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Date: **22/04/2016**

TRIAL CHAMBER III

Before: **Judge Sylvia Steiner, Presiding Judge**
Judge Joyce Aluoch
Judge Kuniko Ozaki

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR
***v.* Jean-Pierre Bemba Gombo**

Public

Public Redacted Version of Defence Supplemental Submissions arising from the further testimony of P-169

Source: **Defence for Mr. Jean-Pierre Bemba Gombo**

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A. INTRODUCTION

1. P-169's evidence before the Trial Chamber between 22-24 October 2014 was pock-marked with dishonesty as will be demonstrated. Despite his many protestations about the importance of the truth, it is a concept to which he is a total stranger, especially where it is inconvenient to his own material interests. Throughout his examination, he lied to the VWU, the Prosecution and on oath to this Chamber. His undertakings as to his future conduct are disingenuous, and his 2011 evidence remains for him a bargaining chip in his negotiations for a larger financial settlement and the even more valuable prize of [REDACTED] (which the Prosecution still seek on his behalf).

B. SUBMISSIONS

1) P-169's assertions of threats or intimidation by people [REDACTED] are demonstrably untrue

2. The starting point for all P-169's claims to financial recompense stem from his assertion that in giving evidence he has compromised his security to such an extent that he can no longer pursue the allegedly lucrative business ventures he was engaged in prior to testifying.

3. That claim falls at two hurdles. The first is that he never had the earning capacity he claims. When pressed to justify his loss of earning claims, he was able to offer no credible evidence of his alleged income, and indulged in an attempt to deceive VWU by producing false documents in order to prove the apparent [REDACTED].[1]

4. However, it is the second aspect of this claim where the dishonest scheme begins to unravel completely, for it depends upon an acceptance that P-169 is prevented from pursuing his business activities by reason of the fact that he cannot [REDACTED], and that, in turn, depends upon accepting that he has received threats from [REDACTED].

5. Before proceeding to analyse that evidence in detail, it is worth pausing to note that the evidence now discloses that it is over three years since these alleged phone calls and P-169 has been subject to no further threat or intimidation, and he cannot now attribute the phone calls to any individual or organisation whatsoever.

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[1] ICC-01/05-01/08-2912-Conf-AnxD, p.3.

a) His evidence is now that the threats did not emanate from [REDACTED] nor from the telephone numbers he gave to VWU/Prosecution in 2011

6. [REDACTED]. [REDACTED].[2]

7. [REDACTED].[3]

8. His evidence on oath supported neither the receipt of threatening calls from [REDACTED], nor the receipt of phone calls from either of his numbers. In answer to direct questions from Her Honour Judge Steiner as to whether [REDACTED] threatened him or made anonymous calls to him, P-169 stated "No"[4], and moreover:[5]

> I know [REDACTED] voice. The telephone number was not his. The first telephone number is not his number. He called me, that is [REDACTED], he called me on another number or from another number. I have already crosschecked the telephone numbers to determine whether - or this telephone number to determine whether it was his telephone number or someone else's. Well, you know, people might have different telephone numbers.

9. The provision of [REDACTED] name and alleged telephone number to VWU on July 15, is illogical if the calls were not received from that number and he was not the man making the threats. The possibility of some misunderstanding or mistake can be ruled out by the fact that the same name and numbers were provided to the Prosecution [REDACTED].[6]

10. The Defence pauses to observe that the only evidence that these are or were [REDACTED] telephone numbers or that [REDACTED] had anything to do with the MLC comes from P-169. Neither assertion has been independently verified.

11. This anomalous situation was put to P-169, when he was asked by the Defence:[7]

> So why did you give [REDACTED] name and telephone number to the VWU and OTP?
> A. It was [REDACTED] and other people who were organising the meetings in [REDACTED], he and some other people.

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[2] ICC-01/05-01/08-1816-Conf-Anx1-Red2, pp.2-3.
[3] ICC-01/05-01/08-1823-Conf-Red, para. 3 (ii); (vii);(xi).
[4] T-361-Conf-Eng-ET, p.11, lines 12-13.
[5] T-361-Conf-Eng-ET, p.12, lines 16-23; see also T-363-Conf-Eng, p.26, lines 22-23.
[6] ICC-01/05-01/08-1623-Conf-Red, paras. 3-10.
[7] T-363-Conf-Eng-ET, p.26, lines 22-25.

12. The meetings in [REDACTED] are a feature of a number of his accounts of events following his return to Bangui. He told the Trial Chamber:[8]

> When I returned to [REDACTED], […] there was a lady there known as [REDACTED], […] It is when she came that we met and this is what she told me, "Good morning, sir. How are you? It's been a while since you travelled. You travelled to Europe and came back." Then I was surprised. She said, "Don't be surprised. Many things have happened in [REDACTED] concerning you. Please don't quote me in this matter." […] and she said, "[REDACTED]." [REDACTED].

13. It is plain, on any version of events that his return to [REDACTED] was some days after his initial report to VWU on 15 July. Precisely when it was a little harder to gauge. [REDACTED], he stated that the above conversation took place on 23 July,[9] in his letter to the Presiding Judge of 6 August, 2011, he said the following:[10]

> [REDACTED].

14. P-169's evidence is therefore impossible to reconcile. He did not provide [REDACTED] name and telephone number to VWU on 15 July as the maker of any threats, because he did not make any, nor did he give his number as the source of those threats, because it was not the number from which the calls came. His stated reason for giving that name and number on 15 July is impossible because he did not know that [REDACTED] had taken part in any meetings in [REDACTED] (if that is even true) for a further 8 or 13 days.

15. What explanation, therefore, can there be for P-169 to provide the names and telephone numbers of [REDACTED] (and for that matter, [REDACTED]) to VWU immediately upon his return to Bangui following his evidence in July 2011? Neither of them, according to his evidence now, had done anything wrong, and their telephone numbers were irrelevant.

16. The only available inference is that P-169 provided those names and numbers in the belief that they would add credibility to the claims of intimidation he was going to use as the basis of his quest for massive financial compensation from the ICC.

17. He, of course, did not anticipate on July 15, 2011, that the Prosecution and VWU would check his telephone records, and he still does not know to this day whether anybody

[8] T-361-Conf-Eng-ET, p.11 line 23 - p.12, line 8.
[9] ICC-01/05-01/08-1623-Conf Red, p.5, para. 3(viii).
[10] ICC-01/05-01/08-1660-Conf Anx1-Red2.

has taken the trouble to investigate who actually used the telephone numbers he gave over and what they have to say about their regular communication with him.

b)His account of the threats, who made them and when is inexplicably inconsistent.

18. There is an irresistible inference that P-169 became aware that his story was going to be checked by reference to telephone records and that he has modified his allegations to take account of that fact.

19. His first report to VWU was unequivocal, according to their understanding of what he was saying on [REDACTED]. The threats were emanating from [REDACTED][11] who was using telephone numbers he, P-169, recognised.[12]

20. By [REDACTED], those allegations had shifted significantly. He told the Prosecution on that date that the phone calls were “anonymous”.[13]

21. [REDACTED];[14] [REDACTED].[15] It is almost certain that he would have been informed of the course of action proposed.

22. Certainly, we know from his evidence that he cross-checked his own telephone records.[16]

23. On 6 August, P-169 wrote his first letter to the Court. It is significant in one material respect, namely, the complete alteration of his allegations concerning the dates on which he had received the allegedly threatening telephone calls. No longer was he asserting that he had received calls on 16 July from [REDACTED], but rather now, he asserted that those calls were made on 23 and 24 July.

24. There are, moreover, serious discrepancies between the allegations reported to VWU and the Prosecution and those contained in the letter of 6 August, notably:

a. [REDACTED].[17] However, no such allegation is made in the letter written 4 days later on 6 August;

[11] ICC-01/05-01/08-1623-Conf-Red, p.4, para. 3(iv).
[12] ICC-01/05-01/08-1816-Conf-Anx1-Red2, pp.2-3.
[13] ICC-01/05-01/08-1623-Conf-Red, p.4, para. 3(ii).
[14] ICC-01/05-01/08-1623-Conf-Red, para. 13.
[15] ICC-01/05-01/08-1623-Conf-Red, para. 5.
[16] T-361-Conf-Eng-ET, p.12, lines 20-23
[17] ICC-01/05-01/08-1623-Conf-Red, p.6, para. 3(ix).

b. He alleged in his letter that he had been intimidated on 28 July, and yet failed to mention any such episode to the Prosecution when he reported various incidents to them one day later;

c. According to the account he gave to the Prosecution on 29 July, the same day that he met the woman at [REDACTED], he received a threatening telephone call from [REDACTED] number. No such telephone call was recorded in his letter of 6 August, and, now, according to his sworn evidence, no calls were made from [REDACTED] numbers.

25. What credence can therefore be given to his allegations to VWU on 15 July if the alleged threatening calls were not made until 8 or 9 days after that date?

It is plain that VWU give little credit to his assertions. In addition to the above, the following must be observed:

a. P-169's alleged loss of income is little more than a dishonest attempt to obtain money from the ICC by deception largely unsupported by any evidence, and in part supported by false documentation;

b. The telephone records completely undermine his assertions of being intimidated by calls from the numbers he gave;

c. At no time prior to 15 July, when, even on his own account of events, he was looking for some recompense for his testimony, did he ever mention any telephone contacts with [REDACTED];

d. More significantly, he did not mention to VWU his telephone contacts with the numbers alleged to belong to [REDACTED] in August 2011, after he had raised his initial complaint; and

e. [REDACTED]".[18] Either that was a lie or his subsequent assertions and evidence before the Chamber were.

26. The allegations of threatening phone calls from persons allegedly connected to the [REDACTED], and made to VWU on 15 July are completely false. They were designed to bolster his claims for financial recompense. Whilst this may be termed "unattractive" the claims are more serious, amounting to an attempt to pervert the course of justice, inviting as they did an Article 70 investigation with no basis whatsoever.

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[18] ICC-01/05-01/08-1816-Conf-Anx1-Red2, p.8.

2) Absent intimidation, the only available inference is that P-169's perception that he is entitled to compensation derives from the fact of his giving evidence and its content thereof

a) The appropriate test is the witness's perception of who is paying/promising the money;

27. The Court's determination as to whether the credibility and truthfulness of P-169's testimony was impacted by the expenses paid to him turns on an assessment as to whether P-169 would have considered such expenses to be related to his role as a Prosecution witness, and his utility to be called as such.

28. In assessing the correlation between the payment of witness expenses or provision of assistance, and the impact that this could have on the witness's credibility, the *ad hoc* Tribunals have considered the critical point to be whether the witness "may feel obliged to return the favour by testifying favourably for the Prosecution."[19] This terminology -"may feel"- emphasises that it is the subjective perception of the witness which matters, not the actual legal state of affairs.

29. This focus on the subjective state of mind of the witness is also consistent with the fact that it is not necessary to demonstrate any wrongdoing or misconduct on the part of the Prosecutor.[20] For the purpose of assessing the impact on the witness's credibility (as opposed to an abuse of process motion), at issue is not whether the Prosecution/Registry paid the expenses with a view to influencing the testimony of the witness, but whether, as a result of such payments, the witness felt an obligation towards the Prosecutor.

30. A witness's views of the ICC and his or her obligations towards it will be shaped by the persons with he or she interacts, and whether the witness perceives that person to be responsible for the benefits received.

31. In this vein, even if the Registry is responsible for allocating funds or approving their disbursement, if the funds are intrinsically tied to the person's status as a Prosecution witness, and the Prosecution has both informed the person of their entitlement to such expenses and intervened on their behalf to secure their disbursement, the witness will "feel obliged to return the favour". This is particularly the case where the VWU rejected the

[19] *Prosecutor v. Haradinaj*, 'Decision on Joint Defence Motion for Relief from Rule 68 Violations by the Prosecution and for Sanctions Pursuant to Rule 68*bis*', 12 October 2011, para 45.
[20] Ibid, para. 46.

request for expenses initially, and only agreed to reconsider it after the intervention of the Prosecution.

b) P-169 had no contact with VWU prior to his giving evidence

32. Although the assertions in paragraphs 4-5 of the Prosecution's additional submissions are largely unsupported by admitted or admissible evidence, the Defence is prepared to assume that the period during which the Prosecution had regular contact with P-169 was indeed 2 years and accept that during that he told the Prosecution initially that he was reluctant to cooperate,[21] and that he was an [REDACTED].[22]

33. The latter assertion was a repeated feature of his evidence. It would be astonishing if he hadn't mentioned it over the course of a 2 year relationship with the Prosecution. But, when put to proof, his claims about his business activities were insupportable, save by his resorting to attempted fraud.[23]

c) All pre-testimonial expenses were paid by the Prosecution

34. During the course of that 2 year period of cooperation, Prosecution investigators gave P-169 money on numerous occasions. The sums of money may have been relatively small, but that misses the point; firstly, at that point in time, P-169 had no way of knowing whether the Prosecution would use him as a witness as opposed to discarding him as just a person of interest. It is plain from his subsequent assertions that he understood the distinction in status and potential reward. Secondly, it will have reinforced the impression in his mind that it was the Prosecution who paid the money and nobody else.

35. It is plain, moreover, that P-169 himself appreciated the significance of these payments, and any payments made to him directly by the Prosecution, as evidenced by his repeated assertion that he "never received a cent"[24] from the Prosecution, nor any money prior to his testimony,[25] whatever the internal accounting documents may show.[26]

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[21] ICC-01/05-01/08-3182-Conf, para. 4.
[22] ICC-01/05-01/08-3182-Conf, para. 5.
[23] ICC-01/05-01/08-2912-Conf-AnxD.
[24] T-361-Conf-Eng-ET, p.32, lines 23-24.
[25] T-361-Conf-Eng-ET, p.32, lines 22-23.
[26] 04/06/2009 (CAR-OTP-0043-0404), 01/04/2010 (CAR-OTP-0062-0030), 10/09/2011 (CAR-OTP-0065-0983, CAR-OTP-0065-0985 and CAR-OTP-0065-0987), 01/06/2012 (CAR-OTP-0066-0280), 02/06/2012 (CAR-OTP-0066-0282 and CAR-OTP-0066-0284), 08/06/2012 (CAR-OTP-0066-0294 and CAR-OTP-0066-0297).

36. One significant meeting is that with Mr. Badibanga in April 2010, during which counsel apparently handed cash to P-169.[27] No interview, screening or proofing note has been disclosed in relation to that meeting, and P-169's account of the meeting is implausible; it is inconceivable that a Senior Trial Counsel would travel to Bangui to conduct a form of pre-court familiarisation meeting with a witness.[28] However, be that as it may, the salient feature of the occasion is that P-169 knew by that date, if not before that he was going to be a witness in court, not just an interviewee in the investigative process.

37. Throughout all of his post-testimonial correspondence, and leaving aside the details of what he sought by way of compensation and who had promised it to him, one thing remains constant: there was in P-169's mind a sum of money due to him ***qua*** witness,[29] something which people who didn't give evidence didn't receive.

38. At the critical point in time, namely when he actually gave evidence, his belief was that he was to be given money by the Prosecution for testifying. The fact that he has in the few days prior to his testimony in 2014 been informed that he was mistaken about where the money came from is quite simply irrelevant. It is his belief at the time he testified which impacts his credibility.

d) The conversation with "[REDACTED]" must have taken place before he testified

39. The conversation with somebody at the ICC about money promised by the Prosecutor undoubtedly took place. Given that "[REDACTED]" was not mentioned by him as visiting the [REDACTED], the conversation must have occurred before he testified. The extent to which P-169 now disavows that conversation is only to question whether he has accurately recorded the name of the person who gave him the information about payments to witnesses by the Prosecution, not to question the information itself.

40. The fact that there may have been misinformation is again irrelevant. A witness' evidence can be suborned by a false promise just as easily as it can be by a genuine one.

41. The idea that witnesses had been promised money by the Prosecution is not one uniquely held by P-169. [REDACTED], [REDACTED].[30]

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[27] CAR-OTP-0062-0030.
[28] T-362-Conf-Eng-ET, p.42, lines 5-9.
[29] CAR-OTP-0072-0504_R01; CAR-OTP-0072-0508_R01; CAR-OTP-0083-1212.
[30] ICC-01/05-01/08-1660-Conf Anx1-Red2, p.2.

42. The contents of the letter of 6 August 2011 are problematic for the Prosecution in upholding P-169's credibility, because either members of VWU were discussing the promise of a payment to witnesses with P-169 or the allegations in both cases is completely false: yet another lie being told by P-169 in pursuit of financial reward.

43. [REDACTED] were not the only people who believed that such payments had been promised. P-178 thought the same and pursued the matter directly with the Prosecution himself.[31]

e) P-169 continued to believe he was owed money by the Prosecution until October 2014

44. It is a remarkable that P-169 was permitted to persist in the belief that he was owed a sum of money by the Prosecution for testifying. At no stage has he ever been told categorically that he would not be paid money by the Prosecution.

45. He has, moreover, persisted throughout 3 and a half years in addressing his demands directly to the Prosecution (and often to no one else). That should come as little surprise given the fact that the Prosecution, rather than the Registry have always championed his cause and ensured that his demands are met, in particular:

a. following his August 2011 letter, the Prosecution paid his monthly allowance without Registry approval for a period of 3 months, and they effected the first payment within literally days of the receipt of his letter;[32]
b. following his June 2013 correspondence, the Prosecution were the catalyst behind buying him [REDACTED] ("I don't know what would have happened if the prosecution hadn't got involved")[33] and were there at the handover of [REDACTED];
c. [REDACTED];[34]
d. on 14 October, a day scheduled for his testimony, and when he had presumably been long acquainted with the VWU resources who would facilitate it, he chose to call Mr. Badibanga, and not a protection officer.

3) P-169's pursuit of money for his testimony is destructive of his credibility as a witness

[31] CAR-OTP-0083-1495-R01.
[32] CAR-OTP-0065-0987, CAR-OTP-0065-0988, CAR-OTP-0065-0989.
[33] T-361-Conf-Eng-ET, p.55, lines 15-16.
[34] ICC-01/05-01/08-2912-Conf-AnxC, p.1.

a)He was prepared put the life and liberty of others at risk if it gives him a material advantage

46. [REDACTED], and [REDACTED] are or were close friends of his, with whom he [REDACTED] and had regular contacts.[35] According to his recent evidence, neither of these men have threatened him, and their telephones were not used to call him.[36]

47. He had no basis to report to VWU on 15 July that these men were responsible for making intimidating phone calls to him, and yet he did so, because he knew that that would enable him to say that he was suffering from the effects of giving evidence and that it was impeding his ability to [REDACTED].

48. He had no concern for the impact that his lies would have on these friends of his. They might have been arrested, charged with offences against the administration of justice and held in custody for months or years, awaiting his telling the truth.

b)His involvement in the scheme to blackmail the ICC is much greater than he has conceded

49. P-169 tried to minimise his involvement in the scheme to bring together the witnesses to make a concerted demand for money to the ICC. In doing so he told a number of lies on oath.

50. He lied about the frequency of his contacts with [REDACTED]. During his examination by the Chamber,[37] the Prosecution[38] and the Legal Representative of Victims,[39] he maintained steadfastly that he had only reluctantly met [REDACTED] once. However, once confronted by the record of VWU's telephone contact with [REDACTED], he conceded that there had been a number of visits (although probably not the four that [REDACTED] himself recalled).[40]

51. This was no failure of memory. These events only took place a little more than a year ago, and he attempted to embellish his account of the one meeting he could recall with

[35] T-361-Conf-Eng-ET, p.11, lines 3-4; p.13, lines 19-21; p. 17, lines 9-10.
[36] T-361-Conf-Eng-ET, p. 11, lines 12-13; p.12, lines 12-23; T-363-Conf-Eng-ET, p. 26, line 15 – p. 27, line 3.
[37] T-361-Conf-Eng-ET, p.37, line 15 – p.40, line 3.
[38] T-361-Conf-Eng-ET, p.57, lines 6-10.
[39] T-361-Conf-Eng-ET, p.68, lines 22-25; T-362-Conf-ENG-ET, p.3, line 25 – p.4, line 14.
[40] T-363-Conf-Eng-ET, p.11, line 21 to p.12, line 20.

considerable detail. He recalled that [REDACTED] had called him prior to the meeting which was at his house[41], he wanted money[42], that he had told him that VWU were "bad people"[43] and that at the meeting, [REDACTED] had originally been interested in "claiming his rights" but that he, P-169 had reprimanded him and he changed his mind.[44]

52. However, once confronted by [REDACTED]'s account, his story changed completely. [REDACTED] had called him to arrange the first meeting which was at [REDACTED]'s office.[45] [REDACTED] called him 2 or 3 times,[46] he recalled 3 meetings in total, none of which were at [REDACTED]'s house.[47]

53. He also lied about the details of his contact with [REDACTED]. Initially, he vehemently denied the suggestion, made by [REDACTED] to VWU, that he had shown [REDACTED] a document with figures on it. He said:

> "What letter did I go to give or show to him? That letter does not exist. What I am telling you is the truth. We were all together with [REDACTED] and [REDACTED]."[48]

54. However, once reminded that [REDACTED] recalled specifically that 2 of his visits were on [REDACTED] he had written two letters to the court about his financial claims, his recollection of the first meeting underwent another sea-change. He said that they had **all** brought letters that they had written to the court, and that he had retained the letter which [REDACTED] had given to him on that the first of the meetings.[49]

55. The assertion that [REDACTED] produced a similar letter is also a lie. No such document has been disclosed pursuant to the Chamber's order.[50] The renewed account does not fit with [REDACTED]'s account of being harassed by P-169.[51]

56. P-169 was dishonest in his evidence about the number of meetings with witnesses of which he was aware. In his letter of 7 June 2013, he referred to a meeting of "a lot of

[41] T-361-Conf-Eng-ET, p.38 lines 11-12 and 18-25, p.39, lines 3-17.
[42] T-361-Conf-Eng-ET, p.38, lines 11-12.
[43] T-361-Conf-Eng-ET, p.69, lines 20-21.
[44] T-361-Conf-Eng-ET, p.39, lines 23-25.
[45] T-363-Conf-Eng-ET, p.12, lines 20-22, p.13, lines 7-8.
[46] T-363-Conf-Eng-ET, p.13 line 11.
[47] T-363-Conf-Eng-ET, p13, lines 17-20.
[48] T-363 Conf-Eng-ET, p13, lines 6-8
[49] T-363 Conf-Eng-ET, p14, lines 7-14
[50] ICC-01/05-01/08-3167-Conf, para. 53.
[51] CAR-OTP-0083-1495-R01.

witnesses" at [REDACTED]'s house in March.[52] There is corroboration for such a meeting, firstly from the telephone enquiries made by VWU,[53] and secondly in the record of a telephone call made by [REDACTED] to the Prosecution.[54]

57. This plainly cannot be any of the meetings which took place with [REDACTED], as the first of those occurred after 7 June 2013.[55] P-169's attempt to conflate the meeting referred to in his letter with one of the meetings with [REDACTED] is another palpably dishonest piece of evidence designed to play down the coordination of witnesses and his involvement in the process.

58. P-169 has given dishonest evidence about the list of Prosecution witnesses. The impression that he was desperate to leave was of his simply being given a hard copy of the list by P-178, however, the list has been in his possession for at least 17 months, and he has no apparent intention of destroying it yet.[56] There are two different copies of the list which are in different formats. He has kept and updated it.

59. The investigation of his participation in the exposure of protective witnesses' identities has been woefully inadequate. VWU contacted 6 witnesses over 21 months, and accepted at face value their inevitable denials of participation in the scheme. No attempt was made to examine P-169's or P-178's telephone records to see whether they had been in contact with any of the numbers on the lists, in stark contrast to the enthusiasm with which corroboration was sought for their false allegations of threats from MLC members.

60. P-169 was at least as centrally involved as P-178 in the scheme. That would make sense. He was the only person known to be in current possession of a list. He was the only person who wrote letters to the court. Those who admitted to having been contacted recalled the codenames [REDACTED] being used by those who called them. Nobody profited as much from this scheme as much as P-169. Neither does his alleged but convenient subservience chime with his own self-image; the big businessman. He did not nor would he have taken instructions from or lived in the shadow of some [REDACTED].

c) His use of the list as a bargaining chip is cynical

[52] CAR-OTP-0072-0504_R01 at 0506.
[53] CAR-OTP-0083-1496-R01.
[54] CAR-OTP-0083-1495-R01.
[55] T-363-Conf-Eng-ET, p.14, lines 7-9.
[56] T-363-Conf-Eng-ET, p.10, lines 11-23.

61. P-169 acted alone in choosing how he dealt with a list of protected and in some cases vulnerable witnesses. It goes without saying, that even if his account is accepted, it was open to him to refuse the list from P-178, or to destroy it. He did neither. He disseminated it. He stored it on his computer disk drive, and allowed his daughter free rein to play with the list as she saw fit.[57]

62. His letters of June 2013 and August 2014 were sent by email, and whilst some of the recipients are curious, many appear genuine. One or more persons having access to those addresses has received a copy of this list, exposing them to potential danger and the indignity.

63. P-169 cares not for that. His sending of the lists, like the letters was a bargaining position, the application of pressure.[58] In that regard, the sending of the further letter in 2014 is especially prescient. He had by then been told of the importance of respecting protective measures, acknowledged the advice,[59] but nonetheless, gone on to send further copies of the lists out.

64. It is against that background that the Chamber must judge the value of his undertakings as to his future conduct.[60] In the Defence submission his promises are disingenuous and temporary, as is his evidence.

4) P178's claims to have been intimidated by people linked to [REDACTED] are demonstrably untrue

65. At the outset the Defence observes that it is a remarkable coincidence that the only 2 witnesses in the whole case who allege that they have been the recipients of intimidating telephone calls were close friends before they testified and have both used the fact of the alleged telephone calls as a basis for substantial financial compensation after testifying.

66. Given P-169's evidence, how now does the Chamber approach the claims of P-178? [REDACTED].[61] [REDACTED].[62] That must have appeared to be compelling evidence. [REDACTED].[63]

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57 T-361-Conf-Eng-ET, p.57, lines 19-23; p.59, lines 13-15; p.61, lines 3-6; T-362-Conf-Eng-ET, p.43, lines 22-25; T-363-Conf-Eng-ET, p.9, line 17 – p.10, line 2; p.19, lines 6-15.
58 T-363-Conf-Eng-ET, p.24, lines 18-21.
59 ICC-01/05-01/08-3099-Conf, para.4; ICC-01/05-01/08-3143-Conf-Anx, p.1.
60 T-361-Conf-Eng-ET, p.41, line 20 – p.42, line 4; T-363-Conf-Eng, p.10, line 10 – p.11, line 6.
61 ICC-01/05-01/08-1816-Conf-Anx1-Red2, pp.10-11.

67. One must ask how P-178 could have [REDACTED]. Of course, this was a number with which P-169 was regularly in communication, and which he had by then falsely alleged was the source of threatening phone calls.

68. [REDACTED][64], [REDACTED].[65] The pair of them acted in concert from 2011 to date in pursuit of their fraudulent claims. The provision by both of them of the same false number is plain indication of the fact that they initiated this scheme at the latest before P-178's testimony. In the light, in particular of P-178's recent assertions to VWU,[66] his evidence to the Chamber on 7 September 2011 must now be regarded as dishonest.

5) P-169's explanation as to the meaning of his letters is untrue

69. Unless one takes the approach that any explanation will suffice to avoid the obvious meaning of his various letters, P-169's evidence as to their contents is wholly implausible.

70. He offers no explanation for the assertion that there was a meeting at [REDACTED]'s house "**in March"** of **"a lot of witnesses"**.[67] That was plainly true, and his attempts to avoid it by suggesting that it was a meeting only of [REDACTED][68] raises serious questions as to his reasons for lying about the fact of the meeting. Of course, any meeting at which [REDACTED] and [REDACTED] were present would likely be representative of a larger group of witnesses, given their respective positions.[69]

71. The obvious inference is that there was widespread dissatisfaction amongst them. P-178 reported as much independently.[70] And what would they be dissatisfied about as a group? Especially with P-169 and P-178 as the organizers. The obvious inference is that they had still in 2013 some expectation, that they thought there was some bargain (marché) in which they had been cheated.

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62 T-155-Conf-Red2-Eng, p.8, line 25 – p.9, line 7.
63 ICC-01/05-01/08-1816-Conf-Anx1-Red2, p.11.
64 ICC-01/05-01/08-1816-Conf-Anx1-Red2, p.12.
65 ICC-01/05-01/08-1816-Conf-Anx1-Red2, p.12.
66 ICC-01/05-01/08-3190-Conf.
67 ICC-01/05-01/08-2827-Conf-AnxA-Red3.
68 T-363-Conf-ENG-ET, p.15, line 24–p.16, line 14; p.21 lines 7-15.
69 [REDACTED].
70 CAR-OTP-0083-1489, 1490, 1491.

72. P-169's attempt to explain what he meant by the phrase "marché de dupes" bears no sensible scrutiny.[71] The two phrases "subornation" and "reconsideration of testimony"[72] strike a harmonious chord in the context of the letter. They are both references to the same thing. He and the other witnesses feel they have been cheated, that their evidence has been bought, and that he is thinking of taking the further step of changing his evidence. Why else would he need to hire a lawyer?

73. His apparent Damascene conversion to an understanding that VWU paid witnesses expenses, is not only irrelevant to his credibility, but highly suspicious, especially given its late occurrence and his refusal to offer any explanation as to how he had come to this new understanding.[73] P-169's evidence on these topics is dishonest and unreliable.

C. RELIEF SOUGHT

74. In view of the above submissions, the Defence respectfully requests the Chamber to qualify P-169's testimony of 2011 as untruthful and unreliable.

The whole respectfully submitted.

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22 April 2016

[71] T-361-Conf-Eng-ET, p.36, lines 23-24, p.53, line 23–p.54, line 12.

[72] ICC-01/05-01/08-3138-Conf-AnxA.

[73] T-362-Conf-ENG-ET, p.37, line 2 – p.41, line 4; T-363-Conf-ENG-ET, p.26, lines 7-14.