

Trial Hearing
WITNESS: CAR-OTP-P-1839

(Open Session)

ICC-01/14-01/18

1 International Criminal Court
2 Trial Chamber V
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard
5 Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Bertram Schmitt, Judge Péter Kovács and
7 Judge Chang-ho Chung
8 Trial Hearing - Courtroom 1
9 Thursday, 3 November 2022
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:39] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE SCHMITT: [9:31:02] Court officer, please call the case.
15 THE COURT OFFICER: [9:31:08] Good morning, Mr President, your Honours.
16 Situation in the Central African Republic II, in the case of The Prosecutor versus
17 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SCHMITT: [9:31:22] Thank you.
20 The appearances of the parties. Prosecution first.
21 MR SCALIOTTI: [9:31:27] Good morning. Good morning, Mr President,
22 your Honours. Good morning, everyone.
23 Once again, the Prosecution team has not changed. So myself, Manochitra
24 Prathaban, Kweku Vanderpuye and Yassin Mostfa. Thank you.
25 PRESIDING JUDGE SCHMITT: [9:31:41] And the representatives of the victims

1 next.

2 MS RABESANDRATANA: [9:31:45](Interpretation) Good morning, your Honours.

3 Good morning, everyone.

4 The team has not changed, actually. Gabriella dos Santos; myself, Elisabeth

5 Rabesandratana, representing the victims of the other crimes.

6 PRESIDING JUDGE SCHMITT: [9:32:03] Thank you.

7 MS LAU: [9:32:04] Good morning, Mr President, your Honours. Good morning,

8 everyone in the courtroom.

9 The former child soldiers continue to be represented by myself, Fiona Lau, Office of
10 the Public Counsel for Victims. Thank you.

11 PRESIDING JUDGE SCHMITT: [9:32:16] Thank you.

12 And since he is next to you, so that I do not forget him, Rule 74 counsel, good
13 morning, Mr Diarrassouba.

14 I turn to the Defence. Ms Dimitri next.

15 MS DIMITRI: [9:32:28] Good morning, Mr President. Good morning,

16 your Honours. Good morning, everyone. Good morning, Madam Witness.

17 Mr Yekatom is present in the courtroom. He is represented by Laurence

18 Hortas-Laberge, Florent Pages-Granier, Alexandra Baer, Anta Guissé, Gyo Suzuki,

19 Lena Casiez and myself, Mylène Dimitri.

20 PRESIDING JUDGE SCHMITT: [9:32:49] Thank you.

21 And, Mr Knoops, finally now -- today, finally.

22 MR KNOOPS: [9:32:53] Good morning, Mr President. Good morning,

23 your Honours. Good morning, everyone in the courtroom.

24 Our Defence team appears today before the Chamber in the same composition as

25 yesterday.

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1 PRESIDING JUDGE SCHMITT: [9:33:01] Thank you very much.

2 And, of course, good morning, Witness. You know that this will be your last day in
3 court, and -- well, I can imagine that you are looking forward to it -- to the end of
4 your testimony, not -- okay.

5 Mr Scaliotti, do you have questions?

6 MR SCALIOTTI: [9:33:27] Thank you very much, Mr President. As a matter of fact,
7 I have some questions, but I can assure everybody it will be short, only a few
8 questions.

9 PRESIDING JUDGE SCHMITT: [9:33:36] Yeah. Let's hear.

10 WITNESS: CAR-OTP-P-1839 (On former oath)

11 (The witness speaks French)

12 QUESTIONED BY MR SCALIOTTI:

13 Q. [9:33:41] Good morning, Witness. So, as you remember, my name is Massimo
14 Scaliotti, and I ask you questions on behalf of the Prosecution.

15 PRESIDING JUDGE SCHMITT: [9:33:49] We are in open session, I assume? Yeah.

16 MR SCALIOTTI: [9:33:52] Yes, we are in open session, and we can stay in open
17 session.

18 PRESIDING JUDGE SCHMITT: [9:33:55] Very good.

19 MR SCALIOTTI: [9:33:58]

20 Q. [9:33:58] So, just to -- for you to understand, based on the procedural rules that
21 we have in place here at the court, once the Defence has completed its examination,
22 the Prosecution can ask you some more questions, and that's what I'm going to do.
23 But, as I said, I don't have -- I have actually a few questions for you, so it will not be
24 long.

25 And I will start with this: A video was played by the Defence in which an

1 Anti-Balaka chief was speaking.

2 And just for reference, the portion of -- the relevant portion of the transcript is 172,
3 page 96. And for the Defence, the time is 15:37, 15:39.

4 And this Anti-Balaka chief stated: "There is no Anti-Balaka amongst us. Most of
5 them are soldiers, apart from a few civilians." You may remember that excerpt of the
6 video.

7 And my question is, now we can safely say, after the evidence that you gave all these
8 days, that you were a member of the Anti-Balaka group under the command of
9 Mr Yekatom, right?

10 PRESIDING JUDGE SCHMITT: [9:35:15] Well, yes, Ms Dimitri.

11 Continue. Next question, your question that you really want to address, please,
12 because this is -- this has been part of the whole examination over days, Mr Scaliotti.
13 You don't have to -- you don't have to -- you don't have to start from scratch again, so
14 to speak.

15 MR SCALIOTTI: [9:35:34] No, no. It was just an introduction.

16 PRESIDING JUDGE SCHMITT: [9:35:35] It's not -- it's simply to bring this --

17 MR SCALIOTTI: [9:35:39] No, no. Absolutely, Mr President. It was just an
18 introduction for the next question.

19 PRESIDING JUDGE SCHMITT: [9:35:43] Yeah, yeah. But the witness -- we have
20 experienced the witness over days, and she grasps immediately what things are about,
21 and she is absolutely able to understand also the undertones of questions and
22 everything. And if not, we help. Please.

23 MS DIMITRI: [9:35:59] Mr President, I'm sorry for the interruption. It has nothing
24 to do with the question.

25 When I press on English Transcend, what I get is French. So I can't have both

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1 screens at the same time. If this could be fixed, please. Thank you.

2 PRESIDING JUDGE SCHMITT: [9:36:16] Indeed. It's the same -- it's not that I am
3 privileged here.

4 So, yeah, Mr Scaliotti, please.

5 MR SCALIOTTI: [9:36:23]

6 Q. [9:36:23] Witness, so when you were part of the -- of the group, of the
7 Anti-Balaka under the command of Mr Yekatom, is it correct that you were a civilian?

8 A. [9:36:36] Yes.

9 Q. [9:36:37] Now, I don't expect you to give me a precise number, of course, but if I
10 ask you approximately, an estimate as to how many civilians among -- within the
11 group there were when you moved to the Mbaïki road, would you say there
12 were 100?

13 PRESIDING JUDGE SCHMITT: [9:36:56] Ms Dimitri.

14 MS DIMITRI: [9:36:56] Thank you, Mr President.

15 I object because this was addressed by Mr Scaliotti. You gave specific rules about
16 what reexamination is. There is no contradiction here. There is no clarification.
17 This specific subject of how many were you when you -- when you arrived --

18 PRESIDING JUDGE SCHMITT: [9:37:17] Ms Dimitri, you're right. You are simply
19 right. I agree here. Although we have -- I dare say it so that it's not misunderstood,
20 but we have here a live witness, so it's a different situation than if we had a Rule 68(3)
21 witness, meaning that things that have not been addressed could -- and have been
22 addressed by the Defence could more easily be addressed on so-called redirect. But
23 this is not one of these issues.

24 Next question, please.

25 MR SCALIOTTI: [9:37:51]

1 Q. [9:37:52] And with reference to transcripts 172, page 101, the time is 15:50.

2 Witness, you were answering questions about the way the group was dressed. And
3 you said, "The heads were dressing well, but the soldiers, the elements, no."

4 I would like to ask you a verification. What period were you referring to when you
5 said that the heads were well dressed?

6 A. [9:38:37] When we were alongside Mr Yekatom, we wore proper clothing. If
7 you wanted to go off on a mission or if you wanted to go somewhere, it was very
8 important to wear military attire.

9 Q. [9:39:00] So am I correct if I'm saying that you refer to the time where you
10 were -- "we were already on the Mbaïki road"?

11 A. [9:39:11] Yes.

12 Q. [9:39:14] Even at that time, were uniforms and, let's say, proper dressing used
13 anytime, or only on specific occasions like, I don't know, missions or operations?

14 A. [9:39:35] At specific points, yes, points in time. Not all the time.

15 PRESIDING JUDGE SCHMITT: [9:39:45] And if I may add, we have seen quite some
16 videos from the time, so we have additional information about that.

17 Please move on.

18 MR SCALIOTTI: [9:39:54] Absolutely, Mr President. And I'm approaching my last
19 topic.

20 PRESIDING JUDGE SCHMITT: [9:40:00] Absolutely. No, this -- no matter how
21 relevant it is, but this is up to us later to decide. But this is a typical thing. This has
22 been asked by Ms Dimitri, and I understand that you wanted clarification, so different
23 to the first topic, yeah.

24 MR SCALIOTTI: [9:40:14] Thank you, Mr President.

25 Q. [9:40:17] Like I said, now I'm addressing the last topic for today. And I would

1 like to refer to another video that Defence played. The relevant portion of the
2 transcript is 174, page 90, and the time for the Defence is 15:19:11.

3 In this video, we saw an Anti-Balaka chief, Maidanda, having tear gas in his hands,
4 and saying that that tear gas was to be thrown at Muslim houses so that Muslims
5 would come out and they would kill them, even the small children. And upon
6 specific question of the Defence, you stated that you have never heard Mr Yekatom,
7 Habib Beina, Coeur de Lion, and Alkanto say that children had to be killed.

8 And I would like to ask you just one thing. What about other Anti-Balaka chiefs?
9 Do you know if other Anti-Balaka chiefs --

10 PRESIDING JUDGE SCHMITT: [9:41:26] Ms Dimitri, this has been covered, yes.
11 The other Anti-Balaka chiefs, no. Let the witness answer.

12 MS DIMITRI: [9:41:33] Mr President, if I may.

13 PRESIDING JUDGE SCHMITT: [9:41:36] Yeah, of course, you may.

14 MS DIMITRI: [9:41:37] It was -- it was also answered, because I put to her the video.
15 She confirmed that at the time when the Prosecution showed her the video, she didn't
16 hear anyone else talking in that way. The question was answered. There is no
17 contradiction, one.

18 PRESIDING JUDGE SCHMITT: Yes, and --

19 MS DIMITRI: [09:41:51] And if I may, Mr President, the issue of instructions was
20 addressed by the Prosecution.

21 PRESIDING JUDGE SCHMITT: [9:42:00] And it was addressed --

22 MS DIMITRI: [9:42:01] I went and I clarified it -- I'm sorry.

23 PRESIDING JUDGE SCHMITT: [9:42:05] And I addressed it too, and I asked further
24 questions, if you recall that. And it was clarified by the witness, that she referred
25 specifically to the question of children, if you recall that.

1 MR SCALIOTTI: [9:42:14] Absolutely, Mr President.

2 PRESIDING JUDGE SCHMITT: [9:42:15] If you don't show me another angle -- and
3 the witness has absolutely clarified that when she said she didn't hear that from any
4 of the chiefs mentioned, that she refers specifically to the question of killing children.

5 MR SCALIOTTI: [9:42:31] Mr President, I think there is -- in my view, there is
6 another angle, because what we covered during our examination was generally the
7 policy and the instructions with regard to Muslims. This was a specific issue
8 regarding the small children or babies that was brought up for the first time by the
9 Defence in their (Overlapping speakers)

10 PRESIDING JUDGE SCHMITT: [9:42:50] But the witness has answered that. The
11 witness has not only answered that on your examination, she has also answered it
12 yesterday, I would say.

13 Mr Vanderpuye.

14 MR VANDERPUYE: [9:43:03] I'm sorry to intervene, Mr President. But it's one
15 thing to discuss instructions that are given. It's another thing to talk about what was
16 said. The climate in which she was operating and in which the group operated is a
17 different question than necessarily a direction or an instruction.

18 PRESIDING JUDGE SCHMITT: [9:43:24] So it's not about instructions now.

19 MR VANDERPUYE: [9:43:25] It's about what was spoken, what was being said.

20 PRESIDING JUDGE SCHMITT: [9:43:30] So then -- no, no. No further discussion.
21 All these so-called rules are from common law on redirect, and they are all -- there is
22 always the caveat that the Chamber can ask questions to establish the truth, and I'm
23 doing that now. So --

24 MS DIMITRI: [9:43:45] I understand, Mr President, but if -- if I just -- one reference.

25 PRESIDING JUDGE SCHMITT: [9:43:50] Yeah.

1 MS DIMITRI: [9:43:50] Because Mr Vanderpuye said something, but there is a
2 specific reference in the transcript. At 15:20, yesterday, I asked her:

3 (Interpretation) "... did you hear people talking or expressing themselves in a similar
4 manner, in a similar manner? You answered, 'No'. Do you confirm that?"

5 (Speaks English) She confirmed. It's clarified. There is no contradiction.

6 PRESIDING JUDGE SCHMITT: [9:44:19] No, no, there is no contradiction.

7 Actually, I don't want to go too far, but I fail to see contradictions in the witness's
8 testimony at all. But I ask one final question, if you allow me, Mr Scaliotti.

9 So, Madam Witness, you have heard something. There is back and forth in a

10 courtroom. The different parties are struggling amongst each other and with the

11 Presiding Judge and the Judges about the correct procedure, so this is the background
12 for that.

13 I ask you one further question. I understood yesterday that when you said that such
14 instruction, such talk you did not hear, that you were talking about killing children.

15 So, first question: Did I understand this correctly, or did we understand it correctly,
16 perhaps?

17 THE WITNESS: [9:45:19](Interpretation) Yes. I didn't talk about killing children. I
18 talked about Muslims, but I didn't say anything about killing children, no.

19 PRESIDING JUDGE SCHMITT: [9:45:30] So, to clarify that, when you say, "I talked
20 about Muslims," so during the time you were in the group, let's say the period

21 Yamwara and then PK9, Mbaïki, and so on and so forth, what did -- the Anti-Balaka
22 that you were with, how did they speak about Muslims? What was their attitude
23 towards Muslims, if you can tell us? Muslims in general.

24 THE WITNESS: [9:46:07](Interpretation) The Muslims in general terms were
25 deemed to be enemy number one, because some of us they had mistreated. So, in

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1 our minds, all Muslims were -- all Muslims were enemy number one. They were our
2 enemies.

3 PRESIDING JUDGE SCHMITT: [9:46:35] Okay. I think there are no further
4 questions.

5 MR SCALIOTTI: [9:46:39] No further question, Mr President. So --

6 PRESIDING JUDGE SCHMITT: [9:46:42] And, actually, she had said something to
7 that effect already -- but, no, sometimes, you know, I dare speak about experiences
8 that -- domestic experience, because my colleagues don't like that, but in that regard, I
9 can say that there is much more repetition in a German courtroom than it is here -- in
10 the courtroom here. Just from my experience.

11 So thank you very much, Mr Scaliotti.

12 Witness, that concludes your testimony. You have testified over many days and
13 have answered straightforwardly all the questions, have, as we could see here in the
14 courtroom, struggled for the answers sometimes, have thought about it. We
15 appreciate that a lot. Without witnesses that come to this Court and testify about the
16 events, we could not do our work. We need witnesses like you, I will have to say
17 that. And we appreciate it also that -- and we know that testifying in this courtroom
18 also brings back terrible memories sometimes. So, on behalf of the Chamber, I
19 would like to thank you that you came to this Court and answered over so many days
20 patiently and diligently the answers that have been -- the questions that have been
21 put to you. We wish you a safe trip back home, Witness.

22 THE WITNESS: [9:48:16](Interpretation) Thank you, your Honour.

23 (The witness is excused)

24 PRESIDING JUDGE SCHMITT: [9:48:18] So this concludes also the hearing for
25 today.

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- 1 The Court is adjourned.
- 2 I don't know at the moment what the next witness is.
- 3 THE COURT USHER: [9:48:27] All rise.
- 4 (The hearing ends in open session at 9.48 a.m.)