

Trial Hearing
Witness: CAR-OTP-P-272

(Open Session)

ICC-01/05-01/13

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido - ICC-01/05-01/13
6 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
7 Judge Raul Pangalangan
8 Trial Hearing
9 Wednesday, 21 October 2015
10 (The hearing starts in open session at 1.02 p.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 PRESIDING JUDGE SCHMITT: Good afternoon, everybody. Could the court officer please
14 call the case again because this is a new transcript as I have understood.
15 THE COURT OFFICER: Good afternoon. Yes, your Honour. Situation in the Central
16 African Republic in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, Aimé Kilolo
17 Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, in the
18 case reference ICC-01/05-01/13.
19 And for the record, we are in open session. Thank you.
20 PRESIDING JUDGE SCHMITT: Thank you very much.
21 Now I ask for the appearances of the parties. There are significant differences as I
22 note.
23 MR VANDERPUYE: Good afternoon, Mr President, your Honours, everyone. This
24 afternoon the Prosecution is represented by Ruth Frolich, seated to my right; behind
25 her Silvia Vidinha and to her left Sylvie Wakchom. I'm Kweku Vanderpuye.

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1 PRESIDING JUDGE SCHMITT: Thank you very much.

2 Mr Gosnell, please.

3 MR GOSNELL: Thank you, Mr President. Good afternoon. Christopher Gosnell on
4 behalf of Mr Mangenda, who's on my far left, accompanied by our reserves person Jeanne
5 Manga Safi.

6 PRESIDING JUDGE SCHMITT: For Mr Kilolo, we come to Mr Kilolo himself, but please
7 introduce yourselves and your colleagues.

8 MR POWLES: Yes. Good afternoon, Mr President and your Honours. Myself, Steven
9 Powles, assisted by my learned colleagues, Ms Leuka Grogan and Ms Camille Strosser. And,
10 of course, Mr Kilolo is absent and a waiver will be signed and filed accordingly as per your
11 Honours' directions, and we're grateful. Thank you very much.

12 PRESIDING JUDGE SCHMITT: Thank you very much.

13 The Chamber notes that the Kilolo Defence has requested that Mr Kilolo be excused
14 from attending trial this afternoon and tomorrow for a personal matter. By way of
15 an email sent to the Chamber this morning, no opposition was raised to this request.
16 The request is granted. The Chamber considers that the reasons for the absence are
17 clearly exceptional. The rights of Mr Kilolo will be fully ensured by Mr Powles and
18 his team. Mr Kilolo will be expected back in the hearing on Friday, 23 October 2015.
19 Mr Kilolo is to sign a waiver of his right to be present at the trial this afternoon and
20 tomorrow. This signed waiver must be filed into the record of the case as soon as
21 possible, and I understand that this will be done as soon as possible.

22 MR POWLES: I'm very grateful. Thank you again, your Honours.

23 PRESIDING JUDGE SCHMITT: I note that the video link to Kinshasa has been successfully
24 established.

25 We are pleased to also have persons on the other side of the video connections. Mr

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1 Bondo Tshimbombo Bontshi, could you kindly introduce yourself for the record,
2 please.

3 MR BONDO: (Via video link)(Interpretation) Yes. My name is Bondo Tshimbombo
4 Bontshi, Richard. I am a member of the Kinshasa Ngombe Bar, I'm a lawyer, and I'm also
5 counsel on the List of Counsel at the ICC and also at the Special Tribunal for Lebanon.
6 I have been designated to provide assistance to the suspect, if I could put it that way.
7 He was thought to be a suspect in the case regarding Mr Bemba, Mr Kilolo, Mr
8 Mangenda, Mr Babala and Mr Arido. So there you have it. I am here to provide
9 assistance to the witness, who is deemed to be a suspect and also possibly provide
10 any other form of assistance he may require.

11 PRESIDING JUDGE SCHMITT: Thank you very much.

12 As a reminder, today the Chamber will sit from 1 o'clock until 3 o'clock in the
13 afternoon, then we will have a coffee break until 3.30, and then we will sit from 3.30 to
14 5.30.

15 Thank you to the parties and of course also to the Registry for your flexibility
16 regarding the schedule, but we all understand that these are, I again use this word,
17 exceptional circumstances.

18 Since the scope --

19 MR KILENDA: (Interpretation) Your Honour, I'm sorry to interrupt, but I did notice that
20 some Defence counsel did not have an opportunity to introduce themselves, and I would
21 imagine that my learned friend in Kinshasa would wish to be acquainted with the names of
22 certain Defence counsel, so I do draw your attention to that point with all due respect, your
23 Honour.

24 PRESIDING JUDGE SCHMITT: Thank you very much for this reminder, Mr Kilenda. You
25 have our -- of course, it's correct what you're saying. The Presiding Judge was much too

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1 expeditious in that respect. So I would please call you to present yourself and your client
2 and the team that you are with. And then we continue with Mr Taku and then with Mrs
3 Taylor. Since you raised the issue, please.

4 MR KILENDA: (Interpretation) Thank you, your Honour. Mr Babala is assisted by Shalie
5 Radoma, associate counsel who is a member of the Brussels Bar; Ms Marie Adriana
6 Manolescu, our case manager; and myself, Jean-Pierre Kilenda, lead counsel and a member of
7 the Brussels Bar and the Kinshasa Ngombe bar as well.

8 PRESIDING JUDGE SCHMITT: Thank you very much then.
9 Mr Taku, please.

10 MR TAKU: May it please your Honours, I appear for Mr Arido. With me is Mr Kiel Walker
11 and Mr Tharcisse Gatarama. Mr Arido is seated at our right.

12 PRESIDING JUDGE SCHMITT: Thank you.

13 MS TAYLOR: Good afternoon, Mr President, your Honours. I'm appearing on behalf of
14 Mr Bemba, who is on my right. Thank you.

15 PRESIDING JUDGE SCHMITT: Still the only person in that respect.

16 Since the scope of the testimony of this witness seems to be limited, the Chamber
17 expects that the parties will have finished the examination by 5.30.

18 The Chamber now turns to the upcoming testimony of Witness P-272. The witness is
19 testifying without protective measures by virtue of Decision 1306.

20 As to Rule 74 assurances, no such assurances have been requested. Mr Bondo
21 Tshimbombo Bontshi, do you have any submissions to make in this regard?

22 THE COURT OFFICER: (Via video link) Mr President, could you please repeat because --

23 PRESIDING JUDGE SCHMITT: No problem. I repeat I think both sentences that I have
24 said. As to Rule 74 assurances, no such assurances have been requested. Mr Bondo
25 Tshimbombo Bontshi, do you have any submissions to make in this regard?

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1 MR BONDO: (Via video link)(Interpretation) At this stage in the proceedings, no, your
2 Honour. At this stage in the proceedings, no.

3 PRESIDING JUDGE SCHMITT: Thank you very much.

4 Then court officer, could you please bring in the witness into the video link location,
5 and I think do we go for that into closed session? No. We stay in open session
6 because we don't have any problems in that respect. Okay.

7 THE COURT OFFICER: (Via video link) I'm going to pick up the witness.

8 MS STRUYVEN: Mr President.

9 PRESIDING JUDGE SCHMITT: Yes, please.

10 MS FROLICH: If I may just raise preliminarily an issue of the prosecution's Rule 68(3)
11 application that we filed for this witness to submit, tender his evidence, his prior statement
12 into the evidence pursuant to that rule and the application is pending. And I was wondering
13 if I may proceed under the assumption that it is provisionally granted pursuant to the rule
14 and until all the requirements of the rule have been met?

15 PRESIDING JUDGE SCHMITT: I've been informed that what we do not have at the moment
16 is that the witness does not have any objections in that respect. If you could inquire that,
17 then we would later on issue a written decision but would provisionally grant it.

18 MR FROLICH: I'm grateful, your Honour. And another quick question: Would it be
19 permissible for me to remain seated while I conduct the examination of this witness via video
20 link so that I can see him better with your leave, your Honour?

21 PRESIDING JUDGE SCHMITT: Under these exceptional circumstances, I would grant that,
22 too, but we don't make that the rule.

23 MR FROLICH: Thank you very much, Mr President.

24 PRESIDING JUDGE SCHMITT: So I see that the witness has been brought in.

25 Mr Witness, good afternoon. You are going to testify before the International

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1 Criminal Court. On behalf of the Chamber, I would like to welcome you to the
2 courtroom.

3 THE COURT OFFICER: (Via video link) Mr President, I'm sorry, but we are not getting
4 the -- we are not getting the Lingala interpretation, so I'm afraid the witness won't be able to
5 understand you. We're trying to fix the problem.

6 PRESIDING JUDGE SCHMITT: So the problem seems to be that we don't have at the
7 moment an interpretation into -- from Lingala or into Lingala and then from Lingala, of
8 course. And they try to fix it; and when it is fixed, we can continue.

9 Perhaps the interpreters could give the Chamber a signal when we can continue.

10 THE INTERPRETER: Message from the interpreters: The Lingala interpreters are in the
11 correct booth now, and will be ready to begin interpreting in a few moments.

12 PRESIDING JUDGE SCHMITT: Thank you very much. Obviously they have changed the
13 booth, so to make possible the interpretation.

14 THE COURT OFFICER: (Via video link) We do have the Lingala channel. Thank you
15 very much.

16 PRESIDING JUDGE SCHMITT: So we do have the Lingala channel, and so I start again I
17 think.

18 Mr Witness, good afternoon. You're going to testify before the International
19 Criminal Court. On behalf of the Chamber, I would like to welcome you to the
20 courtroom.

21 This Chamber has been established to try the case of the Prosecutor against Mr
22 Jean-Pierre Bemba Gombo and others. You are called to testify to assist us in our
23 search for the truth.

24 Mr Witness, you should have a card in front of you with a solemn undertaking to tell
25 the truth. Could you please read out loud this card?

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1 WITNESS: CAR-OTP-P-272

2 (The witness speaks Lingala)

3 THE WITNESS: (Interpretation) Yes, I can do that. I solemnly declare that I shall tell
4 truth, the whole truth and nothing but the truth.

5 PRESIDING JUDGE SCHMITT: Thank you, Mr Witness.

6 Mr Witness, you are now under oath. You have already been informed about the
7 importance to speak the truth. Nevertheless, I want to reiterate to you that, as you
8 have just promised, you have to speak the truth. And I also inform you that it is an
9 offence within the jurisdiction of this Court to give false testimony.

10 I think any protective assurances we have not given. I think we can continue in open
11 session since any assurances have not been given.

12 A few practical matters, Mr Witness, you should have in mind when giving your
13 testimony: Everything we say here in the courtroom is written down and
14 interpreted into English and French. It is, therefore, important to speak clearly and
15 to speak at a moderate or rather slow pace. We want to make sure that your words
16 can be well understood by the interpreters and then by the rest of us.

17 Please speak into the microphone and only start speaking when the person asking
18 you the question has finished.

19 To allow for the interpretation, everyone has to wait a few seconds before starting to
20 speak. So I recommend to you when the lawyer has asked his or her question,
21 please count in your head to three and only then give your answer.

22 If you have any questions yourself, raise your hand so we know that you wish to say
23 something. We will then give you the opportunity to speak.

24 Mr Witness, have you understood all that?

25 THE WITNESS: (Via video link)(Interpretation) Yes, I do understand.

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1 PRESIDING JUDGE SCHMITT: Thank you. We will then start your testimony, and we
2 start with the Prosecution. But what I have said to the witness applies to everybody in the
3 courtroom. It applies also to me, of course. We have to speak slowly, and we have to keep
4 in mind that we have a translation from Lingala into French and then into English, so please
5 avoid at all costs, if possible, overlapping.

6 I give the Prosecution the floor.

7 MR FROLICH: Thank you, Mr President.

8 QUESTIONED BY MS FROLICH:

9 Q. Good afternoon, Mr Nginamau.

10 A. Good afternoon.

11 Q. Can you see and hear me well?

12 A. Yes, I can see you, and I can hear you just fine.

13 Q. My name is Ruth Frolich. We were introduced yesterday during the curtesy meeting
14 when you were also introduced to my colleague, Ms Wakchom. Do you remember that?

15 A. Yes. Yes, I see.

16 Q. I will be asking you some questions today on behalf of the Prosecution, and it is of
17 course important that you heed the instructions of the Presiding Judge to you.

18 It is also important that you listen carefully to my questions and try to answer them as
19 best as you can. If there is anything that you do not understand or that is not clear to
20 you, please let me know, and I will do my best to rephrase my question so that you
21 do understand.

22 Is that clear, Mr Witness? Do you understand?

23 A. Yes, I understand.

24 Q. Thank you. Now, could you please state your full name for the record.

25 A. My name is Nginamau Leba Robert.

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1 Q. Could you please spell your name?

2 A. My name is spelled this way, N-G-I-N-A-M-A-U, space, L-E-B-A, space, R-O-B-E-R-T.

3 Q. Where were you born?

4 A. I was born in Kinshasa.

5 Q. What is your date of birth?

6 A. 24 July 1972.

7 Q. Did you attend school, sir?

8 A. Yes, I did go to school. I ended my studies in fifth year mechanics, and I received a
9 certificate in auto mechanics.

10 Q. When was this?

11 A. In 1995.

12 Q. What is your current occupation?

13 A. Right now I am working, but my boss is not there; but since I am here with you right
14 now, I'm not working. I am a driver.

15 Q. How long have you been a driver?

16 A. When I got my certificate, I was working as a personal driver up until, up until the year
17 2000. I stopped doing that in 2001 and 2002, then I began working for someone.

18 Q. Who is your current boss, Mr Witness?

19 A. My current boss is a member of parliament.

20 Q. Could you please state his name?

21 A. His name is Fidèle Babala.

22 Q. How long have you worked for Mr Babala?

23 A. It's been 11 years now.

24 Q. All right. Mr Witness, I will come back to that later, but right now I would like to ask
25 you about your contacts with the Office of the Prosecutor and if you recall having met with

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1 the representatives of the office on 3, 4 and 5 March 2015?

2 A. Yes, I did meet with them, yes.

3 Q. Do you remember who you met with, their names?

4 A. There was Mr (Redacted) and Sylvie Wakchom, an interpreter for the Lingala
5 language. I've forgotten that person's name.

6 Q. That is all right, Mr Witness. We do not need this person's name right now.

7 Did you provide a statement to the representatives of the office?

8 THE COURT OFFICER: (Via video link) Excuse me to interrupt, but the counsel would
9 like to address the Chamber.

10 PRESIDING JUDGE SCHMITT: Please, Mr counsel.

11 MR BONDO: (Via video link)(Interpretation) May I have the floor?

12 PRESIDING JUDGE SCHMITT: Yes.

13 MR BONDO: (Via video link)(Interpretation) I just want to provide some information
14 about the interpreter mentioned. The name of that person is (Redacted) (phon).

15 MR FROLICH: Mr President -- it is all right, Mr President. I do not have a comment to
16 make.

17 PRESIDING JUDGE SCHMITT: We all understand that it is, of course, not easy if you have a
18 witness testifying via video link, so we I think need all a little bit indulgence with ourselves
19 and everybody that is involved in this process.

20 So please, Mr Bondo, continue. We have interrupted you.

21 MR BONDO: (Via video link)(Interpretation) Just to give you some information about,
22 about the identity of the team, the members of the OTP team, on 4 March, the 4 and 5 of
23 March, the main investigator was (Redacted). The assistant investigator was
24 Sylvie Wakchom, Wakchom. I beg your pardon.

25 MR RODOMA: (Interpretation) I'm a bit surprised to see witness's counsel providing

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1 information about the identity of the investigators. I am a bit surprised.

2 PRESIDING JUDGE SCHMITT: Thank you very much. That is true what you're saying.

3 Mr counsel, it is not your duty to provide the information that the parties want to

4 elicit from the witness, so we would now continue with the examination by the

5 Prosecution. Thank you very much for this reminder.

6 MR FROLICH: Thank you, Mr President.

7 Q. Mr Witness, did you provide a statement to the representatives of the office?

8 A. Could you explain to me what is a statement?

9 Q. Mr Witness, did the representatives of the office ask you questions about the case in
10 which you are currently testifying, about some matters related to that case?

11 A. Yes. The investigators asked me questions. They told me that they had come to see
12 me to put some questions to me. That is what they did, and I gave them answers.

13 Q. And was this -- this is what we call a statement. Was this statement recorded?

14 A. Yes. While they were asking me questions, they had a small recording machine.

15 Q. Did you give your answers to them voluntarily of your own free will?

16 A. Yes, I answered voluntarily. I was present there when they asked me the questions on
17 a voluntary basis.

18 Q. And did you give it in a language that you fully speak and understand?

19 A. Can you kindly repeat your question, please?

20 Q. In what language did you give your statement to the representatives of the office when
21 you met with them? What language did you speak with them?

22 A. I spoke in Lingala. They were asking their questions in French, and the interpreter
23 interpreted the questions as well as the answers.

24 Q. And is Lingala a language that you fully speak and understand?

25 A. Yes, I understand Lingala, and I speak it fluently.

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1 Q. And were you assisted by counsel during that meeting?

2 A. Yes. I was with my lawyer.

3 Q. Did you have a chance to review or did you review the transcripts of your statement
4 that was recorded before today?

5 A. Yes, I had the opportunity to review that statement.

6 MR FROLICH: Could we now show to the witness document 0088-0155_R01. This is tab 2
7 in your Honours' binders. Can we show the first page of that document, please.

8 PRESIDING JUDGE SCHMITT: We have no binders, but -- so that would be, of course -- do
9 the Defence teams have binders? Neither.

10 MR FROLICH: Your Honour, we did have binders for your Honours. I believe we did
11 bring them with us. I will inquire as to where, whereabouts of these binders.

12 PRESIDING JUDGE SCHMITT: I will not exclude the possibility that our staff did not bring
13 it down. But since the Defence teams seem also not to have these binders, there is perhaps a
14 principal problem with that. And it would, of course, be good to have it, so I think we
15 should solve this problem first because we have to know, and we have to know what is on the
16 table to put it this way, to put it this way.

17 MR TAKU: May it please the Court, I don't know, we have some things, I think it's a binder.
18 Yes, I think I have a binder here, Prosecution list of documents. Is that what you are
19 referring to, my Lord, your Honour?

20 PRESIDING JUDGE SCHMITT: I honestly do not know how this binder is supposed to look
21 like, but -- so perhaps the Prosecution can clarify this.

22 MR FROLICH: To be clear, your Honour, we did not produce binders for the Defence,
23 although we did produce a list of documents, which is tabbed so the Defence would know
24 immediately which documents we are referring to. And, of course, the Defence have access
25 to all these documents. But for your Honours we did prepare binders.

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1 PRESIDING JUDGE SCHMITT: Nevertheless it's of course important that also the Bench
2 sees what we are talking about. But I understand that we can put it on the screen any of
3 these documents, so we try it this way and see how far we get.

4 THE COURT OFFICER: (Via video link) The first page of the document is being presented
5 to the witness.

6 MR FROLICH: Could we zoom out a little bit, madam court officer, so that the entire page is
7 visible? Thank you.

8 Q. Mr Witness, can you see the document on the screen?

9 A. Yes, I see the document on the screen.

10 Q. Do you recognize it?

11 A. I can see the document, but the font is very small on the screen, so I'm not able to see it
12 very well.

13 MS FROLICH: Perhaps, madam court officer --

14 THE WITNESS: (Via video link)(Interpretation) I have just recognized the document.

15 MR FROLICH:

16 Q. What is it? What is this document?

17 A. The document that I can see in front of me -- well, I don't know whether counsel can
18 read it out for me.

19 Q. I think the madam court officer can also read it for you, but I'm also happy to read it for
20 you, Mr Witness, and it says here, this is in French, and it says, "Transcription de deposition."
21 And I'm sorry, I have switched to French now (Interpretation)

22 "Name of the Interviewee: Robert Nginamau Leba."

23 And I will go to the date (Interpretation)

24 "Date of the interview: 4 March 2015.

25 "Names of individuals present."

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1 Interviewer 1: (Redacted)

2 PRESIDING JUDGE SCHMITT: I don't know if we should speak out the names in open
3 session, so --

4 MR FROLICH: They have been mentioned already in open session, your Honours. We do
5 not have a problem.

6 PRESIDING JUDGE SCHMITT: It's been redacted -- (Microphone not activated)

7 MR FROLICH: Thank you, Mr President.

8 Q. Can you now see or do you now recognize fully this document, Mr Witness, after I have
9 read out this information to you?

10 A. Yes, yes, I can remember this document very well.

11 Q. Well, then is this document your statement, Mr Witness?

12 A. The document that I see in front of me contains what I said, yes. It is indeed my
13 statement.

14 Q. Thank you, Mr Witness.

15 Can we now go to document 0088-0188, which is for what it's worth in tab 3 of the
16 binders that we produced and on the list of documents.

17 THE COURT OFFICER: (Via video link)(Interpretation) The document is being shown to
18 the witness.

19 MR FROLICH:

20 Q. Mr Witness, do you recognize this document?

21 A. I'm with you. I think this is the same document.

22 Q. Mr Witness, this document is a continuation of the document we just show you a few
23 minutes ago, which consists -- and this entire statement consists of several transcripts. I am
24 showing you right now the second transcript, the second part of that statement, and I'm
25 asking you to confirm whether this is what I say it is, part of your statement. Can you

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1 confirm that?

2 A. Yes, it is my statement.

3 Q. Can we show document 0088-0224.

4 THE COURT OFFICER: (Via video link) The document is shown to the witness.

5 MR FROLICH:

6 Q. Do you see this document and recognize it, Mr Witness?

7 A. Yes, I've seen the document. It is the same document.

8 Q. Mr Witness, you will note that perhaps that the date --

9 MR KILENDA: (Interpretation) Mr President.

10 PRESIDING JUDGE SCHMITT: Yes, please, Mr Kilenda.

11 MR KILENDA: (Interpretation) We have a minor concern here the way the Prosecutor is
12 conducting this examination. I really don't know how to describe it. I think it is not
13 sufficient to put questions to the witness exclusively on the first page and ask him to confirm
14 that it is his statement.

15 PRESIDING JUDGE SCHMITT: There is insofar merit in it, as of course for a person who
16 does not deal with such statements on an everyday basis, they look very similar. So when
17 the witness says it's the same statement, it is, to be honest, understandable. So you would
18 perhaps have to establish really that the witness recognizes that we have different documents
19 in front of us.

20 MR FROLICH: Thank you, Mr President.

21 Q. Can we, while we are still on this document, can we in that case go to second page of
22 this document or, sorry, third page of this document? No, sorry. Second page. I
23 apologize.

24 THE COURT OFFICER: (Via video link) The second page is being presented to the
25 witness.

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1 MR FROLICH:

2 Q. Mr Witness, if you look at line 7 onwards on this document, it says, and I will again read
3 in French (Interpretation) "It is 9.37 a.m., and we are still in Kinshasa. And the date is 5
4 March 2015," and on and on. And I will not go, unless Mr President so wishes, through the
5 entire transcript.

6 So do you note -- did you note this date and time, Mr Witness, that I've just read out?

7 A. Yes, yes, I have followed what you read.

8 Q. Can you confirm in that case that this is the part of your statement that was taken at this
9 time and this date?

10 A. I'm sorry. Yes, I can confirm that this was the interview that I had with those
11 investigators on that date and at the time indicated in the document.

12 Q. Can we now show -- excuse me.

13 I trust this is sufficient, Mr President, for the purpose of identifying --

14 PRESIDING JUDGE SCHMITT: Please continue.

15 MR FROLICH: Thank you, Mr President.

16 Can we now go to document 0088-0249.

17 THE COURT OFFICER: (Via video link) The document is presented to the witness.

18 MR FROLICH: I am simply waiting for it to show up on my screen. Thank you. And can
19 we go to the second page of that document as well.

20 THE COURT OFFICER: (Via video link) Page 2 is being presented to the witness.

21 MR FROLICH:

22 Q. And, Witness, I will read out to you again in French, starting from line 2, (Interpretation)
23 "The date is the 5th of March, and the time is 11.06 a.m."

24 And further on (Interpretation) "We are going to continue with the interview of
25 Robert Nginamau."

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1 Do you see these lines, Mr Witness?

2 A. Yes, I can see that.

3 Q. And of course they were interpreted to Lingala in the transcript, so you will see them in
4 Lingala. Can you confirm then that this is the part of your statement that was taken on 5
5 March 2015 at 11.06 a.m.?

6 A. Yes, I do confirm that it contains what I said.

7 MR FROLICH: Mr President, is there any need for me to go back through the first two
8 transcripts and do the same exercise with the witness?

9 PRESIDING JUDGE SCHMITT: No, I don't think so. Please continue.

10 MR FROLICH: Thank you, Mr President.

11 Q. Mr Witness, were you ever given the opportunity to make clarifications to these
12 statements -- to this statement? Sorry.

13 A. Yes. Yesterday I had the opportunity to read over my entire statement once again.

14 Q. Does it accurately represent what you stated to the Office of the Prosecutor on 4 and 5
15 March 2015?

16 A. Yes, that is what I said on that day.

17 Q. Did you also meet with the representatives of the Registry, an organ of this Court, and
18 acknowledge to the Registry in the presence of counsel, of your counsel, that the contents of
19 your interview are true and correct to the best of your knowledge and belief?

20 A. Yes, I met with the representatives of the Registry. I had the opportunity to reread my
21 statement, and I confirmed to them that the contents of that statement were accurate.

22 MR FROLICH: Could we show -- this is a filing number ICC-01/05-01/13-1224-Conf-AnxII
23 read to the witness please? This is annex 16 in the binders.

24 THE COURT OFFICER: (Via video link)(Interpretation) The document is being shown to
25 the witness.

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1 MR FROLICH: Mr Witness, can we go -- I'm sorry.

2 Madam court officer, can we go to page 4 of this document?

3 THE COURT OFFICER: (Via video link) Just one moment, please. Page number 4 is now
4 presented to the witness.

5 MR FROLICH: I apologise. I did not turn on my microphone.

6 Q. Mr Witness, if you look at the bottom left corner of this page, do you recognize the
7 signature that you see?

8 A. Yes, I can see that signature, and I recognize it.

9 Q. Whose signature is it?

10 A. It is my signature.

11 Q. Thank you, Mr Witness. Witness, do you have any objections to your statement that
12 was taken on 4 and 5 of March 2015 being submitted to the Court?

13 A. This is a statement that I made. I cannot deny it.

14 Q. I take it then you have no objections?

15 MR TAKU: Your Honours, I don't want to interrupt, but for what purpose is it being
16 tendered? Can the Prosecutor state the purpose for which the statement is being tendered to
17 the Court?

18 PRESIDING JUDGE SCHMITT: I think it's clear we are in the realm of Rule 68(3), and the
19 Prosecution tries to establish if there are any objections according to the submission of these
20 statements.

21 It is, of course, a legal term, and I understand that the witness has problems to
22 understand what it means. So it would perhaps be good if the Prosecution would
23 have a wording that the witness really understands what it means when he says he
24 has no objections. When you use the word "submission," of course we know what it
25 means, but I think you should circumscribe it in a way that the witness can

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1 understand it.

2 MR FROLICH: That is understood, Mr President. Thank you for your guidance.

3 Q. Mr Witness, what I mean is would you mind if the judges had the ability to consider
4 your statement, everything that you said in your statement as evidence in this case, do you
5 have any problems with that?

6 A. Your Honour, I am a layman. I don't know about the law. About this problem, well,
7 it's up to you to determine what is to be done. It's not really my job to decide what is to be
8 done.

9 PRESIDING JUDGE SCHMITT: So I think also to protect the witness and to protect the
10 integrity of the proceedings, this is a legal requirement, and we have -- I suggest the following:
11 We make a short break. The witness has the possibility to talk with counsel that is with him,
12 and counsel can explain it to him, and then we inquire if he has understood, and then we take
13 it up again, yeah? Short.

14 Please, Mr Gosnell.

15 MR GOSNELL: No objection to that manner of proceeding, Mr President, whatsoever, but I
16 do just have one comment, and that is that transcript contains two languages translated
17 sequentially line after line, and this witness, in my opinion, should not have been asked to
18 give an attestation in respect to a language that he can't understand. So any non-objection on
19 his part or attestations I think should be on the understanding that they relate only to those
20 parts of these statements that are in the language that he does understand.

21 PRESIDING JUDGE SCHMITT: At first hearing, this makes also sense. We will consider
22 that, we will take that into account. But I think it's the best really to give the witness an
23 opportunity to speak to counsel and let's have 10 minutes of a break and then we resume.

24 THE COURT USHER: All rise.

25 (Recess taken at 2.04 p.m.)

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1 (Upon resuming in open session at 2.18 p.m.)

2 THE COURT USHER: All rise.

3 PRESIDING JUDGE SCHMITT: Mr Witness, did you have a chance to talk with counsel in
4 the room?

5 THE WITNESS: (Interpretation) Yes, I've been able to speak with my lawyer.

6 PRESIDING JUDGE SCHMITT: Then I would turn over again to the Prosecution. Please
7 ask your question again in a manner that the witness possibly, probably understands, and
8 then we'll hear what the witness has now to say.

9 MR FROLICH: Thank you, Mr President.

10 Q. Mr Witness, so to repeat my question, I will try to rephrase it one more time a little bit in
11 maybe easier terms. Is it okay with you if your statement is given to the judges so that they
12 can have it for this case as evidence for this case?

13 A. Could I allow my lawyer to respond on my behalf and answer that question?

14 PRESIDING JUDGE SCHMITT: No. The witness has to answer himself. But what we can
15 do is we can hear the lawyer in that respect, but then the witness has to turn over. So please
16 perhaps, Mr Bondo, you had obviously a chance to talk with the witness. What can you tell
17 us?

18 MR BONDO: (Via video link) (Interpretation) Thank you very much, your Honour, for
19 that question. I just wanted to say that my client would like, when it comes to questions that
20 he does not understand clearly, if he could have a discussion with me before replying? That
21 is what this is all about. But as for the rest, he agrees to speak directly to the Court.

22 PRESIDING JUDGE SCHMITT: So whatever this means, please continue. I don't want to
23 take this over. I don't think this is the duty of the judges. We try it one last time that you
24 try to elicit this information from the witness. Please, Madam Prosecutor.

25 MR FROLICH: Thank you, Mr President.

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1 Q. Mr Witness, do you now understand the question that I have posed to you? Do you
2 understand what I mean when I say is it okay with you if your statement is given to the
3 judges so that the judges can have it and read it and consider it in this case? Do you
4 understand it now? If you do not understand, I am happy to try to explain a little bit better if
5 I understand, if I know what it is that you do not understand about this.

6 A. You can explain a bit more to me. You can go back to that and explain some more.

7 Q. Witness, I could ask you questions, but in this case I also -- we also sometimes can
8 submit your statement, and instead of me asking you every single question that is in the
9 statement -- that was asked already during your statement taking, the answers that you gave
10 already that were recorded are already considered as if you just gave them to me now in the
11 courtroom.

12 So this procedure is meant to save both you and me and everyone else some time in
13 order so we can move a little bit faster. This is what it is.

14 I have asked you already if you -- if that statement was accurate, if your statement
15 was accurate as to what you said at the time, and you said yes. And this is now why
16 I'm asking you then if you would have a problem, if it would be okay with you then if
17 instead of me asking you all the questions that are in that statement, we could simply
18 say, okay, these questions and these answers are already recorded, so we do not have
19 to go through it again.

20 If you are okay with it, then we can proceed that way. If you are not, then we will
21 not, and I will simply ask you some additional questions. Do you understand now?

22 A. Yes. Now I -- I -- I get it more. I understand.

23 Q. And are you now in a position to be able to answer my question then: Would it be
24 okay with you if we proceeded this way and submitted your statement, gave your statements
25 to the judges with your recorded questions and answers?

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1 A. Yes, I agree. You can give it to them. I agree.

2 Q. Thank you, Mr Witness.

3 I will then proceed under the assumption that the requirements have been fulfilled,
4 Mr President.

5 Now, Witness --

6 PRESIDING JUDGE SCHMITT: Just one little remark. Perhaps we could think about if we
7 look at the further submissions according to Rule 68(3), if possible at all that this requirement
8 could perhaps be established beforehand. So this would -- I don't know if there are practical
9 reasons that stand against it, but just to put this on the table, because this was as we know a
10 very, as we have experienced, a very cumbersome experience. That's no critique. It's
11 perfectly clear we have to protect the witness, and not everybody is a lawyer. But I see that
12 we have used now one and a half hours for this matter. So please continue.

13 MR FROLICH: Thank you, Mr President. The Prosecution has noted your comments, and
14 we will consider them for sure.

15 Q. Mr Witness, let's turn now to what you spoke about in your statement and the money
16 transfers that you made on behalf of Mr Babala via Western Union. Do you recall that,
17 saying that? Do you recall saying that in your statement?

18 A. Could you repeat your question? I have the impression you're asking me a question,
19 but you're going kind of fast. Could you ask the question again?

20 Q. Yes, of course. I would like to discuss the Western Union transfers that you made on
21 behalf of Mr Babala. Did you understand me now?

22 A. Yes, I understand you.

23 Q. In what period of time did you make or have you made these transfers? Can you give
24 us the years in which you made transfers on behalf of Mr Babala?

25 A. I no longer recall the exact year. It was one of the various errands I did, but I don't

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1 remember the exact date. When he was arrested, I was no longer working for him, so it was
2 before his arrest. I did those transfers back when I was working for him; but after he was
3 arrested, I no longer worked for him, but those transfers I did them when I was working for
4 him.

5 Q. How often did you make those transfers on behalf of Mr Babala?

6 A. I just said that it was the boss who would give me that errand to do. I no longer recall
7 what amount of money I sent or how often I sent money. I -- maybe it was 10 or 15 times.
8 I'm talking about these transfers that were done, but I can't give you an exact number of times
9 that I did these transactions, but I would say maybe somewhere between 10 and 15 times.

10 Q. Have you ever made these transfers on your own behalf?

11 THE COURT OFFICER: (Via video link) Mr President, the counsel would like to address
12 the Chamber.

13 PRESIDING JUDGE SCHMITT: Yes, please, Mr Bondo.

14 MR BONDO: (Via video link)(Interpretation) Your Honour, my concern is that when the
15 client responds to the question that is being translated into Lingala, the answer is not coming
16 back to us. So that means that I'm starting to have concerns about the faithfulness of the
17 translation when the answer is provided in whatever language, be it English or French,
18 because, you see, I'm not getting the translation coming back here.

19 PRESIDING JUDGE SCHMITT: Then, of course, we have to inquire what the reason for
20 these problems are and, if possible, we have to fix them. Our court officer on the field, to put
21 it this way, can you tell us if there are -- can you identify the problems that there possibly are
22 with the translations?

23 THE COURT OFFICER: (Via video link) Mr President, I'm getting the French
24 interpretation. I do not understand what the witness states. Not as if the interpretation is
25 right, but yeah, we -- but I have -- I'm trusting -- I'm trusting -- yeah, I'm trusting the

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1 interpreters back in HQ that they are interpreting the best they can.

2 PRESIDING JUDGE SCHMITT: I think we continue. And Mr Bondo, if you have further
3 concerns or if you do not receive any interpretation or you have problems with the
4 interpretation, please raise your concerns again.

5 So the Prosecution has still the floor, of course.

6 MR FROLICH: Thank you, Mr President.

7 Q. I do not think I heard the answer to my last question, which was have you ever made
8 any Western Union transfers on your own behalf?

9 A. If I've understood your question properly, when I would make the Western Union
10 transfers, I would make them in my own name because I had to show my voter identification
11 card. But it wasn't my money. It was my boss's money.

12 When I would go there at the Western Union office, I would be asked to show my
13 voter's identification card, and that's what I would do.

14 Q. Yes, you have understood it perfectly, and that is what I was asking you.

15 To whom have you made transfers via Western Union?

16 A. I transferred money to Mr Kilolo and Mr Jean-Jacques Mangenda. As to Mr Narcisse
17 Arido, I no longer remember whether I sent any money to him. All I remember is that I sent
18 money to those two other people, and it is my boss who sent me to transfer the money.

19 Q. Were there other individuals that you sent money to whose names you do not recall?

20 A. No. I sent money to Mr Kilolo and Jean-Jacques Mangenda only. Regarding Mr
21 Narcisse Arido, it is possible that I might have sent him money, but I no longer remember. If
22 you do have evidence that I did indeed send him money, you can let me know. But all I can
23 tell you, all I am sure about is that I sent the money to Mr Kilolo and Mr Jean-Jacques
24 Mangenda and no one else.

25 MR FROLICH: Mr President, if we can now show to the witness document bearing the

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1 number CAR-OTP-0070-0007, tab 34 Nginamau. This document is located in tab 12(2) in the
2 Prosecution's binders, and it should not be broadcast publicly. Of course to the witness, yes,
3 of course.

4 And if the Court officer could show, we have -- we produced screenshots of these
5 documents, of this document amongst others for easier use. And with permission, I
6 would show the screenshots to the witness.

7 This is, your Honour, this is a Western Union record spreadsheet showing
8 transactions in this case, showing transactions made by Robert Nginamau.

9 I do not think, your Honours, that we have the right document on screen. The
10 document that I wish shown is 0070-0007, tab 34 of that document.

11 THE COURT OFFICER: (Via video link) This is the document that's being presented to the
12 witness. Maybe you could specify which row should be zoomed in.

13 MR FROLICH: We have rows from 1 to 59 that we need shown. And if they're not
14 showing then --

15 PRESIDING JUDGE SCHMITT: Since the binders have resurfaced, could you tell us at
16 which tab of the binders this is?

17 MR FROLICH: Yes. This is tab 12(2) in the binders.

18 THE COURT OFFICER: (Via video link) I'm actually showing the witness document
19 CAR-OTP-0070-0007, tab 34, rows 2 to 57.

20 MR FROLICH: Rows -- I'm sorry, rows -- which rows?

21 THE COURT OFFICER: (Via video link) 2 to 57.

22 MR FROLICH: I simply do not have the document on the screen in front of me, so I will
23 have to proceed on the basis of what madam court officer has said. And I do see the
24 document now.

25 If we can go up higher on the screen, please, to the top of the row 1. Thank you.

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1 Yes, that is the correct document.

2 Q. Mr Nginamau, do you see the document well in front of you?

3 A. Yes, I can see that document, but I would like them to scroll down a little bit or scroll up.

4 Yes, I can see my name, Robert Nginamau.

5 Q. All right. So Witness, to just give you a brief explanation of what you are looking at,

6 this is a Western Union record of payments made by Robert Nginamau, as indicated in

7 column C.

8 In column A, you can see the amount of money paid in US dollars.

9 In column E, you can see -- which is entitled "SPhone," which means sender's phone,

10 you can see phone numbers of the sender as used for those transactions.

11 In column F, you can see the sending date.

12 In column G, you can see the sending time.

13 And then further, if we scroll to the right, in columns K, L, and O, you can see

14 respectively the sender's ID, location and address of where it was sent.

15 In column P you can see the city where it was sent from. Further on in column U,

16 you can see the sent amount in the local currency.

17 In column Y, importantly, we can show column Y, you can see the name of the person

18 who the money was sent to.

19 And then further on, there are some other columns on where the person who money

20 was sent to was located, so the location where the money was received, and the date

21 when it was received.

22 Do you understand all that, Mr Witness?

23 A. Yes. I have seen my name on this document, and I can also see other names, some of

24 which I recognize. I've seen all of it.

25 Q. Which other names do you recognize, Witness? Can you tell us?

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1 Your Honour, it may be at this stage, it may be required to -- it may be necessary to go
2 into private session for the mention of names, because there might be some third
3 parties here, so just for this portion of the answer.

4 PRESIDING JUDGE SCHMITT: Yes, let me go into private session.

5 *(Private session at 2.45 p.m.) Reclassified as Open session

6 THE COURT OFFICER: We are in private session, Mr President.

7 PRESIDING JUDGE SCHMITT: Please proceed.

8 MR FROLICH: Thank you.

9 Q. Witness, what other names do you recognize?

10 And we can show column Y to the witness so he can have these names in front of
11 him.

12 THE COURT OFFICER: (Via video link) Y is currently shown to the witness.

13 MR FROLICH:

14 Q. Can you answer my question, Witness?

15 A. I can see Aimé Kilolo, Jean-Jacques Mangenda, (Redacted) and that
16 is my sister-in-law. There are other names, (Redacted) those are people I saw
17 together with Jean-Jacques Mangenda and Aimé Kilolo. There is also the name of Narcisse
18 Arido and (Redacted)

19 THE INTERPRETER: Mr President, the duty counsel would like to address the Court.

20 PRESIDING JUDGE SCHMITT: Yes, please.

21 MR BONDO: (Via video link)(Interpretation) Mr President, I would simply like to point
22 out that the interpreter did not accurately translate what was said because the client
23 recognizes Kilolo, Jean-Jacques Mangenda, (Redacted), who is Mr Babala's
24 (Redacted) who is his child. But the interpreter added that my client said that he saw some
25 people that he had been seeing with Mr Kilolo, which is not true. That is not what he said.

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1 He said that there are some people that he does not know.

2 THE INTERPRETER: The interpreters would like to point out that the sound quality is
3 pretty poor most of the time.

4 MR BONDO: (Via video link)(Interpretation) He said that he saw (Redacted)

5 PRESIDING JUDGE SCHMITT: The Presiding Judge has a question to the witness. You
6 have heard what counsel has said about the interpretation. Is that correct what counsel has
7 said?

8 THE WITNESS: (Interpretation) I did not quite understand your question, your Honour.

9 PRESIDING JUDGE SCHMITT: That is understandable. Your counsel has said that the
10 interpretation did not fully tell what you have said. This especially referred to that you have
11 said, according to the interpretation, that you recognize names that were connected with
12 Mr Kilolo. And counsel said that you have not said that actually. And the Chamber wants
13 to inquire if that is correct, what your counsel has said, not what the interpretation has said
14 before.

15 THE WITNESS: (Interpretation) I did not quite understand your question in relation to Mr
16 Aimé Kilolo, Mr President.

17 PRESIDING JUDGE SCHMITT: I think we have here a difficulty. I don't see how I could
18 rephrase it. So it seems to be that we have in the record this interpretation that relates to
19 Mr Kilolo, and that there is a discrepancy between what the official interpretation is and what
20 the counsel tells us the witness has actually said. So perhaps Prosecution can try to inquire
21 and to clarify this again. I have not managed to do it obviously.

22 MR FROLICH: I will give my best, Mr President.

23 Q. Let me try this again, Mr Witness. Let us take it slowly. First of all, you said you
24 recognized some names on this page. Do you know Aimé Kilolo Musamba?

25 A. Yes.

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1 Q. Have you made money transfers to him?

2 A. I would say that I know him because I came across him at the airport. I saw him at the
3 airport. And I also saw him at the hotel in which he was lodging. On the second day, I saw
4 him with my boss. So these are the circumstances under which I saw him. But I cannot say
5 I really know him as such. I saw him at the hotel having a conversation with my boss, but I
6 was off to one side.

7 Q. Do you know the name of that hotel, Mr Witness?

8 A. No. I no longer remember the name of the hotel, but it was quite close to (Redacted)

9 Q. Have you met -- do you know Mr Jean-Jacques Kabongo Mangenda?

10 A. I have never met him. I do not know him, but I have sent him some money. I did
11 transfer some money to him, but I do not know him.

12 Q. Do you know Narcisse Arido?

13 A. I have never met Narcisse Arido.

14 Q. If you look at row 6 in this document that is being shown to you, we can see the name
15 Narcisse Arido. Do you see it?

16 A. Yes, I can see it.

17 Q. Does this refresh your memory as to whether you sent money to Mr Arido?

18 A. As I told you before, when it comes to Mr Narcisse Arido, I did not remember. It is
19 quite possible that I sent him money or not. But since you have the evidence and you are
20 showing me the document on which his name is featured and my name is also on that
21 document, it means that it is true that I sent him money.

22 Q. Can you please look at row 10. We see a name Joachim Kokate. Do you recognize
23 that name? Is it familiar to you?

24 A. I have absolutely no idea. That name doesn't ring a bell.

25 Q. Could we please scroll to the left and to columns A through -- A through -- I'm not sure

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1 how long -- how far the computer can show and H. Yes, that's okay.

2 We're still in row 10, Mr Witness. Do you see your name in this row?

3 THE COURT OFFICER: (Via video link) We do not have column H. Maybe on the other
4 document?

5 MR FROLICH: No. It's the same document, just in -- we need to see column C, C
6 through -- A through -- A through H. If we can make visible columns A through H in this
7 document. It is the same document. Just a bit more to the left.

8 THE COURT OFFICER: (Via video link) Is that document at tab 32?

9 MR FROLICH: That is tab 34, Nginamau. It is the same document that we have been
10 looking at. I would just like you to show to the witness the left side of that document, as it
11 were, the left most side starting with column A, which shows amounts in US dollars.
12 I can see it well now on the screen in the courtroom, so we are okay here.

13 THE COURT OFFICER: (Via video link) Column A is being shown to the witness.

14 MR FROLICH:

15 Q. Witness, now, in column A through H visible here, now let us look at column E, which
16 shows phone numbers. Could you please look at row 2 in that column. Do you see it? Do
17 you see that row and that column?

18 A. Yes, I see it.

19 Q. Witness, the number that ends in (Redacted) in this column, is this your phone number?

20 A. Yes, it is my number.

21 PRESIDING JUDGE SCHMITT: I think this would be the time to have a coffee break. The
22 expectation of the Bench and the Presiding Judge that the scope of this testimony of this
23 witness is limited was obviously idle, but, nevertheless, I would ask the Prosecution to think
24 about how long they will continue with their examination and then we, of course, have to
25 inquire what the Defence intends to do.

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1 THE COURT USHER: All rise.

2 (Recess taken at 3.01 p.m.)

3 *(Upon resuming in private session at 3.30 p.m.) Reclassified as Open session

4 THE COURT USHER: All rise.

5 THE COURT OFFICER: Mr President, for the record, we are in private session still.

6 PRESIDING JUDGE SCHMITT: The Chamber would like to make a short announcement
7 about the hearing tomorrow to inform the parties. The Chamber will sit the normal 9.30 to
8 16 hearing schedule. We have heard that P-245 (Redacted) whatever this means.

9 But we have been told that he may be in a position to continue testifying tomorrow.

10 The Chamber will finish P-272's examination in the first session tomorrow, if it does
11 not finish today, so yeah.

12 Once P-272 is released, P-245's testimony will continue, of course under the condition
13 that (Redacted) If not, the Chamber then expects the parties to be prepared to
14 examine P-198; but, as I said, we hope that we can continue with 245, of course.

15 Then Mrs Taylor wanted to raise an issue, and I would give her the floor.

16 MS TAYLOR: Thank you, Mr President, your Honours. I was informed by the Prosecution
17 during the break that no familiarisation materials will be provided to Witnesses P-201 and
18 P-198 by virtue of the fact that statements were not taken from these witnesses. And we
19 respectfully submit, Mr President and your Honours, that the fact that statements were not
20 taken from them should not operate to their detriment, because in the Prosecution response to
21 our request to strike them from the list, the Prosecution advanced the position that the case
22 concerning these witnesses were encapsulated in their intercepts.

23 It is in my understanding that in other cases before this Court witnesses have been
24 allowed to view any product generated by the witness as part of familiarisation
25 process. And in the specific instances of these witnesses, their ability to consult with

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1 their counsel before their testimony and to make an informed decision whether to
2 seek assurances and whether to waive their right to silence will be very much
3 hampered in the absence of witness statements. The proceedings themselves will
4 also be hampered if the witness each time they're shown an intercept have to review
5 the intercept and potentially consult with their counsel.

6 So it would be in the interest of expeditiousness and expediency for the witnesses to
7 be provided with any materials generated allegedly by them as part of the
8 familiarisation process. Thank you.

9 PRESIDING JUDGE SCHMITT: We have taken note of this. An additional remark on
10 behalf of the Presiding Judge, the VWU was informed that, of course, since we don't have
11 statements of every witness, that in these cases there would be a need to modify, not to
12 abolish any familiarisation procedure in respect with these witnesses, and the VWU was
13 asked to apply the familiarisation protocol for P-198 and P-201 to the fullest extent possible
14 under the circumstances. That's just an additional information. But that's, of course, not
15 100 percent what you have addressed, but that is a little bit something different to what
16 possibly or probably the Prosecution has told you.

17 MR VANDERPUYE: Thank you, Mr President. May I address the Chamber?

18 PRESIDING JUDGE SCHMITT: Yes.

19 MR VANDERPUYE: And thank you for that additional clarification with respect to the
20 application of the protocol with respect to Witnesses P-198 and P-201. As I understood it, the
21 application of the protocol to the fullest extent with respect to those witnesses related to the
22 familiarisation, court familiarisation protocol and that sort of thing, as opposed to the
23 familiarisation in terms of the review of any statements that may be attendant to that process.
24 I did share with Ms Taylor just as we broke that to the extent that these witnesses had
25 not given statements, there were no statements to provide to them.

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1 I note the Defence position with respect to Mr Pluijmers and in respect of the
2 documents that were provided for him -- provided to him in terms of his
3 familiarisation, some of which included materials that were extraneous to his report
4 to which they objected.

5 I note Ms Taylor's concern with respect to the position of these witnesses in terms of
6 their preparation to be examined, but that's a different thing altogether than the
7 familiarisation as is defined in the protocol, which is strictly limited to the statements
8 that are made by the witnesses or materials generated by the witnesses in the context
9 of making those statements.

10 In this context, the intercepted communications are not material that were generated
11 by the witnesses. These are materials that were generated by the authorities that
12 intercepted the conversations. So I would draw that first, that distinction.

13 Secondly, the protocol does not provide for the provision of this material to the
14 witnesses.

15 Third, I think in terms of eliciting the truth from these witnesses, and your Honours
16 have reviewed the intercepts in question in relation to the issuance of the summonses
17 to appear in terms of establishing the truth as concerns these witnesses, I think it is
18 actually appropriate that they're not provided with these materials in advance of their
19 testimony.

20 I also think that in respect of Rule 74 counsel's duties and functions as assigned by the
21 Chamber, those lawyers, those duty counsel have an obligation to prepare and to
22 bring to the Chamber's attention any deficiency in their preparation or their capacity
23 to represent the individual's concern in accordance with their directions and
24 assignment by the Chamber, and it's up to them to raise that issue. To the extent that
25 they need it to prepare in order to properly represent the witnesses, it should be

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1 within their purview to make that determination and not the determination of
2 counsel who does not represent those witnesses.

3 Thank you, Mr President.

4 PRESIDING JUDGE SCHMITT: We will consider these positions.

5 Mrs Taylor, do you want to add something?

6 MS TAYLOR: Just a brief statement, and that is in terms of the ability of duty counsel to
7 raise this issue. Obviously that, too, is hampered by the absence of statements concerning
8 these witnesses. So duty counsel won't be on notice or be aware of their duty to apply for
9 materials that they're unaware of. Thank you.

10 PRESIDING JUDGE SCHMITT: Thank you very much.

11 I think we continue with the examination by the Prosecution, but I would like -- no.

12 Mr Powles is standing. You want to --

13 MR POWLES: Just I can deal with it very briefly. Obviously, first of all, to support the
14 submissions of my learned friend Ms Taylor; but second of all, in relation to the possible
15 commencement of Witness P-198 tomorrow, of course, Mr Kilolo, my client, won't be here
16 tomorrow. We had understood that it was more than likely we would be proceeding with
17 P-245. The change of witness potentially creates difficulty in that he hasn't even seen P-198
18 to give evidence in-chief or know exactly what he's going to be saying in relation to these
19 proceedings, particularly given that there is no statement from that witness either.
20 So we're in some difficulty in the absence of our client in terms of preparing for that
21 witness if we are actually to commence with P-198 tomorrow morning.

22 PRESIDING JUDGE SCHMITT: I think we stick with what we have said. We hope, of
23 course, that we can continue with P-245 after having finished 272, but I would stick with what
24 I've said before, that we otherwise would commence with 198. We have to look then when
25 we can commence with him, and we will of course have to consider tomorrow morning the

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1 judges what has been said today about these issues. Thank you.

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

3 PRESIDING JUDGE SCHMITT: We continue now with the Prosecution. But also the
4 Prosecution, I wanted to ask in light of this Rule 68(3), how long do you envisage to continue
5 with the examination?

6 MR FROLICH: I can reassure your Honours, Mr President, I have only very little left to go.
7 I am, indeed, almost done. So if I can only ask for another perhaps 10 minutes and I will
8 finish.

9 PRESIDING JUDGE SCHMITT: Of course conceded. That's clear.
10 Can we go into open session?

11 MR FROLICH: Your Honour, I have one or two short questions to ask in private session;
12 and after that, we will be able to go into public session. Thank you.

13 PRESIDING JUDGE SCHMITT: So you will tell us when we can move into public session?

14 MR FROLICH: Yes, I will, and I do hope I will not forget.
15 Thank you very much.

16 PRESIDING JUDGE SCHMITT: Please continue.

17 MR FROLICH: I am just not sure if we can -- I'm sorry, we can see the witness. Thank you.

18 Q. Witness, do you still see the same document in front of you that was shown to you
19 before the break?

20 THE COURT OFFICER: (Via video link) The document is being shown to the witness.

21 MR FROLICH:

22 Q. Can you see column E in front of you?

23 A. Yes, I can see it.

24 Q. Can you look at row 6, column E, and tell me if you recognize the number there?

25 A. Yes, I do see the numbers there.

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- 1 Q. Do you see the number ending in (Redacted) in row 6, column E?
- 2 A. Yes, I see them.
- 3 Q. Do you recognize that number?
- 4 A. Yes, I remember.
- 5 Q. Whose number is it?
- 6 A. That is my boss's number.
- 7 Q. Can we now scroll back to column Y, please, still in private session.
- 8 THE COURT OFFICER: (Via video link) Column Y is being displayed.
- 9 MR FROLICH:
- 10 Q. Can you look at rows 2 and 3 in column Y and look at the name that's written there?
- 11 Do you see it?
- 12 A. The names are (Redacted)
- 13 Q. Do you recognize that name?
- 14 A. That name doesn't really come to mind, (Redacted) I don't remember.
- 15 MR FROLICH: Mr President, we can go back in, I'm sorry, public session.
- 16 PRESIDING JUDGE SCHMITT: Yes, open session.
- 17 (Open session at 3.45 p.m.)
- 18 THE COURT OFFICER: We are in open session, Mr President.
- 19 MR FROLICH:
- 20 Q. Mr Witness, why did you use your boss's number for some of the transactions that you
- 21 made?
- 22 A. Often people ask for numbers, or you give a number. That day I think I didn't have my
- 23 telephone with me, so I gave his number, and then I started using it.
- 24 Q. Did you ever discuss with Mr Babala who the persons that you were paying money to
- 25 were?

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1 A. Well, how are you going to talk about that with your boss? I was his employee. I
2 couldn't talk to him. I couldn't talk to my boss about money. That just isn't done.

3 Q. Did you ever discuss with him why these people were being paid?

4 A. That's what I just said. The boss is not your friend. When he sends you off and he
5 tells you "Take this money and give it to such another person to do this or that," you can't talk
6 about it. We never talked about that. I know one thing, he sent me to go and do this or that.
7 That's all.

8 Q. But did you always inform him when transactions were completed?

9 A. The boss gives you some money and says, "Go send the money to such and such a
10 person." I go, I send the money, and then I bring back the receipt of the transaction, and I
11 give it to him, and then I would go off. I might have given him the receipt at the office or at
12 his home, and then my work would be done, and I would leave.

13 Q. Did you ever pay cash to anyone on behalf of Mr Babala?

14 A. No, no, no. I never provided cash to anyone.

15 MR KILENDA: (Interpretation) Your Honour, I was listening to the witness in Lingala,
16 and I think that the question really had no factual basis.

17 PRESIDING JUDGE SCHMITT: Could you please clarify? But I think, Mr Kilenda, since
18 the answer has been given to this question and the answer was no, I don't think that it is
19 perhaps necessary to inquire further if the question was justified or not. What do you say?

20 MR KILENDA: (Interpretation) That's what I just said, your Honour, that I really didn't
21 want to rise, because I could have made an objection because the question had no factual basis.
22 The answer was the answer provided by the witness, and it wasn't really the time to make
23 comments; but I think in the future such a question could be avoided.

24 PRESIDING JUDGE SCHMITT: I understand, but of course the Bench cannot have
25 everything what has possibly or probably a factual basis have in their minds. So if you raise

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1 these issues, we will decide on it after listening to the other party, of course.

2 Thank you very much, and please move on.

3 MR FROLICH: Mr President, I have no further questions for the witness. But just very
4 briefly just if we go back, in response to this point, if we go to the transcript, the witness did
5 say that he would -- let me just read. The witness said "The boss is not" -- this is page 44 in
6 the English transcript, line 4, "The boss is not your friend. When he sends you off and he
7 tells you take this money and give it to another person to do this or that, you can't talk about
8 it."

9 So I would say there was a perfect factual basis for that question.

10 PRESIDING JUDGE SCHMITT: So I think we can stop that there. You were in good faith.
11 And, to be honest, I cannot speak for my colleagues, I did not understand this literally, but I
12 understood this in another way. But we stop this here. I think we don't have to litigate
13 about this issue anymore.

14 MR FROLICH: Thank you, Mr President.

15 PRESIDING JUDGE SCHMITT: What I want to inquire with the Defence team like always
16 when it is their turn, first, sequence; second, time, meaning who wants to start with the
17 examination first?

18 MR RODOMA: (Interpretation) Yes, your Honours. I will speak on behalf of Mr Babala's
19 Defence team.

20 Now, this matter concerns us in particular, and I wish to merely state that we have no
21 questions really because I did meet with the witness when I was in the CAR. Indeed,
22 the statement in question has been placed on the case record. I thank you.

23 PRESIDING JUDGE SCHMITT: Thank you very much.

24 And to the other Defence teams in the sequence they want to decide?

25 MR TAKU: Absolutely no questions for Mr Arido, your Honour.

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- 1 PRESIDING JUDGE SCHMITT: Mr Powles?
- 2 MR POWLES: Likewise, Mr President, your Honours, no questions on behalf of Mr Kilolo.
- 3 PRESIDING JUDGE SCHMITT: Mr Gosnell?
- 4 MR GOSNELL: No questions, Mr President.
- 5 PRESIDING JUDGE SCHMITT: Mrs Taylor?
- 6 MS TAYLOR: No questions for Mr Bemba either.
- 7 PRESIDING JUDGE SCHMITT: (Microphone not activated.)
- 8 MR TAKU: Microphone, your Honour.
- 9 PRESIDING JUDGE SCHMITT: Excuse me. My microphone was not on, so I repeat
- 10 myself.
- 11 This concludes today's session. We will repeat --
- 12 I was informed I should not forget the witness. I will not forget the witness. I first
- 13 wanted to address this other issue.
- 14 We are at the end of this session and at the end of the testimony of this witness. We
- 15 hope that we can proceed with Witness 245. We are mindful of what has been said
- 16 about P-198. We have to consider that. And since we are much earlier than
- 17 expected, we can consider that in the late afternoon and don't have to come early into
- 18 the courtroom to think about this tomorrow morning.
- 19 So for the witness, thank you for answering the questions. We concluded your
- 20 testimony today. I think that you are very satisfied with this fact. Thank you very
- 21 much again, and have a nice day.
- 22 (The witness is excused)
- 23 PRESIDING JUDGE SCHMITT: We will resume the hearing tomorrow at 9.30.
- 24 MR TAKU: Your Honour, is the witness released? I'd like to find out if the witness is
- 25 released, you release the witness, your Honour?

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- 1 PRESIDING JUDGE SCHMITT: Of course the witness is released.
- 2 MR TAKU: Thank you, your Honour.
- 3 PRESIDING JUDGE SCHMITT: This is something that, of course, can always be said
- 4 explicitly, but you can also conclude this from the wording of the Presiding Judge from the
- 5 last two or three witnesses, so -- but for the record the witness is released. Thank you very
- 6 much.
- 7 MR TAKU: You're welcome, your Honour.
- 8 THE COURT USHER: All rise.
- 9 (The hearing ends in open session at 3.55 p.m.)
- 10 RECLASSIFICATION REPORT
- 11 Pursuant to Trial Chamber VII's instructions, ICC-01/05-01/13-1209, dated
- 12 2 September 2015, the version of the transcript with its redactions becomes Public.