

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 Friday, 9 October 2015
11 (The hearing starts in open session at 9.30 a.m.)
12 THE COURT USHER: All rise.
13 The International Criminal Court is now in session.
14 PRESIDING JUDGE SCHMITT: Good morning, everybody, especially good morning and
15 welcome again to our witness.
16 Court officer, please call the case.
17 THE COURT OFFICER: Thank you, Mr President. The situation in the Central African
18 Republic in the case of The Prosecutor v Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
19 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, case reference
20 ICC-01/05-01/13.
21 We're in open session.
22 PRESIDING JUDGE SCHMITT: Thank you very much.
23 For the presentation, please at first the Prosecution and as always the short version.
24 MR VANDERPUYE: Thank you, Mr President. We're the same as we were yesterday.
25 PRESIDING JUDGE SCHMITT: Thank you.

1 For the Defence, perhaps we start from here from the right in the front.

2 MR GOSNELL: Good morning, Mr President. Appearances are the same as yesterday
3 afternoon.

4 MR POWLES: Good morning, your Honours. Likewise the appearances for Maître Kilolo's
5 team are likewise the same as yesterday. Thank you.

6 PRESIDING JUDGE SCHMITT: Mr Taku.

7 MR TAKU: May it please your Honours. I'm here today with Mr Arido and our colleague,
8 Lea Kulinowski.

9 MR KILENDA: (Interpretation) Good morning, Mr President. Good morning, your
10 Honours. The Defence for Mr Babala is composed of the same individuals. I thank you.

11 MS TAYLOR: Good morning, Mr President, your Honours. The Defence for Mr Bemba is
12 composed of Melinda Taylor and Ms Yuqing Liu. Thank you.

13 PRESIDING JUDGE SCHMITT: Thank you very much.

14 Then we continue with the examination by the Prosecution.

15 MS STRUYVEN: Thank you, Mr President.

16 WITNESS: CAR-OTP-P-0361 (On former oath)

17 QUESTIONED BY MS STRUYVEN: (Continuing)

18 Q. Good morning Mr Pluijmers. I will now move to questions related to the second part
19 of your expert report, namely, the intercepted communications.

20 First, are you familiar with how communications are intercepted in The Netherlands?

21 A. I am indeed, and I have given an overview of the interception process in my expert
22 report.

23 Q. Now, can I ask you to turn to page 1845 of your report. And that would be at
24 CAR-OTP-0090-1825. As I mentioned at 1845.

25 Now, can you explain to the Chamber briefly how the interception process works in

1 The Netherlands step by step?

2 A. The interception facility consists of three interfaces. The first interface is an incoming
3 interface, the administration function. This is based on an order from an investigative
4 magistrate. As soon as this one has been received two outbound interfaces within a
5 telecommunication service provided are opened. One interface contains the call content, the
6 intercepted communications, and second outbound interface contains the intercept related
7 information.

8 So basically that's the metadata, which can be combined with the call content. The
9 intercept related information or IRI is quite similar to the call detail records we
10 discussed yesterday. They also contain, usually contain the same information.

11 Q. And can you explain to the Chamber how the information then ends up with the law
12 enforcement agency?

13 A. There is a central interception facility. It's located in Driebergen, The Netherlands.
14 It's within the national police in a secured environment. And from the central facility, the
15 call content and the intercept related information is forwarded to the requesting law
16 enforcement agency. This can be realtime. This can also be off line, usually within 24 hours
17 where a person within a law enforcement agency gets the information through a streaming
18 connection.

19 So it's contained within the central facility. It's stored there as well.

20 Q. Now, is there a specific standard that is followed for the interception process?

21 A. There is. Since quite some time The Netherlands comply with the ETSI, the European
22 Telecommunication Standardisation Institute. The ETSI standards are used in various,
23 various other countries as well. So it's the -- it's fully compliant with the ETSI standards.

24 Q. Now, are they -- are you aware of any safeguards that are put in place to ensure the
25 reliability of the interception process?

1 A. I think I listed about three quarters of a page on page 22 of my expert report. I can
2 name a few if you want. Critical components have redundancy. This means double hard
3 disc. When one hard disc fails, the other takes over. Double power supplies. When one
4 power supply fails the other one takes over.

5 And this gives quite a high up-time of the central interception facility. It's been
6 reported in 2012, 99.55 percent and in 2013 99.95 percent which are quite high.

7 Safeguarding the information, there is a dedicated virtual private network between
8 each individual telecommunication service provider and the central facility. It's
9 encrypted and it has two-way authentication. So that ensures the integrity of the
10 data going back and forth on the three interfaces.

11 The telecommunication service provider provide each communication with a
12 cryptographic hash, which is a kind of unique serial number. And afterwards you
13 can recalculate that hash to see if the data was changed or if it's still original.

14 All the intercepted communication get a unique serial number. A unique serial
15 number for the system. And a number within the target number. So for a target it
16 starts with 1, 2, 3, 4, 5 and so on. If any intercepted communication should be
17 missing, there is a gap there.

18 For the central system it's a unique serial number consisting of I think 10 digits, something
19 like that. You can see if something is missing there as well.

20 So several safeguards are in place. For an elaborate overview please refer to page 22
21 of my expert report.

22 Q. For the record that would be at CAR-OTP-0090-1846.

23 Maybe last question about that: Is there any restrictions or any safeguards in place in respect
24 of the access to the materials?

25 A. There is. For the central facility, it's in a secured data room. It's separated from the

1 other systems of the national police. We're discussing privileged information here, and that's
2 even in another room as the central system. Basically they have two systems. One for
3 non-privileged information and one specifically for privileged information.

4 The access to the system for privileged information is limited to a couple of people in
5 Driebergen.

6 The function of the people in Driebergen is operating and maintaining the system, so
7 they don't have access to the intercepted communications. They can't listen in.
8 They can't see the intercept related information.

9 The only persons allowed to hear the information, hear the intercepted
10 installation -- information are in the law enforcement agency, the requester of the
11 intercept, and there is a physical separation of the lawful intercept system within a
12 local police force, for instance, with access, with access logging.

13 And a police officer is only entitled to listen to the communications of the target
14 numbers that have been assigned to him. So not to different communications.

15 Q. Now, we've asked you to examine the interception process and the intercepted materials
16 in this particular case. I will ask you questions about both, the intercepted process and the
17 intercepted materials. And I first would like you to turn to CAR-OTP- -- so the page 1827 of
18 your report, and that would be at CAR-OTP-0090-1825 at page 1827. Under the section
19 "References and Literature," number 12 up to number 24, I see the different filings, we call
20 them filings here, that we have been -- that we have provided to you; is that correct?

21 A. That's correct, indeed. From -- I think from reference number 12 until reference
22 number 24.

23 Q. And would it be fair to say that some of these filings contain the actual intercepted
24 materials or the metadata that you referred to before and that some are more of a
25 documentary nature, accompanying the intercepted materials?

1 A. That's correct. It contained the intercepts related information and some background
2 information about the process, for instance, the Court order allowing the recording of
3 privileged information.

4 There were no -- the communication itself has not been provided to me. So only the
5 intercept related information, the metadata as you mentioned.

6 Q. Now, were you in a position to indeed examine these documents more closely?

7 A. I've examined all the documents closely.

8 Q. And was it the first time that you examined a document of this -- documents of this
9 nature?

10 A. No, it wasn't. About two years ago I had a case for the NFO, National Forensisch
11 Onderzoeksbureau. It was a fraud case including intercepted communications. And in that
12 case I got the DVDs from the police, from the interception process. So the information found
13 in these references is quite similar to the intercept -- the information I found on the DVDs in
14 this case two years ago.

15 Q. Now based on your examination of the materials, could you determine whether the
16 documentation is consistent with your understanding of how the Dutch intercepted
17 process -- or interception process is normally conducted?

18 A. They were consistent. I should mention that the information contained in these files
19 has been post processed, because the information usually found on the DVDs from the
20 interception process is in the form of an XML file. And from the proceedings I understood
21 that the Court could not read these files. So the police have converted them to a readable
22 format, for instance, Excel.

23 But yes, looking at the field names inside the Excel, inside the documentation, they're
24 similar to the field names usually found in the XML file from the interception process.

25 Q. Now, first about the actual process and now we'll move to intercept related materials

1 soon, but just about the process, having examined these documents, do you have any
2 indication that the interception process in this case was not properly followed?

3 A. I have no indications for that whatsoever.

4 Q. And do you have any reasons to believe that the process was compromised or otherwise
5 unreliable?

6 A. I've not seen evidence for that.

7 PRESIDING JUDGE SCHMITT: Mrs Taylor?

8 MS TAYLOR: I'm sorry, Mr President, but the witness testified during the voir dire that he
9 actually hasn't seen any information concerning the modalities of the interception process in
10 this case. So I fail to see how he can be in a position to comment on the procedures
11 employed in this case.

12 PRESIDING JUDGE SCHMITT: I think this is sort of a question, we could say. And I put it
13 to you, you have heard what Ms Taylor has said, and what is your answer to this question?

14 THE WITNESS: I've not seen the original DVDs from the police, but based on my
15 knowledge, based on previous case, the information contained in the files looks genuine to
16 me.

17 PRESIDING JUDGE SCHMITT: Yes. Then continue. Please continue.

18 MS STRUYVEN:

19 Q. Now, moving to the second group, so we've dealt with the interception process, moving
20 to the intercepted materials, the metadata or the intercept related materials as called them,
21 you already mentioned the situation with the XML files. Just so that we're all understanding
22 this correctly, could you explain what you observed in respect of the format in which the
23 materials were transferred to the ICC?

24 A. If I recall correctly they were Excel files. And if you look at the field names, the column
25 names in the Excel file they have almost one-to-one similarity with the information found in

1 the XML source data.

2 Q. Now I'm going to ask you to look at the samples of the intercepted related materials that
3 we provided to you.

4 MS STRUYVEN: Your Honours, maybe if I may seek your guidance one more time on this
5 issue. I don't intend to go through every single sample with this witness. I intend to show
6 him all of the samples and then ask general questions, because they're all very similar. I
7 don't see the need to --

8 PRESIDING JUDGE SCHMITT: I would appreciate this approach, yes.

9 MS STRUYVEN:

10 Q. So, Mr Witness, if I can ask you to turn to tab 16. So I'm going to show you all the
11 samples that we've asked you to examine. The first one is at tab 16, and it's at page 15.
12 And for the record this is ICC-01/05-01/13-6-CONF-AnxA-Red, and it's at page 15. I'm not
13 going to ask you questions straight away. I'm just going to ask you to look at that.
14 If I can also then ask you to look at tab 17, and for the record that would be filing
15 number 6-CONF-AnxA-0000.

16 And if I can ask you to look at tab 18 that would be filing 6-CONF-AnxA-042.

17 And if I can ask you to look at tab 20 that would be filing 6-CONF-AnxB-000.

18 And if I can also ask you to look at tab 21 that would be filing 6-CONF-AnxB-042 at page 2.

19 Now turning to tab 26, and that would be filing 410-CONF annex page 22 to -- 25 to
20 29.

21 And tab 31 to 35, which are the annexes to filing 438-CONF, and it would be annex A0001 to
22 an annex A0005.

23 And finally, if I can ask you to turn to tab 36, and that would be for the record filing
24 438-CONF-AnxB.

25 Now, is it the first time -- so first of all, were you in a position to have a closer look at

1 those documents in preparation for your report?

2 A. I have had a close look at them, yes.

3 Q. And from what I understood before, this was not the first time you saw these
4 documents, these type of documents?

5 A. No. If you look at the intercept related information, it's quite similar to the XMLs, XML
6 files I have examined in a previous case, the fraud case I mentioned.

7 Q. So would it be correct to say that -- or could you answer the question -- or could you
8 determine whether these files contain the data usually found in intercept related materials?

9 A. They do. They have a target number. So that's the mobile phone number or the fixed
10 telephone number under surveillance. The type of communication, voice, data, text,
11 direction is mentioned. If you look at the intercept related information there is also the
12 product ID. This is the unique serial number from the intercept system, the central intercept
13 facility. There is an A party. That's the party that started the communication. There is a B
14 party. The party that received the communication. There is a start time and date. There is
15 an end time and date. And there is a duration in seconds. And in most cases there is also
16 the IMEI, the mobile station serial number. So yes, they are similar to the source data usually
17 found in the XML files.

18 Q. And from your examination, could you determine whether these documents could be
19 used to reliably establish contacts of the target number?

20 A. Yes, you can, because they contain the target number as well as the communication
21 partner. So they contain calling and called party numbers.

22 Q. And did you find any indication that those documents did not result from a proper
23 interception process?

24 A. I have found no indications for that.

25 Q. Do you have any reason to believe that those documents were compromised or

1 otherwise unreliable?

2 A. I don't have indications for that either.

3 Q. Do you have any reasons to believe they were altered, fabricated or manipulated?

4 A. I don't have indications for that.

5 Q. And the last question, do you have any reasons to believe that those documents would
6 not have been generated by the Dutch authorities?

7 A. From what I've seen, I know quite sure that they were generated by the Dutch
8 authorities from the lawful intercept process.

9 MS STRUYVEN: Your Honours, that ends my questioning.

10 PRESIDING JUDGE SCHMITT: Thank you very much, Ms Struyven.

11 I have also myself one or two questions, and they are related to the outstanding translation
12 that is for the parties' information of the Dutch documents cited in your report. I'm referring
13 to CAR-OTP-0090-1827. That's on page 3 of your report.

14 I've been informed by the Registry that they do not have the necessary capacity to
15 translate the largest document internally. And I'm referring insofar mainly to the
16 document entitled "WODC: Het gebruik van de telefoon en internettap in de
17 opsporing." And that must be note 31 of your report on page 3. And it is 199 pages
18 long.

19 So the translation we have been informed would have to be outsourced at great cost.

20 And in this circumstances I would ask you, Mr Pluijmers, Mr Witness, to indicate
21 which parts or part of the document you relied upon or perhaps first you tell us if you
22 know, if you can do this on the spot, to put it this way, what the content of this
23 document is, if you recollect that, and then you could perhaps describe to us how far
24 you relied upon it.

25 THE WITNESS: Basically if you look at reference 29, 30, and 31, I have used them as

1 background information to confirm how the intercept system works in The Netherlands. As
2 the document you referred to is 190 pages, I don't recall correctly which parts I have used, but
3 basically it covers the whole interception process and also how intercepts are being used in
4 the legal process.

5 I only used a small part of it. If you allow me after one of the breaks, I can look the
6 document up on my laptop and be more specific to tell you which part I specifically
7 used for this report, based my information on.

8 Basically it's background information on the lawful interception process in The
9 Netherlands. As I told the Court yesterday, the police is quite secretive about the
10 system, so the main reason of having these references in the report is to refer to open
11 sources describing some parts of the interception process. I will come back to it,
12 your Honour.

13 PRESIDING JUDGE SCHMITT: I think it is fair to give you an opportunity to look into this
14 document and then after the break we will come back to that. That's just to, especially for
15 Defence counsel as an information for you and also for the Chamber. We have made this
16 caveat when we decided, you understand this, that it is not excluded, to put it this way, that
17 you could come back to this issue.

18 MR POWLES: Yes, thank you very much, Mr President. I don't know if Mr President and
19 your Honours received yet, but on behalf of Mr Kilolo, we've prepared or tried to get a very
20 short summary of the three individual annexes, and they've been translated into English.
21 Now, it's obviously not an official translation, it's just something to assist the Court and to
22 assist the parties and to assist Mr Pluijmers to see exactly, you know, what was contained
23 within those annexes in an English document.

24 PRESIDING JUDGE SCHMITT: This is new and very interesting information, but to be
25 honest I have not received it yet and neither have my colleagues. I would suggest that we

1 start with the examination by the Defence and we come back to this point after the coffee
2 break and this of course reduces the break as such for our witness, but I think he is willing to
3 do that.

4 So who wants to start with examination by the Defence?

5 MR POWLES: I think I've been delegated to go first, Mr President.

6 PRESIDING JUDGE SCHMITT: Right person standing.

7 QUESTIONED BY MR POWLES:

8 Q. Good morning, Mr Pluijmers. My name is Steven Powles and I ask questions on behalf
9 of Mr Kilolo.

10 PRESIDING JUDGE SCHMITT: Excuse me, just a second. I've been informed that it lies on
11 our table. Excuse me. But we have a good excuse, it was covered by other sheets of paper
12 so we could not see it. Thank you. Please.

13 MR POWLES: Thank you, Mr President.

14 Q. As I was saying, Mr Pluijmers, I appear on behalf of Mr Kilolo who sits to my right.
15 And I just wanted to ask if I may a few questions about your reports and the evidence that
16 you've given to us yesterday and this morning.

17 Just so it's very clear, you obviously, I'm probably stating the obvious, you weren't
18 involved in obtaining the call data records yourself, were you?

19 A. No, I wasn't. The call detail records and the intercepted communications were
20 intercepted by a police team. I think that the Court has asked judicial support from the
21 Prosecution in The Hague, and they provided the necessary information. So no, I've not
22 been involved in anything of that.

23 Q. Exactly. And one of your tasks as it were and what we spent a lot of time doing
24 yesterday was you going through the material generated by the TSP, the telecom service
25 providers, to review whether they've actually been generated by the telecom service providers

1 who say they generated them?

2 A. That's correct. You could see it as an audit on the materials.

3 Q. Exactly. And you went through the 10 service providers, and we see it in your report,
4 and you made an assessment in relation to each one as to whether the call data records were
5 in fact generated by those telecom service providers?

6 A. I did. And you may recall my wording for that --

7 Q. Absolutely.

8 A. -- "likely" and "highly likely."

9 Q. Absolutely. You're one step ahead of me, Mr Pluijmers.

10 For each and every single one of those 10 telecom service providers, your assessment
11 was that the records were either likely or highly likely generated by those TSPs?

12 A. That's correct.

13 Q. You said yesterday in relation I think to the T-Mobile records, and it's page 87, line 14,
14 for anyone who is interested, you said that there is one level higher than highly likely. It's
15 not -- it's not in your -- I can remind you. There is no -- there is no trick. I'm not -- you said
16 one level is likely, one level up is highly likely, and you said there was a level above highly
17 likely, which I think you described as sure?

18 A. Yes, I described it as certain. And this is the case when I receive the information
19 directly from the TSP.

20 Q. I think yesterday you used the word "sure." And you said, "There is one level above,
21 and that's when I'm sure." And you said, "When I'm sure I want to have received the CDR
22 directly from the mobile operator, preferably with a digital signature."

23 A. That's correct.

24 Q. So in order to leave that -- achieve that level of sureness, it will be important to have
25 something from the telecom providers themselves?

1 A. They're usually not accessible for experts, because the whole process has been
2 standardized and there is only a relationship between the telecommunication service
3 providers and the requesting law enforcement agencies.

4 Q. Absolutely. So the requesting law enforcement agency, there is nothing stopping them
5 getting something from the telecom service providers?

6 A. That's right.

7 Q. Absolutely. Now, in relation to the intercepts, moving on from the CDRs, if we look
8 at -- well, in terms of conducting the review in relation to the call data records, if we turn to
9 page 5 of your report at CAR-OTP-0097-1829, in relation to the CDRs, and that's page 5 of
10 your report, halfway down, "In this case CDR samples have been received from 10 different
11 telecom providers. For each of them the following questions will be answered."

12 And then question one: Whether they confirmed, the typical CDR records, whether
13 they contain the normatively constituent elements of such records -- and this is the
14 bit -- and whether they were generated by the TSPs and whether they provide
15 information necessary for the service providers to carry out their activities.

16 So that's the question you're answering in relation to the CDRs, the call data records?

17 A. That's right. And the questions come directly from the instruction --

18 Q. Absolutely.

19 A. -- from the Office of the Prosecutor.

20 Q. Absolutely. If we then come to page 23 of your report, and that's CAR-OTP-0090-1847,
21 we'll see there question one in relation to the intercept material, whether they
22 confirm -- conform to typical TNDs from the Dutch authorities, i.e, whether they can contain
23 the normatively constituent elements of such records.

24 So again a similar sort of exercise in relation to the intercept materials?

25 A. It is a similar exercise compared to the CDRs, because the intercept related information

1 shows great similarity with the data usually found in CDRs.

2 Q. Absolutely. And unlike the CDRs, you don't use the language of "highly likely" or
3 "likely." If we look at page 23 of your report -- over the page, sorry, page 24, the column
4 names I think at the top of the page you say "seem to be derived from the names usually
5 found in the source."

6 So "seems to be" rather than "likely" or "highly likely."

7 And then again over the page 25, the column names in relation to question 1, page 25,
8 "The column names seem to be derived from the names usually found in the source."

9 So again it seems to be a step lower than "likely" even. It seems to be akin to what
10 one would expect to see, but no higher than that?

11 A. Actually that's not the message I wanted to convey in my report. If I should judge the
12 intercept related information contained in these files, they should have the wording "highly
13 likely" as well.

14 Q. So "highly likely"?

15 A. "Highly likely," yes.

16 Q. I'm grateful for the clarification. And that was one of the reasons for the question.
17 Thank you.

18 Turning back then to page 21 of your report, now obviously in a similar question in
19 relation to the intercept materials, you didn't actually obtain them? I'm stating the
20 obvious.

21 A. No, I didn't.

22 Q. No. At page 21 of your report, you refer to -- and please don't name him, unless there
23 is no issue in terms of naming him -- but you refer at the top of the page, "The information in
24 this section has been verified in an interview with a telecom interception expert from the
25 police of the greater Hague region."

1 Yes, I think you told us a little bit about that yesterday?

2 A. That's right.

3 Q. Don't name him if it's sensitive. Do if you can. But just to ascertain, that police officer
4 or that person, was he involved in obtaining the intercepts in this case to the best of your
5 knowledge or not?

6 A. Due to the confidentiality, I will not name him.

7 Q. Absolutely.

8 A. But from what I understood, he was involved in composing the DVDs with the
9 intercepted communications, the selected intercepted communications, and the relating
10 intercept relation information in this case. It's the same person.

11 Q. Yes. So he's available potentially to answer questions about these intercept materials?
12 It would be preferable to go to him rather than going through you, one could say.

13 A. I don't think he was available. But that's up to the Court to decide obviously, which
14 witnesses to call.

15 Q. Absolutely. Or up to the Prosecution.

16 A. Or the Prosecution.

17 Q. And presumably that person would be better to answer questions about whether the
18 materials had been fabricated, manipulated or altered in any way. I mean, you're relying on
19 someone else's work product in a way.

20 PRESIDING JUDGE SCHMITT: Before the witness answers, I would like to hear what
21 Mrs Struyven wants to tell us.

22 MS STRUYVEN: Thank you, Mr President. I'm not sure if this witness is in a position to
23 actually evaluate or determine why or why -- whether or not we should have called someone
24 else and what that person would be able to testify on. So I'm not sure if this line of
25 questioning will get us anywhere with this particular witness.

- 1 MR POWLES: I'm grateful to my learned friend. I can rephrase the question and its --
- 2 PRESIDING JUDGE SCHMITT: I would --
- 3 MR POWLES: Yes.
- 4 PRESIDING JUDGE SCHMITT: I would beg you to rephrase it.
- 5 MR POWLES: Yes.
- 6 PRESIDING JUDGE SCHMITT: I know of course what you're heading at.
- 7 MR POWLES: Yes.
- 8 PRESIDING JUDGE SCHMITT: But you can rephrase it --
- 9 MR POWLES: Absolutely.
- 10 PRESIDING JUDGE SCHMITT: -- in a manner that I think we can accept.
- 11 MR POWLES: Yes.
- 12 Q. Mr Pluijmers, I mean, it's a simple point, if there is someone who is directly involved in
- 13 the process of obtaining the intercept materials, would you say that they would be better
- 14 placed or worse placed than you in assessing whether they had been fabricated, manipulated
- 15 or altered in any way?
- 16 A. I had no access to the source information, the XML files, the DVDs. If you would hand
- 17 me the DVDs, I would be able to do a comparison between the information contained on the
- 18 DVDs and the information submitted to the Prosecution as evidence. But the person who
- 19 composed the information could do the same obviously, so I have had no access to the DVDs,
- 20 only to the printout and Excel files that have been based on the information on the DVDs.
- 21 Q. Yes, I'm grateful.
- 22 MR POWLES: Your Honour, I have --
- 23 PRESIDING JUDGE SCHMITT: I think this is an answer.
- 24 MR POWLES: Absolutely. I have some questions about the annexes. I can put them to
- 25 the witness now or I can perhaps deal with them later after he's had a chance to look through

1 the annexes again and perhaps read the English translation.

2 PRESIDING JUDGE SCHMITT: I think it would be fair to wait until the witness had a
3 chance to review them. So I would suggest that we do have now our coffee break and we
4 will resume at a quarter to 11.

5 MR POWLES: Thank you.

6 THE COURT USHER: All rise.

7 (Recess taken at 10.11 a.m.)

8 (Upon resuming in open session at 10.45 a.m.)

9 THE COURT USHER: All rise.

10 PRESIDING JUDGE SCHMITT: So, Mr Pluijmers, did you have the time to review these
11 annexes?

12 THE WITNESS: Yes, your Honour.

13 PRESIDING JUDGE SCHMITT: Can you tell us something about the content.

14 THE WITNESS: I refer to three documents in Dutch. Number 29 called "Auditdienst Rijk:
15 Rapportage onderzoek interceptiefaciliteit." It's a report by the auditing service of our
16 government on some interruptions in the interception facility that have happened in 2012
17 with a write-up of the root causes of the system failure and some recommendations to prevent
18 this happening in the future.

19 Number 30, "Minister van Justitie: Brief naar aanleiding van toezeggingen tappen."

20 It's a letter of the previous minister of justice, Ivo Opstelten, where he describes
21 certain measures that will be taken to improve the availability of the legal intercept
22 facility.

23 The last one, number 31, "WODC: Het gebruik van de telefoon en internettap in de
24 opsporing," the 190 pages you referred to. It's basically a quite broad overview of
25 the tapping process, the lawful intercept process in The Netherlands both on a legal

1 and technical -- both legal and technical.

2 The chapters I have used, I have based my report on, or at least used it for my report,
3 are chapters 3 and 4.

4 Chapter 3 describes the regulation of tapping in The Netherlands, so the safeguards,
5 the authorisation that needs to take place. Also interception of confidential
6 information for privileged information.

7 Chapter 4 describes more technical, what is -- what is a tap, what is legal interception
8 and how does the system work globally.

9 So chapters 3 and 4 for the last document are the most important ones for this process.

10 PRESIDING JUDGE SCHMITT: Thank you, Mr Pluijmers.

11 Yes.

12 MR POWLES: Thank you very much, Mr President, and your Honours.

13 May I just say that the English translation that we've had prepared and the
14 summaries of these three documents, it's not an official translation, it wasn't done by
15 an official interpreter so there may be inaccuracies. It was just done to try and assist
16 all the parties with these documents.

17 PRESIDING JUDGE SCHMITT: But I may say that the Chamber appreciates very much this
18 approach by the Defence.

19 MR POWLES: I'm grateful, your Honour.

20 PRESIDING JUDGE SCHMITT: If you want to continue with your examination, please do
21 so.

22 MR POWLES: Thank you very much, your Honour.

23 Q. Mr Pluijmers, again, perhaps stating the obvious, but these three annexes are all
24 open-source materials, aren't they?

25 A. They are open-source material. They can be found readily on the internet. My

1 original report contains hyperlinks to the PDF files of those documents.

2 Q. I'm grateful. And of course the interception of communications, it's a highly secretive
3 and sensitive practice. I mean perhaps less secretive now after some of the revelations of
4 Mr Snowden, but the whole process internationally, it's quite a regulated and secretive
5 process; would it be fair to say that?

6 A. That's a fair conclusion.

7 Q. And there are aspects of it that even you as an expert don't know about?

8 A. That's right.

9 Q. You've very helpfully taken us through the three documents after having read them.
10 Just to highlight a couple of points in relation to them, in relation to the first document, the
11 letter in relation to the tapping commitments, the letter dated 6 February 2015, I'm looking at
12 the English translation, in relation to the production of tapping reports, is it right that the
13 Dutch public prosecutor service and the national police are working on the development of a
14 national protocol with regard to tapping?

15 A. I'm not aware of that.

16 Q. You're not aware?

17 A. No.

18 Q. So you don't know whether that protocol's been produced or what's inside it?

19 A. I have not done research in that matter.

20 Q. It's not a criticism.

21 A. No, no.

22 Q. Yeah. I don't think we need to look at the second document in any detail. The third
23 document, I apologise for not having numbered these pages but it starts on the third page, it's
24 a document from July 2013 in relation to the use of telephone and internet taps in -- in
25 criminal investigations.

1 A. That's correct. It describes the situation in The Netherlands and also does an
2 international comparison with several countries.

3 Q. I'm grateful. And obviously you mentioned safeguards and there are safeguards
4 within the system here in The Netherlands.

5 A. The safeguards I described earlier this morning to the Prosecution as well as safeguards
6 for recording privileged information.

7 Q. Absolutely.

8 A. Confidential information.

9 Q. And that was an area I wanted to consider with you in relation to privileged material
10 because of course there are, as that document sets out, certain groups that are -- particularly
11 those dealing with privileged communications there are certain sensitivities and it's a slightly
12 more regulated field when it comes to the interception of communications?

13 A. Yes, I don't know all the legal details, but the level of authorisation needed from Dutch
14 law, Dutch courts is higher in the organisation. I think it's an investigative judge that should
15 give the authorisation instead of a prosecutor.

16 Q. Absolutely. And I appreciate you said yesterday that obviously you're not a lawyer
17 and the law isn't your expertise, but I just wanted to perhaps just consider one issue with you
18 in relation to the regulation of this area by the law and the courts as you mention them. Is it
19 right that -- or, are you aware of a recent decision, and I say recent, I mean 1 July of this year,
20 so which post-dates the interception of communications in this case, a decision of the District
21 Court here in The Hague called *Prakken d'Oliveira* against the State of The Netherlands?
22 Are you aware of that case? And it's quite a celebrated case here in the Netherlands about
23 the interception of communications particularly of lawyers.

24 A. Could you elaborate a little bit more on what's inside the decision?

25 Q. If you're not aware of it --

1 A. No.

2 Q. -- then --

3 A. No.

4 Q. -- there's --

5 A. Doesn't ring a bell.

6 Q. -- absolutely no point in me (overlapping speakers).

7 A. All right.

8 Q. Okay.

9 A. Yeah.

10 Q. So you're not aware of that decision and whether there have been any commitments
11 made by the Dutch authorities in relation to how they will regulate their involvement or
12 practice in relation to the interception of lawyers' communications as a result of that decision?

13 A. No, I'm not aware of that.

14 Q. Then I can't take it any further.

15 MR POWLES: Thank you very much, your Honours.

16 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Powles.

17 Further Defence teams?

18 Mrs Taylor, perhaps? Yes.

19 QUESTIONED BY MS TAYLOR:

20 Q. Good morning, Mr Witness, Mr Pluijmers. I'll be questioning you on behalf of the
21 Defence of Mr Bemba.

22 I would just like to take you back to a scenario you were discussing yesterday with the
23 Prosecution. While you were analysing the KPN Belgium CDRs, you gave the scenario that
24 when you're on holiday you forward your phone to your colleague and that in these CDRs it
25 would show call forwarding when no reply.

1 A. That's right.

2 Q. I would just like to clarify this scenario. Now this would apply -- it should show in the
3 CDR as call forwarding when no reply if it's your number that's a target number; is that
4 correct?

5 A. That's correct.

6 Q. Now, if we can just change the scenario slightly so that rather than your number being
7 the target number it's your colleague's number that is the target number for the CDR. And if
8 that was the case, and someone calls you while you're on holiday and the call goes from your
9 number to your colleague's number and we were to look at the CDR of your colleague's
10 number, which is a target number, it would only show that a connection had been made
11 between your number and your colleague's number?

12 A. On the colleague receiving the call it would appear as an incoming call, but I don't know
13 which number will be as the originating party. It may be my number, which is forwarded, it
14 may also be an internal switching system number. I'm not sure how it will end up in the
15 base or KPN Group Belgium CDRs. This is a very specific case.

16 Q. Well, if we could just make that about all CDRs. If you have a target number, which is
17 C and you have B and the CDR shows a connection between B and C, C being the target
18 number, is there a way to see if the connection from B originated from A, if C is a target
19 number, not B?

20 A. I understand your question. A calls B, B forwards his phone to C; is that correct?

21 Q. Yes.

22 A. What would appear on the call detail records is the original A number originating the
23 communication and the C number, the receiving end.

24 Q. But the B number wouldn't show?

25 A. It may show as an intermediate number or in an intermediate column somewhere.

1 I don't know the exact details.

2 Q. So if we have the call data records for C, only C, it is your case that A would show, not
3 B?

4 A. That's correct.

5 Q. Thank you. Could I now move to the situation of multi-party calls.

6 And in your report I believe you conclude that it's not possible to determine the
7 existence of multi-party calls in the samples you reviewed; is that correct? And we
8 can turn to your report if you prefer.

9 A. Yeah, that's -- that's correct.

10 Q. I'd just like to clarify this terminology. By multi-party calls do you mean connections
11 with multiple persons at the same time?

12 A. Yes, I would see that as like a three-person calling on the same line, for instance. You
13 have a connection with somebody and you include somebody else in the call and have a
14 three-party call.

15 Q. That's one example, but it's correct that a multi-party call can have several different
16 constellations. So, for example, one common example could be A is on the phone to B, they
17 then get a call from C and B is put on hold so they can answer it?

18 A. I would not consider that a multi-party call.

19 Q. What would you consider that?

20 A. Call waiting.

21 Q. Call waiting?

22 A. Mm-hmm.

23 Q. But as from these CDRs was it possible to see call waiting?

24 A. Theoretically, yes. If you look at the CDRs, the target is talking to somebody on the
25 phone, for instance, for three minutes. If during those three minutes another incoming call is

1 answered, it has an overlapping time frame.

2 Q. So you're basing it on the overlapping time frame only, but from the data in the CDRs is
3 there any data which would tell us if the person was put on hold or if there was, for example,
4 a conference call?

5 A. If a person was put on hold by the target number, the target number answers the second
6 call, there will be two call detail records of the calls. There's no way other than examining
7 overlapping time frames to determine whether this will be -- whether the first person was put
8 on hold.

9 Q. Perhaps to illustrate this point it might facilitate the process to have a look at a specific
10 CDR example and if we could look at CAR-OTP-0072-0391, but we've actually prepared a
11 printout because it is an Excel sheet and it's easier to have a look at the printout. I believe
12 that was handed to the Judges, to the witness and to the Prosecution.

13 THE INTERPRETER: Request from the interpreters: Could the interpreters please have
14 said document. Thank you.

15 MS TAYLOR: I believe it's on Ringtail. We have a copy.

16 Should we give the copy to someone? Thank you. The interpreters have asked for
17 it.

18 Q. So this is -- I think you have it before you, Mr Pluijmers. And if we could look at rows
19 9614 to rows 9620. And I'm not going to read out the full numbers because we're in open
20 session, so I'll just read out the last two numbers for each number, if that's acceptable.
21 If we look at row 9614 this shows a number ending in 99, and it's calling the target
22 number, which ends with 39, at 18.17.27, and it ends at 18.45.41, and the duration of
23 the connection is 1659 seconds, so roughly 30 minutes.
24 And if we turn to row 9615 there's a number ending with 43 and it calls a target
25 number at 18.29.24, and there is a connection of 6 seconds.

1 Row 9616, the 39 number sends an SMS at 18.30.04.

2 Row 9617, the 39 number appears to send another SMS to the same number at the
3 same time, so it could have been recorded twice.

4 And if we go to row 9618, at 18.36.31, the 39 number calls the number ending in 42.

5 It is forwarded due to no reply.

6 And at row 9619, the same thing happens at 18.37.08.

7 At row 9620, at 18.37.39 the target number ending in 39 calls the same number and
8 there is a connection of 440 seconds of duration, and the connection ends at 18.45.14.

9 This represents a time period of roughly, as I said, 30 minutes. And during this time
10 period, the 39 number was involved in seven different connections, and six of those
11 connections occurred, these are the ones in rows 9615 to 9620, while the 39 number
12 was connected to the 99 number.

13 Mr Pluijmers, have you had a chance to look through them?

14 A. I did follow your explanation.

15 Q. And with the information we have in these CDRs we can see that multiple connections
16 were made, but we can't determine the nature of those connections, we can't determine if a
17 particular person was placed on hold or not.

18 A. That's correct. That cannot be derived from the call detail records.

19 Q. Thank you. I would just like to move on to this issue of time duration.

20 And yesterday you mentioned that the CDRs of some companies show the reason for
21 the termination of the call, but for the samples you've analysed in this case they don't
22 include that data as a subset of information, do they?

23 A. It's not contained in the call detail records, that's correct.

24 Q. You also mentioned in relation to the CDRs from KPN Belgium that if you lost coverage
25 and someone called you after you had lost coverage, then that would show as call forwarding

1 or not reachable; do you recall that?

2 A. I do. That's correct.

3 Q. Again, if I could shift the scenario slightly. If you were on the phone with someone
4 already and you lose connection -- you lose coverage after the connection had been made, so
5 you walk into a lift or you're driving under a tunnel, that wouldn't register as call forwarding
6 when not reachable, when not reached, would it?

7 A. No, it wouldn't; it would be a lost call which cannot be identified other than when the
8 termination cause is included in the call detail record. So basically the call breaks and you
9 lose connection.

10 Q. Thank you. I'd just like to go through a few more scenarios to see how they would be
11 reflected in these CDRs.

12 Now, all phones have a green or a red button. Green starts the connection, red ends it.

13 I think on iPhones it's now a picture of a button. I don't have one, but I understand it to be
14 the case. Now with the red button, if you press it accidentally, that terminates the
15 connection?

16 A. That would terminate the connection indeed.

17 Q. It would. And if you had more than --

18 MR KILENDA: (Interpretation) I do apologise, Mr President, for interrupting my learned
19 colleague. I would like to request leave from the Court to accompany my client for an urgent
20 natural need.

21 PRESIDING JUDGE SCHMITT: Of course conceded. Yes, and I think we make a short
22 break for that. How much would you need, 5 minutes?

23 MR KILENDA: (Interpretation) Five minutes for the call of nature.

24 PRESIDING JUDGE SCHMITT: Yes.

25 (Pause in proceedings)

1 MR KILENDA: Merci, Monsieur le Président.

2 THE INTERPRETER: Mr President, a message from the interpreters --

3 PRESIDING JUDGE SCHMITT: So you can continue, Mrs Taylor.

4 THE INTERPRETER: Mr President, a message from the interpreters: Would the parties be
5 kindly reminded to slow down and observe the pause because of the density of the material
6 being processed. Thank you, sir.

7 MS TAYLOR:

8 Q. So I'll just start the scenario again, although I think we had it fairly established that
9 we're looking at a phone with a green button, red button. If you inadvertently press the red
10 button, it terminates the call or the connection?

11 A. It would terminate the current connection. How this works with call waiting regarding
12 your previous question, that's depending on the implementation of call waiting by the specific
13 operator. I don't have details on that, but it may be if you have somebody waiting, if you
14 inadvertently pushed the red button, you are connected to the waiting party, but I am not
15 sure of that. That's depending on the operator and I would need to do research on the exact
16 working of -- of call waiting in GSM. I would have to go through the -- to the GSM
17 documentation to find out how it should be implemented.

18 Q. Well, perhaps to go to a scenario that you mentioned yesterday, the losing coverage
19 scenario or losing battery scenario, that you're on a phone with multiple connections and
20 you're already connected to them and you lose reception, would that terminate all the
21 connections?

22 A. That would indeed terminate all the connections.

23 Q. So it would show in a CDR, the CDR would reflect all of the connections being
24 terminated at the same time, to state the obvious?

25 A. That's true. That's a good observation.

1 Q. So the most we could ascertain from the fact that a CDR shows multiple connections
2 ending at the same time is that they ended at the same time?

3 A. That's right.

4 Q. Thank you. I have no further questions.

5 PRESIDING JUDGE SCHMITT: Thank you, Ms Taylor.

6 Other Defence counsel want to raise their voice?

7 MR TAKU: I thank you very much. And good morning, your Honours.

8 QUESTIONED BY MR TAKU:

9 Q. Good morning, Witness. I'm counsel for Mr Arido, who is seated here by me, and I
10 will put a few questions to you.

11 Let me start by asking you if -- let me put on this, my questions will relate to the report at tab
12 11, that's from Orange Cameroon. Do you have that before you, sir?

13 A. Just one moment. I have it now.

14 MR TAKU: Yes. I will very respectfully ask their Lordships for us to go to private session
15 because we're asking questions related to confidential material.

16 PRESIDING JUDGE SCHMITT: Yes, then we go into private session.

17 * (Private session at 11.18 a.m.) Reclassified as open session

18 MR TAKU:

19 Q. I will also, Witness, ask --

20 THE COURT OFFICER: Mr Taku, please. Thank you.

21 (Interpretation) We are in private session, Mr President.

22 PRESIDING JUDGE SCHMITT: Please continue, Mr Taku.

23 MR TAKU:

24 Q. Yes. I will also respectfully ask the Registrar to put before you some documents which
25 I'll be referring to as we proceed so we can move very, very quickly. Do you have them

1 before you, sir?

2 A. You're referring to tab 11, Orange?

3 Q. No, there's tab 11, Orange, but there's also a list of documents that we submitted this
4 morning. I would like them to be before you before I will ask questions relating to them.

5 THE COURT OFFICER: (Interpretation) Mr Taku, please, can you provide the ERN
6 number for the first page of the document, please.

7 MR TAKU: We have the documents. That's CAR-OTP-0074-0020. Letter from Orange
8 Cameroon (Redacted).

9 MS STRUYVEN: Excuse me, Mr President, I think the reference is 73-0020.

10 PRESIDING JUDGE SCHMITT: Thank you, Ms Struyven.

11 MR TAKU:

12 Q. Now, Witness, are you familiar with Orange Cameroon?

13 A. I know that it is a GSM operator and that's about it. So that's my familiarity. I have
14 not investigated materials from Orange Cameroon before.

15 Q. What about MTN Cameroon?

16 A. I know the operator exists, but that's it.

17 Q. Now, Witness, looking at the tab 11 can you provide to the Court, tell the Court the
18 name of the -- as written authority, the requesting authority, the person who requested for
19 this -- that data to be provided?

20 A. I see a name of (Redacted)..

21 Q. And the data requested was from which date to this date?

22 A. The date as starts, date début is 1 June 2012 and the end date for the request is 29
23 July 2012.

24 Q. And now, Witness, the data that you analysed, that's this data, it was from which
25 period -- which was finally submitted was from which period to which period?

1 A. The start date is 1 May 2012 and the end date is 29 July 2012.

2 Q. That will be about 14 months, the data for about 14 months?

3 A. That would be 4 months.

4 Q. In other words, that demonstrated the ability of the provider to provide data for more
5 than a year?

6 A. Well, the data contained in the call detail records starts at 1 May 2012 and ends at 29
7 July 2012, so that's not a period of more than one year.

8 Q. Take for example July -- just one minute, please.

9 Okay, my error. My error, I'm sorry about that, Witness.

10 Now let me put another question to you.

11 PRESIDING JUDGE SCHMITT: Can we go into open session again?

12 MR TAKU: No, no, no.

13 PRESIDING JUDGE SCHMITT: Would that be possible? Or you're referring to confidential
14 information in your further questioning?

15 MR TAKU: Yes, let me do that very quickly, your Honour.

16 Q. Now, Witness, look at document number 4 before you that was submitted, that is
17 CAR-OTP-0091-0317_R01, (Redacted).

18 (Redacted).

19 (Redacted).

20 (Redacted).. Do you have that document before you, sir?

21 A. Actually, I don't have the document in front of me and I don't recall the information
22 cited as well.

23 MR TAKU: Well, we submitted this, your Honours. We filed this.

24 PRESIDING JUDGE SCHMITT: Mr Witness, perhaps you can look. If you have this small
25 binder it should be, if I'm not misled, on tab 4 what you're referring to. And I think you will

1 also have it, I'm informed now, on your screen. No. But you can look at the binder. It
2 must be tab 4 I think Mr Taku is referring to.

3 You don't have this binder obviously.

4 THE WITNESS: The only binder I got this morning is the binder with the three Dutch
5 documents with the English summary.

6 PRESIDING JUDGE SCHMITT: Then of course you cannot have it if you don't -- perhaps
7 you can provide the witness with this binder that has been provided also to the Bench. To be
8 honest I thought that this had been done before.

9 MR TAKU:

10 Q. Yes, Witness, look at the second page. You have the document before you, look at page
11 2.

12 PRESIDING JUDGE SCHMITT: And perhaps for the record we can say which ERN number
13 it has, so we have it also in the record, and then we can proceed, I think.

14 MR TAKU: Well, I have given my own copy to him so I don't have that information with
15 me.

16 PRESIDING JUDGE SCHMITT: Then perhaps I can say, allow me to shorten things. I think
17 we are talking about CAR-OTP-0091-0317, and you're referring to 0318, that is page 2, tab 4.

18 MR TAKU: Yes. Thank you, your Honour.

19 Q. Witness, you have page 2. Have you seen the document?

20 A. Today is the first time I see this document, sir.

21 Q. Yeah, but you have the document before you?

22 A. I have it.

23 Q. Now look at the phone numbers at page 2. Can you find this, these phone numbers on
24 the report that you analysed? Do you find any of them in the report you analysed?

25 A. I would need to investigate that. I don't know that from the top of my head.

1 Q. In any case, you were not provided a copy of this document by the Prosecutor?

2 A. No. This is the first time I see it.

3 Q. Now, there is another document from the (Redacted).. I don't have
4 the reference. (Redacted).. It is

5 CAR-OTP-0073-0023. Do you have it before you, sir?

6 A. I have it before me, yes, sir.

7 Q. Now, to help you, probably this is the first time you're seeing this document?

8 A. It is the first time I see this document.

9 Q. Okay. It is titled, sir, (Interpretation) (Redacted).
10 (Redacted).

11 And maybe to help you, sir, they provided information from Mr Arido's records
12 (Redacted).

13 (Redacted).. Now, do you see that number, sir, on the report at tab 11?

14 A. I see the number.

15 Q. And again the authority that requested this is the (Redacted).

16 Now, you have another document, sir, from the (Interpretation) (Redacted).
17 (Redacted)..

18 It is CAR-OTP-0073-003 (Interpretation) (Redacted).
19 (Redacted)..

20 Do you have it before you, sir? Do you have that document before you, sir?

21 THE INTERPRETER: Message from the interpreter. If counsel is going to mix two
22 languages, could he please go more slowly and mark a pause between the languages, because
23 we have to free up the channel.

24 PRESIDING JUDGE SCHMITT: It should be, if I'm not wrong, tab 3, tab 3 of your binder.

25 MR TAKU: Thank you very much, your Honours.

1 Q. Now, Witness, it is a -- I'm giving you the number, his lordship has helped us, now the
2 numbers attributed to Mr Arido in that report are (Redacted). and (Redacted).. Do you see
3 that, sir, the last but one paragraph?

4 A. I do see the numbers.

5 Q. Yes. Now, one of these numbers, sir, is from Orange Cameroon. That's number (Redacted)..
6 Did you in your analysis, sir, come across these numbers starting with
7 (Redacted). in your report? Did you in your report or your analysis come
8 across that number?

9 A. I would need to go through the Orange Cameroon CDRs to see if I can find that number.
10 I don't know that from the top of my head. And since it's on paper and quite some -- some
11 paperwork, some 10 pages, that would take considerate time to see if it was included in the
12 call detail records.

13 Q. Now, you have another document, sir, that is CAR-OTP-0073-0020. That is to (Redacted),
14 and it is entitled. (Interpretation) Your
15 request of 28 May 2013.

16 It is sent on -- it is signed one (Redacted).
17 (Redacted), Orange Cameroon.

18 Do you have that before you, sir?

19 A. I do.

20 Q. Do you see the numbers attributed to Mr Arido in the report? Well, not attributed to
21 Mr Arido, but the numbers, not attributed -- the numbers are related to that report and the
22 period, the period stated there in which the call data was provided.

23 A. I have those numbers.

24 Q. Now it says, their investigation, the call data was, let me read it in French (Interpretation)
25 "During the period from 1 May 2012 to 28 May 2013, as well as the localisation."

1 Did you come -- do you have -- were you provided the call data related to that period,
2 sir, stated in this report?

3 A. In my investigation to the call detail records for Orange Cameroon, I recognized a
4 number ending in (Redacted). and it covers the period of about three months we discussed
5 before, so from 1 May until 29 July 2012.

6 Q. In other words, you are saying that you did not receive any call data from 1 January
7 covering February 2012? You don't have any information about that period?

8 A. That's right. The call detail records start at 1 May 2012.

9 Q. Now, let's look at the report you have before you.

10 PRESIDING JUDGE SCHMITT: Is it now possible to go into open session again? Would
11 this be possible?

12 MR TAKU: One more question, sir. One more question.

13 Q. Now, look at tab 11 and also look at this report from the (Redacted)..

14 That name you read, answer was (Redacted).. Did you see the person who signed this
15 report, (Redacted).? CAR-OTP-0073-004. Is that the same
16 name who signed this report, that (Redacted).?

17 A. Could you help me out where I can find the signature of (Redacted).?

18 Q. Yes, the document is here. (Redacted).. Yes, CAR-OTP-0073-0003,
19 and the next page, sir.

20 A. Yes, it is under tab 3.

21 Q. Yes.

22 A. It is duly signed by (Redacted)..

23 Q. And it is that name that you saw on Orange Cameroon, that's the authority, that
24 requisition that call data that you analysed?

25 A. On tab 11, the call detail record said from Orange Cameroon are listed.

1 Q. Yes, yes.

2 A. And that contains the same name, autorité (Redacted)..

3 Q. Now, looking at that number you say you recognized, that number starting with (Redacted),
4 now look at the call data before you, you find that no location -- there's no location indicated
5 from which the calls were made, do you find that, whereas other numbers related to -- which
6 are unrelated to that, the locations are indicated. Do you see that, sir?

7 A. In the call detail records I do find a lot of indications of the base station used both for the
8 A number, that's the calling party, and the B number, the called party. In some cases there's
9 no location mentioned. It is not always recorded.

10 Q. Now, if -- let me just put this for -- to get your expert opinion on this fact. If Mr Arido
11 were in France, had made a call from that number, would it be roaming, sir, and it would be
12 indicated as such?

13 A. If your defendant was in France roaming?

14 Q. I made a call using that number, MTN Cameroon, would it be indicated on the call data
15 that you analysed as roaming?

16 A. It would be in the call detail records of the operator on which defendant is roaming on,
17 so it would not appear on the call detail records from Orange Cameroon.

18 Q. Okay, but then --

19 PRESIDING JUDGE SCHMITT: Mr Taku, I think we can go into open session now.

20 MR TAKU: Yes, sir, yes.

21 PRESIDING JUDGE SCHMITT: I think because we have been going through these
22 documents --

23 MR TAKU: Yes.

24 PRESIDING JUDGE SCHMITT: -- these sensitive documents, to put it this way, so we go
25 into open session, I would suggest.

1 MR TAKU: Thank you, my Lord. Thank you.

2 PRESIDING JUDGE SCHMITT: Open session, please.

3 (Open session at 11.38 a.m.)

4 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.

5 PRESIDING JUDGE SCHMITT: Thank you.

6 MR TAKU:

7 Q. Witness, wouldn't it also be possible -- wouldn't it also be possible that if that number
8 remained dormant for some time, Mr Arido is away, he doesn't use it, Orange Cameroon
9 could assign it to some other person?

10 A. If your defendant pays his bills, this number will stay assigned to him. So even if
11 somebody is roaming abroad, this number is used abroad. He's reachable under this number,
12 so he's still active.

13 The only reason for a telecommunications service provider to reassign a mobile
14 telephone number is only after termination of the contract or, in case of a pre-paid
15 SIM card, when a SIM card has not been used for some time. If you're roaming,
16 you're actively using your phone, so the telephone number remains alive and will not
17 be reassigned.

18 Q. What if some other person, say family member or some other friend, he is not there, the
19 phone is given out to someone, would that person, when -- when that person makes calls, will
20 that show up in the call data?

21 A. It would. If I would give my mobile telephone to my brother and my brother makes
22 telephone calls, those call detail records obviously will show up.

23 So having a phone number, you should always be careful by linking a mobile
24 telephone number to a person, certainly if it's about locations. I've seen several cases
25 where people were accused of being at a crime scene while they had lost their phone

1 or giving it to a relative or whatever. So always take care in not mixing the
2 telephone number, the use of the telephone and the actual person that pays the bills
3 that's registered to use that telephone number.

4 So to answer your question, it could be possible if you give your telephone to
5 somebody else that that other person makes telephone calls with it and they would
6 appear in the call detail records. From the call detail records it cannot be determined
7 who is making the calls, other than the telephone number.

8 Q. In case where the phone was stolen or confiscated in a search, in a legal search, and used
9 at some other time, will it show in the call data?

10 A. You would not see that the telephone number will be used. If my telephone is stolen, I
11 call Vodafone, my telecom service provider to block my number.

12 Q. Witness, let me find out, did the Prosecutor hand over to you any other, by an
13 investigative judge in Cameroon, to interfere with and confiscate -- or, intercept the calls
14 related to Mr Arido?

15 A. The references provided to me, the documents provided to me by the Prosecution are
16 listed in the -- I think it is tab -- tab 1, and also mentioned in my list of references, so I did not
17 have the materials you refer to.

18 Q. Did he hand over to you any letter or authority of Mr Arido consenting to assess his file
19 at the High Commissioner for Refugee in order to get information from his records?

20 A. I have not received that information. I did not dig into the legal aspects of the
21 intercepted call detail records. I've only looked at the call -- the contents of the call detail
22 records and the structure of the call detail records. So, no, I didn't -- I don't have that
23 information.

24 Q. Did you include any protocols regarding the interception of phone communications in
25 the territory of Cameroon and in the CEMAC zone, that is the Central African Economic Zone?

1 Did you -- do you have access to that protocol?

2 A. I don't have access to that protocol and I've not seen it, I've not received it.

3 MR TAKU: That will be all for the witness, Sir. Thank you.

4 PRESIDING JUDGE SCHMITT: Thank you, Mr Taku.

5 Mr Gosnell.

6 MR GOSNELL: Thank you, Mr President.

7 QUESTIONED BY MR GOSNELL:

8 Q. Good morning, Mr Pluijmers. My name is Christopher Gosnell, I represent

9 Mr Mangenda. I have just one question for you -- or, one topic to ask you about and it
10 concerns an answer that you gave yesterday to the following question, which appears at page
11 94, line 10, of the transcript, for the record.

12 And the question was: Does the ringing, up until the moment I get to "Hello, René,
13 this is the voicemail of René," is the ringing counted in the duration, or not usually?

14 And your answer was: Well, we're not looking at call detail records and -- I'm sorry,
15 we're looking at call detail records and they're used for billing purposes, and you
16 usually don't pay for ringing time, so the time contained in call detail records is the
17 time of the net communication from answering the phone until hanging up.

18 You're very precise in your language and you have been very precise in your
19 language throughout your testimony. And the use of the word "usually" attracted
20 my attention. Can you enlighten us as to the exceptions - the exceptions - when you
21 say "usually." What are the exceptions to the ringing time being excluded?

22 A. Excuse me, excuse me, this is a little bit a semantic discussion. I only say that I'm sure
23 when I'm really 100 per cent sure. So I can't recall of any -- any events where the ringing
24 time would be included in the time recorded in the call detail records. So it is more
25 semantics than there's something behind it.

1 Q. Do you have any experience or knowledge in respect of African telecom operators as to
2 whether ringing time is included within the duration of a call on a call data record?

3 A. I do not have that experience. This is my first time with Orange Cameroon, for
4 instance, where an MTN -- when I was exposed to African call detail records or an African
5 mobile operator.

6 Q. Thank you, Mr Pluijmers.

7 Thank you, Mr President.

8 PRESIDING JUDGE SCHMITT: Thank you, Mr Gosnell.

9 MR TAKU: My Lord --

10 PRESIDING JUDGE SCHMITT: Obviously Mr Taku wants to resume the examination.

11 MR TAKU: No, My Lord. I respectfully, My Lord, apply or seek leave of the Court to
12 tender the documents we used so that the Court could admit them as submitted. Thank you,
13 My Lord.

14 PRESIDING JUDGE SCHMITT: Absolutely. This is the approach that I have advised all
15 parties to do so and you can do this. I think we decided to -- that's -- it is best to do this via
16 email, haven't we?

17 Yes, I'm informed it is correct that we, of course, would prefer this to be done via
18 email.

19 And I have to ask the Prosecution if you have any objections to that?

20 MS STRUYVEN: No, Mr President.

21 PRESIDING JUDGE SCHMITT: Yes, I could not imagine it, but I have to ask of course.

22 So then Mr Kilenda, please.

23 MR KILENDA: (Interpretation) Thank you, Mr President, for allowing me to address the
24 Court.

25 QUESTIONED BY MR KILENDA:

1 Q. Good morning, Mr Witness. I am rising to my feet for the defence of Mr Fidèle Babala
2 in order to say that we have no questions to put to you.

3 And I thank you, Mr President.

4 PRESIDING JUDGE SCHMITT: Thank you very much. Are there any --

5 MS STRUYVEN: Mr President, we just have two follow-up questions --

6 PRESIDING JUDGE SCHMITT: Yes.

7 MS STRUYVEN: -- if you may.

8 PRESIDING JUDGE SCHMITT: But then please let me say something before that derives a
9 little bit from past experience; a re-examination, to put it this way, is not an examination, I
10 reiterate that, and it should address issues that have been brought up during the examination
11 by the Defence.

12 Please, Ms Struyven.

13 MS STRUYVEN: Thank you, Mr President.

14 QUESTIONED BY MS STRUYVEN:

15 Q. Mr Witness, just on the multi-party calls, the questions you answered in respect of the
16 multi-party calls. Now, if you have two different sources of call data records, imagine if you
17 have, for example, on the one hand detention centre logs that record the calls that are made,
18 for example, from or to the detention centre on the one hand, and on the other hand you have
19 the CDRs that record communications between, for example, a mobile phone and a third
20 party, if you put those two together and you have a call that starts at the detention centre to a
21 mobile phone, and then in the second source from a mobile phone to another mobile phone,
22 would that allow you to establish the existence of a multi-party call?

23 A. If you would combine it's -- it would give you the existence -- possible existence of a
24 multi-party call, with one caveat: The time of the interception systems or the call detail
25 records collecting system should be synchronised with GPS time, otherwise you will get a

1 different timing from one system to another, which may lead to wrong conclusions. So the
2 timing is essential.

3 I know that mobile operators synchronise their time with atomic time, GPS time which is
4 accurate within a fraction of a second.

5 I don't know how it is for a detention centre, if they have recording CDR equipment right
6 there, or if you're referring to TSP CDRs. If it is TSP CDRs you can rest assure that the time
7 synchronisation is not an issue and you can, by combining those call detail records, you can
8 show the possible existence of multi-party calls.

9 MS STRUYVEN: I have no further questions.

10 PRESIDING JUDGE SCHMITT: Thank you very much.

11 Ms Taylor, please.

12 QUESTIONED BY MS TAYLOR:

13 Q. Thank you, Mr Pluijmers.

14 I would just like to bring you back to what the Prosecution asked you. And if you have the
15 call data sample that I put before you before in front of you.

16 A. I have it in front of me, Ms Taylor.

17 Q. Now, in the scenario provided you by the Prosecution, you have a separate call data
18 record which might show a connection being made from a 99 number to the 39 number, and
19 that's what you already have, I think, in the first row highlighted.

20 A. That's correct.

21 Q. So the detention unit CDR, or log, will confirm the timing of that connection, but it
22 won't give you information about the nature of the other six connections, will it?

23 A. That's right. If you request the call detail records of the detention centre you will only
24 get the information, the called party, so the B number information, not of all other parties.

25 Q. So by the same token and looking at this sample, it still won't be possible to ascertain

1 whether any of the other contacts were put on hold or not?

2 A. I think that's a correct observation. You won't know the status of the individual calls in
3 call waiting. So you cannot draw conclusions from that.

4 Q. Thank you very much, Mr Pluijmers.

5 PRESIDING JUDGE SCHMITT: So thank you.

6 This concludes the testimony of the witness. I think the witness should stay in the
7 room.

8 I just wanted to ask for scheduling matters what we can await on Monday, and this of course
9 addresses the Prosecution.

10 MR VANDERPUYE: Thank you, Mr President.

11 I appreciate the opportunity to address the Chamber concerning scheduling matters. We
12 have the next witness, who is P-0260, that witness is good to go on Monday. We expect that
13 witness to be followed by P-0245.

14 Now, with respect to that witness, there has been -- there is some indication that there
15 may be some delay in terms of producing the witness, but at the moment it appears
16 the witness should be available as of Wednesday. There is a matter concerning a
17 travel document that has to be arranged and -- so there's -- there's some play in that,
18 but we feel quite confident that the witness will be available as of Wednesday, which
19 I think would coincide well with the schedule in any event because I think Witness
20 P-260 will probably take until Wednesday too.

21 And then I can update you further, but I don't think we need to do that at this
22 moment (Overlapping speakers).

23 PRESIDING JUDGE SCHMITT: No, I think then we should defer this discussion, if any
24 issue insofar arises to next week.

25 Then this concludes finally the session for today, which is -- which we of course appreciate

1 that we have a free afternoon, everybody, and we will resume on Monday at 9.30.

2 We thank you very much, Mr Pluijmers, for having been a witness here for these two days.

3 There has initially been some discussion about your appearance. I want to make you
4 understand that it is very difficult the scheduling in such proceedings, as the International
5 Criminal Court, that behind us and everybody here are enormous efforts, logistically and
6 organisational efforts, to bring witnesses to the Court and because of that sometimes the
7 Court has to insist on appearances that perhaps you at the moment did not accommodate
8 very much.

9 So as I said, this concludes for today. I wish everybody a good weekend.

10 I thank the interpreters, especially I think -- I have forgotten it, yesterday or the day before
11 yesterday, when we had this -- these issues that arose from transcripts that had not been
12 completely translated.

13 And as I said, for everybody a good weekend.

14 THE COURT USHER: All rise.

15 (The witness is excused)

16 (The hearing ends in open session at 11.56 a.m.)

17 RECLASSIFICATION REPORT

18 Pursuant to Trial Chamber VII's instructions, ICC-01/05-01/13-1209, dated
19 2 September 2015, this lesser redacted public version of the transcript is filed in the
20 record of the case.