

Trial Hearing  
Witness: CAR-OTP-P-245

(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 Monday, 19 October 2015  
10 (The hearing starts in open session at 9.31 a.m.)  
11 THE COURT USHER: All rise.  
12 The International Criminal Court is now in session.  
13 PRESIDING JUDGE SCHMITT: Good morning, everybody. Could the court officer please  
14 call the case.  
15 THE COURT OFFICER: Good morning. 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 ICC-01/05-01/13.  
19 And for the record we are in open session.  
20 PRESIDING JUDGE SCHMITT: Thank you very much.  
21 Now I'll ask for the appearances of the parties. Please, Mr Vanderpuye.  
22 MR VANDERPUYE: Thank you, Mr President. Good morning to you, your Honours,  
23 everyone. Today the Prosecution is represented by Olivia Struyven, who is seated to my left;  
24 Silvia Vidinha, who is behind her to my left; Ekaterina Kopylova, who is behind me; and I am  
25 Kweku Vanderpuye. Good morning.

1 PRESIDING JUDGE SCHMITT: Thank you. Perhaps we stick with the sequence that we  
2 always have.

3 MR GOSNELL: Good morning, Mr President, your Honours. Thank you. The  
4 appearances for Mr Mangenda are the same as last Thursday. Thank you.

5 PRESIDING JUDGE SCHMITT: Mr Powles or Mr Djunga?

6 MR DJUNGA: (Interpretation) The only change today is that Ms Grogga Lueka is with us  
7 today. She is our case manager. The rest of the team remains the same.

8 PRESIDING JUDGE SCHMITT: Mr Kilenda or Mr Larochelle.

9 MR LAROCHELLE: (Interpretation) Good morning, your Honours. Mr Arido is  
10 represented by Mr Taku and myself.

11 PRESIDING JUDGE SCHMITT: Thank you.

12 Mr Kilenda.

13 MR KILENDA: (Interpretation) Good morning, your Honours. Our team remains  
14 unchanged.

15 PRESIDING JUDGE SCHMITT: I like this expression to be honest.

16 Mrs Taylor, please.

17 MS TAYLOR: Well, I'm afraid we are changed. Good morning, Mr President, your  
18 Honours. Melinda Taylor appearing on behalf of Mr Bemba with Ms Ines Pierre de la Brière.  
19 Thank you.

20 PRESIDING JUDGE SCHMITT: Thank you very much.

21 And also Mr Nève, we welcome Mr Nève.

22 MR NÈVE: (Interpretation) Good morning, your Honours. I am here to assist the witness  
23 we will be hearing from today.

24 PRESIDING JUDGE SCHMITT: Thank you. We assume that you will be available for the  
25 full duration of the testimony of this witness. Thank you.

1 I've been informed that the Defence for Mr Arido has housekeeping matters. And as  
2 we know that the Arido Defence interprets this expression relatively broad, we want  
3 to know what it is about, please.

4 MR LAROCHELLE: Thank you, Mr President. From the outset, I apologise that we didn't  
5 file written submissions. I understand that your Honours prefer that.

6 The issue concerns what we consider to be a very late disclosure of a document that  
7 we received from the Prosecutor, which is a log of contacts between the witness who  
8 is about to testify and the Prosecutor. It figures at tab 49. I think I want -- I insist  
9 that your Honours see a little extract in our documents. It is at tab 49. The ERN is  
10 CAR-OTP-0091-0892, and I'm interested at 0899 of the document, which is page 8 of  
11 the document, which is an entry of 3 March 2014.

12 What you find here, what you find here is basically a statement from P-245 to the  
13 Prosecutor. According to the Prosecutor, we are not entitled to get that in the  
14 exchanges we've had with the Prosecutor, but this was given to us as a matter of  
15 courtesy.

16 Your Honour, this is not acceptable. We should have gotten that material before D-2  
17 or P-260 took the stand because this extract is something that appears in the statement  
18 of P-260. So they were legitimate questions to be asked to P-260 about whether he  
19 discussed, whether he discussed that particular bit of statement with P-245 before he  
20 called the Prosecutor and very fortunately added this piece of information to the  
21 statement he had given. This is on 3 March. The statements of P-245 are given on  
22 28 February and 1 March 2014, so two days before that.

23 So this is not -- this is not something that is normal. We've been -- we've been asking  
24 for that kind of material for months now. So I'm sorry there is no more formal  
25 written motion, but this clearly falls under the purview of what your Honours have

1 seen in terms of motion we have made repeatedly.

2 And I'm sorry, we would like to trust the Prosecutor as much as we can, but when we  
3 get things like that, then I don't want to accuse the Prosecutor of anything yet, but this  
4 clearly impedes on our work and I don't think it is appropriate for the Prosecutor to  
5 retain that material.

6 And if you see that document, which is 43 pages, you would see that it is heavily  
7 redacted. It is very heavily redacted. And those witnesses, the last two witness, the  
8 last witness and this witness and even the other ones for that matter, there are no,  
9 there are no -- they are very special witnesses because they have a deal with the  
10 Prosecutor. They are testifying here because they have a deal with the Prosecutor  
11 and they received benefits from the Court.

12 Where I come from in Canada, and certainly in Mr Kweku's prior life as a defence  
13 counsel in the USA, whenever a witness decided to cooperate with the authorities and  
14 to start giving evidence in consideration for benefits or money or things like that, we  
15 would get a complete and exhaustive transparent disclosure, which we are not  
16 getting in this case.

17 So I think that your Honour should take into account the fact that these are special  
18 witnesses that even the dealings of these witnesses with the VWU, for example, trying  
19 to extort benefits, trying to get more money, trying to -- they were in hotels after their  
20 testimony and they were somewhat desperate, this should have, this should have all  
21 been disclosed, I'm sorry.

22 And what I would ask this morning to do, I don't want to ask for a postponement or  
23 to ask for unreasonable remedies, but what I should ask the Prosecutor to do is to  
24 forward you that document completely unredacted so that you yourself, your  
25 Honours, you now, I think you understand enough the dynamics of this case to be

1 able to rapidly over lunch decide whether it is, these redactions are completely  
2 justified and order the Prosecutor, if there is anything there that could be assistance in  
3 the defence in showing that there are motives, that these witnesses have reason to tell  
4 you this story today, that it should be given to us forthwith so that at least we will be  
5 in a position where we can use it tomorrow. So that's for this document.

6 And the other thing is, I just alluded to the fact of interactions with the Victim and  
7 Witness Units. If you look at CAR-OTP-0078-0206, at page 0207.

8 This is the last little document, your Honour, I'm almost done. At lines 15 to 18, this is  
9 what (Redacted) when he interviewed the witness says, he says (Interpretation) "We  
10 also suggested not speaking about all the interactions with the VWU because we  
11 thought that it wasn't necessarily important for the time being."

12 So there is a whole dynamic of these witnesses I presume in satisfaction with what we  
13 are receiving, their position, their situation, and we -- what we claim, desire to  
14 improve their lot, so it would be important for us to know the full extent of what  
15 happened in the period after their testimony up to the moment where they were met  
16 by the Prosecutor between these witnesses and the VWU.

17 So I would also ask that if there is a contact log between the witness and the VWU,  
18 that the VWU be ordered to produce that with, of course, with the necessary  
19 redactions.

20 And why it is important, because if we can show, for example, that the two witnesses  
21 are calling at the same times asking for the same things, complaining about the same  
22 issues, then there is a stronger case to argue that they are actually concocting this  
23 thing together. So these are my, these are my submissions for this morning. And I  
24 thank you very much for the opportunity to be able to make them.

25 PRESIDING JUDGE SCHMITT: These are not the classical housekeeping matters, of course.

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1 But of course you have the floor.

2 And now Mr Vanderpuye has the possibility to comment or answer to that.

3 MR VANDERPUYE: I see that Mr Gosnell is on his feet. However you wish to proceed,  
4 your Honour.

5 PRESIDING JUDGE SCHMITT: Mr Gosnell, please.

6 MR GOSNELL: Mr President, it might be more expeditious if I just add one or two points  
7 that I wish to add to Mr Larochelle's points.

8 And he mentioned that this would be common practise to disclose this kind of  
9 material in the United States and Canada. Well, it's not just the United States and  
10 Canada, Mr President. It's the practise of this Court to ensure that this kind of  
11 material is disclosed.

12 And I would draw your attention, just to add some law to the mix, to decision 1227  
13 from this case, paragraph 9, where your Honour defined the scope of a statement.

14 And I would also draw your attention to decision 904 from the Bosco Ntaganda case  
15 where there is description of the scope of a definition of a statement. And there is  
16 also a discussion about the duty to record when you have an inter -- when the  
17 Prosecution has an interaction with the witness and the witness provides additional  
18 or new information about the substance of the case, that's material that must be  
19 recorded, and it follows from there that it must be disclosed.

20 So to be clear about the potential non-disclosure, it's not just this particular document.

21 It's not just the redactions in this particular document. It's also if there were  
22 investigative notes that were made by anyone from the Prosecution team, and I don't  
23 say that necessarily the lawyers have access to all of those notes, but regardless of  
24 who on the team has those notes, they do have to be disclosed to the Defence  
25 regardless of their form.

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1 So those will be our submissions, Mr President.

2 PRESIDING JUDGE SCHMITT: Thank you.

3 Mr Vanderpuye.

4 MR POWLES: My apologies.

5 PRESIDING JUDGE SCHMITT: I think we should then complete to the comments and the  
6 submissions by the Defence.

7 Please Mr Powles and then Mrs Taylor.

8 MR POWLES: Mr President, your Honours, it's not a related point actually, and I don't  
9 know whether your Honours would like me to make our submissions in relation to a separate  
10 issue now before Mr Vanderpuye responds on behalf of the Prosecution or deal with this  
11 discrete issue first and then we can make our separate points.

12 PRESIDING JUDGE SCHMITT: I think we want to hear and complete first this issue, to put  
13 it this way, one after the other.

14 MR POWLES: Then I'll sit down.

15 PRESIDING JUDGE SCHMITT: Mrs Taylor, do you have something to say on this issue?

16 MS TAYLOR: (Microphone not activated) Thank you, Mr President. Now I have the  
17 microphone.

18 On this specific issue, we would like to reiterate my colleague's concerns, but  
19 particularly in connection with the Witnesses P-198 and P-201, for which we don't  
20 have a prior statement. Again, we have just recently been given the contacts log.

21 And it would appear that again the Prosecution investigator dissuaded both  
22 witnesses from providing statements, both witnesses attempted to provide an account  
23 and both witnesses were actively dissuaded from doing so.

24 So in their specific instances this information, these notes are the only form of  
25 information we have apart from the intercepts concerning their prospective testimony.

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1 So there is a heightened need for us to have any information, any form of an account  
2 which they provided from the Prosecution's investigators irrespective of the format.  
3 And this does fall within the Appeal Chamber's directive in the Banda judgment that  
4 it's not the form of the statement that matters, it's the fact that it pertains to the  
5 witness's account. So if this account is littered through different notes, then it should  
6 be disclosed to us and not redacted. Thank you.

7 PRESIDING JUDGE SCHMITT: Thank you.

8 Mr Kilenda, I assume to the same issue?

9 MR KILENDA: (Interpretation) Yes, I will be very brief, and it is the same issue. The  
10 Defence of Mr Babala totally subscribes to the concerns of the Arido Defence. You will  
11 remember that the previous witness stated here that all the other witnesses who come later  
12 will tell you the same thing. So if there is a document written by the witness that we are  
13 going to listen to right now, it is crucial that such a document be disclosed to the Defence  
14 teams and, as Mr Larochelle has said, we should be able to prepare.

15 I believe the scope of the preparations is such that we are not in a situation to fully  
16 understand what is really happening. We are defence teams. We are bound by the  
17 necessity for confidentiality. So we have taken the oath to keep all that information  
18 confidential. And if any one of us violates this principle, then the consequences are  
19 there. So we believe that these disclosures should be made. Thank you.

20 PRESIDING JUDGE SCHMITT: Thank you.

21 Mr Powles, we do not forget you, we do not forget you, but I think we should now  
22 give Mr Vanderpuye the floor.

23 MR VANDERPUYE: Thank you, Mr President. First with respect to my colleague Mr  
24 Larochelle's comments and as well as Mr Gosnell, I want to address a couple of things. First,  
25 as concerns the document at issue, as I stated before, this is an internal document. It is

1 prepared for the purposes of maintaining a register of contacts that the Prosecution makes  
2 throughout any given investigation. It is common to all cases in order to keep track of our  
3 contacts during the investigative phase with various individuals. It is not a document that is  
4 shared with any other unit, any other division or any other part of the Court. It is  
5 exclusively an internal document.

6 We've taken the position that because of the nature of the case and some of the  
7 requests we have received from the Defence that it would be helpful to the Defence to  
8 disclose this material.

9 As Mr Larochelle knows and I'm sure Mr Gosnell is aware as well, in our respective  
10 jurisdictions you don't get things just by sitting around and hoping that they fall out  
11 of the sky as a defence attorney. You make specific requests, targeted requests,  
12 intelligent requests as they relate to various positions that the Defence may take.

13 We've invited the Defence on numerous occasions to make those requests to the  
14 extent that they consider certain materials relevant and appropriate for the Defence of  
15 their case.

16 In our respective jurisdictions there is a principal distinction between material that is  
17 relevant for the preparation of the defence case and material that is material to the  
18 preparation of the defence case as they well know. That distinction is somewhat  
19 blurred in this Court, although it remains in this Court nevertheless.

20 Merely because a particular piece of information may satisfy the Defence's curiosity  
21 concerning the nature of the case, that does not make it material or relevant within of  
22 meaning of Rule 77 in this case.

23 What we decided to do to provide Defence with this material notwithstanding the  
24 Chamber's ruling with respect to another application by the Defence for contact  
25 information, which was rejected, was to make this material as available to Defence as

1 expeditiously as we could, and we've done that in this case by taking an internal  
2 document and redacting it appropriately so that we could provide it to the Defence  
3 expeditiously.

4 The alternative would be to extract that material, process it, take a couple of weeks to  
5 do it and then give it to the Defence, and I've repeatedly informed the Defence that  
6 that was the strategy that we were taking in order to get it to them as quickly as  
7 possible. So that is in respect of the nature of the document and the information that  
8 is held within it.

9 I don't dispute that there is material in there, particularly, particularly the material  
10 that Mr Larochelle pointed out that would constitute a statement under Rule 76 of the  
11 Rules. There is no question about that one. And that I have to tell you is an  
12 oversight in this case because of the manner in which it was recorded.

13 The reverse of that is, of course, that having realized that, we disclosed it. We didn't  
14 sit on our hands. We didn't try to hide it. We didn't cross it out. We didn't redact  
15 it. We made it plain and apparent to the Defence and disclosed it in a manner with  
16 respect to this witness that could be used.

17 And the Defence obviously have seen it, obviously have digested it and obviously are  
18 in a position to use it with respect to this case.

19 So I don't see that even if it is -- even if it is not in compliance with Rule 76 of the  
20 Rules that the Defence is in any way disadvantaged in terms of using that material  
21 with the witness.

22 Moreover, the question of the contacts between witnesses was broached between  
23 rather 245 and 260 was broached during the course of the cross-examination of 260. I  
24 fully expect that that issue will be broached again with respect to this Witness 245.

25 That's number one.

1 Number two is that the nature of the contact itself is not such that it in any effect  
2 impedes or impacts the credibility of the witness's statement. In any event, the  
3 Defence are perfectly positioned to cross-examine the witness. That's the purpose of  
4 cross-examination. The purpose of coming into a courtroom and having a witness  
5 on the witness stand to put questions to, the so-called principal of orality is to put  
6 questions to the witness and to put your case to the witness and to impeach the  
7 witness as is necessary to advance the interests of your client and your case. They all  
8 know that. And there is nothing in those materials that prevents the Defence from  
9 doing that.

10 With respect to Ms Taylor's argument concerning 198 and 201, the mere articulation  
11 of a curiosity as to what may be helpful to the Defence case without any basis at all to  
12 assert that there is anything in the nature of the contacts or by virtue of the nature of  
13 the contacts themselves which would advance the interests of the Defence or in any  
14 way address the salient issues before the Court or in any way serve the interests of the  
15 Defence by either undermining the Prosecution's case or the evidence to be presented  
16 by those witnesses is an idle, it's an idle and unsubstantiated argument in order to get  
17 that information.

18 As I said from the beginning, simply saying that this the Defence would like to know  
19 or that the Defence would like to know is an insufficient legal basis to acquire  
20 information, not any more so than the fact that I would like to know what's in  
21 Mr Kilolo's files. I would like to know what's in the seized materials that the Court  
22 ordered and that was turned over by the Belgian authorities. I would like to know  
23 that, but that doesn't mean necessarily that there is a legal basis for me, legal basis for  
24 me to have that material. Some might call it a fishing expedition, for example, or  
25 some might say that we're not legally entitled to it because it's work product,

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1 notwithstanding the fact that the witnesses talk about this, notwithstanding the fact  
2 that the witnesses themselves are not members of the Defence team.

3 A legal basis for the provision of certain information is not the same or not equivalent  
4 to an idle curiosity or a curiosity that would satisfy the interests of any particular  
5 party. It has to be -- there has to be a legal basis. They have failed to articulate one.  
6 And there is not one otherwise apparent from the information before the Court.

7 If the Court thinks that it's appropriate to examine the material unredacted, which as  
8 I've said is work product and therefore protected under, protected under 81(1), then  
9 we are prepared to provide it to the Chamber. We don't think that we should have  
10 to because it is work product.

11 If the Court considers that we should review the material more carefully to determine  
12 whether or not there is additional information, which I can say with respect to 245  
13 there is not, that may be of interest to the Defence, then we're happy to do that as  
14 well.

15 But I don't think that the Defence in any way even to the extent that that material  
16 contains arguably a Rule 76 statement that the Defence is in any way disadvantaged,  
17 because the witness is here and he's available to have questions put to him on the  
18 very subject matter of that information or any other information the Defence can  
19 dream up to put to him that they consider would advance their interests.

20 Thank you, Mr President.

21 PRESIDING JUDGE SCHMITT: Mr Gosnell.

22 MR GOSNELL: Mr President, if you would permit me, I would like to just very briefly reply.

23 Mr President, you would think from listening to the Prosecution that disclosure is  
24 only required when there is a request that has been made by the Defence, and that is  
25 absolutely not true. And the reason for that is that only the Prosecution knows what

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1 it has possession of. For example, if there is indeed an investigator's note generated  
2 coincident with one of the meetings on the contact log, we can't know whether that  
3 exists. And Rule 76(1) creates a spontaneous obligation to produce that material.  
4 Disclosure is not a cat and mouse game. Only the Prosecution knows what's in its  
5 files and knows what is disclosable.

6 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, but then I think we conclude this point  
7 and we give Mr Powles the floor.

8 MR VANDERPUYE: If Mr Gosnell considers that the nature of the contacts between P-260  
9 and 245 are material to the preparation of his Defence, there is nothing that precludes him  
10 from asking for the nature of -- for contacts of a specific nature that he considers advances the  
11 interests of his client. I want to know, for example, does the Prosecution have any contact  
12 information between these two witnesses related to X issue, Y issue concerning this period of  
13 time concerning that meeting or that meeting.

14 That certainly is not a cat and mouse game. That's what we call making an  
15 articulated and substantiated request. We have yet to receive one from any one of  
16 these Defence attorneys. Given the fact that these materials were disclosed well over  
17 a year ago, it seems to me that this is hardly, hardly a situation where we are playing  
18 games. It is very simple for anyone to make that argument, and they haven't  
19 advanced it.

20 The same thing with respect to Rule 190 -- I'm sorry -- Witness 198 and 201. You just  
21 heard Ms Taylor's arguments, and she doesn't articulate a single founded basis for the  
22 contact information concerning those witnesses.

23 The fact that there is no statement for those witnesses has absolutely nothing to do  
24 with the relevance of the contact information. Those are completely separate issues.  
25 And the absence of any articulated basis for receiving that information is

1 fundamentally, fundamentally detrimental to the request.

2 It has no legal foundation and it's not very hard to articulate, quite frankly.

3 MR LAROCHELLE: I'm -- 30 seconds.

4 PRESIDING JUDGE SCHMITT: One sentence, one sentence for Mr Larochelle.

5 MR LAROCHELLE: What Mr Vanderpuye tells you is wrong. We have made those  
6 requests and we have asked for the Prosecutor to disclose to us any contact with their  
7 witnesses. And that's what we've asked and that's what we never received. That they  
8 consider this not to be material to our preparation is a complete different argument, but we  
9 have made those requests months ago.

10 PRESIDING JUDGE SCHMITT: (Microphone not activated)

11 MR VANDERPUYE: Mr President.

12 PRESIDING JUDGE SCHMITT: Okay.

13 MR VANDERPUYE: I'm sorry.

14 PRESIDING JUDGE SCHMITT: One sentence also for Mr Vanderpuye, and I think we  
15 should then move on. It's perfectly clear that the Chamber has to digest this and has to retire  
16 then for deliberation. That's perfectly clear. But first Mr Vanderpuye.

17 MR VANDERPUYE: I very much appreciate it.

18 What Mr Larochelle has just argued is exactly the problem. The problem is you can't  
19 just say "Give us all the contacts you ever had with any witness." That's the problem.

20 It's very simple for Mr Larochelle to say "I want the contacts between X witness or Y  
21 witness in this period of time concerning this issue or that issue." That's the problem.

22 He can't just say "Give me every contact the OTP has ever had with anybody at any  
23 time anywhere." He can't say "Give me every expense that the OTP has ever  
24 dispensed with regard to any witness anytime anywhere anyplace." It has to be  
25 specific in order to demonstrate that it is material to the preparation of the Defence.

1 If there is a receipt because the OTP and during the course of an investigation bought  
2 a witness a soda, that is not material to the preparation of the Defence with all due  
3 respect.

4 PRESIDING JUDGE SCHMITT: Mr Powles, do you want to address another issue or do you,  
5 to put it this way, to open a new round of discussion? But of course, I told you that you have  
6 the floor, yes.

7 MR POWLES: It's a separate but potentially related issue, but only in a very minor way. I  
8 mean, I'm happy to deal with it now or after your Honours rule. I can deal with it now and  
9 perhaps it is better that we deal with it all.

10 PRESIDING JUDGE SCHMITT: Please, please, so we can perhaps discuss it when we retire  
11 for deliberation.

12 MR POWLES: Mr President, your Honours, this was a matter that we were thinking of  
13 raising during the testimony of the last witness, P-260. We refrained at that stage because we  
14 didn't -- we try and keep our objections and interventions to a minimum to keep the flow of  
15 the witness going. We also thought of raising it on Thursday afternoon, but it was very late  
16 in the day and perhaps these matters are perhaps best raised at the beginning of the day  
17 rather than at the end of the day when feelings might be slightly different. And we'll try and  
18 raise this in a sensitive way if we can.

19 And it's two points arising from in part in the way the Prosecution dealt with the last  
20 witness, P-260, and also comments made in a recent filing that was disclosed to the  
21 Defence on a confidential basis. And because of that it may be appropriate for us to  
22 deal with these submissions in a private session. It might be freer -- we might be  
23 freer to raise all the issues in a private session given that some of the issues were  
24 raised in a confidential filing. I'm not sure they are confidential, but just out of an  
25 abundance of caution.

1 PRESIDING JUDGE SCHMITT: I have no problem with that. Then we go into private  
2 session and afterwards you can continue.

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

4 (Private session at 10.01 a.m.)

5 (Redacted)

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11 (Open session at 10.41 a.m.)

12 THE COURT OFFICER: Your Honour, we are now in open session.

13 PRESIDING JUDGE SCHMITT: Thank you very much.

14 The Chamber issues two short decisions. The Chamber is not persuaded that it must  
15 review P-245's contact log. However, when these logs contain information falling  
16 under Rule 76, they must be disclosed to that extent.

17 The Prosecution is ordered to review P-245's contact log and logs of P-260 and other  
18 relevant witnesses to ensure that the Defence has all disclosable material.

19 Second decision. The Chamber notes that upon the request of the Defence, the VWU  
20 has already provided a list of payments provided to P-260 and P-245. The Chamber  
21 considers VWU to be a neutral unit of the Court and therefore does not find it  
22 necessary and appropriate that the VWU is obliged to disclose a contact log with  
23 these witnesses.

24 This concludes the two decisions and now we are turning to the upcoming testimony  
25 of Witness 245. We will first discuss the issue of protective measures and Rule 74

1 assurances. For this we need to go to private session again.

2 Please, Mr Court Officer.

3 (Private session at 10.43 a.m.)

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Trial Hearing

(Closed Session)

ICC-01/05-01/13

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- 16 (Closed session at 10.47 a.m.)
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- 23 (Redacted)
- 24 (Open session at 10.49 a.m.)
- 25 THE COURT OFFICER: We are in open session, your Honour.

1 PRESIDING JUDGE SCHMITT: Thank you.

2 Mr Witness, good morning. You are going to testify before the International  
3 Criminal Court. On behalf of the Chamber I would like to welcome you to the  
4 courtroom.

5 This Chamber has been established to try the case of the Prosecutor against  
6 Jean-Pierre Bemba Gombo and others. You are called to testify to assist us in the  
7 search for the truth.

8 Mr Witness, there should be and I hope so, there is a card in front of you with a  
9 solemn undertaking to tell the truth. Could you please read out loud this card.

10 WITNESS: CAR-OTP-P-245

11 (The witness speaks Sango)

12 THE WITNESS: (Interpretation) I solemnly swear that I shall tell truth, the whole truth and  
13 nothing but the truth.

14 PRESIDING JUDGE SCHMITT: Thank you, Mr Witness. Mr Witness, you are now under  
15 oath. You have already been informed about the importance to speak the truth.

16 Nevertheless, the Chamber wants to reiterate to you that, as you have just promised, you have  
17 to speak the truth and that it is an offence within the jurisdiction of this Court to give false  
18 testimony.

19 We should go then into private session, please.

20 (Private session at 10.51 a.m.)

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Trial Hearing

(Private Session)

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Trial Hearing

(Private Session)

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Trial Hearing

(Private Session)

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- 24 (Private session at 11.33 a.m.)
- 25 (Redacted)

Trial Hearing

(Private Session)

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(Private Session)

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5 (Open session at 11.42 a.m.)

6 THE COURT OFFICER: We are in open session, your Honour.

7 MR VANDERPUYE:

8 Q. Mr Witness, we're now in open session, so I'd ask you to just be mindful of that and  
9 avoid stating anything that may tend to identify you. And I have just a few questions for  
10 you.

11 First question is: Do you remember testifying in the case of Prosecutor versus  
12 Jean-Pierre Bemba Gombo?

13 A. Yes, I do recall that.

14 Q. Do you remember when you testified in that case?

15 A. Yes, I do.

16 Q. And what is your recollection as to the dates that you testified in that case? If you  
17 don't remember, just let us know.

18 A. I do remember the date. It was on the 18th, 18 June 2013.

19 Q. And do you recall if your testimony comprised just the one day or other days?

20 A. I really no longer remember because I fell ill during my testimony and I had to stop my  
21 testimony. So I stayed on for a few more days, so I really no longer remember very well.

22 Q. Okay. The Chamber has this information in any event.

23 In the course of your testimony, do you remember if you were called as a Defence  
24 witness or witness for the Defence or a witness for the Prosecution or in some other  
25 capacity?

1 A. I remember testifying as a Defence witness.

2 Q. And did you testify in the favour of Mr Bemba?

3 A. Yes.

4 Q. All right. I'll come back to some of the substantive parts of that testimony in a little  
5 while. Can you tell us, were you in the Central African Republic between October 2002 and  
6 March 2003? Just please answer "yes" or "no" and then we can proceed to private session if  
7 we need to develop this further.

8 A. No.

9 MR VANDERPUYE: Can we go into private session please, Mr President?

10 PRESIDING JUDGE SCHMITT: Private session.

11 (Private session at 11.47 a.m.)

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Trial Hearing

(Private Session)

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4 (Open session at 11.57 a.m.)

5 THE COURT OFFICER: We are in open session, your Honour.

6 MR VANDERPUYE:

7 Q. Just again we're in open session, and that means that you need to be especially attentive  
8 not to provide information that may tend to reveal your identity, and I'll try to do the same,  
9 okay?

10 A. That's fine with me.

11 Q. Before today at some point you and I have met; is that fair to say?

12 A. That is true.

13 Q. And most recently we met last week in this building; is that fair to say?

14 A. (No translation)

15 MR VANDERPUYE: We don't seem to have an answer in the record in English.

16 THE WITNESS: (Interpretation) I understood the question. The last time that we met was  
17 last week in this very same building.

18 MR VANDERPUYE:

19 Q. Thank you, sir.

20 All right. Now it seems that we don't have the answer in the French transcript. I  
21 don't know if it's a technical problem.

22 PRESIDING JUDGE SCHMITT: Me neither.

23 MR VANDERPUYE: The miracle has happened and it is now in the record.

24 Q. Okay. And prior to that meeting last week, without telling us, telling the Chamber  
25 where, can you confirm that we have met as well?

1 A. Yes, I can confirm that.

2 Q. Can you tell the Chamber approximately when that was?

3 A. I no longer recall the date. I might remember the month and the year.

4 Q. All right. Before you and I met, did you have an opportunity to meet with other  
5 members of the Office of the Prosecutor? And if you can tell us, when was the first time you  
6 met?

7 A. Other than you, I met with (Redacted) and a white lady. I don't remember her name  
8 anymore. We met with him, (Redacted)  
9 (Redacted) That was on 17 February.

10 THE INTERPRETER: Correction from the Sango interpreter: (Redacted)  
11 (Redacted)

12 MR VANDERPUYE:

13 Q. Okay. And can you tell us what transpired the first time that you met with members of  
14 the Office of the Prosecutor, in particular having met with (Redacted)

15 A. Do you want me to tell you what was said? What are you asking me to do exactly?

16 Q. Just to say or tell the Chamber just basically what transpired, what happened, and then  
17 we can talk about the details of what was said a little bit later on. And be mindful also that  
18 we are in public session, so if there is anything that may identify you, let us know and we can  
19 move into private session.

20 A. Well, if that's the case, I think we should go into private session.

21 MR VANDERPUYE: Thank you.

22 Mr President.

23 PRESIDING JUDGE SCHMITT: Yes, we go into private session.

24 (Private session at 12.04 p.m.)

25 (Redacted)

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(Private Session)

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Trial Hearing

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Trial Hearing

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Trial Hearing

(Private Session)

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- 13 (The hearing ends in private session at 4.03 p.m.)