q. And just to be clear on the record, what is your exact function at the NFO? Where are
13 you providing your expertise in?

14 A. I'm an expert in telecommunications forensics focusing on mobile telecommunications.

15 Q. Now, you mentioned that you worked on around 20 cases for the NFO or on behalf of
16 the NFO. Could you share with the Chamber some of the examples of the work that you
17 performed?

18 A. Several examples, several murder cases, people convicted, sentences until 15 or 20 years.
19 They were contesting the telecommunications evidence, and I provided a second opinion on it.
20 Some time ago there was a shooting in Antwerp with a suspect who claimed he was not
21 present at the shooting, but his telecom records showed that he was. I investigated that case.
22 I invested a case where a young lady ran over an elderly lady on a zebra path. The
23 elderly lady passed away. The police have examined the telephone, her telephone
24 and the historic telecommunications data and accused her of SMSing while driving,
25 texting while driving.

1 I investigated the evidence and the police had made some mistakes in the call detail
2 records where it was shown that she didn't text herself, but she has been texted by
3 somebody else and she hadn't read the text on her cell phone either.

4 I've done investigation also on a lawful intercept case where privileged information
5 was added to the files, which was -- in this case should not have happened. The
6 authorities, the prosecutor claims that all the privileged information had been
7 removed from the files, but I still found several pieces of evidence where the
8 privileged information was still included in the file.

9 Does that answer your question?

10 Q. Yeah, I think that's enough examples.

11 Just to clarify, in most of these cases or in all of these cases, I don't know, who exactly
12 would have -- or would appoint you to appear as an expert?

13 A. When I started to work, I worked a lot for criminal defence lawyers, but it shifted more
14 towards the investigative magistrates requested by the Defence in most cases to do a second
15 opinion on the telecommunication evidence. So now in about 80, 90 percent of all cases it's
16 the investigative magistrate that assigns me to do this task.

17 Q. And in the examples you gave or in other examples, would you have had to prepare an
18 expert report?

19 A. In all 20 cases I have. In only a few cases I appeared in court during an appeal, I think
20 in two or three cases I actually had to appear in court. But in most cases the expert's report
21 was sufficient for the parties, the defence, the prosecutor and the judges to base their opinion
22 on.

23 Q. And when you say you appeared in court, I take it that you appeared as an expert?

24 A. I appeared as an expert witness, that's right.

25 Q. Now, in order to conduct the type of work that you just explained to us, do you need to

1 go through a specific procedure in The Netherlands or do you have to be accredited by an
2 organisation for that?

3 A. There is no official accreditation like with DNA experts in The Netherlands. We have a
4 register of forensic experts. But telecommunications is not yet a part of that official register.
5 I have been registered at what is called the Landelijke Deskundigheidsmakelaar. It's
6 department of the police academy in Apeldoorn, The Netherlands and I have been
7 accredited by the LDM, by the police academy.

8 It went through a vetting procedure where they checked my telecommunications
9 expertise as well as my behaviour, my -- the way I explained in court about -- the way
10 I testified in court about different cases.

11 Q. Another question: Do you or not teach in the area of telecommunications?

12 A. I do. I started teaching in telecommunications during my military service obviously.
13 During my time with KPN in the mid-'90s, I did several trainings on the then new GSM
14 system. From 2004 to 2012, I taught the mobile school, which was an introduction training in
15 mobile telecommunications. And there I was responsible for the radio network part.
16 If you look at the architecture of a GSM network it's the radio network with the
17 towers and the antennas and you have a switching network, a core network that takes
18 care of the connectivity with all the telephone network or different mobile, mobile
19 networks.

20 In the mobile school I was responsible for teaching the radio network part. That's a
21 two-day introduction on radio communications in GSM, UMTS and LTE, 2G, 3G and
22 4G.

23 Apart from that, since I've been associated with the National Forensisch
24 Onderzoeksbureau, the NFO, I've also been conducting trainings for criminal defence
25 lawyers about once, twice a year. Participation is about 15 to 20 lawyers, and they

1 get an introduction of the GSM network, of the USTM network, call detail records, the
2 lawful intercept system and procedures in The Netherlands and special investigation
3 methods the police use like IMSI catchers, eavesdropping tagging devices, GPS
4 trackers and stuff like that.

5 MS STRUYVEN: Your Honours, on the basis of what the witness has said, we would like the
6 Chamber to qualify Mr Pluijmers as an expert in telecommunication analysis.

7 PRESIDING JUDGE SCHMITT: Thank you. I give the Defence in a sequence that they can
8 decide amongst themselves. I could imagine that perhaps Mrs Taylor would start this
9 afternoon. I give you the floor then.

10 QUESTIONED BY MS TAYLOR:

11 MS TAYLOR:

12 Q. Good afternoon, Mr Pluijmers. My name is Melinda Taylor and I'll be questioning you
13 on behalf of the Defence for Mr Bemba.

14 I only have a very few, very few questions for you this afternoon on a very discrete
15 issue.

16 Mr Pluijmers, would it be correct that your experience lies primarily with telecom
17 service providers from the private sector?

18 A. What is your definition of the private sector?

19 Q. For example, you have testified that you worked as a project manager with KPN, with
20 Base, with private companies?

21 A. That's a correct observation.

22 Q. Thank you. And I note that you have testified that you were an associate with -- and if
23 you don't mind, can I call it the NFO? And would I be correct that this is a part-time
24 associateship?

25 A. That's correct. The average time I spend per month for the NFO, it's a little bit

1 depending on the cases. Sometimes you don't have a case for some time and sometimes like
2 now I have three cases. But on the average it's about two days a month.

3 Q. And the NFO as you testified provides advice to independent entities, so it's not part of
4 the Dutch police, is it?

5 A. It's fully independent and it also gives fully independent advice, not linked to defence,
6 prosecution, police or whatsoever.

7 Q. And the interception process in The Netherlands, it's operated by the Interceptie &
8 Sensing department of the Dutch police?

9 A. That's correct.

10 Q. And you have not worked as a Dutch policeman?

11 A. That's correct as well.

12 Q. So you have not participated directly in the actual implementation of the interception
13 process in The Netherlands?

14 A. No, I haven't.

15 Q. In compiling your expert report, you were provided with certain filings from the ICC,
16 and in these filings there were statements from the Dutch police.

17 A. Could you elaborate which statements you refer to?

18 Q. I believe that there is certain filings from the ICC Registry which document the process
19 in The Netherlands and it includes reports from the magistrate. There was an independent
20 counsel, an expert designated and a Dutch policeman. I'm not going to name his name. Do
21 you recall reviewing those?

22 A. I have reviewed them, yes.

23 Q. And the statements from the Dutch police that you reviewed, they don't provide
24 detailed information concerning the technical modalities of the interception process in this
25 case.

1 A. That's right. And also the police is very secretive about the way the interception
2 system works.

3 Q. I'd just like to turn to a very discrete part of your report and I don't know if it can be
4 brought up. It's page 21. It's ERN 1845, CAR --

5 PRESIDING JUDGE SCHMITT: I have no problem to bring it up, that you bring it up.

6 MS TAYLOR: Okay.

7 PRESIDING JUDGE SCHMITT: Obviously we have another -- yes.

8 MS STRUYVEN: No, your Honours. Just a point of clarification. My understanding was
9 that this part of the procedure was just to question the qualifications of Mr Pluijmers.

10 PRESIDING JUDGE SCHMITT: Mrs Taylor should immediately make clear that we are still
11 on the general path to put it this way. Yes.

12 MS TAYLOR: We certainly are.

13 PRESIDING JUDGE SCHMITT: Immediately.

14 MS TAYLOR: Yes.

15 Q. And this is a section addressing the lawful interception process in The Netherlands.
16 And in this section I believe you use the words that it's been carefully composed.

17 A. Yes, I recall that wording.

18 Q. And you refer to knowledge collected by the NFO and public sources and a telecom
19 expert?

20 A. What I did is based on my knowledge of the interception system, I have drafted the way
21 the interception system works, probably works in The Netherlands based on open sources.
22 They're referenced in my reports as well, the last couple of links. And I've verified this
23 information I think with the same policeman you're referring to. So he just had to say it's
24 correct or it's not correct without having to go into detail himself, just verifying my
25 information that it was correct.

1 Q. Thank you.

2 MS TAYLOR: I don't have any further questions for the witness. Should I state my position
3 now concerning the scope of his expertise?

4 PRESIDING JUDGE SCHMITT: I think I would like to inquire if there are other --

5 MS TAYLOR: Of course.

6 PRESIDING JUDGE SCHMITT: -- if other Defence teams want to question the witness on
7 these matters, and then we can come back to you.

8 MS TAYLOR: Thank you, Mr President.

9 PRESIDING JUDGE SCHMITT: So my question would be are there other counsel who want
10 to raise their voice?

11 MR POWLES: No. Thank you very much, your Honour.

12 PRESIDING JUDGE SCHMITT: Then I give you the floor again, Ms Taylor.

13 MS TAYLOR: Thank you, Mr President.

14 The Defence for Mr Bemba does not contest Mr Pluijmers' expertise as concerns the sections of
15 the report concerning the call data records, and we don't contest his expertise or ability to
16 interpret certain information in the -- the intercept information.

17 What we do contest is whether Mr Pluijmers can appear as an expert on the specific
18 issue as the legality and modalities of the interception process.

19 PRESIDING JUDGE SCHMITT: That's understood.

20 Is there a comment by the Prosecution in that respect?

21 MS STRUYVEN: Your Honours, I think it's -- indeed, there is certain functions that Mr
22 Pluijmers has not had in the past. There is indeed limitations to what he can testify to, but
23 we do believe that the materials that he examined will allow him to enlighten us about the
24 procedures that were put in place or that were followed and the resultant data from those
25 procedures.

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1 So we do believe that he is in a position, through his experience, through the work he has
2 done in the past, to assess the legality or the appearance of the documents that resulted from
3 the interception process.

4 (Trial Chamber confers)

5 PRESIDING JUDGE SCHMITT: So I think this is of course a matter that has -- we have to
6 consider and we have to retire to -- deliberation for that. And are there -- okay, you want to
7 have the floor again, Ms Taylor?

8 MS TAYLOR: Yes, Mr President, just very briefly, in relation to the sources referred to in the
9 report, as the Bench is well aware, these sources are, to a large part, in Dutch. We have not
10 had access to them. And it's not clear from the report to what extent they've been relied on
11 and for what propositions. And the same issue applies to any information which may have
12 been derived from the policeperson. We don't know what has been derived from the
13 policeperson. And it's Mr Pluijmers in the stand, not the policeperson.

14 So in terms of our ability to contest the foundation of these opinions, we're not in
15 ability to do so. And I do believe that the purpose of having an expert is to present
16 specialized training or knowledge or experience. And Mr Pluijmers evidently has
17 those on a range of topics on his report, but for some topics it is secondhand
18 information that we have in the stand, and it would not advance the proceedings to
19 lead testimony on that given our inability to evaluate the foundation and contest
20 them.

21 PRESIDING JUDGE SCHMITT: Okay. Thank you very much. We retire to deliberation.
22 And (Overlapping speakers)

23 MR KILENDA: (Interpretation) Very briefly, Mr President. I do recall that you -- you
24 raised a question about what an expert can do. So he must be limited to the scientific and
25 technical aspects of questions that are before the Court. He has no expertise in matters of

1 law. That is all we would like to say on behalf of Mr Babala.

2 PRESIDING JUDGE SCHMITT: I see Mr Pluijmers nodding. Could you please confirm
3 what this nodding obviously means.

4 THE WITNESS: I agree with the counsellor that my expertise is limited to
5 telecommunications and not to law. So I have no formal law background. I've been
6 exposed obviously in different cases to the legal aspects, but I cannot provide expertise on
7 that.

8 PRESIDING JUDGE SCHMITT: Thank you. There are no other comments wished, so we
9 retire now for deliberation.

10 THE COURT USHER: All rise.

11 (Recess taken at 2.44 p.m.)

12 (Upon resuming in open session at 2.58 p.m.)

13 THE COURT USHER: All rise.

14 PRESIDING JUDGE SCHMITT: The Chamber gives the following ruling, a very short one:
15 The witness may testify as a telecommunications expert in this case. This concludes
16 the ruling.

17 I add that the Chamber is mindful of the limitations that have been brought up by the
18 Defence and been confirmed by the witness himself.

19 (Microphone not activated)

20 MS STRUYVEN: Thank you, Mr President.

21 QUESTIONED BY MS STRUYVEN:

22 Q. Mr Pluijmers, I would like to show you four documents, and I think you have them in
23 the binder in front of you. And I would like you to have a look at the document under tab 1.
24 For the record, that would be CAR-OTP-0090-1825. The document under tab number 2, that
25 would be CAR-OTP-0090-2109. The document under tab 3, and that would be

1 CAR-OTP-0090-2110. And the document under tab 4, and that is CAR-OTP-0090-2113.

2 Mr Pluijmers, do you have them in front of you?

3 A. I do.

4 Q. And do you recognize these documents?

5 A. I do recognize them.

6 Q. What are these documents?

7 A. The first document is my expert report. The document under tab 2 is a request to
8 finalize my report before 20 July this year. The document under tab 4 has been provided to
9 me as part of the instruction. It's an overview of the exhibits you provided me.

10 Q. Now, Mr Pluijmers, can you briefly explain to the Chamber what instructions you were
11 given in relation to preparing your report?

12 A. The instructions are mentioned in my report. I have used the same wording as
13 contained in the instructions.

14 The instructions contained several questions to elaborate on the provided materials.

15 For instance, are these call detail records coming from a telecommunications service

16 provider? Which information do they contain? Do they contain all elements

17 usually contained in call detail records? Can you make forensic conclusions? Can

18 you draw conclusions from these call detail records?

19 And the same for the intercepted data, the intercepted related information provided, same

20 questions were asked. Are these data coming from the standard intercept process? Do they

21 contain all consecutive elements needed for forensic research? Do they contain location

22 information?

23 Q. Now, you already briefly mentioned it, but am I correct in understanding that the

24 documents provided under tab 4, so that would be CAR-OTP-0090-2113, am I correct in

25 understanding that those are the documents you were asked to examine?

1 A. That's right. And the structure of my report follows the same structure as the exhibits
2 presented in this document.

3 Q. Now, in terms of the drafting of the report, could you explain to the Chamber
4 how you -- how you went about drafting your expert report. Of course briefly, not -- I mean,
5 just briefly explain how you came about drafting your report.

6 A. If you look at the samples of call detail records, what I did is one by one I answered I
7 think it were four questions. I gave an overview of the structure of the call detail records, of
8 the tables included, the meaning of the tables, the information contained in the call detail
9 records, and I examined whether they contained information about possible location, which is
10 usually the cell identification number, the number of the mast that is used.

11 So one by one I answered the whole list of questions time and again for each of the
12 consecutive call detail records.

13 For the intercepted communications, I think the instruction was twofold. One, to
14 give an overview of the interception process in The Netherlands. And the second
15 one is go through the exhibits provided, also explain what information do they
16 contain. Do they come from a standard interception process? What kind of
17 conclusions can you draw? And do they contain location information?

18 So also one by one I have had the same approach answering the questions as
19 contained in the instruction of the Office of the Prosecutor.

20 Q. Later on I will break up the examination indeed in those two parts. I will first address
21 the call detail records and then move to the interception process.

22 But just before I do, did you consult with anyone while or when drafting your expert report?

23 A. No. I haven't contact anybody when I drafted the report. However, my colleague,
24 he's mentioned in the report, Redert Steens, was my reviewer on this case. So after drafting
25 the report I provided the report to him for a review.

1 Q. And did the substance of your report change upon such review?

2 A. The most part of the review was crossing the Ts and dotting the Is. So the structure did
3 not change. Also the conclusions did not change.

4 Q. Now, starting with the first group that you mentioned, the CDRs, could you briefly
5 explain to the Chamber what CDRs are?

6 A. Actually I can read out what is in my report. In telecommunications networks call
7 detail records is part of -- for the record, it's part of A-1, introduction. Call detail records,
8 CDRs, they're also called charge detail records. They're generated merely to compose a bill
9 for telecommunication customers.

10 When you make a call through a mobile network you will first enter the base station.

11 The base station will connect you to the base station comptroller. The base station
12 comptroller will connect you to the switching network and the switching network
13 takes care of terminating the call.

14 Each of these elements I mention, they generate a call detail record, so basically
15 generating an event record. If you collect all those event records, you get a
16 composed call detail record containing the most -- the information you need to send
17 your customer a bill.

18 For instance, when did the call start? When did it end? What was the originator?
19 What was the destination? And possibly what was the location or the cell ID of the
20 customer?

21 Call detail records are meant to send customer a bill. So usually they were not
22 meant to support legal processes, but they can be used for that, because they contain a
23 lot of valuable information.

24 Q. You explained the type of information that a CDR usually contains. You referred to the
25 starting time of the call, the end time, et cetera. Is there any other information that one can

1 find usually on a CDR?

2 A. It's a little bit dependent on the operator you ask, because you will not get the raw CDR

3 usually. They're in a format that is quite unreadable. It's called the XML format.

4 Usually call detail records are provided as text or as a comma separated value list or

5 as an Excel file. And the operator that provides the call detail records usually makes

6 a subset of all the information that is contained in a call detail record.

7 I mentioned the calling party, the called party, the call start date and time, the call

8 duration, the call type can be a voice call, can be SMS, can be data. And sometimes

9 or in most cases there is also information about the cell ID, the approximate location

10 where the call is being made.

11 And in some cases the call detail records also contain the termination calls. Why did the call

12 ended? Just because the customer hang up -- hung up? Or there were some technical

13 problems, that could be a part of the call detail records as well. But it's usually not found in

14 the call detail records that are provided from a telecommunications service provider to the

15 requesting legal office like a prosecution team.

16 Q. So on that last point, am I correct in understanding that the information then goes from

17 the telecommunication service provider to the legal team or the law enforcement agency is a

18 subset of the information that is collected?

19 A. That's right. There is a lot of background information in the original call detail records

20 containing termination cause, containing vendor-related information. So basically they

21 provide a subset of the information that is needed by the law enforcement agencies. If you

22 look at the raw call detail records, which I did in several cases, it's a huge file, and basically

23 what I do is filter the information as well to get the essential information out of it; who called,

24 with whom, at what time, at which date, type of service.

25 Q. Now, you mentioned or you explained in which format these call data records are

1 normally kept by the telecommunication service providers. What we're interested in is in
2 what format are they provided normally to the law enforcement agencies?

3 A. This is again depending on the mobile operator or the fixed network operator. In
4 many cases it's an Excel file, XLS, XLSX. In many cases it's a comma separated file, point
5 CSV. Sometimes it's just an ASCII text file, point text. In some cases it's a PDF file, like a
6 print to PDF output of the CDR collection process. So it's depending on the
7 telecommunication service provider.

8 Q. Now, Mr Pluijmers, when you look at a CDR that has been provided to law enforcement
9 agency, what do you look for to assess the -- let's say the reliability of the CDR?

10 A. I look at the completeness of the call detail records. For instance, are there gaps in time.
11 Sometimes half a day is missing. It can mean that the suspect did not make any telephone
12 calls during half a day. That's possible. But it's also possible that information is left out.
13 Sometimes I request to a law enforcement agency the original call detail records as
14 received from a mobile operator. So what I get is an email, a forward of the email
15 provided by the mobile operator, to be sure that the information I got is the same as
16 has been provided by the telecommunication service provider to the requesting law
17 enforcement agency. So it's a kind of safeguard you can apply.

18 Q. And within the CDRs themselves, is there any other information you look for to assess
19 the reliability of the files?

20 A. Basically I look at the structure of the CDR and compare them with CDRs received
21 earlier from the same telecommunication service provider. If a -- which will not happen in
22 The Netherlands, but if a police law enforcement agency would tamper with the information,
23 I will only notice once I receive the original files from the operator. So there is no way for me
24 to conclude if the CDRs provided by a law enforcement agency contain the complete set of
25 information.

1 Q. Now, if I can point you back to the binder in front of you, in tabs 5 to 14, we have made
2 print screens of the CDRs that you were asked to examine. Maybe while you're looking at
3 those documents, your Honours, I have a request for clarification.

4 Given the testimony of P-433, I have no intention of asking Mr Pluijmers to explain to
5 us again each and every single column of each and every single sample of CDR that
6 he received, unless your Honours would prefer me to do that. It is in his report so it
7 is easily available if --

8 PRESIDING JUDGE SCHMITT: No, that's okay. Please continue.

9 MS STRUYVEN:

10 Q. So Mr Pluijmers I will not ask you to repeat the information that you have compiled in
11 your expert report, but I am going to ask you just a few questions for each of these CDRs that
12 you've looked at. And I will start with the first one which is at tab 5, it's the one that is called
13 VodaCom Congo, and it has the ERN number CAR-OTP-0071-0503. First question: Did
14 you examine this sample file?

15 A. I did. I think it was the first one I examined.

16 Q. And does the sample file that you examined consist of data that is usually found in
17 CDRs?

18 A. It does contain all the information usually contained in CDRs, which is start time, end
19 time, direction of the communication, the originator and even the serial number of the mobile
20 telephone that is used to initiate, that's the MCR_IMEI number.

21 Direction is shown, even the approximate location is shown. If you look at
22 RCID_SITENAME it contains the base station where the communication has been
23 initiated.

24 Q. Now, in your opinion, can the sample record that you examined be used to reliably
25 determine the contacts with the target number?

1 A. Yes, it can, because it has the originating numbers and the terminating numbers
2 included in the CDR file.

3 Q. And in your opinion, do you believe that this CDR was indeed generated by VodaCom
4 Congo?

5 A. I used two wordings in my report, I used "likely" and "highly likely." I've not seen call
6 detail records from Vodafone Congo before, but they look genuine to me because they contain
7 the information normally found in call detail records.

8 If I have seen a similar format before, for instance for The Netherlands, the Dutch
9 telecom service providers, I use the wording "highly likely" because they comply with
10 the file structure and the content I've seen before.

11 So in this case I find it likely that it has been generated by Vodafone -- by VodaCom
12 Congo.

13 Q. Now, moving to the second one, that would be at tab 7, and I'm sorry, there is a -- I'm
14 trying to follow your report. So that would be -- the second one would be at tab 7 and that is
15 a sample from T-Mobile Netherlands, and it is CAR-OTP-0072-0079. I'm going to ask you a
16 very similar, if not the same questions. Were you in a position to examine this sample file?

17 A. I have sampled this file as the second one on my list.

18 Q. And was it the first time that you looked at CDRs from T-Mobile?

19 A. No. I've examined files of T-Mobile several times before.

20 Q. And does the sample file that you examined consist of the data usually found in CDRs?

21 A. It does contain all the information, date and time of communication, starting party,
22 calling party, called party. It also contains a lot of information about the base stations used.
23 This is usually found in files of T-Mobile. It contains the location area codes of the base
24 station. It contains the start cell, so the base station where the communication has been
25 initiated. It contains the end cell called Eind Cell in this list, meaning the base station where

1 the communication was terminated. It contains IMEI, the international mobile equipment
2 identity of the mobile phone used. And it contains the addresses and the locations of the
3 base station used in the Dutch national grid system, the X and Y system.

4 So yes, it contains all the information usually found in call detail records. And the
5 T-Mobile call detail records are the most detailed ones you will probably get from TSP
6 because they contain a lot more information like the cell use, the cell address, the cell
7 location in X and Y.

8 Q. Following what you said, could I therefore -- or could you confirm whether or not the
9 sample can be used to reliably determine the contacts with the target number?

10 A. Absolutely.

11 Q. Now one particular question in respect of this one. In row 1, I see - and I will say this
12 in Dutch - Parketnummer, Officier van Justitie.

13 Could you explain to the Chamber what that means?

14 A. To collect call detail records from a telecommunication service provider you need to
15 have an order from a magistrate to provide the data to this law agency, law enforcement
16 agency. In this case it's the prosecutor, the Officier van Justitie, that has requested the
17 information and they need to provide the official Parketnummer. You probably know to
18 translate it in English to -- this telecommunication service provider. So the
19 telecommunication service provider will only hand over these call detail records with an
20 order from a magistrate or a prosecutor.

21 Q. So again the same final question, in your expert opinion do you believe this particular
22 CDR was generated by T-Mobile?

23 A. I used the wording "highly likely." There is one level above, that is when I'm sure.
24 When I'm sure I want to have received these call data records directly from the mobile
25 operator preferably with a digital signature. Then I'm absolutely sure. But in this case it's

1 highly likely.

2 Q. Now moving to the next one, and that would be at tab 8, it's a CDR from Vodafone
3 Netherlands, and it is at CAR-OTP-0072-0082. Again, same questions: Did you examine
4 this particular sample?

5 A. I did.

6 Q. And would this be the first time you examined CDRs from Vodafone?

7 A. I've examined call detail records from Vodafone many times before in several of the 20
8 cases I mentioned. Call detail records from Vodafone were included.

9 Q. And does this sample file consist of data usually found in CDRs as applied to law
10 enforcement agencies?

11 A. It's typical for the information Vodafone Netherlands provides to law enforcement
12 agencies. It contains the date, the start time, the duration in seconds, the initiating number,
13 the called party and also the IMEI, again that's the serial number of the mobile phone, and
14 also the IMSI, the international mobile subscriber identity, which is the serial number of the
15 SIM card used in the mobile telephone.

16 Further to that, it contains information about the cell ID. It's column S called
17 Startpaal, starting cell.

18 And if you would browse to the right you would also see the terminating cell, which
19 is called Eindpaal in column Z.

20 There is information about the location of the base stations and these correspond to
21 actual Vodafone base stations. So yes, it contains all the information usually found
22 in call detail records from Vodafone, and it can be used for analysis.

23 Q. Am I correct in understanding that it can be used to determine contacts with the target
24 number?

25 A. Yes, absolutely.

1 Q. Again, the same last question, but before I do I would like you -- could I ask you to go to
2 in your tab the second document which contains part 3 of this Vodafone CDR and the very
3 last question -- the very last column, it's column CJ, could you explain to us what we see in
4 this particular column?

5 A. If you look at the columns CI to CJ, they refer to the raw information. So column CI
6 contains the file name of the raw CDR data which I mentioned is usually in XML format.
7 And the provider is Vodafone. There are a couple of virtual network operators. They use
8 the radio network of Vodafone, but they use their own switching network and then you will
9 find a different name here. But this is typically coming from Vodafone itself as the telecom
10 service provider.

11 Q. So as a last question on this particular CDR, in your opinion do you believe that this
12 particular CDR was generated by Vodafone?

13 A. I do.

14 Q. Moving to the next, and that would be at tab 6. That is a sample of KPN Netherlands.
15 And the corresponding ERN number is CAR-OTP-0072-0078. So it's the same questions:
16 Were you in a position to examine this particular file?

17 A. I was.

18 Q. And is this the first time you examined CDRs from KPN Netherlands?

19 A. No. In about 70 percent of all the cases I have examined call detail records from
20 Vodafone are present. So it's certainly not the first time.

21 Q. Now, does the sample file that you examined consist of data usually found in CDRs?

22 A. It does. It contains all the information usually found in call detail records.

23 Q. And can the sample that you examined be used to reliably determine contacts with the
24 target number?

25 A. It can. It has information about the calling party and the called party. So both parties

1 are there.

2 Q. Now, one particular question about this one. If I look at row 17, I see the words
3 "warrant." Do you know what they mean in this particular context?

4 A. I do. If a law enforcement agency requests call detail records, they cannot request for
5 all the call detail records collected, but they have to give a start date and time and an end date
6 of time.

7 So if you look at row 17, the start date of the call detail records collected is 1
8 January 2012 at midnight and the warrant end, so that's the end date and time of the
9 call details requested to KPN, is 20 September 2013 at 1 minute before midnight.

10 Q. And if I look at the third row, I see KPN Security. Do you know what that refers to?

11 A. Yes, I do. KPN has a dedicated department dealing with requests from law
12 enforcement agencies. It's situated in Groningen. It has 15 people working almost full time
13 on collecting call detail records and providing those to law enforcement agencies and the
14 name of the department is KPN Security.

15 Q. Two more questions about this particular CDR. The first one is if I look at column R, I
16 see reference to a word that is "WHSINT." Do you know what that stands for?

17 A. That would be called Wholesale International, which is one of the fixed operators KPN
18 uses to terminate the traffic. Another one you will find is iBasis, the abbreviation for iBasis.

19 Q. And what do these codes refer to?

20 A. These call detail records were collected from the KPN fixed network where a connection
21 was routed from the calling party to the called party. And it means the route the call has
22 taken, which part of the KPN network the call was routed through. So it's merely technical
23 information for KPN. Then it's useful in our case.

24 Q. So then the final question: In your opinion, do you believe this sample CDR was
25 indeed generated by KPN Netherlands?

1 A. The structure and the content is consistent with files, CDR files of KPN Netherlands in
2 this case fixed I've seen before, so it's highly likely it's coming from KPN Netherlands.

3 Q. Moving to the next one at tab 9, and the ERN reference is CAR-OTP-0072-0391. Same
4 question: Were you in a position to examine this sample?

5 A. Yes, I have been examining this one as well.

6 Q. And was it the first time you examined CDRs from KPN Group Belgium?

7 A. I think I've seen call detail records from KPN Group Belgium in two or three cases I
8 examined for the NFO where international crime was involved. So it's not the first time I've
9 seen call detail records from Base or KPN Group Belgium.

10 Q. And does this particular sample consist of the data usually found in CDRs?

11 A. It does. It contains all the information about start date and time, calling party, called
12 party, duration, type of communication. So it's complete.

13 Q. And can it be used to reliably determine contacts with the target number?

14 A. Yes, it can. It contains the called party and the calling party. So I confirm that it can
15 be used.

16 Q. Now, in respect of this particular one I have a few particular questions in respect of the
17 call forwarding.

18 If you look at the second page of this record, in row 16, and there is different rows under that,
19 I see the wording "forwarding" in the first column.

20 And if you also look at the third page, I've tried to identify different scenarios of call
21 forwarding. So I see one in the 16th row which in the second column says "Forward When
22 No Reply."

23 If I look at the second -- the third page, the third print screen, and I look for example at row
24 376, I see "Forwarding," "Forwarded When Busy." And then if I look at row 408, I see
25 "Forwarding," "call Forward Were Not Reachable."

1 And on the last page, at row 5407, I see something like "voice Mail Out dial."

2 Now, I would like to ask you if you can explain to the Chamber those different
3 scenarios or how we can interpret those different scenarios?

4 A. Let's look at a couple of scenarios. I call you, Ms Struyven. You're on the phone with
5 one of your colleagues and your call is being forwarded. That would be call forward when
6 busy.

7 You could be in the restaurant while your telephone is lying at your desk. You will
8 not be able to answer it. Then you get a call forward, no answer.

9 Or you could be in an underground parking where you don't have cellular coverage.

10 You don't receive the signals of the radio network. There you will have call forward
11 when not reached. You are outside reach of the mobile network.

12 And the last one at row 5407, there the owner of the -- sorry. There the voicemail
13 system dialed the owner of the telephone that there were voicemails waiting for him.

14 You can get an SMS, a text notification of a voicemail, but some voicemail systems
15 also let the voicemail system connect to the user when he's reachable again.

16 Q. Now, in those scenarios, so it says "Forwarding When No Reply," am I correct in
17 understanding that the forwarding then means forwarding to voicemail?

18 A. In most cases it is. You can forward -- usually you're forwarded to voicemail, but any
19 user can dial a different forwarding number as well. So in most cases you will end up in a
20 voicemail box, but I can also -- for instance if I'm on holiday, I can forward my mobile phone
21 number to my colleague, who then answered it. So it will be forwarding to a different
22 number. But for the average user and the standard configuration of a mobile phone system,
23 it's forward to voicemail.

24 Q. Now, in these scenarios, if I go back to the very first example at row 16, if I then look at
25 column H, which is called "Duur," and I'll take the liberty to translate that myself into -- I

1 don't think anyone will object, that means duration in English. I see that it has a duration of
2 5 seconds. Which 5 seconds are recorded here?

3 A. That's probably the voicemail welcome message of the user "Hello, you've reached the
4 voicemail of René" click, 5 seconds. So usually it's hanging up during the voicemail welcome
5 message when you see a short time recorded like this, the 5 seconds.

6 Q. So what about the ringing to your voicemail? And this may be a very simply phrased
7 question, but does the ringing up until the moment I get to hello, René, this is -- or this is the
8 voicemail of René, is the ringing counted in the duration or not usually?

9 A. Well, we're looking at call detail records, and they're used billing purposes and you
10 usually don't pay for ringing time. So the time contained in call detail records is the time of
11 the net communication from answering the phone until hanging up.

12 Q. Now, another question about the actual voicemail. So if I end up in a voicemail either
13 because it's busy or because the person is not reachable or doesn't pick up the phone, so I end
14 up in the voicemail, is there -- so it starts with, "René is not able to pick up the phone. Please
15 leave a message" and then I can leave a message, I guess.

16 Is there a limitation to the duration of a voicemail? Like how long can you go on
17 usually or is there a limitation to the duration that you can go on on a voicemail?

18 A. It's depending on the telecommunication service provider that can put limits to
19 voicemail. I don't have specific figures for you. I can give you some anecdotal information.
20 For KPN it used to be a limited length. I don't recall the exact number of seconds. But
21 when you reach -- almost reach the end, you will hear the voicemail system, "You have only
22 got 10 seconds left."

23 Once somebody called me from a Vodafone number. His phone was probably in his
24 pocket, because on my voicemail I heard background noises for like 5 or 6 minutes.
25 But then again, that's anecdotal. I don't have specific information about what's the

1 maximum length of a voicemail per provider. If needed for an investigation, it's

2 information I can collect from a telecommunication operator whether there are

3 limitations in the voicemail length. But I can't give you any specifics right now.

4 Q. Before I end this line of questioning, earlier you talked about net communication.

5 Therefore am I understanding you correctly that the duration, that is or the seconds that are

6 identified under column H, which reflects I assume that net communication -- or I'll put it as a

7 question. Would that correspond to the net communication that you referred to, column H?

8 A. Column H contains the communication time in seconds from the moment the telephone

9 was answered until the connection has been disconnected.

10 Q. Now, a final question about this particular CDR or maybe two final questions. The

11 first question would be, on the very first page of this print screen, I see KPN Group Belgium.

12 I take it that I see this -- or and I see a name under that, "Anciaux." The CDRs that you

13 usually looked at from KPN Group Belgium, did they contain the same logo and name on the

14 front page?

15 A. Yes, they do. Probably and the OR Anciaux is the person in KPN Group Belgium that

16 has composed this list of call detail records. Yes, the logo is familiar for KPN Group

17 Belgium.

18 Right now they're not called KPN Group Belgium anymore. When Base started,

19 Base is the original company name, Base started its operations in 1996 in Belgium, if I

20 recall correctly, '96, '97. I think around 2008 they were rebranded in KPN Group

21 Belgium. But some time ago they were rebranded back again to Base.

22 So if you look at Base and KPN Group Belgium, they all have the KPN logo and the

23 font type used as found in this exhibit.

24 Q. So then I have a final question. In your opinion, do you believe that this particular

25 sample was generated by KPN Group Belgium?

1 A. I use the same wording as in my report, it's highly likely.

2 Q. Moving onto the next one, that would be under tab 13, and for the record it is

3 CAR-OTP-0083-1454. Did you examine this particular file as well?

4 A. I have examined this file as well.

5 Q. And was this the first time you examined CDRs from Base Belgium?

6 A. No. In the cases I mentioned, two or three international criminal cases I examined for
7 the Nationaal Forensisch Onderzoeksbureau, NFO, contained call detail records either from
8 KPN Group Belgium or Base. And these basically have the same structure as the call detail
9 records from KPN Group Belgium previously discussed.

10 Q. So did you also, did you hear -- find also the data usually found in CDRs?

11 A. I did. It contains the start time and date, duration of the communication, calling party,
12 called party and a lot of additional information, like base station numbers, IMSI numbers,
13 serial numbers of SIM cards, cell IDs. So yes, it contains all the information.

14 Q. And can the sample that you examined be used to reliably determine contacts with the
15 target number?

16 A. Yes, it can, because it contains the called party and the calling party. So you can
17 examine the links between the two.

18 Q. Now, in this particular case, I'm just going to ask you, because you already explained to
19 us that it has the same structure as KPN Group Belgium, I'm not going to ask you to go again
20 through the forwarding information, but if I just may ask you one question. And you can see
21 it in the third print screen, yes, in the third print screen at row 107 and 106, it refers to a
22 different term which is "client in roaming."

23 Is this any -- is this particular information that need to be determined or that has a
24 specific meaning?

25 A. It does have a specific meaning. Roaming means you use your mobile telephone

1 outside the coverage area, outside -- basically outside your country. So if this mobile
2 telephone was roaming, it was not on the base network, but it was abroad, outside Belgium.
3 So "in roaming" means using a different network out of the country.
4 And the column B, I will answer, I will elaborate on that, it mentioned VPLMN, it
5 means Visiting Public Land Mobile Network. So the customer is roaming onto a
6 different network than the Base network.

7 Q. And now on the first print screen, I see the wording "Base Company." Am I correct in
8 understanding that that would be the logo of Base Belgium?

9 A. That would be correct, Base Company, Base KPN Group Belgium. They take turns in
10 naming their company. But basically it's the same company, subsidiary of KPN The
11 Netherlands in Belgium.

12 Q. So then my final question: In your opinion, do you believe that this particular CDR
13 was generated by Base Belgium?

14 A. I use the same wording as in my report, it's highly likely.

15 Q. Moving to the next at tab 14, and that would be CAR-OTP-0083-1472, the same first
16 question, were you in a position to examine this particular file?

17 A. I have examined this file.

18 Q. And did it or does it consist of data usually found in CDRs?

19 A. It does. It has the start date and time, end date and time, calling number, called
20 number and a lot of supporting information as well, for instance, the IMSI number, the serial
21 number of the SIM card used, the IMIE number, IMIE number, which is the serial number of
22 the mobile phone, the operator used. So yes, it's complete.

23 Q. And can the sample that you examined be used to reliably determine contacts with the
24 target number?

25 A. Yes. It contains the calling party and the called party. So that link can be made.

1 Q. And then the final question: In your opinion, do you believe that this CDR was
2 generated by Mobistar Belgium?

3 A. I have to rely on my report. One moment, please.

4 The wording in my report used is likely that it's coming from Mobistar, which means
5 I have not seen call detail records from Mobistar before. This is the first time I've
6 seen records from Mobistar, but it's likely that they were generated by Mobistar.

7 Q. I have three more that I would like to go through. I'll go as fast as I can, because it is a
8 bit repetitive.

9 So the next one would be at tab 10, and that would be a Belgacom Belgium sample.

10 So again the same questions: Were you in a position to examine this sample -- to
11 examine this sample and have you seen samples from Belgacom before?

12 A. I was able to examine this sample, and yes, I've seen samples of Belgacom or Proximus,
13 which is the name of the mobile operator from Belgacom. I've seen CDRs from
14 Belgacom/Proximus before.

15 Q. And does this sample consist of data usually found in CDRs?

16 A. It contains all the necessary information: call start, date and time, end date, call duration,
17 calling party, called party and a lot of location information, base station numbers as well.

18 Q. And does this sample allow you to determine reliably the contacts with the target
19 number?

20 A. It contains the calling party and the called party numbers, so yes, that can be reliably
21 discovered.

22 Q. Now, in this particular CDR I have a different question or an additional question. If I
23 look at row 9, and I will quote this in French, it says -- (No interpretation) and then it gives a
24 telephone number that I will not repeat here. Do you know what that refers to?

25 A. It's probably part of the order from the -- I don't know the English term, juge instructive,

1 the instructive judge to Mobistar -- sorry, correction -- to Belgacom to provide the requesting
2 law agent, law enforcement agency with these call detail records. So it's probably part of the
3 Court order towards, towards Belgacom.

4 Q. Now, and in this particular CDR, if I look at the second print screen, I see in type, or
5 maybe it's easier if we all look at the third print screen, in the first column, which is the
6 column A, which is column type, in row 46, 47, and 48 and 49, I see the reference to the letters
7 1D and 1E, and I see reference to the same letters at the front page, at the first print screen in
8 row 28 and row 30.

9 Can you explain briefly to the Chamber what those references mean?

10 A. If a call has a status 1D, it's transferred to the voicemail system. And if a call has status
11 1E, it's an incoming voicemail -- sorry, incoming text message, SMS message that you have a
12 missed call. So somebody has left a message in your voicemail, you receive a text message
13 that somebody left a voice message for you.

14 Q. So then the final question, in your opinion, do you believe that this CDR was generated
15 by Belgacom Belgium?

16 A. I've seen call detail records from Belgacom and Proximus before. This has the same
17 structure and the same content of columns, same information contained, so it's highly likely
18 that it's generated by Belgacom and or Proximus.

19 Q. I have two more. The first one is at tab 11, and it corresponds to CAR-OTP-0073-0190.
20 It's tab 11. Were you in a position to examine this particular CDR?

21 A. Yes, I have examined this one.

22 Q. And does it consist of the data usually found in CDRs?

23 A. It does. It contains the calling party number. It contains the called party number. It
24 contains the date and time of communications and it contains the duration of the
25 communications. So yes, these are, albeit basic, this is the information you would typically

1 need from a call detail record.

2 Q. So would it allow you to determine contacts with the target number?

3 A. Yes, from the two columns MSISDN A and MSISDN B. MSISDN stands for mobile
4 station international service designated number. So it's basically the mobile telephone
5 number. Yes, you can determine that from that.

6 Q. And the logo that we see at the front page, does that logo seem the proper logo for
7 Orange?

8 A. It looks like the standard Orange logo indeed.

9 Q. So then the final question, in your opinion, do you believe this particular -- the sample
10 that you examined from -- that you examined, did -- was it generated by Orange Cameroon?

11 A. In my investigations from the -- for the NFO, I've never seen call detail records from
12 Orange Cameroon before, so it's likely given the content of this exhibit, it's likely that it's
13 generated by Orange Cameroon.

14 Q. Then the last one, if I can ask you to go to tab 12, and that would be at
15 CAR-OTP-0073-0533. Mr Pluijmers, were you in a position to examine this particular file?

16 A. I have examined this exhibit.

17 Q. Does it contain the information usually found in CDRs?

18 A. It does. It has the start date and time. It has the duration. It has the initiating
19 number, so the calling party and the called party numbers. So it contains all the basic
20 information you would need.

21 Q. And does it allow you to establish reliably the contacts with the target number?

22 A. Yes, it does.

23 Q. Now, in this particular example, I would like you to have a closer look at row 10 and 11.
24 It says Inefficace, and then at row 32 and 33 it says Mevo. And then if you look at the second
25 print screen at row 785 and 786, it says Valo and Otad. Could you explain to the Chamber

1 what those terms mean?

2 A. In row 10 and 11 you will find Inefficace with a call duration of 0 seconds. It's an
3 unsuccessful call.

4 If you look at row 27, you see Mevo. It probably stands for message vocal, voicemail
5 message. My French is virtually non-existing, but you will forgive me for that.

6 If you look at number 785 it says Valo. And 786 says Otad. It has probably to do
7 with the type of SIM cards used. It looks like a prepaid SIM card is being used here.

8 You can recharge the prepaid SIM card by, for instance, an ATM machine or a
9 different way of payment to increase the number of minutes on your SIM card. So
10 what you see happening here is Valo is probably the process of putting money on the
11 SIM card and Otad is the SMS back, the text message back to the SIM card that the call
12 limit actually has been raised. OTA stands for Over The Air Activation. So you
13 pay money and the SIM card gets a confirmation that the call limit has been increased,
14 that you increase the number of minutes you can call with that prepaid SIM card.

15 Q. So in your opinion -- or, maybe if I can ask you back to look at row 1, it says Numéro
16 Référence Free. Am I correct in understanding that Free would then refer to Free Mobile
17 France?

18 A. That's right.

19 Q. So in your opinion, do you believe that this sample was generated by Free Mobile
20 France?

21 MR GOSNELL: Objection, Mr President.

22 PRESIDING JUDGE SCHMITT: Yes.

23 MR GOSNELL: I think before we proceed to this question, the question should be asked
24 whether the witness has ever previously seen such records, if that was the normal procedure.

25 And the reason why I am insisting in this case is because I will object depending on the

1 answer that's received to the next question.

2 PRESIDING JUDGE SCHMITT: Then please ask this question first and then we proceed.

3 MS STRUYVEN: I'm sorry, I'm -- we have -- because norm -- so the same --

4 PRESIDING JUDGE SCHMITT: The same procedure that you followed --

5 MS STRUYVEN: Exactly.

6 PRESIDING JUDGE SCHMITT: -- you can follow here too.

7 MS STRUYVEN:

8 Q. Were you in a position to examine this sample CDR?

9 A. I have examined it and I think the question was if I have seen call detail records of Free
10 Mobile France before. No, I haven't. This is my first exposure to it. From the contents, I
11 find it likely that it has been generated by Free Mobile France.

12 PRESIDING JUDGE SCHMITT: (Overlapping speakers) would have been your objection.

13 MR GOSNELL: Quite right, Mr President.

14 PRESIDING JUDGE SCHMITT: (Overlapping speakers) If --

15 MR GOSNELL: My objection --

16 PRESIDING JUDGE SCHMITT: If the examination follows a certain pattern, it's of course
17 your duty to also follow this pattern.

18 MR GOSNELL: Yes, Mr President. My objection would purely have been, if the question
19 had been asked and there had been a pause before the answer, would have been that if the
20 witness has not previously seen such records, then he cannot -- I would say, I'd say there is no
21 foundation for him being able to say that it's likely that it is from one provider as opposed to
22 any other provider.

23 PRESIDING JUDGE SCHMITT: I think you can address this during your examination, too.

24 I think we don't have so much time any more. I understand that you want to finish
25 this point, and I assume that you will soon finish.

1 MS STRUYVEN: Exactly, Mr President. I have four more questions about the CDR.

2 They're short questions.

3 PRESIDING JUDGE SCHMITT: Sure.

4 MS STRUYVEN: And then I move -- I will not move to the next subject until tomorrow.

5 Q. Now, having examined all of these CDRs, do you have any reason to believe -- the
6 samples that you reviewed, do you have any reason to believe that they were compromised or
7 in any other way unreliable?

8 A. I have not found any proof for that.

9 Q. And do you have any reason to believe that they would be manipulated or fabricated?

10 A. I don't have reason to believe they're fabricated or manipulated.

11 Q. And do you have any reason to believe that they were not generated by the
12 telecommunication service providers indicated?

13 A. Me, all the call detail records provided look like they're generated by telecommunication
14 service providers.

15 MS STRUYVEN: Thank you, Mr President. That would conclude this part of the
16 examination.

17 PRESIDING JUDGE SCHMITT: Thank you, Mr Pluijmers, for answering the questions today.
18 You have obviously recognized that tomorrow we'll continue with your testimony.

19 In the meantime, I know that you know this, but I advise you not to talk about your testimony
20 with anyone, neither with family members.

21 Have a good rest. We will see each other tomorrow, and we continue with the
22 examination by the Prosecution.

23 How long will it take? Do you have an estimate?

24 MS STRUYVEN: Mr President, the second part is shorter, much shorter than the first part.

25 So I -- it's always difficult to give an estimate, but I would think half an hour, 45 minutes.

Trial Hearing

(Open Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: So you will stay -- you will stay within the time limit that
2 you have, yourself, indicated before?

3 MS STRUYVEN: Yes.

4 PRESIDING JUDGE SCHMITT: Yes. This concludes the hearing for today. We will
5 resume tomorrow at 9.30. Thank you very much to everyone.

6 THE COURT USHER: All rise.

7 (The hearing ends in open session at 4.07 p.m.)

8 RECLASSIFICATION REPORT

9 Pursuant to Trial Chamber VII's instructions, ICC-01/05-01/13-1209, dated
10 2 September 2015, this lesser redacted public version of the transcript is filed in the
11 record of the case.