

Trial Hearing
WITNESS: CAR-OTP-P-2328

(Open Session)

ICC-01/14-01/21

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Mahamat Said Abdel Kani - ICC-01/14-01/21
5 Presiding Judge Miatta Maria Samba, Judge María del Socorro Flores Liera,
6 Judge Sergio Gerardo Ugalde Godínez and
7 Judge Keebong Paek
8 Trial Hearing - Courtroom 2
9 Thursday, 31 October 2024
10 (The hearing starts in open session at 9.35 a.m.)
11 THE COURT USHER: [9:35:40] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE SAMBA: [9:36:03] Good morning, everyone.
15 Madam Court Officer, can you kindly mention the case.
16 THE COURT OFFICER: [9:36:09] Good morning, Madam President, your Honours.
17 The situation in the Central African Republic II, in the case The Prosecutor versus
18 Mahamat Said Abdel Kani, case reference ICC-01/14-01/21.
19 And we are in open session.
20 PRESIDING JUDGE SAMBA: [9:36:24] Thank you very much.
21 Can I ask for representation, starting with the Prosecution.
22 MS MAKWAIA: [9:36:29] May it please the Court. For the Office of the Prosecutor
23 this morning, myself, Holo Makwaia, Thomas Bifwoli, Marie-Jeanne Sardachti, trial
24 lawyers; Sanyu Ndagire, Anusha Rawoah, assistant legal officers; and Alessia Vitiello
25 analysis assistant. Thank you.

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- 1 PRESIDING JUDGE SAMBA: [9:36:48] Thank you very much, Ms Makwaia.
2 Ms Pellet for the victims, please.
- 3 MS PELLET: [9:36:52](Interpretation) Thank you, Madam President. The victims
4 are represented by Tars Van Litsenborgh and myself Sarah Pellet, counsel, OPCV.
- 5 PRESIDING JUDGE SAMBA: [9:37:06] Thank you very much, Ms Pellet.
6 Ms Naouri for the Defence, please.
- 7 MS NAOURI: [9:37:10](Interpretation) Thank you, Madam President. Good
8 morning. To my right, Fiana Gantheret; to my left, Mr Jacobs; and as for myself,
9 I am Jennifer Naouri, lead counsel representing Mr Said.
- 10 PRESIDING JUDGE SAMBA: [9:37:29] Thank you very much, Ms Naouri.
11 And for the record, I take note that Mr Said is in court with us here.
- 12 A very good morning to you, Mr Said. I hope I see you well.
- 13 MR SAID: [9:37:40](Interpretation) Yes. Good morning, Madam President.
- 14 PRESIDING JUDGE SAMBA: [9:37:43] Good morning.
15 Good morning, Mr Witness. I hope you rested well.
- 16 WITNESS: CAR-OTP-P-2328 (On former oath)
17 (The witness speaks French)
- 18 THE WITNESS: [9:37:55](Interpretation) Yes, I am well, Madam President. Good
19 morning.
- 20 PRESIDING JUDGE SAMBA: [9:37:58] Good morning.
21 Now we're going to continue with your testimony and hopefully finish off with you
22 today. I wish to remind you that you are still on oath to say the truth. So I'm going
23 to invite Ms Naouri, counsel for Mr Said, to continue putting questions to you in
24 cross.
- 25 Ms Naouri, your witness, please.

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1 MS NAOURI: [9:38:29](Interpretation) Thank you, Madam President.

2 QUESTIONED BY MS NAOURI: (Continuing) (Interpretation)

3 Q. [9:38:32] Good morning, Mr Witness.

4 A. [9:38:34] Good morning.

5 Q. [9:38:38] We need to respect the five-second rule, as usual. We're nearly
6 finished for today, but as I was saying yesterday, my final questions have to do with
7 dealings between OTP representatives.

8 And my first question is this, Mr Witness: Now, the first time that you were
9 contacted by the OTP investigators was by telephone, correct -- over the telephone,
10 correct?

11 A. [9:39:17] I don't remember exactly, but I was contacted. I don't remember if it
12 was at my office in Bangui or over the phone, but I was contacted by the OTP.

13 Q. [9:39:42] Very well.

14 I'd like to show you a document, tab 13 on our list, CAR-OTP-2094-0132. This is
15 confidential and should not be shown to the public, but it can be shown to the
16 witness.

17 It is in English and this is what is called a screening note. And it will be coming up
18 on the screen in a few moments.

19 There it is. And we can see here that the location of the screening is located -- it's
20 mentioned that you were in Paris and the screening was done over the telephone.

21 Does that refresh your memory, Mr Witness?

22 A. [9:40:39] Yes, it does. Yes, I remember.

23 Q. [9:40:43] Thank you very much.

24 I'd like to request official submission of tab 13 on our list, please.

25 Do you know how the investigators got your telephone number, Mr Witness?

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1 A. [9:41:14] No.

2 Q. [9:41:18] Now, on the same document we see that the number was provided by
3 a witness, and you didn't ask them how it came to be that they were able to get your
4 phone number?

5 A. [9:41:41] No. I'm a public figure, and I believe that the Court does have an
6 office in Bangui, and it is easier to get my contact information from the office of the
7 Court in Bangui. So I didn't wonder about that.

8 Q. [9:42:04] Very well. We note that.

9 And then you had a conversation with the investigators to plan the interview. Do
10 we agree on that point?

11 A. [9:42:13] Yes.

12 Q. [9:42:20] In the discussion you talked about some preparations for travelling
13 and the reimbursement of travel costs?

14 A. [9:42:32] Yes.

15 Q. [9:42:37] Thank you.

16 I'd like to show you something else, tab 16 actually on our list. *This is an
17 investigation report dated 22 October 2024, CAR-OTP-0003-7535. And if we could
18 move to page 0001, please. This can be shown to the witness, not to the public.

19 Now the first point, and I will translate this unofficially, here we see:

20 "Contact surrounding the statement would include communicating for travel
21 arrangements, safety and reimbursements for travel and medical if applicable."

22 So, ultimately, what costs were covered by the OTP, if you remember?

23 A. [9:43:53] My transportation and my stay here.

24 Q. [9:44:01] Did you receive a per diem while you were here?

25 A. [9:44:16] Yes, I believe when I got here I received 60 euros as a per diem.

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1 Something like that. 10 euros per day.

2 Q. [9:44:32] Very well.

3 I'd like to request official submission of tab 16.

4 And then you communicated with the OTP representatives by way of email?

5 A. [9:44:53] Yes.

6 Q. [9:44:56] Very well. I'd like to show you something else, tab 139.

7 This should not be shown to the public, but it can be shown to the witness.

8 CAR-OTP-2102-0869. And it's the page ending in 01 that is of interest to me.

9 Second page, actually. *page 086901

10 Now, here we see an email. I'll let you read this. And if you could confirm whether
11 or not this is indeed your email.

12 A. [9:46:01] Yes.

13 Q. [9:46:04] Thank you, Mr Witness.

14 I would like to request official submission of the item at tab 139 of our list.

15 And I'd like to show you another document, this is tab 18 on our list,

16 CAR-OTP-2102-0926. And this is to be shown to the witness, but not to the general
17 public.

18 Now, once again, same question, is this your email?

19 A. [9:47:01] Yes.

20 Q. [9:47:06] Thank you.

21 I'd like to request official submission of the item at tab 18 on our list.

22 And then the investigators from the OTP contacted you to inform you that Mr Said
23 had been arrested and they also told you about how the proceedings would unfold,
24 correct?

25 A. [9:47:44] I don't remember.

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1 Q. [9:47:51] Very well.

2 I'd like to show you a document, then.

3 And this is tab 16 on our list, CAR-OTP-00037535, page 0001. Could we scroll down
4 a bit and have a look at paragraph 3.

5 Here we read, and I'll translate this unofficially, this is an investigator report:

6 "[Now] on 10 May, an Investigator contacted ..." and then we read your pseudonym,

7 "... to update him on Said's arrest and the next steps of the proceedings.

8 On 12 February 2022, an Investigator contacted ..." and then we read your pseudonym

9 "... to update him on Said's case and the next steps of the proceedings."

10 Does that refresh your memory, Mr Witness?

11 A. [9:49:14] No. It is possible, yes. I was there. I came and I testified as part of
12 those proceedings. So I was contacted and I agreed, but the details of the contacts I
13 really don't remember particularly.

14 Q. [9:49:36] Very well, Mr Witness. Thank you for your answer. You've told me
15 what you remember.

16 MS NAOURI: [09:49:40] (Interpretation) And this item has already been submitted,
17 so I won't return to it.

18 Madam President, for my last questions, I'd like to put a few questions about
19 telephone contacts, and I believe this should be done in private session because we
20 will be discussing private information of the witness.

21 PRESIDING JUDGE SAMBA: [9:50:06] Yes. Madam Court Officer, can we go
22 briefly into private session, please.

23 (Private session at 9.50 a.m.)

24 THE COURT OFFICER: [9:50:23] We are in private session, Madam President.

25 PRESIDING JUDGE SAMBA: [9:50:25] Thank you very much.

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1 Ms Naouri, please continue.

2 MS NAOURI: [9:50:29](Interpretation) Thank you, Madam President.

3 Q. [9:50:32] I'd like to show you a document and this is tab 14 on our list,

4 (Redacted). This is a (Redacted) report.

5 And this should not be shown to the witness. Someone has reminded me that it

6 should not be shown to the witness because there are some (Redacted) on the

7 document. But I'd like to ask you to confirm your telephone number. This is an

8 (Redacted). We won't be showing you this report out of an abundance of caution,

9 but we see a telephone number here, and at page (Redacted), the number that has

10 been attributed is as follows: (Redacted). Is that your number, Mr Witness?

11 A. [9:52:04] Could you repeat it, please.

12 Q. [9:52:08] Of course. No, I'm just cross-checking whether or not I can show you

13 the report, but since it makes mention of another witness, I don't think I will show it

14 to you. But what I have here is (Redacted).

15 A. [9:52:41] I don't remember.

16 Q. [9:52:43] Very well.

17 PRESIDING JUDGE SAMBA: [9:52:50] Ms Naouri, can you go over the telephone

18 number again. Are you looking at the numbers under the rubric "(Redacted)

19 (Redacted)

20 Can you go over those numbers again. MS NAOURI: [9:53:07](Interpretation) You

21 are correct, Madam President. I can see that there's a few typos in my document.

22 Let me go back to the report itself. What I have here, there might be a typo on my

23 side. My mistake. Sorry about that. The first number is (Redacted).

24 THE WITNESS: [9:53:40](Interpretation) I don't remember.

25 MS NAOURI: [9:53:41](Interpretation)

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1 Q. [9:53:42] Very well.

2 A. [9:53:44] All the same, I would like to specify one thing. When I was in the

3 Central African Republic, *I had a telephone number that was (Redacted) and then

4 I had another number, (Redacted), I don't remember all the numbers.

5 And then when I was (Redacted), I had another telephone number and I was actually

6 given (Redacted) with a number which I've now forgotten. So those are the

7 (Redacted) numbers. I believe those are the (Redacted) numbers that I used when

8 I was working in the Central African Republic. Now, in addition, I have a (Redacted)

9 that I use. It (Redacted) and I use it everywhere.

10 Q. [9:54:51] Very well. Thank you for that. *And the (Redacted) number you've

11 just given us is in the report. So, I repeat: (Redacted). So that one you have validated

12 for us. 'I have a (Redacted). You mention a (Redacted). So I'm going to give you the

13 number that is (Redacted), which

14 is (Redacted).

15 A. [9:55:15] Perfect.

16 Q. [9:55:17] You mentioned another telephone number (Redacted). I realise this is

17 a lot of numbers. We see (Redacted)?

18 A. [9:55:35] Yes, that could be one of my numbers.

19 Q. [9:55:40] Very well. Now, (Redacted), that doesn't ring a bell?

20 THE INTERPRETER: [9:55:55] Correction: (Redacted).

21 THE WITNESS: [9:55:57](Interpretation) That's possible, yes.

22 MS NAOURI: [9:56:00](Interpretation)

23 Q. [9:56:01] Thank you, Mr Witness.

24 I wish to request official submission of tab 14.

25 This concludes, Madam President, cross-examination by the Defence. Thank you.

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1 PRESIDING JUDGE SAMBA: [9:56:15] Thank you very much, Ms Naouri.

2 Mr Prosecutor, do you have any question in re-examination of this -- but before you

3 do so, may I -- can we go back into open session, please, Madam Court Officer.

4 (Open session at 9.56 a.m.)

5 THE COURT OFFICER: [9:56:40] We are back to open session, Madam President.

6 PRESIDING JUDGE SAMBA: [9:56:43] Thank you very much.

7 Mr Prosecutor, do you have any question in re-examination of this witness?

8 MR BIFWOLI: [9:56:52] Thank you, Madam President, your Honours. Yes, we

9 have a few questions for this witness.

10 PRESIDING JUDGE SAMBA: [9:57:00] Can we hear them.

11 QUESTIONED BY MR BIFWOLI:

12 Q. [9:57:06] Good morning, Mr Witness.

13 A. [9:57:11] Good morning.

14 Q. [9:57:13] Yesterday you were shown three lists of senior Central African

15 Republic officials who attended the national --

16 MS NAOURI: [9:57:28](Interpretation) Objection, your Honour.

17 PRESIDING JUDGE SAMBA: [9:57:31] Yes, Ms Naouri.

18 MS NAOURI: [9:57:33](Interpretation) The national security council was dealt with

19 in the witness's previous statement at length and also in the statement when he was

20 questioned in the Yekatom, Ngaïssona case.

21 This is a 68(3) witness. His previous statement, his examination-in-chief is not a new

22 subject. The participation or the non-participation of the witness in the national

23 security council is not a new topic. This is not something new that has emerged

24 from cross-examination. On the contrary, we just asked some questions about a

25 topic that was dealt with at length in his previous statement.

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1 So this is not redirect. This is not a new topic and we are utterly opposed to dealing
2 with such matters during redirect. Thank you, Madam President.

3 PRESIDING JUDGE SAMBA: [9:58:30] Thank you very much, Ms Naouri.

4 In fact, Mr Bifwoli, I'm not going to ask you to respond. You had the prior recorded
5 testimony of this witness. You ought to have clarified whatever it is you wanted to
6 clarify with him. He's a 68(3) witness. Those are not new issues. It's in his
7 testimony.

8 Are you saying that the question you want to ask relates to something new that came
9 up from the Defence which is not in this witness's testament before you?

10 MR BIFWOLI: [9:59:09] Madam President, your Honours, it is our submission that
11 the questions -- the line of re-examination we are pursuing here, arises out of a new
12 issue that arose on cross-examination. In particular, during cross-examination, the
13 witness was shown documents of participants in those meetings, but conveniently
14 documents that show that this witness also attended were left out.

15 So it's in the interest of justice to establish the truth that actually these documents that
16 were left out but show that the witness also attended those meetings are also brought
17 to the attention of the Chamber. Thank you.

18 PRESIDING JUDGE SAMBA: [9:59:53] Those documents you are referring to, aren't
19 they referred to in your -- in the witness's prior recorded testimony?

20 MR BIFWOLI: [10:00:03] These documents that we are referring to are documents
21 which were disclosed to the Defence in 2021. They are on our list of evidence.
22 However, they are not on our LOM because --

23 PRESIDING JUDGE SAMBA: [10:00:16] That's not my question.

24 MR BIFWOLI: [10:00:18] Yes.

25 PRESIDING JUDGE SAMBA: [10:00:19] The documents, are they referred to in the

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1 prior recorded testimony of this witness which was submitted to this Chamber under
2 Article -- under Rule 68(3)?

3 MR BIFWOLI: [10:00:31] No, Madam President.

4 PRESIDING JUDGE SAMBA: [10:00:37] They are not referred to in the prior
5 recorded testimony? The witness's testimony and associated materials that you
6 submitted, none of those documents you want to refer to are in that testimony; is that
7 what you're saying from the bar?

8 MR BIFWOLI: [10:00:55] Yes, that document is not referred to the annex to a Rule 68
9 application.

10 PRESIDING JUDGE SAMBA: [10:01:02] Yes, I'm not talking about the annex. Is it
11 referred to as far as you remember the prior recorded testimony of this witness
12 of -- which was taken -- which you submitted, I think it's in 2018, it was -- his
13 testimony were taken several days in 2018, place of interview, The Hague. That's the
14 document I'm talking about. What you now want to deal with, is it referred to in
15 that testimony?

16 (Counsel confers)

17 MR BIFWOLI: [10:01:46] Just a minute to confer with my colleagues.

18 (Counsel confers)

19 MR BIFWOLI: [10:02:19] Thank you, Madam President, your Honours. It was not
20 referred in his prior recorded testimony.

21 PRESIDING JUDGE SAMBA: [10:02:28] Ms Naouri, please.

22 MS NAOURI: [10:02:30](Interpretation) Thank you, Madam President. I did not
23 quite understand whether my colleague wants to use documents that are not in his
24 LOM, and, if that is the case, why would he want to use them?

25 Secondly, the documents that we have used in the Defence are based on what he said

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1 in his prior statement. In paragraph 276, the witness says that the CNI would meet
2 weekly.
3 I'm sorry, I will repeat slowly.
4 In paragraph 276 of his statement, the witness talks about the national security
5 council and the fact that it met weekly, that there were members and -- who discussed
6 security issues within that council. That is paragraph 276. The Prosecutor knows
7 very well that the participation or non-participation in the CNS is part of the prior
8 statement.
9 So if he wanted to put questions to the witness on that participation, he could have
10 done so. He chose not to do so. But we chose to go further in depth into the matter.
11 Subsequently, in the Yekatom, Ngaïssona case, once again the witness speaks about
12 the national security council, and I'm referring here to tab 4.1, tab 4 for the English
13 and that is CAR-OTP-00036379, page 00004, line 28 to page 00007, line 5.
14 And so, insofar as - I was just cross-checking the reference - insofar as the
15 participation of the witness in the national security council is dealt with in the prior
16 statement, in cross-examination we simply came back to that matter. So the
17 participation of the witness in the CNS is not a new topic. It is dealt with in the prior
18 statement and it is both in the written statement and in the testimony in the
19 Ngaïssona and Yekatom case. * It is up to the Prosecution to verify the credibility of
20 its witness. It has these documents. They are CAR-OTP documents, so they have had
21 them for a long time. We decided to use them, but they decided not to. So the
22 Prosecution calls this witness, asks for a 68-3, the subject is covered in the previous
23 statement, they didn't dig into it, they didn't check whether the documents they have
24 allow them to know whether the person was there or not, it's over now. We've done
25 our duty to question this. So I'm going to try to repeat what I said, because I'm told

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1 that not everything I say is necessarily interpreted. We have a witness who gave
2 evidence under Rule 68-3, who, in his statement, talks about his participation... his
3 participation in the NSC. The Prosecution asked for an additional hour to conduct
4 further examination-in-chief of this witness. It did not do so. It was an opportunity to
5 carry out useful checks on the credibility of what her witness had said in writing.
6 Above all - and I stress this - she had these documents, because they were documents
7 disclosed to the Defence by the Prosecution. So they had these documents. So they
8 had the documents they needed in order to pursue the issue in examination-in-chief.
9 This was not done. Finally, I didn't quite understand whether it was a question of
10 using our documents, that is to say that we, the Defence, put on our LOM, list of
11 materials, but if the documents that the Prosecution wants to use in addition are not
12 on its LOM, on its list of materials, then we would oppose that in the strongest terms.
13 There you have it, Madam President.
14 Re-examination is not the opportunity to try to correct something that happened in
15 the direct examination because this is contrary to judiciary logic.
16 Lastly, I did not well understand whether it was a matter of using our
17 documents -- or, rather, what we the Defence included in our own list of materials,
18 but if the documents that the OTP wants to use are not in their LOM, their own list of
19 materials, we then oppose even more strongly, we object even more strongly to that.
20 Thank you, Madam President.
21 PRESIDING JUDGE SAMBA: [10:10:01] Thank you very much.
22 I see the witness's hand was up some three minutes ago.
23 Mr Witness, can I hear you?
24 THE WITNESS: [10:10:14](Interpretation) Thank you, Madam President. I do not
25 know whether I have the right to come back on the issue of my participation or not in

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1 the national security council.

2 PRESIDING JUDGE SAMBA: [10:10:33] Okay, Mr Witness, that's not your role. I
3 thought it's something that -- maybe you wanted a break or something. So that's
4 okay.

5 Now, having listened to you all, Mr Prosecutor, as I said earlier, you know, these
6 issues, as you would have seen, are referred to in part of the witness's prior recorded
7 testimony.

8 You see, one thing that I appreciate about your senior's line of leading witnesses - I'm
9 talking about Mr Choudhry - is that he would state all that he wants to do with a
10 witness who is coming under Rule 68(3). It's not just about coming here and putting
11 documents into court and leaving everything for the bench at the end of the day to
12 work on. You also have work to do. That forms part of the witness's testimony.
13 So it is nothing new. If you chose not to clarify issues that the witness would have
14 raised with you, and you leave it at the end of the day with the bench, you cannot
15 now come and say that that is new. That is not the rule as it applies to
16 re-examination, and I'm sure you know. Re-examination is only allowed when
17 something new comes up in cross-examination.

18 MS MAKWAIA: [10:11:59] Madam President, with the leave of the Chamber,
19 this -- perhaps it wasn't well expressed. This is in fact a new issue that arose as a
20 result of the cross-examination of the Defence. As the Chamber is aware, in
21 Rule 68(3), we are not required to bring everything back again to the Chamber. That
22 would defeat the purpose of the rule under which we are operating with this witness.
23 The issue arose when it was suggested to this witness that because - this was not put
24 to the witness, actually - because he didn't feature in certain forums --

25 MS NAOURI: [10:12:38] Objection. Argumentative. Objection. Argumentative.

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- 1 MS MAKWAIA: [10:12:41] I can withdraw that. Because he was shown certain
2 documents with a list of attendees where he didn't feature --
- 3 MS NAOURI: [10:12:50] Objection. Argumentative.
- 4 MS MAKWAIA: [10:12:51] There's nothing argumentative about it, Madam
5 President.
- 6 MS NAOURI: [10:12:52] * She is explaining the legal analysis to the witness.
- 7 PRESIDING JUDGE SAMBA: [10:12:55] No, you can't -- both of you cannot --
- 8 MS NAOURI: [10:12:56] (No interpretation) (Overlapping speakers)
- 9 PRESIDING JUDGE SAMBA: [10:12:57] No, no, Ms Naouri, both of you cannot be
10 on your legs. I have to listen to the Prosecutor.
- 11 Yes, Madam Prosecutor.
- 12 MS MAKWAIA: [10:13:04] Thank you, your Honours.
- 13 I was saying two documents, I think, were shown to the witness where attendees of
14 the meeting of the security council were listed and his name was not found.
- 15 What we're saying, your Honours, in re-examination --
- 16 MS NAOURI: [10:13:19] Objection.
- 17 MS MAKWAIA: [10:13:21] Perhaps the witness can be --
- 18 MS NAOURI: [10:13:22] Objection.
- 19 MS MAKWAIA: [10:13:24] -- removed if there's fear of influence, Madam President.
- 20 MS NAOURI: [10:13:29] Objection.
- 21 MS MAKWAIA: [10:13:31] I am also allowed to address the Court.
- 22 MS NAOURI: [10:13:34] Objection.
- 23 MS MAKWAIA: [10:13:35] Objection to that?
- 24 PRESIDING JUDGE SAMBA: [10:13:35] Ms Naouri -- Ms Makwaia, please take your
25 seat.

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1 Yes, Ms Naouri.

2 MS NAOURI: [10:13:40](Interpretation) Madam President, I have persistently

3 objected because the arguments presented by the Prosecutor are argumentative.

4 They are in her -- the written form. They are in our submissions. My learned

5 friend has understood the judicial purpose, but we are not going to explain to the

6 witness what is happening and the legal impact that is going to happen. So that's

7 why I continue to object, because it is argumentative.

8 We have done our work in the cross-examination. We have created doubt, but it is

9 not a reason to consider that it is a new topic. It remains the same subject, the

10 participation or not of the witness in the national security council. So there was one

11 hour of direct examination. It was not used and so it is not a new topic,

12 unfortunately. We have created the doubt, that is the problem, and each time doubt

13 is created, if the OTP has to come back to redirect, then it defeats the purpose.

14 Thank you. I don't have anything else to add.

15 PRESIDING JUDGE SAMBA: [10:15:29] Mr Court Officer, can you help us get the

16 witness -- Mr Witness, can you excuse us for a few minutes, please.

17 (The witness exits the courtroom)

18 PRESIDING JUDGE SAMBA: [10:16:02] These lists that the Prosecutor wants to

19 show the witness, are they in evidence, Madam Prosecutor?

20 MS MAKWAIA: [10:16:11] In fact, Madam President, it's only one list. It's not

21 multiple lists, just for the record to be clear. Now, they are on the list of evidence of

22 the Prosecution that has been disclosed to the Defence since 2021 -- or June 2022, in

23 any event, Madam President. It's just one list and the Defence is quite aware of these

24 four documents that relate to this topic, and they chose to use three, which is also

25 their choice. So yes, to answer that question, your Honours, they are on our list of

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1 evidence.

2 With your leave, if I could conclude on my submission, your Honours. So the issue
3 that arose was in re-examination, and re-examination is designed to allow the other
4 party to clear any ambiguity of a new topic that arose as a reason of the
5 cross-examination, and this, as our submission, your Honours, is exactly what
6 happened. The witness was shown three documents with a suggestion that was not
7 put to him, ultimately, that "Because you're not on these lists of attendees, you did not
8 take part in any of these meetings".

9 Now, in the manifestation, or in seeking the truth, your Honours, it's our submission
10 the Court is entitled to have all the relevant evidence before it so that ultimately it can
11 make the right assessment, it can come to a final determination with ample evidence
12 before it.

13 This is why we state, your Honours, we should be allowed to put this document that
14 demonstrates otherwise, because it wasn't even put to this witness that "We put it to
15 you you never attended these meetings". So it's all hanging in the air.

16 Your Honours, the objections that have been raised, in our humble submission, is
17 they're not borne out by the evidence because this falls within the realm of
18 re-examination and we should be allowed to conduct one.

19 Thank you, your Honours.

20 PRESIDING JUDGE SAMBA: [10:18:36] Can we have a look at the list that you
21 referred to. Is it -- can you refer to it so that we look at it from this end.

22 MS MAKWAIA: [10:18:48] It's CAR-OTP-2101-3688 at 3696. We've given it to the
23 court clerks so it can be sent to your Honours.

24 MS NAOURI: [10:19:06](Interpretation) Madam President, now that the request is
25 clear to submit a new document, a new document, there is a reason why the Defence

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1 has the last word. There is a reason why the Defence has a last word. The
2 cross-examination is the last stage and the redirect is only in case of a new subject,
3 and that makes it possible for the proceedings to be fair.
4 Furthermore, my learned friend is putting words in my mouth. I did not suggest to
5 the witness that he was never there for the good reason *that all we have done at this
6 stage is to show that he was not present at the three meetings that we submitted to
7 him in September. The position of the Prosecution -- the position of
8 Prosecution is clear, that he was there. It is in their documents, so to submit an
9 additional document to show that he was there is not useful. It is not new. In the
10 prior statement the witness said, "I was there". And I'm being reflected as saying
11 that I suggested that he was never there. * And that's why you shouldn't make an
12 argument, because nobody knows what argument I'm going to put forward in my
13 written submissions. For the moment, the only thing I've done is to establish in the
14 case file that he wasn't present at three meetings. And I'll draw the conclusions about
15 those three meetings.. We have a prior statement in which he said, "I was present",
16 but we have three documents that we submitted relating to the meetings that show
17 that he was not there. So items are not going to be added which are not in the list of
18 materials of any of the parties using the excuse that we have had those documents a
19 long time ago. The question is not how long we have had the documents, but it is
20 judicial logic. You cannot foist a different position on me.
21 I will make my submissions reflecting my interpretation of these documents, then it
22 will be up to the bench to decide. And if this document is that important, then a Bar
23 table procedure can be used. The position of the witness is clear: "I was there". He
24 told us that he believed that he was there. Now, if the Prosecution want -- wants to
25 come back to -- to a new document, then he should use the Bar table process.

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1 So, once again, the witness has been influenced and he's just waiting to express
2 himself in order to -- to puncture the problem that has been created, the doubt that
3 has been created.

4 To recapitulate, to summarise ...

5 I'm sorry, Madam President, I was looking at the interpretation. And counsel
6 concluded that the witness is waiting only for one thing, because he had been
7 influenced.

8 So what I was saying, because I was speaking too fast, you see, the witness even
9 raised his hand, thanks to the explanation given by my learned friend of the
10 Prosecution, he's only trying to add to his only credibility. That is why we are not
11 making argumentative objections. Our position is simple. The position of the
12 witness in his prior statement -- it is in his prior statement in which he says that he
13 participated in the CNS meetings.
14 Our position at this point is that he did not attend at least three of them. If there are
15 other documents that the Prosecution wants to submit on this issue, which is not new,
16 he should do -- they should do so by the Bar table. But to do that in redirect, we
17 absolutely object to it.

18 Thank you, Madam President.

19 PRESIDING JUDGE SAMBA: [10:24:46] Yes. Having listened to both parties, our
20 position is that the document that the Prosecution wants to use, I'm sure you'd agree,
21 is not a new document. It's already on the record and has been formally submitted
22 through the Bar table. And the question could not have been anticipated.

23 It is our ruling that the question could not have been anticipated. So being that that
24 would help us when we're doing our Article 74 judgment, because our objective here
25 is to learn the truth, to know the truth so we know everything that happened, we will

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1 have to allow counsel to put the question to the witness.

2 Mr Court Officer, can you kindly bring in the witness for us.

3 In re-examination -- put the question to the witness in re-examination. Thank you.

4 MR BIFWOLI: [10:25:55] Most obliged, your Honours.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE SAMBA: [10:26:55] Mr Prosecutor, please.

7 MR BIFWOLI: [10:26:58] Thank you, your Honours.

8 Q. [10:27:01] Now, Mr Witness, do you recall, yesterday, being shown lists of

9 senior Central African officials who attended national security council meetings in the

10 months of September and October?

11 A. [10:27:21] Yes.

12 Q. [10:27:24] And for the record, I'm referring to the Defence tab 94, which is

13 CAR-OTP-2101-3718. I'm also referring to Defence tab 95, which is

14 CAR-OTP-2075-1166. And the last one is Defence tab 96, which is

15 CAR-OTP-2034-3627.

16 And this is found in yesterday's transcripts at T-129, page 47, line 22 onwards, and at

17 page 49, line 24 onwards, and page 50, line 16 onwards.

18 Now, Mr Witness, I am going to show you another list of senior CAR officials who

19 attended a national security council meeting and ask you a few questions.

20 So I request CAR-OTP-2101-3688 to be displayed.

21 Can you kindly scroll it down a bit for the witness to see the whole of that page.

22 Mr Witness, can you see that document?

23 A. [10:29:30] Yes.

24 Q. [10:29:31] What is it about?

25 A. [10:29:35] It is an invitation to a meeting of the national security council.

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1 Q. [10:29:45] I kindly request for the next page to be displayed for the witness.

2 Do you have that page on your screen, Mr Witness?

3 A. [10:30:03] Yes. This is the work of the work done by the 9th meeting of the
4 national security council.

5 Q. [10:30:17] Now, I will request page 9 of that document to be shown to the
6 witness.

7 Mr Witness, do you see the document displayed on your screen now?

8 A. [10:30:46] Yes.

9 Q. [10:30:48] Can you tell the Court what it is.

10 A. [10:30:55] Yes, this is a list of the participants at the meeting and I see my name
11 there, number 7.

12 Q. [10:31:06] And when is it dated?

13 A. [10:31:14] 23 October 2013.

14 Q. [10:31:19] Thank you very much, Mr Witness, for answering our questions?

15 MR BIFWOLI: [10:31:23] And that is all for this witness.

16 THE WITNESS: [10:31:28](Interpretation) May I -- because this is the national
17 security council. Yesterday I saw a document and my name was not on it and it was
18 dated 9 August. Yesterday I was shown a document that --

19 PRESIDING JUDGE SAMBA: [10:31:45] Sorry, Mr Witness. Sorry, Mr Witness.
20 Thank you very much.

21 Thank you, counsel.

22 And to be very fair with the Defence also, I mean, it should be the end, but do you
23 have anything, any question at all to ask? No.

24 I'm going to ask my colleagues to put questions to you.

25 Are you done, Mr Prosecutor?

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1 MR BIFWOLI: [10:32:08] Save that I wanted to request for formal submission of that
2 document.

3 PRESIDING JUDGE SAMBA: [10:32:12] Okay. Okay. Thank you very much.
4 Do you have any other question?

5 MR BIFWOLI: [10:32:15] That's all.

6 PRESIDING JUDGE SAMBA: [10:32:20] Thank you very much.

7 Judge Ugalde, questions?

8 Mr Witness, we're going to ask you a few questions from the bench. Thank you.

9 JUDGE UGALDE: [10:32:28] Good morning, Mr Witness. I'm going to be asking
10 you a number of questions. If you do not understand me, please say so and I'm
11 happy to repeat or reformulate the question.

12 Today counsel referred to paragraph 276 of your prior recorded testimony and I'm
13 going to read part of that paragraph. It reads as follows:

14 "In August 2013, after the MISCA had been set up, I was appointed as
15 Minister-Counsellor to the President's Office in charge of the DDR-RSS and relations
16 with the MISCA."

17 My question to you, first question to you is the following: When President Djotodia
18 appointed you in this position, what was the president's instructions to you in terms
19 of what you were to accomplish?

20 THE WITNESS: [10:34:01](Interpretation) My mandate was to offer the president
21 possibilities and programmes to carry out DDR and reform the security sector. And
22 then I was supposed to establish relations between these authorities of the Central
23 African report and the MISCA force and to inform the president of the MISCA's
24 missions and to help MISCA carry out its mandate within the Central African
25 Republic.

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1 JUDGE UGALDE: [10:35:03] Thank you, Mr Witness.

2 In terms of disarmament activities, did the president ask you for advice or did he tell
3 you specifically what he wanted you to accomplish?

4 THE WITNESS: [10:35:22](Interpretation) He asked me for advice. He didn't
5 specify exactly what should be done. It was up to me to come up with proposals
6 and he would put them to the council of ministers for them to be put in place, for
7 them to be implemented.

8 JUDGE UGALDE: [10:35:51] Thank you, Mr Witness.

9 Mr Witness, also in relation to your appointment as minister, yesterday at tab 12 of
10 the evidence presented by the Defence - and I don't know if this can be shown to the
11 witness - it's an instruction of mission and I understand that you were to travel to
12 Brazzaville, Congo, and according to this document, you were supposed to depart on
13 9 September 2013 and to return on 19 September 2013. The question to you is did
14 you depart on 9 September 2013 and return on 19 September 2013? Do you recall
15 that you left Bangui on this date and returned Bangui on the other date?

16 THE WITNESS: [10:37:10](Interpretation) Yes.

17 JUDGE UGALDE: [10:37:16] Thank you.

18 Do you also recall if Minister Josué Binoua also was with you at all times during this
19 period of time that is shown in the order?

20 What I mean to say was did Minister Binoua left with you on 9 September to
21 Brazzaville and return with you on 19 September 2013 and was Minister Binoua
22 during this time in Brazzaville?

23 THE WITNESS: [10:38:00](Interpretation) No, he wasn't with us and I don't
24 remember him being alongside us in Brazzaville. And the mission continued on to
25 Libreville and even in Libreville he wasn't with us. I was much more with the

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1 minister of foreign affairs and in Brazzaville I also saw the minister of, I believe, the
2 minister of transportation at the time, or the minister of justice, but it wasn't
3 Mr Binoua.

4 JUDGE UGALDE: [10:38:34] Thank you, Mr Witness.

5 Perhaps coming back to the -- to paragraph 276 of your prior recorded testimony, and
6 if you allow me one second.

7 So you said that after you were appointed minister counsellor to the president,
8 Djotodia set up a national security council at the president's office, which would meet
9 once a week, and that you have been appointed as member of this council and that
10 you would debate security matters within this council.

11 Now, I have a number of questions for you in this regard. The first question is, do
12 you remember who were other members of this council who attended these
13 meetings?

14 THE WITNESS: [10:40:09](Interpretation) All the ministers of state, the general
15 secretary of the council itself, all the officials from the security services, the head of
16 the gendarmerie, the head of the intelligence services. There was a police
17 commissioner who was a security adviser to the president of the republic within the
18 presidency, and other high level people such as the president or the prime minister,
19 people that they might invite to attend these meetings.

20 JUDGE UGALDE: [10:41:02] Thank you.

21 So do you recall in the first meeting or the first meetings, what were the topics that
22 were discussed at these meetings? What were the issues that grabbed the attention
23 of the national security council? Do you recall what were the issues that the security
24 council addressed, say, at the beginning of the setting up, or after being set up?

25 THE WITNESS: [10:41:44](Interpretation) The first topics dealt with were

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1 organisation of the security arrangements throughout the country. It was necessary
2 to re-establish military garrisons within the country and designate a number of
3 military leaders who would go to the provinces and try to re-establish order and
4 create a presence demonstrating the authority of the state. That was the first thing
5 we dealt with.

6 And then after that, the problem of the confinement of Seleka elements in Bangui.

7 JUDGE UGALDE: [10:42:47] Thank you, Mr Witness.

8 At paragraph 79 of your prior recorded testimony, you said the following, let me read
9 to you:

10 "At the time I was Minister-Counsellor to the President's Office in charge of the DDR
11 and RRS. We had a meeting -- we had meetings at the President's Office to discuss
12 security issues, and the issue of the Anti-Balaka around Bangui was raised at a
13 meeting of the *Conseil national de sécurité* [National Security Council]. Djotodia, then
14 head of state, was the one chairing the meeting. The secretary-general of the CNS
15 was Mr Yamale. We knew that something was in the planning. This was also the
16 reason why the Seleka initiated a search operation in the Boy-Rabe neighbourhood in
17 November 2013."

18 The question to you, Mr Witness, is do you recall when was this meeting held about
19 this topic?

20 THE WITNESS: [10:44:24](Interpretation) I don't remember the date. I don't
21 remember the specific date, but that meeting must have been held in August or early
22 September. But, in any event, I do know that at that meeting -- well, there was a
23 meeting, indeed, during which we discussed the infiltration of Anti-Balaka members
24 in Bangui at the beginning, but I can't remember the exact date.

25 JUDGE UGALDE: [10:44:59] Thank you, Mr Witness.

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1 I don't have any further questions, Madam President.

2 PRESIDING JUDGE SAMBA: [10:45:08] Thank you very much, Judge Ugalde.

3 Now, Mr Witness, mine is to do with the timing and certain periods when some
4 issues that you dealt with or you testified to in your prior recorded testimony took
5 place.

6 Madam Court Officer, can we have the witness's statement. I think it's on tab 1.1 of
7 the OTP binder. And I want to look at paragraphs 60 and 61. Paragraphs 60 and
8 61.

9 Do you have it in front of you, Mr Witness? Can I ask that you read that -- those two
10 paragraphs to yourself, please.

11 THE WITNESS: [10:46:33](Interpretation) Yes, I've just read paragraph 60.

12 PRESIDING JUDGE SAMBA: [10:46:37] And 61, did you read 61 also?

13 THE WITNESS: [10:47:15] (No interpretation)

14 PRESIDING JUDGE SAMBA: [10:47:16] Thank you.

15 Now, my question, as I said, relates to timing. What time period are you referring to
16 in those paragraphs? Are you talking about before December 2013 or was that after
17 December 2013?

18 THE WITNESS: [10:47:42](Interpretation) After.

19 In paragraph 60, in paragraph 60, this is a -- well, this is an activity that began before,
20 before, that had already begun in 2013, that is to say, as of June 2013, around then.
21 This structure I've mentioned here had already been implemented and led by the
22 gentleman that I've mentioned here.

23 In contrast, in paragraph 61, this is something that was going on in 2014, when -- in
24 2014. So these are two completely different periods of time.

25 PRESIDING JUDGE SAMBA: [10:48:57] That's helpful, Mr Witness.

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1 So looking again at paragraph 61, and in view of the answer you just gave, the
2 military command hierarchy that you referred to there in that first sentence, which
3 military command are you referring to? Are you talking about the FACA or the
4 Seleka, the Anti-Balaka? Read that first sentence and advise as to which military
5 command.

6 THE WITNESS: [10:49:37](Interpretation) The military hierarchy of the FACA.

7 PRESIDING JUDGE SAMBA: [10:49:41] Thank you very much.

8 Now, still with that statement, can I ask the court officer to bring up paragraph 73.

9 Can you read paragraph 73.

10 73, please, Mr Court Officer.

11 Mr Witness, can you kindly read paragraph 73 that appears on your screen.

12 THE WITNESS: [10:50:48](Interpretation) Yes, I've read it.

13 PRESIDING JUDGE SAMBA: [10:50:50] Yes. Now, you would see, Mr Witness,

14 that in that paragraph you mention that some of the FACA returned to the Central

15 African territory and set up an Anti-Balaka base in Landjia. Now, do you know

16 when this was, maybe approximately the period, and can you explain where Landjia

17 is, the location Landjia.

18 THE WITNESS: [10:51:30](Interpretation) Landjia is in the south, south of Bangui,

19 along the Oubangui river, to the south, about 20 kilometres from Bangui to the south.

20 And those events occurred between May and June and until the complete installation

21 of the Anti-Balaka in 2013.

22 PRESIDING JUDGE SAMBA: [10:52:11] And how did you get to know this,

23 Mr Witness?

24 THE WITNESS: [10:52:22](Interpretation) In one of my statements, I said that

25 amongst the people who had fled Bangui and went over to the other side of the river,

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1 namely to the Democratic Republic of Congo, there were people who called me and
2 explained to me that they were there and that an organisation was being established
3 there.

4 PRESIDING JUDGE SAMBA: [10:52:51] Thank you very much.

5 Can I ask the court officer to bring up paragraph 128 of the witness's statement.

6 Can you read that paragraph to yourself, Mr Witness, and let me know when you're
7 done.

8 THE WITNESS: [10:53:35](Interpretation) Yes.

9 PRESIDING JUDGE SAMBA: [10:53:36] Yes. Now, you've seen that paragraph 128,
10 Mr Witness, you said that the Anti-Balaka appeared at various locations in 2013. My
11 question is when did you come to know, how did you know that they were in all of
12 these locations that you refer to in 128 of your statement?

13 THE WITNESS: [10:54:13](Interpretation) You must realise that in the Central
14 African Republic I held some positions over the years. For example, minister of
15 defence, I was responsible for national security. So throughout the entire land I did
16 have sources of intelligence that could give me intelligence about what was going on.
17 And then there were a number of police officers and gendarmes who had fled. They
18 also gave me intelligence. Third, in those locations, the Anti-Balaka did not hide
19 themselves, so the organisation had become public in nature. They were out there
20 and they began to try to gain possession of all the administrative things that the
21 Seleka had abandoned when they withdrew. So we were -- the authorities in Bangui,
22 we were informed of their presence. They were no longer hiding themselves. And
23 in the towns, if there were any *Seleka elements remaining, there were clashes with
24 them. So the information would regularly come to Bangui.

25 PRESIDING JUDGE SAMBA: [10:55:49] Thank you. So when you say in that

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1 paragraph that the Anti-Balaka appeared in 2013 in Damara, Bambari, Sibut and all of
2 those places referred to in that first sentence of paragraph 128, when are you talking
3 about? What's the period, which period are you talking about?

4 THE WITNESS: [10:56:16](Interpretation) July -- June, July, as of June and July
5 until -- until they disappeared from the country, from the political landscape.
6 July 2013, by then they had appeared along the roads and started to set up roadblocks
7 on a number of roads. So in those towns they really were appearing in public and
8 even around Bangui.

9 PRESIDING JUDGE SAMBA: [10:57:03] Okay. One last question for you,
10 Mr Witness, from me.

11 Mr Court Officer, can you kindly bring up paragraph 304.

12 Paragraph 304, it's a short paragraph.

13 So when you say Rakis -- that the OCRB was under the control of Rakis, which period
14 are you looking at? Which time, which period were you looking at when you --

15 THE WITNESS: [10:58:26](Interpretation) As soon as -- oh, I'm sorry, Madam
16 President. Once the Seleka had arrived in March 2013, the Seleka took control of the
17 OCRB and the Seleka had appointed someone called Rakis. He was the director
18 general -- the deputy director general of the police and this gentleman, Mr Rakis, was
19 working with the minister of security * and he was the one whose mission it was to
20 take control of all the police stations and to replace the old police commissioners with
21 officials who would become the new commissioners, and put the elements... He
22 would also, and I saw this with my own eyes, go on missions in different parts of in
23 Bangui to arrest people who were either Anti-Balaka or criminal elements. And so it
24 was he, as well as the officials he had appointed from the OCRB, who carried out
25 these missions. That's it.

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1 PRESIDING JUDGE SAMBA: [10:59:54] Thank you very much, Mr Witness.

2 Ms Naouri, do you have any reaction to the questions put by the bench, please?

3 MS NAOURI: [11:00:09](Interpretation) Thank you very much. Just a few
4 follow-up questions if you don't mind.

5 QUESTIONED BY MS NAOURI: (Interpretation)

6 Q. [11:00:16] Now, we've discussed your prior recorded testimony. Now, at
7 paragraph 49 of your previous statement, organisation of the Anti-Balaka, and
8 I believe you still have the document in front of you, paragraph 49, you said:

9 "I got all this information from my department in my capacity as former Minister to
10 the President's Office in charge of security."

11 Can you confirm that you were the minister in charge of security within the
12 president's office when you worked under President Samba-Panza?

13 A. [11:01:01] Yes.

14 Q. [11:01:03] Thank you. And, Mr Witness, the attacks in the provinces by certain
15 groups were in September 2013, correct?

16 A. [11:01:20] That's possible, yes.

17 Q. [11:01:38] Thank you, Mr Witness.

18 MS NAOURI: [11:01:40] (Interpretation) I have no further questions, Madam
19 President.

20 PRESIDING JUDGE SAMBA: [11:01:43] Thank you very much, Ms Naouri.

21 Mr Witness, on behalf of the Chamber, I wish to thank you very much, as we've come
22 to the end of your testimony. We do appreciate your willingness and your
23 participation as a witness and for your contribution to the process of us establishing
24 the truth as to what happened in the Central African Republic.

25 We wish you well in all of your future endeavours and we wish you a safe travel back

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1 home.

2 (The witness is excused)

3 PRESIDING JUDGE SAMBA: [11:02:25] So we've come to the conclusion of your
4 testimony and we know that tomorrow we shall hear the Prosecution's -- well, for
5 now, last witness. Can you confirm that, Madam Prosecutor.

6 MS MAKWAIA: [11:02:38] Yes, your Honours, that would be P-1339.

7 PRESIDING JUDGE SAMBA: [11:02:44] Indeed.

8 So I'll rise the Court and ask that we come tomorrow at 9.30 for the Prosecution's last
9 witness. Thank you.

10 THE COURT USHER: [11:02:54] All rise.

11 (The hearing ends in open session at 11.02 a.m.)