

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  
6 Narcisse Arido - ICC-01/05-01/13  
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and  
8 Judge Raul Pangalangan  
9 Trial Hearing  
10 Monday, 5 October 2015  
11 (The trial hearing starts in open session at 9.30 a.m.)  
12 THE COURT USHER: All rise.  
13 The International Criminal Court is now in session.  
14 PRESIDING JUDGE SCHMITT: Good morning, everybody.  
15 Could the court officer please call the case.  
16 THE COURT OFFICER: Thank you, Mr President.  
17 The situation in the Central African Republic, in the case of The Prosecutor versus  
18 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,  
19 Fidèle Babala Wandu and Narcisse Arido, case reference ICC-01/05-01/13.  
20 We are in open session.  
21 PRESIDING JUDGE SCHMITT: Thank you.  
22 Last week Ms Taylor has discreetly advised me on the practice that counsel  
23 introduces himself or herself at the beginning of each trial hearing and we are going  
24 to stick with that practice. Because of that I ask for appearances of the parties and  
25 we start with the Prosecution.

1 MR VANDERPUYE: Thank you, Mr President. Good morning to you, good  
2 morning, your Honours, everyone.

3 Today, Mr President, the Prosecution is represented by Nema Milaninia to my left,  
4 trial lawyer; Coleen Gilg, associate trial lawyer to my left also behind me, and  
5 Sylvie Vidinha, our case manager. I'm Kweku Vanderpuye. Good morning.

6 PRESIDING JUDGE SCHMITT: Thank you.

7 Now for the Defence please. We start perhaps with the Defence of Mr Bemba.

8 MS TAYLOR: Good morning, Mr President, your Honours. Melinda Taylor,  
9 appearing for Mr Jean-Pierre Bemba on my right and I'm appearing today with  
10 Ms Ines Pierre de la Brière. Thank you.

11 PRESIDING JUDGE SCHMITT: Defence for Mr Kilolo, please.

12 MR DJUNGA: (Interpretation) Good morning, Mr President. For Mr Kilolo, I'm  
13 Paul Djunga, lead counsel; Mr Steven Powles, counsel; and Ms Leuka Grogan is our  
14 case manager.

15 PRESIDING JUDGE SCHMITT: Defense for Mr Mangenda.

16 MR GOSNELL: Good morning, Mr President and your Honours and to everyone in  
17 and around the courtroom. My name is Christopher Gosnell on behalf of  
18 Mr Mangenda, accompanied by Maître Arthur Vercken, case manager  
19 Marine Farshian, and Mr Mangenda himself. Thank you.

20 PRESIDING JUDGE SCHMITT: Thank you.

21 Defence for Mr Babala.

22 MR KILENDA: (Interpretation) Good morning, Mr President. Good morning,  
23 your Honours. Ms Adriana-Maria Manolescu is our case manager;

24 Mr Azama Shalie Rodoma and Jean-Pierre Kilenda are both counsel, lead counsel and  
25 co-counsel for Mr Fidèle Babala Wandu, who is seated to our right. Thank you.

1 PRESIDING JUDGE SCHMITT: Thank you.

2 Defense for Mr Arido.

3 MR TAKU: May it please your Honours. My name is Chief Charles Taku. I

4 represent Mr Arido. With me my learned colleague and brother,

5 Mr Philippe Larochelle. Mr Michael Rowse is our case manager. Mr Arido is

6 seated at the extreme right. Thank you, your Honour.

7 PRESIDING JUDGE SCHMITT: Thank you, Mr Taku.

8 And I understand that we have a legal adviser here, Mr Nève. Could you also please

9 kindly introduce yourself for the record.

10 MR NÈVE: (Interpretation) Good morning, Mr President. My name is Marc Nève,

11 lawyer. And I was assigned to assist the witnesses who appear -- or, this witness

12 appearing before your Court.

13 PRESIDING JUDGE SCHMITT: Thank you very much.

14 Before starting with the testimony of the second witness, the Chamber will render an

15 oral decision regarding the order of witnesses and the commencement of Witness

16 P-361 testimony. First the oral decision on the order of witnesses.

17 The Chamber recalls the discussion it had with the parties on 1 October 2015 during

18 the hearing about who would testify after P-261 in this case. The Chamber was

19 subsequently informed by email that, (i), the Prosecution's position is to call P-361

20 after P-261, and then to have P-260 commence testifying on 12 October 2015 and, (ii),

21 the Defence's collective position is to have P-260 testify on 12 October 2015 and

22 postpone P-361's testimony until a suitable time thereafter.

23 One of the Defence's primary concerns in commencing P-361's testimony this week is

24 that three documents referenced in his report are in Dutch and require translation

25 into the working languages of the Court. The Defence has requested that the

1 Registry complete these translations, but they have not been completed to date.

2 The Chamber was informed by the translation unit by way of email on 1 October 2015  
3 that none of the three documents in question can be translated by this week, and that,  
4 for the longest of the three documents, the translation unit would need to outsource  
5 the document and, I quote, "may only be able to receive the translation back or  
6 towards -- back at or towards the end of the year." Quote finished.

7 On 2 October 2015, the Bemba Defence informed the Chamber by way of two emails  
8 and a filing, 1333, that it wished for its telecommunications expert to follow P-361's  
9 testimony, but that he would be unable to do so if his testimony commenced this  
10 week and, more fundamentally, that it has not had adequate time and facilities to  
11 prepare for P-361's testimony.

12 The Chamber has previously been informed of the outstanding translation request.

13 On 22 September 2015, the Single Judge rejected a joint Defence request to defer  
14 notification of any challenge of P-361's testimony, filing 1280. On the issue of the  
15 translations, the Single Judge noted that they were outstanding and then said at  
16 paragraph 11, I quote:

17 "However, importantly, expert witness P-361 does not make any reference to any part  
18 or parts of any of the three relevant documents in his report and appears to have used  
19 them solely as general sources in his consideration of the interception process. In the  
20 absence of any indication showing that these documents were used in the report in a  
21 specific manner or to support a specific contention on the part of the expert, the  
22 Defence request to defer notification in relation to P-361 is hence rejected without  
23 prejudice to the Chamber entertaining a challenge request following the receipt of the  
24 requested translations."

25 Now to the analysis and conclusion.

1 The Defence has the right under Article 67(1)(f) to receive translations as are  
2 necessary for the requirements of fairness. These documents are part of a  
3 "References and Literature" list in P-361's report -- they are not directly used or  
4 discussed in the body of the report itself. The Chamber is not persuaded that the  
5 mere citation of these documents makes their translation necessary to examine P-361  
6 or necessary within the meaning of Article 67(1)(f). The Chamber is not going to  
7 condition P-361's testimony on translations of ancillary documents of speculative  
8 importance.

9 As for the arguments raised by the Bemba Defence, the Chamber is not persuaded to  
10 wait for P-361's testimony in order for the Bemba Defence expert to follow it.

11 Transcripts of P-361's testimony are available and the Bemba Defence can use them to  
12 consult with its expert outside of court sessions.

13 The Chamber also notes the Bemba Defence's arguments about not having had  
14 adequate time and facilities to prepare for P-361's testimony. However, and as noted  
15 by the Bemba Defence itself, it may call its expert during its own presentation of  
16 evidence should it wish to do so. The Bemba Defence may also request the recall of  
17 P-361 at a later point should it justify that it has significant new lines of questioning  
18 which could not have been asked when P-361 first appeared before the Chamber.

19 For these reasons, the Chamber has decided that P-361 will commence testifying after  
20 P-261's testimony has concluded. The Defence requests to delay or vary the timing  
21 of P-361's testimony are rejected.

22 In fairness to the Defence, the Chamber is aware that the Defence may have  
23 challenged the qualifications of P-361 in writing at an earlier time had it known that  
24 he would testify in advance of these translations being ready. This written notice is  
25 required by the terms of paragraph 22 of decision 1209, entitled "Directions on the

1 conduct of the proceedings."

2 Under the circumstances, when P-361 first appears he will be examined in the  
3 following sequence:

4 First, P-361 will take the oath and the Prosecution will be permitted to ask questions  
5 about P-361's background and qualifications.

6 Second, once these questions have been completed, and before turning to discussion  
7 of P-361's report, the Defence teams will be allowed to question P-361 on these same  
8 matters.

9 Third, following this questioning, the Defence teams may then orally challenge  
10 P-361's qualifications or the overall relevance of his anticipated testimony. The  
11 Chamber will then make a ruling on whether P-361 may testify as an expert in this  
12 case. If he is allowed to testify, then the Prosecution's examination of the witness  
13 will continue.

14 As indicated by the Single Judge in decision 1280, should receipt of the requested  
15 translations meaningfully change the Defence's position on P-361's qualifications, it  
16 may request for reconsideration of his qualifications.

17 This concludes the Chamber's oral ruling.

18 The Chamber turns now to the upcoming testimony of Witness 261. We will  
19 therefore now first discuss the issue of protective measures.

20 For this we need to go to private session, please, court officer.

21 (Private session at 9.43 a.m.)

22 (Redacted)

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Trial Hearing

(Private Session)

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1 (Redacted)

2 (Closed session at 10.08 a.m.)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Open session at 10.10 a.m.)

8 THE COURT OFFICER: We are in open session, Mr President.

9 PRESIDING JUDGE SCHMITT: Thank you.

10 Again, Mr Witness, good morning. As I have said, you are going to testify before the  
11 International Criminal Court.

12 On behalf of the Chamber, I would like to welcome you to the courtroom.

13 The Chamber has been established to try the case of the Prosecutor against

14 Mr Jean-Pierre Bemba Gombo and others. You are called to testify to assist us in our  
15 search for the truth.

16 You will be asked questions both by the Judges and the lawyers in the courtroom. In  
17 this connection, I would like to guide you. Please listen carefully to those questions.

18 It is very important that you make sure that you understand the question before you  
19 answer it. If you do not understand, feel free to ask for the question to be repeated  
20 or rephrased.

21 Do you understand all this, Mr Witness?

22 WITNESS: CAR-OTP-P-0261

23 (The witness speaks French)

24 THE WITNESS: (Interpretation) Yes.

25 PRESIDING JUDGE SCHMITT: Very good. I hope somewhere in front of you

1 there is a card on which is printed a solemn undertaking. Could you please read out  
2 the words on the card.

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

5 PRESIDING JUDGE SCHMITT: Mr Witness, you are now under oath. You have  
6 already been informed about the importance to speak the truth. Nevertheless, and  
7 under the circumstances I want to reiterate to you that, as you have just promised,  
8 you have to speak the truth, your answers have to be accurate to the best of your  
9 knowledge and belief. I also want to inform you that it is an offence within the  
10 jurisdiction of this Court to give false testimony.

11 We go now into private session.

12 (Private session at 10.13 a.m.)

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20 (Open session at 10.28 a.m.)

21 THE COURT OFFICER: We are in open session.

22 MR VANDERPUYE: Thank you.

23 Q. Witness, I just wanted to go over our prior contacts, and I think we can do that  
24 safely in open session. So I'll ask you some questions about that. If at any point  
25 you think it may be appropriate, because it may reveal your identity, to go into

1 private session, just let us know and I will ask the Chamber to do that, okay?

2 A. Okay.

3 Q. Witness, you and I, we've met before today; is that right?

4 A. Yes, of course. I do recognize you.

5 Q. And we met just a few days ago last week in this building; is that correct?

6 A. Of course.

7 Q. Was that in the presence of a representative of the Victims and Witnesses Unit?

8 A. Of course.

9 Q. And can you confirm that we've met on two prior occasions as well?

10 A. Of course.

11 Q. And without saying where those meetings occurred, can you tell the Chamber

12 when it was, to the best of your recollection, that we first met?

13 A. Could you please repeat your question as to where and when? I didn't quite

14 grasp what you said.

15 Q. Certainly. Without saying where it is that we first met, can you tell the

16 Chamber, to the best of your recollection, when we first met?

17 A. We met for the first time, I believe, on 17 December 2014, if my memory serves

18 me correctly.

19 Q. And can you tell the Chamber basically what the circumstances were under

20 which we met?

21 A. I might need some time to explain to you the circumstances in which we -- we

22 met. I was at my place of work, in the afternoon, early afternoon, when my phone

23 rang for the first time. (Redacted)

24 (Redacted)

25 (Redacted)

1 MR VANDERPUYE: Mr President, if I may -- if I can just interrupt you for a  
2 moment -- can we go into private session, please.

3 PRESIDING JUDGE SCHMITT: Of course it's clear. We go into private session.

4 MR VANDERPUYE: Thank you.

5 (Private session at 10.32 a.m.)

6 (Redacted)

7 (Redacted)

8 (Redacted)

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12 (Redacted)

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Trial Hearing

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21 (Redacted)

22 (Open session at 12.24 p.m.)

23 THE COURT OFFICER: We are in open session, Mr President.

24 MR VANDERPUYE: May I proceed, Mr President?

25 Q. A few minutes ago, a little more than that, I asked you some questions

1 concerning your contacts or prior contacts with the Prosecution before your testimony  
2 here today. And what I want to do is I want ask you some questions about your  
3 prior contacts with the Defence or members of the Defence before you testified here  
4 today.

5 So let me first ask you that since we last met in March 2015, have you been in contact  
6 with any member of the Defence, and you can see there are five of them here, and that  
7 relates to the Defence of Mr Kilolo or Mr Mangenda, Mr Arido or Mr Babala or  
8 Mr Bemba?

9 A. No. Absolutely not.

10 Q. Are you aware of anyone -- if anyone or members of those Defences has  
11 attempted to reach you or to contact you either directly or indirectly?

12 A. As far as I know, when the members of the victims unit arrived in (Redacted) --

13 MR VANDERPUYE: Could we go into private sessions, please, Mr President

14 THE WITNESS: (Interpretation) -- after our meetings --

15 MR VANDERPUYE: I'm sorry to stop you.

16 If we can go into private session, please, Mr President.

17 PRESIDING JUDGE SCHMITT: Yes, private session again.

18 (Private session at 12.26 p.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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12 Page 48 redacted – Private session.

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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12 Page 49 redacted – Private session.

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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- 22 (Redacted)
- 23 (Recess taken at 12.59 p.m.)
- 24 (Upon resuming in private session at 2.30 p.m.)
- 25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/05-01/13

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12 Page 57 redacted – Private session.

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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12 Page 69 redacted – Private session.

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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Trial Hearing

(Private Session)

ICC-01/05-01/13

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- 16 (Redacted)
- 17 (The hearing ends in private session at 4.01 p.m.)