

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
6 Arido - ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and Judge Raul
8 Pangalangan
9 Trial Hearing
10 Monday, 12 October 2015
11 (The hearing starts in open session at 9.33 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 Now I ask for the appearances of the parties.
23 We start with the Prosecution.
24 MR VANDERPUYE: Good morning, Mr President, your Honours, everyone. The
25 Prosecution is represented today by Olivia Struyven, seated to my left; Sylvie Vidinha,

- 1 seated behind her; and behind me, Ekaterina Kopylova; I'm Kweku Vanderpuye.
- 2 Good morning, your Honours.
- 3 PRESIDING JUDGE SCHMITT: Thank you.
- 4 Now the Defence please.
- 5 MR GOSNELL: Good morning, Mr President, your Honours. Christopher Gosnell
- 6 on behalf of Mr Mangenda, to my left; accompanied by Nikki Sethi, legal assistant;
- 7 and co-counsel Maître Arthur Vercken.
- 8 MR DJUNGA: (Interpretation) Good morning, Mr President. Maître Paul Djunga;
- 9 Mr Steven Powles; Madam Rosalie Mbengue. We are representing Mr Maître Kilolo.
- 10 MR TAKU: Good morning, Mr President. Good morning, your Honours. My
- 11 learned colleague and brother, Phillipe Larochelle appears for Mr Arido; and with us
- 12 today is our case manager, Mr Michael Rowse.
- 13 MR KILENDA: (Interpretation) Good morning, Mr President. Good morning,
- 14 your Honours. Maître Azama Shalie Rodoma; and Maître Kilenda, respectively
- 15 co-counsel and lead counsel, for Fidèle Babala Wandu, to my right; and also
- 16 Adriana-Maria Manolescu, case manager, for the defence of Mr Babala.
- 17 MS TAYLOR: Good morning, Mr President, your Honours. Melinda Taylor
- 18 appearing on behalf of Mr Jean-Pierre Bemba, who is on my right; and today I'm with
- 19 Ms Natacha Lebaindre. Thank you.
- 20 PRESIDING JUDGE SCHMITT: Thank you very much.
- 21 And now we have another person that we don't know yet. I assume that this is
- 22 Ms Doucerain. And could you kindly introduce yourself, please.
- 23 MS DOUCERAIN: (Interpretation) Yes, good morning, Mr President, your
- 24 Honours. Karine Doucerain, duty counsel for Witness 260.
- 25 PRESIDING JUDGE SCHMITT: Thank you very much.

1 Before turning to the testimony of the next witness, the Chamber wishes to issue a
2 few directions and the Chamber has not forgotten that the Arido Defence wants
3 to address some housekeeping matters. We can do that after we have issued these
4 directions.

5 First direction: Oral decision on accompanying transcriptions for audiovisual
6 experts played in Court.

7 We have discussed about this last week.

8 First, the Chamber will clarify how it wishes for the interpreters and court reporters
9 will use the transcriptions provided by the parties when they play audiovisual
10 materials. We all recall that from last week.

11 When the parties give transcripts of a audiovisual material which they intend to use,
12 the court reporters are to copy the transcription verbatim into the record. The
13 interpreters would then read out or translate this transcription accordingly.

14 The interpreters can note for the record before any recordings are played that they are
15 reading a part-prepared transcription. This will make it clear for the record that they
16 are not translating the played recording in realtime.

17 Should the parties disagree with the accuracy of the transcription, they may request
18 corrections to the transcript as needed in accordance with decision 1209.

19 This concludes the first oral decision.

20 The second oral decision is on the motion requesting directions for refreshing
21 recollection and for impeachment of a party's own witness.

22 Second, the Chamber will now turn its attention to Defence motion 1357 which is
23 called, I repeat this, motion requesting directions for refreshing recollection and for
24 impeachment of a party's own witness.

25 The Defence requests the Chamber to require a calling party seeking to refresh a

1 witness's recollection with a prior statement, first, to establish the nature of the
2 witness's failure to remember and, second, to ask the witness whether he believes that
3 his memory would be refreshed by resort to the information sought to be put before
4 the witness.

5 The Defence also requests a guideline in respect of impeachment. Reference to prior
6 statements by the calling party will be permitted only where, first, the calling party
7 has sought, expressed permission from the Trial Chamber to do so and, second,
8 permission is granted on the basis that the witness is demonstrably hostile.

9 The Defence makes specific reference in its motion to the way P-261's prior statements
10 were used by the Prosecution in its recent examination of him. I would first like to
11 hear from the Prosecution as to how they respond to the Defence request, and it
12 would be helpful if you could clarify if you wanted to impeach Witness P-261.

13 Please, Mr Prosecutor.

14 MR VANDERPUYE: Thank you, very much Mr President. I was a little worried
15 that you'd already made a decision.

16 PRESIDING JUDGE SCHMITT: (Overlapping speakers) The basic -- the line that
17 we had was decision -- the oral decision will be rendered afterwards of course.

18 MR VANDERPUYE: Yes. Thank you very much for the opportunity to address the
19 Chamber.

20 I have read the Defence filing and there are some problems I think with it in terms of
21 what the remedy is that the Defence seek in this case.

22 First is the question of the use of the statement. The motion is predicated
23 fundamentally on the assumption that the statement was used in a manner -- that the
24 statement was used as a prior inconsistent statement, or a prior out-of-court
25 declaration with this witness.

1 So I want to clarify, first of all, that the entire purpose of laying the foundation for the
2 use of that statement through eliciting from the witness in his present testimony that
3 the statement that he previously made was true was to incorporate that statement and
4 its contents and the truth of those contents into his present testimony, which -- which
5 is an issue that is noticeably absent from the Defence filing in the case. And it is
6 absent from the Defence filing in the case because it precludes the arguments that the
7 Defence are making.

8 The use of a witness's statement that is adopted as his present testimony in a case is
9 neither leading nor necessarily impeachment by reference to it. It's as though I were
10 to say, "You just testified two minutes ago X, and now you're saying Y, which is it?"
11 Those two statements on the present record before the Chamber stand in equipoise
12 against any other evidence that is adduced from the witness on the specific issue.

13 So I think there's a fundamental misunderstanding or misgiving concerning the use of
14 the statement to begin with.

15 In terms of the use of statements, out-of-court statements for the purposes of either
16 impeaching a witness or refreshing their recollection, absent the witness adopting the
17 statement in court under oath before the Chamber, that's another matter altogether
18 and that I can address as well.

19 In terms of the application of the Defence concerning the manner in which a witness's
20 recollection is refreshed, it seems to me that the Chamber is neither bound by any
21 particular rubric, any particular rituals that are derivative of the common law system.
22 We're all experienced counsel her. You are professional Judges and you are perfectly
23 capable of weighing and assessing the evidence that's adduced through a witness
24 through a manner of refreshing recollection that is not necessarily a textbook method
25 that is derived from a common law system, because we are a hybrid system and we

1 are from different systems, and the Chamber is readily able to make that assessment.
2 So I don't think there's any need to adopt any specific rubric or specific procedural
3 mechanisms where it is obvious that the witness's recollection is being refreshed, as
4 was the case with 261.

5 In many instances you may recall, because I don't think there are specific instances
6 cited in the Defence motion, but you will recall in many instances where the witness
7 said he could not remember the specific words that he used or the specific question
8 that was put to him in his prior statement. And, effectively, when the statement was
9 shown to him the witness -- the witness actually confirmed the statement: That's
10 what I meant, that's what I said, that's what I interpret what I said to mean presently.
11 That's not impeachment. That's a clarification of a present testimony before the
12 Chamber.

13 And in terms of -- in terms of the impeachment -- let me just add one other thing:
14 With respect to the notion of incorporating a witness's prior statement as their present
15 evidence before the Chamber, that's something that's well-recognized, both
16 internationally and domestically in many common law jurisdictions. It is something
17 that is enshrined in the principle that underlies Rule 92ter in the ICTY's Rule of
18 Procedure and Evidence, where the witness is available for cross-examination, the
19 witness attests to their prior statement, the truth and accuracy of that testimony -- of
20 that statement, that becomes part of their evidence before the Court, which is
21 essentially what happened with respect to 261.

22 And in terms of the regulation of impeachment, it seems to me that if a party intends
23 to impeach their witness, certainly it is within the discretion of the Chamber to
24 regulate how that occurs, whether there's any particular litany that is required or any
25 particular -- slow down. I've got it.

1 Whether there's any particular litany that may be required, whether there is any
2 formalistic means by which the party should proceed lies entirely within the
3 discretion of the Chamber. I think that the Chamber had made with respect to 261
4 and will make with respect to the following witnesses appropriate determinations as
5 to whether and when such a procedure should apply. I know that there is
6 jurisprudence in this Court, but I don't think it's binding on this Chamber in any
7 event, but there is some jurisprudence as to the use of statements or the process that
8 applies to the impeachment of a witness.

9 I would underscore that that is an ad hoc determination that the Chamber may make
10 with due regard to the circumstances. And I would also add that it's quite clear even
11 in international jurisprudence that the Defence cites the Popovic appeals decision on
12 this matter, and it's quite clear from that appeals decision that that is a matter that
13 rests entirely within the discretion of the Chamber, notwithstanding that the decision
14 held that there should be some procedure that applies. What the nature is of that
15 procedure, the steps that are required is left to the discretion of the Chamber.

16 The other thing that that decision also importantly points out though is that there
17 has to be and the Chamber should consider that there is flexibility in this respect.

18 Whether the witness is adverse, whether the witness is hostile in the circumstances,
19 whether or not the statement is being used simply to refresh recollection or simply to
20 clarify an inconsistency in two positions that lie together on the present record are all
21 determinations the Chamber has to make. It is entirely appropriate for a Chamber to
22 allow a witness's evidence to be clarified, their recollection to be refreshed without
23 making a determination necessarily that the witness is either hostile, adverse so as to
24 require or necessitate their impeachment.

25 Just so the record is clear, that's at the Popovic appeal decision. It's a decision on

1 appeals against the decision on impeachment of a party's own witness,

2 1 February 2008. The reference is IT-05-88-AR-73.3, paragraph 28.

3 That's our position in a nutshell. With respect to this Witness P-261, to the extent
4 that the Defence are either challenging the decisions made by the Chamber during the
5 course of that witness's evidence, I would oppose the application as essentially
6 relitigating a decision that have already been made by the Chamber.

7 Alternatively, I think that the record is quite clear as to the propriety of the
8 examination and the use of the statement as a present reflection of his testimony
9 before the Chamber and, therefore, none of these issues apply.

10 That's it in a nutshell. I'm sorry to have taken as long as I have, Mr President.

11 PRESIDING JUDGE SCHMITT: No, I think this is an important issue. As you all
12 are well aware of, we have been not very specific in the conduct of proceedings
13 directions, and that was for a reason. And it's perfectly clear that we all in this
14 courtroom have to accustom ourselves a little bit to an approach that is not
15 completely common law of course and of course also not completely civil law, but is a
16 hybrid approach.

17 (Trial Chamber confers)

18 PRESIDING JUDGE SCHMITT: Yes, and the Chamber will retire for a little
19 deliberation. It will not take long, perhaps ten minutes, and then -- yes.

20 MR LAROCHELLE: Can I briefly reply to the Prosecutor? If I can be granted --

21 PRESIDING JUDGE SCHMITT: Briefly, yes.

22 MR LAROCHELLE: Very briefly. So we hear from the Prosecutor that there is
23 actually no foundation for the use of the statement. I thought, I was wondering, now
24 we have a clear position, which is the use of the statement is to refresh the memory of
25 the witness about what he told the Prosecutor. This is different from reminding the

1 witness about what happened and the event itself.

2 The Prosecutor is just trying to iron out and to basically remind the witness about the
3 version he would like you to have. But can I just remind you of what few facts about
4 these witnesses?

5 First, they are paid by the Prosecutor to testify here. They are receiving benefits first
6 from the Prosecutor, then from the VWU. They have refused systematically to be
7 interviewed by us. This, we will probably save days of hearing time if we would
8 have been given the opportunity to interview these witnesses who are now working
9 from the Prosecutor. They are self-confessed liars. We have a right to confront
10 their evidence. And the purpose for which the Prosecutor proposes to use the past
11 statement of the witness have no ground, no basis. We are losing time. The
12 witness should just testify. Maybe we won't even confront the witnesses with those
13 mere inconsistencies or mere contradictions. Our role is here to maybe bring the
14 witness into a different light. So those are my few comments about the Prosecutor's
15 response.

16 PRESIDING JUDGE SCHMITT: Thank you.

17 Also first, Mr Gosnell, Mrs Taylor rose first, so she has of course first the floor.

18 MS TAYLOR: I'll be very brief. Thank you very much, Mr President.

19 We've heard today about common law precepts, and we've heard about Rule 92ter.

20 But what we haven't heard is the ICC Rules of Procedure and Evidence, in particular,
21 Rule 68. What it seems the Prosecutor is doing is laying a foundation to admit the
22 statement for the truth of its contents.

23 We have a provision. We have an appeals judgment decision in the Bemba case
24 which governs the use of statements such as this. And they are clear criteria, there is
25 clear guidelines, exceptional circumstances. The Judges must take into consideration

1 the impact upon the rights of the accused and whether it goes to acts and conduct.

2 The Appeals Chamber was also very cautious about the wholesale introduction of

3 such statements. So of course it's concerning to hear about statements being

4 admitted when there's no grounds to do so because the witness testified in accordance

5 with the principle of orality, which was guaranteed by the Appeals Chamber. Thank

6 you.

7 PRESIDING JUDGE SCHMITT: Mr Gosnell, I assume that it is in line with what

8 Mrs Taylor said, of course you have also the floor.

9 MR GOSNELL: Thank you, Mr President. I appreciate your forbearance. And

10 rest assured, I am going to say something new and not just repeat what has been said.

11 And it has to do with -- and I appreciate your Honours' acknowledgment of the

12 fundamental importance of this issue. And one of the questions that was raised was,

13 by my learned friend opposite was isn't this just the same as the witness being asked

14 to comment on what had just been said by the witness a few minutes previously?

15 And, Mr President, that's actually not true at all. And this does go to the heart of the

16 difference between an inquisitorial system and an adversarial system. In an

17 inquisitorial system, if you are going to refer to a prior statement, usually that prior

18 statement will have been taken under some form of judicial control or supervision.

19 It has a certain degree, therefore, of reliability and transparency as a result of that

20 supervision and those rules.

21 What is being referred to here are lengthy transcripts of interviews conducted

22 essentially by the police. They are not conducted with the same level of

23 transparency or control or guidance that would be required by an instructing Judge.

24 And that means that you are introducing material that is very different from a prior

25 statement by the witness on the stand; not to say that it can't be referred to under any

1 circumstances, but that your Honours will get the best impression of the witness's
2 actual recollection in respect of events -- and that's a very key point that my colleague
3 made -- if you hear it from the witness directly, and if there are failings in their
4 memory, then you will understand how it's been refreshed.

5 And just to say one more thing, Mr President, I do appreciate your patience, this
6 Chamber has already laid down a procedure for how Rule 68(3) is to be used, and it
7 has been resorted to already by the Prosecution in this case. If they wish to do that
8 in terms of adoption, because that was the point being made by my learned friend,
9 they could have resorted to it and they didn't at least in respect of this witness.

10 And just to clarify, Mr President, there has been no request for reconsideration. That
11 was not the purpose of the motion. So that matter can be taken off the table. Thank
12 you.

13 PRESIDING JUDGE SCHMITT: Of course you, Mr Powles, also get the floor and for
14 one or two sentences also Mr Larochelle. You can see by that and afterwards you
15 can perhaps respond also very shortly, you see indeed it's correct what you're saying,
16 Mr Gosnell, that the Chamber deems this question as so important that we should
17 address this here in the courtroom and discuss it as we wished it to do so in general in
18 a lively debate, to put it this way, and I appreciate that very much.

19 So Mr Powles is the next.

20 MR POWLES: I'm very grateful, Mr President. I saw Mr Vanderpuye on his feet.
21 I wonder if he'd rather I went first so he can respond to all the Defence submissions
22 before he addresses the Court?

23 Very briefly then, Mr President, your Honours, in addition to all the points that
24 already been made and the written motion by the Defence and those by my learned
25 colleagues this morning, what we would seek to do on behalf of Mr Kilolo is

1 respectfully remind the Chamber of an unusual feature of this case and the use of
2 prior of statements and interviews by the Prosecution in this case; and that is that
3 each interview which each of the these Prosecution witnesses I think I'm not mistaken
4 by saying in relation to every of these witnesses was prefaced and predicated by a
5 statement of limited use, which is an unusual feature of this case.
6 And your Honours will remember the contents of each of those statements of limited
7 use which each of these Prosecution witnesses have entered into and signed by the
8 Prosecution. Essentially each is cautioned that if they deviate from the interview
9 that they have given to the Prosecution, that they themselves are now and thereafter
10 at risk of prosecution.
11 My learned friend reminds you respectfully that you are professional judges, and we
12 would respectfully adopt and agree with that; and that no doubt your Honours will
13 treat with caution a situation where a Prosecution witness is prompted to or pushed
14 to adhere to or maintain a previous statement that they have given an interview to the
15 Prosecution in light of and with the statement of limited use in the background of
16 their testimony.
17 Moreover, as my learned friend Mr Gosnell reminded you and drew attention to,
18 there was no Defence representative or even independent officer of the Court present
19 when these interviews were given to the Prosecution. Yes, it's right that some of
20 these witnesses had representation, but there was no representation of those against
21 whom those statements and interviews would be used and certainly no independent
22 officer of the Court present when those interviews were being taken.
23 So we would caution and invited the Chamber to give limited weight and value to
24 those independent -- to those interviews given to the Prosecution by these witnesses
25 prior to their testimony in Court.

1 PRESIDING JUDGE SCHMITT: Thank you.

2 Please very short, Mr Larochelle, because you had the floor before.

3 MR LAROCHELLE: I don't even to talk about that. I simply want to know
4 whether you would like me to address the housekeeping matters that I want to raise
5 now before you retire so you can also ponder on these or if you want to wait before?
6 I was simply offering to do that now. It's up to you, your Honour.

7 PRESIDING JUDGE SCHMITT: I don't hope that the housekeeping matters will
8 force us to retire again to deliberation. I don't know. But I think it would be the
9 best to now hear from the Prosecutor what he wants to answer to your colleagues,
10 because this is the issue that we are at the moment discussing.

11 MR VANDERPUYE: I will just say at the outset that I'm somewhat concerned about
12 the additional arguments that the Defence have raised in addition to their filing that
13 was submitted.

14 But I'll start first with Mr Powles, because this is the second time that I think he has
15 mischaracterized the nature of the statement of limited use.

16 The document he has in front of him, he's read the conditions under which those
17 statements were taken. The conditions under which those statements were taken,
18 which I attempted to elicit from the Witness 261 before the Court was objected to by
19 most of the Defence. I can't remember who. And so the foundation and the
20 contents of that material the Defence sought to prevent the Chamber from knowing
21 about, notwithstanding the Prosecution's attempt to put it squarely before the
22 Chamber so the Chamber could evaluate the nature, the circumstances and all of the
23 issues surrounding the statement made by the witness to the Office of the Prosecutor.
24 That agreement does not say and does not suggest that the witness will be prosecuted
25 if they don't stick to what they told the Prosecution. Its plain reading is simply that

1 if the witness deviates from what they've told the Prosecution is the truth, that that
2 statement can be used to rebut what they claim when they testify at trial. That's
3 what it says. There's no dispute about it.
4 Mr Powles has that thing right in front of him. He can read it into the record so that
5 we're on all -- we're on all fours all of us about what the nature of that agreement is.
6 So that argument, I would submit, does not hold any water, and it's the second time
7 he's made this representation. The first time was in front of the witness himself.
8 As to Mr Gosnell's arguments concerning challenging the witness's evidence as he
9 delivers it, one of the fundamental problems with his argument and I think the same
10 for Ms Taylor's argument is it presupposes that this statement is coming into evidence
11 without the Defence having an opportunity to examine the witness, right. It violates
12 the principle of orality because the Defence is not in a position to examine the witness
13 about the circumstances of the statement when the witness is on the witness stand.
14 Anything they want to know about how the statement was taken, who was there,
15 what happened, what was said, A, they have in front of them and they have the
16 witness to answer the question. So it doesn't violate the principle of orality by any
17 stretch of the imagination.
18 In respect of Ms Taylor's argument concerning Article 68, I would also -- I'm sorry, in
19 terms of Ms Taylor's arguments, I would also point out that this Court has Rule 68,
20 Rule 68(3). Rule 68(3) is not an exception to the principle of orality. Why?
21 Because the witness is on the witness stand and the witness can address every issue
22 that is raised in a prior statement. It is entirely consistent with the principle of
23 orality.
24 And the Defence can't rely on the fact that they simply don't want to get into the
25 circumstances in order to cross-examine a witness and then claim that the witness's

1 prior statement violates the principle of orality. That is -- it is entirely dependent
2 upon the opportunity to examine the witness which they are presented with
3 unequivocally.

4 Now, I'm sure that I'm -- I'm sure that I'm forgetting an argument or two, but I would
5 say also that the reason why I raised the question of 92ter was to establish that the
6 notion of a witness incorporating a prior statement as their statement in court is one
7 that's well established, it's well recognized, not just in -- not just internationally, but
8 domestically. There's several domestic cases, which I'm sure my colleagues are fully
9 aware of that when a witness says to a Chamber under oath that what I said
10 previously is true in its -- in whatever respect, that that is a binding testimony of the
11 witness presently before the Chamber.

12 And during the course of 261's examination, the Defence basically went
13 round-robin objections on the laying of the foundation for that proposition fully
14 aware that once the witness adopts that, adopts their prior testimony, incorporates
15 their prior testimony, that all of the issues arising concerning the refreshing of the
16 recollection, concerning impeachment by a prior inconsistent statement evaporate.
17 There is no argument about impeachment by a prior inconsistent statement when the
18 statement isn't prior. It is their present testimony.

19 And so I think the Chamber should take that into consideration.

20 In terms of Mr Larochelle's argument, I can hardly remember exactly what he said,
21 but I would say with respect to what he was arguing that it conflates the issue before
22 the Chamber.

23 There's absolutely no reason why a witness cannot testify to their prior statement
24 before the Chamber and the contents of the prior statement before the Chamber.

25 There's no rule against hearsay here. The witness is simply attesting to something

1 that they said at another time, which is entirely admissible in these circumstances.

2 And it should not be the case that simply when the witness has made a prior
3 statement, the Prosecution should overlook that prior statement in order to lead
4 evidence before the Chamber when it is entitled to and the witness can attest to the
5 reliability of that statement. And in this case that's exactly what happened and the
6 witness adopted it. It's not a question of impeachment. It's not a question of
7 refreshing the recollection.

8 And I think that the Defence have -- if you look at the filing, that's the elephant in the
9 room. The prequalification of that prior statement as the witness's present evidence
10 before this Chamber under oath is what is missing from every single one of their
11 arguments and the filing itself because it's dispositive of the issue. It actually
12 renders their -- all of their arguments fundamentally moot. That's why you don't see
13 it, that's why they're not arguing it today.

14 MR TAKU: May it please, your Honours. Just one word. I think --

15 PRESIDING JUDGE SCHMITT: Yes.

16 MR TAKU: -- what the Prosecutor has just described we call that internal
17 inconsistency. It cannot just be about adopting a prior -- a statement as his evidence
18 in this case. It becomes an internal inconsistency. He has to make a distinction
19 between contradictions and internal inconsistencies. And these internal
20 inconsistencies render the witness even more unreliable.

21 PRESIDING JUDGE SCHMITT: Thank you very much. That should be enough as
22 a foundation for the deliberation.

23 As I said, we retire for deliberations. I would say 15 minutes at the least we will -- it
24 will take us.

25 THE COURT USHER: All rise.

1 (Recess taken at 10.05 a.m.)

2 (Upon resuming in open session at 10.37 a.m.)

3 THE COURT USHER: All rise.

4 PRESIDING JUDGE SCHMITT: The Chamber will now render its ruling on this
5 request.

6 The Chamber recalls at the outset its oral direction at the commencement of the trial
7 that, and I quote, "The Chamber has not set strict regulations on questioning so that
8 appropriate limitations can be set on a case-by-case basis." Quote end.

9 Issuing general guidelines clash with this previous direction so the Chamber will only
10 respond to the Defence's request in a limited manner.

11 From the outset the Defence's proposal for refreshing recollection appears to be
12 reasonable. The Chamber would appreciate it if the examining party would first try
13 to elicit the information sought by asking direct questions before seeking to refresh
14 the witness's recollection.

15 However, the Chamber deems it not necessary to ask the witness before such try to
16 recollect his memory if he or she believes his or her memory would be refreshed.

17 The Chamber would also emphasise that when prior statements refresh a witness's
18 recollection, the evidence given is the witness's subsequent testimony and not the
19 contents of the prior statements.

20 The Chamber recalls should the Prosecution intend to use the prior recorded
21 statements to prove the content of this prior statement, that the Prosecution must give
22 21 days' notice before introducing statements under Rule 68(3). The rule itself also
23 requires that the witness indicates that he or she does not object to the submission of
24 the prior recorded testimony.

25 It is therefore unnecessary to formally submit the witness's prior statements when

1 they were used solely to refresh the recollection.

2 As regards a general guideline for impeaching witnesses, the Chamber does not
3 consider that any such guideline is necessary or appropriate. The Chamber will not
4 abandon or undermine its authority to control the calling party's questioning of its
5 witness. Any improper use of witnesses' prior statements will not be tolerated and
6 non-calling parties are always entitled to object to the way a prior statement is put to
7 a witness.

8 The Chamber recalls that many such objections were raised and ruled upon during
9 P-261's testimony. This concludes the Chamber's ruling on Defence motion 1357.

10 As a final matter -- we have a third oral decision that is on submitting evidence by
11 email and P-261's materials. As a final matter and as stated by the Chamber last
12 week the parties may formally submit items by email. This has the advantage of not
13 having to reread all the ERNs of all the items in Court. Whenever this is done the
14 tendering party is to request during the hearing to file the list of items by email.

15 In accordance with Rule 64 of the Rules the other parties will be given an opportunity
16 to raise any issues with respect to any of the items used during the tendering party's
17 examination. These items will then be recognized as formally submitted and the
18 tendering party may send its email in copy to the other parties and court officer with
19 a full list of ERNs.

20 Once the Registry has marked these items as formally submitted in the eCourt
21 metadata, it is then to submit a formal filing containing the list of items which it has
22 marked as formally submitted for a particular witness.

23 As regards the documents requested for formal submission related to P-261, the
24 Chamber notes the Prosecution's email of 8 October 2015 containing 20 items. In
25 view of the Chamber's direction today on refreshing recollection, the Chamber

1 reiterates that it will not consider these prior recorded statements to prove the content
2 of these statements if the Prosecution has not made use of Rule 68(3) and the
3 procedure established by the Chamber in the conducts of proceedings direction.

4 Now we turn to the upcoming testimony of Witness 260 and we will discuss the issue
5 of protective measures and Rule 74 assurances.

6 Or should we address first the housekeeping matters? I hope they are not too
7 serious, but perhaps we should do that before. We should hear what you want to
8 say, Mr Larochelle.

9 MR LAROCHELLE: I will be very brief. The first housekeeping matter is the issue
10 of obtaining the benefits given to that witness and we wrote emails about that, but we
11 would like to know -- for us it is important to assess their credibility and for the Trial
12 Chamber as well to know the full extent of the benefits of course without
13 compromising their security. I think there's easily a way where -- we don't want
14 their address, we're not interested, but we would like to know how long they're
15 supposed to get rent and food and family allocations. I think we should be able to
16 get that.

17 The question of -- the issue of the fact that they testify for promises or what
18 consideration, we think we should get that, so we would request an order from the
19 Trial Chamber to the Registry, I guess, to obtain in a form that would not jeopardise
20 protection measures this information. That's the first.

21 PRESIDING JUDGE SCHMITT: Perhaps we address this first and ask the
22 Prosecution if they want to say something to that.

23 MR VANDERPUYE: I wouldn't have a problem with the Defence addressing the
24 matter to the VWU or to the Registry as concerns any benefits that they allege were
25 conferred on this witness or witnesses that may be coming. We would note,

1 however, that this is information that the Defence has been in possession of for a very
2 long time now and it seems to me that the timeliness of the request is in issue
3 considering the speed with which this case is going, considering the length of the
4 Prosecution's direct case. So we don't know that it's -- that it's timely, but certainly
5 I would -- I would suggest to the Chamber that proceeding not be delayed as a result
6 of this because this in my view is a seriously belated request for this information.
7 Mr Larochelle has been aware of this for a very long time, as has Mr Taku and the rest
8 of the Defence in this case.

9 PRESIDING JUDGE SCHMITT: No, no, Mr Larochelle, I don't need further
10 submissions on that. I think we know what is on the table and we will defer a
11 decision. We will not -- we will proceed today as we want and of course we will
12 keep in mind what has been said by both the Defence and by the Prosecution.
13 The second housekeeping matter, Mr Larochelle?

14 MR LAROCHELLE: The second housekeeping matter, another very short one, we
15 were given until Wednesday to file a response for the judicial notice motion of the
16 Prosecutor. We have very busy days these days. If we could have until Friday
17 afternoon, that would be much appreciated. This is something you can decide over
18 lunch and inform us after that.

19 PRESIDING JUDGE SCHMITT: Exactly we will do that. We will decide that after
20 lunch. Okay.

21 MR LAROCHELLE: And the last one is, this is the last one, and I'm very grateful for
22 the time.

23 PRESIDING JUDGE SCHMITT: I appreciate that, that it is the last one.

24 MR LAROCHELLE: The last one is concerning disclosure that we received Friday
25 afternoon, and this is a list of contacts between the Office of the Prosecutor and the

1 witness who is about to take the stand. We had been requested that -- requesting
2 this information for a long time. It's in our list of document. We can -- we can
3 bring it up if that would clarify matters. It's tab 32 of our documents at -- the
4 reference is CAR-OTP --

5 PRESIDING JUDGE SCHMITT: I think this is premature. Don't you think so?

6 MR LAROCHELLE: Well, I wanted to show it to you, but I can address it orally.
7 Basically we have a list now of 43 pages which detail the contacts the witness had
8 with the Prosecution and in those summarized contact we see that it refers to more
9 reports from the Prosecutor's investigators about these meetings which we still don't
10 have and this is -- I want to alert your Honours because this is the second time that
11 we receive last-minute disclosure. With Witness P-261 on the day where he started
12 we had on our office the unredacted version of his statement where we could find all
13 the phone numbers we needed.

14 So we think -- we request the Prosecutor to disclose immediately these list of contacts
15 for all the other witnesses so that we're not stuck with material received at the last
16 minute in the preparation of our cross-examination.

17 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, do you want to respond to this
18 request?

19 MR VANDERPUYE: Thank you, Mr President. I think Mr Larochelle is well aware
20 that the information that we provided to the Defence concerning Prosecution contacts
21 with this witness is work product under Rule 81.

22 What we've done in this case is we have in response to specific requests that have
23 been made by -- first by the Bemba Defence for a given period of time and secondly
24 by the Arido Defence concerning this information, we have decided in the -- in the
25 interests of being expeditious to simply disclose our internal contact -- witness contact

1 database information. We've redacted it appropriately because it is work product.
2 Alternatively, we can extract information from it and provide that, but the fastest way
3 to do it was to disclose it in this way, which is what we've done.
4 With respect to 261, that was done concerning Ms Taylor's request for a period of time
5 from November, I think, until December of I think it was 2013, which we provided.
6 We provided her the dates of the contact and then subsequently provided the
7 substance of those contacts.
8 We've done the same thing with respect to this witness. We will do the same thing
9 with respect to 245. But our view of it is that the fact that the Prosecution has had
10 contact with its witnesses cannot be a mystery to the Defence at this stage of the
11 proceedings. It's obvious. Not only that, but the nature of those contacts is entirely
12 exploitable and explorable, if you can use that term, during the course of
13 cross-examination as it is in any case. And there is nothing that precludes the
14 Defence from doing that.
15 Further, the fact of the contacts is not material to the preparation of the Defence.
16 What the Defence knows is that the Prosecution has been in contact with its witnesses
17 is something that any Defence would know. Anybody on the street would know
18 that. So it does not comprise material that is necessarily met -- that is material to the
19 preparation of the Defence under Rule 77. And we provided it as a courtesy, as we
20 indicated, in our -- in our correspondence with the -- in our near daily correspondence
21 I should say with the Defence on these types of issues.
22 So I don't think Mr Larochelle's request holds any merit in this case. And to the
23 extent -- and to the extent that he has the material, he can prepare for the examination
24 of the witness. There's no prejudice as a result of this information being disclosed.
25 MR LAROCHELLE: Quickly, your Honour, when the witness sends an email --

1 PRESIDING JUDGE SCHMITT: But very quickly, please.

2 MR LAROCHELLE: When the witness sends an email begging for money to the
3 Prosecutor, that's something which can affect his credibility and we should not be
4 seeking that repeatedly. It should be -- it should be volunteered by the Prosecutor,
5 not extracted list a wisdom tooth. I'm sorry.

6 And we still have not received for example the RFA that was sent to the country
7 where these people reside allowing them to summon them and -- we're still -- despite
8 our repeated request and even your Honours' order to that effect, we have not
9 received the RFA upon which the Cameroonian police was involved in these matters.
10 So this is just replying for the Prosecutor.

11 PRESIDING JUDGE SCHMITT: But of course you understand that I have again to
12 give Mr Vanderpuye one or two sentences to respond to that.

13 MR VANDERPUYE: Mr President, Article 69(8) of the Statute reads as follows:
14 "When deciding the relevance or admissibility of evidence collected by a State the
15 Court shall not rule on the application of the State's national law."

16 Mr Larochelle's argument is predicated on the notion that the legality of the collection
17 of evidence with respect to the identification of witnesses, their location and all of this
18 kind of preliminary steps to actually get the witness or to engage the witness
19 somehow violates some international human right or some -- or the Statute itself
20 pursuant to Article 69(7). It doesn't. The Statute is explicit on this issue and what
21 they -- what Mr Larochelle is trying to do is to create an impression that information
22 concerning the interactions of the Cameroonian police or Cameroonian authorities
23 with witnesses there has an impact on the admissibility or relevance of the
24 information that is produced as a result of it. It does not. The Statute is clear on
25 that issue.

1 Secondly, he is aware of this information and he's aware of our invitation to him and
2 the other Defence as early as August to put these questions to the Prosecution so that
3 it can answer it. The Chamber is aware of that. It was in our filing. You have
4 your emails -- the emails of that exchange in front of you.

5 He was assigned to this case back in March. It was no mystery that the -- who the
6 witnesses were in this case, who the Prosecution was in contact with. The first
7 application for this specific material was made on 25 September, four days before the
8 opening statements in this case.

9 This is an issue that is of the Defence's making in this case and I don't think it's
10 appropriate necessarily at this stage for them to try to argue that there is some
11 prejudice that enures from it or that the Prosecution has been lax or inappropriate in
12 dealing with disclosure matters.

13 We have been proactive, we have invited this material, and the fact that he sits on his
14 hands and raises it 10 minutes before the witness is -- comes to testify I don't think is
15 appropriate and I don't think it should be dealt with in this fashion.

16 PRESIDING JUDGE SCHMITT: We take -- please, Mrs Taylor, but please shortly.

17 MS TAYLOR: Very quickly. I'm just very concerned that we seem to be relitigating
18 issues which were ruled upon by the Trial Chamber. The Trial Chamber has ruled
19 on the relevance of the RFAs so I'm concerned that the Prosecution is trying to reopen
20 that issue by referring to Article 69(8) when we have a decision. Than you.

21 PRESIDING JUDGE SCHMITT: Thank you very much. We take notice of all the
22 positions and of course we will discuss this with the Chamber and we will come back.
23 Now for the protective measures for P-260 we have to go into private session.
24 Please, court officer.

25 *(Private session at 10.55 a.m.) Reclassified as open session

1 THE COURT OFFICER: We're in private session, Mr President.

2 PRESIDING JUDGE SCHMITT: Thank you.

3 I was informed that I have said 261. Really? So of course I meant 260, but the
4 reason for that is of course perfectly Freudian, I would say, because we have talked
5 about that -- Freudian in German we would say because we have talked so much
6 about Witness 261 in the past days.

7 The Chamber notes that the witness testified as a Defence witness in the case of The
8 Prosecutor versus Jean-Pierre Bemba Gombo under the pseudonym D-2.

9 Trial Chamber III granted the following protection measures: The use of image and
10 voice distortion, the continued use of pseudonyms, as well as the use of the private
11 session where necessary to protect his identity.

12 The VWU has recommended retaining these measures in an email sent to the
13 Chamber on 9 October 2015.

14 According to Regulation 42(1) of the Regulations of the Court the same protective
15 measures shall apply in proceeding before this Court with a clarification that the
16 pseudonym that has been attributed by the Prosecution in this case, P-260, will be
17 used.

18 However, the Chamber also notes that Ms Doucerain has also requested that P-260
19 testify entirely in closed session. This is filing 1360.

20 Just as a question to Mrs Doucerain. P-260's testimony cannot be heard by the public
21 in either private session or closed session. The difference between them being is
22 whether the blinds in the courtroom are up or down.

23 Mrs Doucerain, is it possible to reframe your request as one to testify entirely in
24 private session resulting only to closed session to bring the witness in or out of the
25 courtroom?

1 MS DOUCERAIN: (Interpretation) Yes, I would like to rephrase my request.

2 I would request that the witness testify in closed session.

3 PRESIDING JUDGE SCHMITT: Thank you very much.

4 Now the Chamber will hear any submissions from the parties on this request.

5 And of course we start with the Prosecution. Mr Vanderpuye or Mrs Struyven, do
6 you want to -- do you have any comments on that request?

7 MR VANDERPUYE: Mr President, I think as we managed the same issue with
8 Witness 261, I think that it should be dealt with in exactly the same way.

9 There is some issue with respect to the scope of the closure of the courtroom, but
10 I think private session is perfectly adequate to deal with the issues concerning
11 self-incrimination. If the Chamber sees fit to go into closed session in certain
12 circumstances, I don't have a problem with it, but I just don't think that it's necessary
13 in the circumstances knowing what the scope of private session will be in relation to
14 those issues.

15 There is one matter I'd like to raise just before we break if -- but it's not related to this
16 issue.

17 Thank you, Mr President.

18 PRESIDING JUDGE SCHMITT: So you think it is not necessary to generally and
19 totally go into private session?

20 MR VANDERPUYE: That's correct, Mr President.

21 PRESIDING JUDGE SCHMITT: Any comment by the Defence?

22 This is not the case.

23 (Trial Chamber confers)

24 PRESIDING JUDGE SCHMITT: I think we will rule after the break that we are
25 making.

1 But you wanted to address an issue before the break?

2 MR VANDERPUYE: Yes, there is the -- I don't know if we need to go in public
3 session. Doesn't matter.

4 There is the issue with respect to the Chamber's ruling concerning the application of
5 Rule 68(3) concerning the admissibility of P-261's out of prior statements.

6 I just wanted the record to reflect that the Prosecution takes exception to the
7 Chamber's ruling for obvious reason with respect to -- with respect to its declining to
8 admit that evidence. And the reason for it is because of a ruling or series of rulings
9 during the course of the testimony of that witness whereby the contents of those
10 statements either used to refresh the witness's recollection or to clarify an issue was
11 precluded from being read into the record as a matter of course during the course of
12 the proceedings.

13 You might recall that in one specific incident I had mentioned that the record did not
14 reflect what the witness was either refreshing his recollection of or what it is that the
15 witness had said and therefore it would be an issue concerning the admissibility of
16 the statement in order to identify what it is that the witness was either refreshing his
17 recollection for or what the witness had actually said in the statement.

18 So to that extent, we take the exception to the Chamber's ruling, but I just wanted the
19 record to reflect that.

20 PRESIDING JUDGE SCHMITT: Thank you very much. We have now the break
21 until half past 11.

22 THE COURT USHER: All rise.

23 (Recess taken at 11.02 a.m.)

24 (Upon resuming in open session at 11.34 a.m.)

25 THE COURT USHER: All rise.

1 PRESIDING JUDGE SCHMITT: I think we have to go into private session for these
2 rulings.

3 *(Private session at 11.35 a.m.) Reclassified as open session

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

5 PRESIDING JUDGE SCHMITT: The Chamber will stick with the procedure that we
6 have adopted on the question if private session or public session on a case-by-case
7 basis. We will not say that we will have an entire testimony in private session from
8 the outset and we trust, as we did in the past, on the guidance of counsel.

9 The Chamber will now discuss the matter of assurances pursuant to Rule 74 of the
10 rules for Witness 260.

11 Ms Doucerain, requested Rule 74 assurances for this witness on 9 October 2015.

12 Prosecution, what are your views on these Rule 74 assurances requested?

13 MR VANDERPUYE: Thank you, Mr President.

14 Our position is the same as it was with the previous witness. We think that Rule 74
15 assurances are entirely appropriate with respect to this witness's evidence.

16 PRESIDING JUDGE SCHMITT: Thank you. Beyond the email already sent on the
17 requested assurances by the Arido Defence, we know your position, on 11
18 October 2015, do the Defence want to provide any other comments?

19 MS TAYLOR: Thank you, Mr President, your Honours. We're minded to request
20 the Chamber to issue clarification or guidance to the witness concerning the
21 relationship between Rule 74 and the statement of limited usage. And the reason
22 why we're requesting this for this specific witness comes out of an investigator's
23 report which we were disclosed over the weekend, and it is CAR-OTP-009-0882 at
24 0883.

25 And in this report the investigator records that they explained to the witness the

1 OTP's offer of guarantee over self-incrimination under a statement of limited use and
2 a condition of giving a truthful statement.

3 Now, we don't have a full record of this meeting, but it would appear if it was
4 explained in these terms that the witness might perceive this as a guarantee of
5 self-incrimination; whereas the conditions of Rule 74 are governed by the Trial
6 Chamber and are governed by the obligation of giving truthful testimony to this Trial
7 Chamber irrespective of anything that might be in the prior statement.

8 So there might be a perception or a perceived clash between these two guarantees, so
9 to speak, of self-incrimination. And in these specific circumstances we believe
10 there's grounds for clarifying the relationship between Rule 74 and this prior
11 information to the witness. Thank you.

12 PRESIDING JUDGE SCHMITT: Thank you very much, Ms Taylor.

13 I think this gives us reason to retire again for deliberation, but only for a short time,
14 I think between 5 and maximum 10 minutes, I would say, and we'll be back on short
15 notice.

16 THE COURT USHER: All rise.

17 (Recess taken at 11.41 a.m.)

18 *(Upon resuming in private session at 11.48 a.m.) Reclassified as open session

19 THE COURT USHER: All rise.

20 PRESIDING JUDGE SCHMITT: The Chamber will now render its decision on the
21 requested assurances, mindful of the factors specified in Rule 74(5) of the Rules.

22 The Chamber has decided to provide assurances pursuant to Rule 74 of the Rules of
23 Procedure and Evidence in order to enable the witness to testify truthfully without
24 fear of the consequences of self-incrimination. These assurances are granted with
25 respect to Witness 260 and as a condition as specified in Rule 74(3)(c) and 74(7).

1 The Chamber does not consider that the terms of any limited use agreement affect the
2 Chamber's authority to give assurances under Rule 74(3)(c). Contrary to the
3 arguments of the Arido Defence, Rule 74(3)(c) assurances can be given in this case.
4 This does not exclude that the witness can still be prosecuted under Article
5 70 -- Articles 70 and 71 for his future conduct such as testifying falsely before this
6 Chamber in this case. However, the witness's testimony as to his past conduct
7 cannot be used against him in a subsequent court prosecution. This concludes the
8 ruling of the Chamber.

9 Court officer, we go now into closed session so we can bring in the witness.

10 *(Closed session at 11.51 a.m.) Reclassified as open session

11 THE COURT OFFICER: We are in closed session, Mr President.

12 (The witness enters the courtroom)

13 PRESIDING JUDGE SCHMITT: I think we can start with this witness in open
14 session and then we will then go to private session.

15 (Open session at 11.52 a.m.)

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

17 PRESIDING JUDGE SCHMITT: Thank you.

18 Good morning, Mr Witness. You are 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 The Chamber has been established to try the case of the Prosecutor against Jean-Pierre
22 Bemba Gombo and others. You are called to testify to assist us in our search for the
23 truth. Mr Witness, you should have a card in front of you with a solemn
24 undertaking. Could you please have a look if you have it.
25 Could you please read out this solemn undertaking.

1 WITNESS: CAR-OTP-P-0260

2 (The witness speaks French)

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,
7 I want to reiterate to you that as you have just promised, you have to speak the truth,
8 and that it is an offence within the jurisdiction of this Court to give false testimony.
9 Court officer, could we then go to private session, please.

10 *(Private session at 11.55 a.m.) Reclassified as open session

11 THE COURT OFFICER: We are in private session.

12 PRESIDING JUDGE SCHMITT: Thank you.

13 Mr Witness, we know that you have already provided testimony before this Court in
14 another case. This Chamber wants you to testify truthfully without any fear of
15 consequences of self-incrimination. This is why this Chamber has granted you
16 assurances that nothing that you say during your testimony before this Chamber can
17 be used against you in proceedings before this Court. This includes anything that
18 you tell this Chamber with regard to your testimony before the other Chamber.

19 As long as you tell the truth and follow the directions of this Chamber, you can be
20 assured that nothing you say will be used against you by this Court. However,
21 should you not, should you not tell the truth to this Chamber, this means there can
22 future prosecutions against you for falsely testifying before this Chamber. I want
23 you to have this in your mind when you are going to testify now. Do you
24 understand that?

25 THE WITNESS: (Interpretation) I do understand you, your Honour.

1 PRESIDING JUDGE SCHMITT: Thank you. Now we can't guarantee you that
2 there will be no prosecutions against you in domestic jurisdictions for what you say
3 here. The Chamber does not have the power to do this. But what we will do in
4 order to protect you is that nothing incriminating you say will be disclosed to a State
5 or anyone outside of this courtroom.
6 Every time you say something that is potentially self-incriminating, we will go into
7 what we call private session. This means that this testimony will not be broadcast
8 outside of the courtroom and only the people in the courtroom can hear it.
9 We told the lawyers and everybody else in the courtroom that they are not allowed to
10 disclose your identity or anything self-incriminating you say to anyone. We also
11 told them that there can be proceedings against anyone who does not obey this order
12 of the Chamber. Do you understand what I have said?

13 THE WITNESS: (Interpretation) Yes, I do understand, your Honour.

14 PRESIDING JUDGE SCHMITT: Let me now explain in more detail to you how the
15 protective measures work that the Chamber has put in place for your testimony.

16 These are the following measures to protect you: Face distortion has been put in
17 place, which means that no one outside the courtroom can see your face during the
18 testimony on the screen.

19 There will also be the use of a pseudonym. In accordance with that, we will all refer
20 to you, as I have done before, only as "Mr Witness" to make sure that the public does
21 not know your name.

22 When you answer questions that will not give away who you are or might
23 incriminate you, we will do so in open session, which means that the public can hear
24 what is being said in the courtroom. You can see yourself that we are in open
25 session if the light in front of you is red. When you are asked to describe anything

1 that relates specifically to you personally, or you are asked to mention facts that
2 might reveal your identity, for example, any locations where you live or persons close
3 to you, we will do this in private session. You can see that we are in private session
4 when the light in front of you is green. As I already explained to you in private
5 session there is no broadcast and no one outside the courtroom can hear your answer.
6 If ever anything gets said during open session, which should have been said in
7 private session, we will do our best to protect this information, your testimony will be
8 broadcast on a delay and we can remove any such remarks from the broadcast which
9 will be heard by the public and we can remove it from the public transcript of the
10 proceedings.

11 The Chamber recognizes that your security and well-being is important during the
12 course of this trial. If at any point you feel that you would like a brief break from
13 giving your testimony, or you feel unwell, do not hesitate to let us know.

14 Now we have a few practical matters you should have in mind when giving your
15 testimony.

16 Everything we say here in the courtroom is written down and interpreted into
17 English and French. It is, therefore, important to speak clearly and to speak at a
18 moderate or rather slow pace, as I try to do it at the moment. We want to make sure
19 that your words can be well understood by the interpreters and then by the rest of us.

20 Please speak in the microphone that is in front of you and only start speaking when
21 the person asking you the question has finished. To allow for the interpretation,
22 everyone has to wait a few seconds before starting to speak, so I recommend to you
23 when the lawyer has asked his or her question, please count in your head to three and
24 only then give your answer.

25 If you have any questions yourself raise your hand so we know that you wish to say

1 something. We will then give you the opportunity to speak.

2 I know that these have been many informations, but have you understood what I
3 have said?

4 THE WITNESS: (Interpretation) Yes, your Honour, I've understood you.

5 PRESIDING JUDGE SCHMITT: Thank you. We will then start your testimony.
6 And the Prosecution has the floor.

7 MR VANDERPUYE: Thank you, Mr President. Good afternoon to you,
8 your Honours, good afternoon everyone.

9 QUESTIONED BY MR VANDERPUYE:

10 Q. And good afternoon to you, Witness.

11 Before we get started I just wanted to remind you to try to keep your voice up. I will
12 try to speak more slowly as I've been reminded repeatedly and I would invite you to
13 do the same. If there's anything that I ask you during the course of your
14 examination that is unclear, please just let me know and I'll try to rephrase it or
15 phrase it in a way that we can better understand one another, okay?

16 A. Okay. I agree.

17 Q. Thank you. Then we are in private session, so we'll continue in that way for
18 the moment.

19 First can I ask you to state your name for the record and spell your last name.

20 A. My names are (Redacted).

21 Q. What is your date of birth, sir?

22 A. I was born (Redacted).

23 Q. Are you a national of (Redacted)

24 A. Yes, I'm a national of (Redacted)

25 Q. Were you raised there and attended school there?

1 A. Yes, I grew up in (Redacted) and I attended school throughout
2 in (Redacted).

3 Q. Can you tell the Chamber what is the highest level of education that you
4 achieved?

5 A. I attended school up (Redacted) and at the end of my training, I received a
6 (Redacted) diploma, but I also went on to have another diploma (Redacted)
7 (Redacted), according to that diploma.

8 Q. Did you receive any other training or specialised schooling following obtaining
9 this diploma that you've just indicated?

10 A. Yes, I went on to do (Redacted), and I also
11 obtained other diplomas (Redacted). And I graduated from one school as a
12 (Redacted).

13 Q. Did you receive any training as a soldier or a military person?

14 A. In my entire life, I have never received any training as a soldier.

15 Q. And without telling us where you live currently, can you tell the Chamber
16 whether you live or continue to live in (Redacted)?

17 A. Currently, I do not live in (Redacted).

18 Q. And if you would, could you please tell the Chamber when you left (Redacted)
19 (Redacted)?

20 A. I left (Redacted) in 2011.

21 Q. I'd like to ask you a few questions about the circumstances of your testimony in
22 the case of Prosecutor versus Jean-Pierre Bemba.

23 MR VANDERPUYE: So if I could, Mr President, can we go into public session?

24 PRESIDING JUDGE SCHMITT: If you suggest it we go into public session, yes.

25 (Open session at 12.10 p.m.)

1 THE COURT OFFICER: We are in open session.

2 MR VANDERPUYE: Thank you.

3 Q. Witness, we're in open session so I'm going to ask you to be aware of that and
4 be careful not to reveal information that may tend to identify you, okay?

5 A. Yes, Mr Prosecutor.

6 Q. First I want to ask you can you confirm that you testified in the case of The
7 Prosecutor versus Jean-Pierre Bemba Gombo, and if you remember, can you tell the
8 Chamber when that occurred?

9 A. Yes, I remember that I testified in the Jean-Pierre Bemba Gombo case in May
10 and June 2013.

11 Q. Okay. And in the context of your testimony in that case, were you called as a
12 Prosecution witness, Defence witness, or a witness of the Chamber; do you recall?

13 A. I remember that I was a Defence witness.

14 Q. And during the course of your testimony, did you testify in the favour of
15 Mr Bemba?

16 A. Yes, I testified for Mr Jean-Pierre Bemba.

17 MR VANDERPUYE: If we could go into private session, Mr President, please.

18 PRESIDING JUDGE SCHMITT: I thought so. Yes, private session.

19 *(Private session at 12.12 p.m.) Reclassified as open session

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

21 MR VANDERPUYE: Thank you.

22 Q. If you can recall, Witness, can you tell the Chamber whether you were in the
23 Central African Republic between October 2002 and March 2003?

24 A. October 2002 and March 2003 I was in (Redacted). I was not in Bangui, which is
25 the capital of the Central African Republic.

1 Q. And what were you doing during this period of time?

2 A. At that time I was (Redacted)

3 (Redacted), some 600 kilometres at least (Redacted).

4 Q. To your recollection, can you recall what it is you testified to concerning that
5 specific period of time in the Bemba trial? If it's unclear to you -- if my question is
6 unclear, also let me know and I'll try to rephrase it.

7 A. Please, kindly repeat your question, Mr Prosecutor.

8 Q. Yes, I'll try to rephrase it. Were you -- do you recall being asked what you
9 were doing during the period between October 2002 and March 2003 in the course of
10 your testimony in the Bemba trial? Do you recall being asked about that period of
11 time?

12 A. I do not remember, but maybe you could kindly remind me.

13 Q. Would it assist if I were to read to you your testimony to help you recall what it
14 is that you testified about?

15 A. Yes, Mr Prosecutor.

16 Q. All right. Then I'll do that. It is at transcript 321, CONF, English version,
17 page 10, lines 12 through page 11, line 2.

18 For the Chamber's benefit that's at tab 18 of binder 1 and that's in the French, and in
19 the English -- sorry, I may have that backwards. That's in the English. The French
20 version is the same transcript, French version, page 10, line 22 through page 11, line 8.
21 I'll just read it very quickly.

22 And specifically I'm going to refer to line 25 of the English through -- of the previous
23 page through line 2. The question is as follows. And it refers to your prior
24 testimony about being a sub-lieutenant in the support battalion and the question is:
25 "Is that the role that you had between October 2002 and March 2003?"

1 And your answer was: "Yes, that is the role I played during those events that
2 occurred in 2002 and 2003."

3 Does that refresh your recollection as to what you testified you were doing during the
4 period between October 2002 and March 2003?

5 A. Yes, Mr Prosecutor.

6 Q. Was that evidence true?

7 A. That statement is not true.

8 Q. Were you ever a member of the armed forces of the Central African Republic or
9 any other armed force or militia?

10 A. I would like to say to this Court that I have never received any military training,
11 I have never been a soldier. I am (Redacted).

12 MR VANDERPUYE: I would like to go into public session for a moment,
13 Mr President.

14 PRESIDING JUDGE SCHMITT: Yes, then we trust your assessment, then we go into
15 public session.

16 (Open session at 12.19 p.m.)

17 THE COURT OFFICER: We are back in open session.

18 MR VANDERPUYE: Thank you.

19 Q. Witness, we're are back in open session, so again I just want to remind you of
20 that so that we try to be careful not to say anything that reveals your identity, okay?

21 A. Yes, I understand that.

22 Q. Now prior today -- prior to today, rather, you and I met before. Can you
23 confirm that?

24 A. Yes, we met before today.

25 Q. And can you confirm that we met most recently last week in the offices of the

1 Victim and Witnesses Unit?

2 A. Yes, I can confirm that.

3 Q. And can you confirm that we've also met on occasions prior to having met last
4 week at the Victim and Witnesses Unit, without telling publicly where that occurred?

5 A. Yes, I can confirm that.

6 MR VANDERPUYE: Mr President, can we go into private session, please.

7 PRESIDING JUDGE SCHMITT: Yes. Private session, please.

8 *(Private session at 12.21 p.m.) Reclassified as open session

9 THE COURT OFFICER: We are in private session.

10 MR VANDERPUYE:

11 Q. Before you and I met for the first time, Witness, did you have -- did you meet
12 with other members of the Office of the Prosecutor?

13 A. Yes, I met other members of the Office of the Prosecutor.

14 Q. Can you tell the Chamber to your recollection when that was, for the first time, I
15 should say?

16 A. The first meeting was on 2 and 3 February 2014. We had another meeting on
17 the 29th and yet another in November of that same year.

18 Q. I'd like to ask you just a couple of questions about the first meeting in April.

19 MR LAROCHELLE: The witness said "February," not April.

20 MR VANDERPUYE: Excuse me.

21 Q. The meeting that you refer to in February, can you tell the Chamber what the
22 circumstances of that meeting was?

23 A. That meeting took place when the representatives of the OTP came to the
24 country where I was residing. They sought to meet with me. When we met, they
25 explained to me that they had come on behalf of the Office of the Prosecutor to meet

1 with me. Those are the circumstances in which I agreed to receive them. We then
2 began to have some discussions.

3 But let me specify here that a short while ago I mentioned the month of February, but
4 this happened in April. I am sorry for making that mistake.

5 Q. Do you recall who from the Office of the Prosecutor you met with or spoke to?

6 A. I met (Redacted), an investigator at the OTP who came along with a
7 gentleman whose name I no longer remember.

8 Q. You mentioned -- let's see how it's translated. You spoke with these two
9 representatives of the Office of the Prosecutor?

10 A. Yes, I talked with those two representatives of the Office of the Prosecutor.

11 Q. And in relation to your interaction with those two representatives of the Office
12 of the Prosecutor, was there anyone else present?

13 A. The two representatives of the OTP met with me and explained to me the
14 reasons which they had come to see me, then I asked them -- then I told them that
15 I wanted to be assisted by a lawyer, and they complied by calling upon a lawyer who
16 was made available to assist me. When I met with the lawyer, I then went on to
17 have this discussion with them, along with the lawyer.

18 Q. Do you recall the name of the lawyer?

19 A. I do not remember his name, but with your leave I have his business card here
20 in my pocket, in my jacket. With your leave I can pull it out and read out that name
21 for the Court.

22 PRESIDING JUDGE SCHMITT: Yes, please do that.

23 THE WITNESS: (Interpretation) The lawyer's name is (Redacted). He
24 is on the list of lawyers at the International Criminal Court in The Hague.

25 PRESIDING JUDGE SCHMITT: Mr Larochelle.

1 MR LAROCHELLE: Briefly, maybe, your Honours. Maybe you could ask if the
2 witness has any other notes he prepared or he is using to refresh his memory such as
3 this card. I think that would be a valid inquiry at this stage.

4 PRESIDING JUDGE SCHMITT: No, I don't think so. I think this came relatively
5 spontaneous with this lawyer, with his counsel, and I don't have any problem with
6 that.

7 Please continue, Mr Prosecutor.

8 MR VANDERPUYE: Thank you, Mr President. Just bear with me, I'm just trying to
9 see what is actually reflected in the transcript.

10 Q. With respect to your interaction with this lawyer, can you tell us what his role
11 was? What did he do in respect of your interaction with the members of the Office
12 of the Prosecutor?

13 A. When I met with the members of the OTP, well, I wasn't ready to collaborate
14 with them immediately because I felt that I had already testified in the
15 Bemba -- Jean-Pierre Bemba case and I, therefore, was not ready to go ahead to
16 explain things to them. That is why I asked for the assistance of a lawyer.

17 Now, when I was given the services of a lawyer, I felt freer to have these discussions
18 with them. That is when I became available, and it is in that context that we started
19 the discussions. This is what happened.

20 When lawyer (Redacted) came to meet me at the hotel, he explained to me that lying
21 would serve no purpose. He told me that the Court was aware of the fact that I am
22 not a genuine witness, as such, but that I'm a suspect and, therefore, I either had to
23 accept to continue lying or choose to tell the truth in order to assist the Court.

24 For reasons of my conscience, therefore, I immediately agreed with my lawyer's
25 proposal and that is how I agreed then to have this discussion with the

1 representatives of the Office of the Prosecutor. This is what happened.

2 Q. Did that discussion with your lawyer occur in the presence of members of the
3 Office of the Prosecutor, or did members of the Office of the Prosecutor discuss those
4 matters together with you and your lawyer?

5 A. When I requested the assistance of a lawyer, the representative of the Office of
6 the Prosecutor immediately did everything they could to put me in contact with this
7 lawyer. And upon his arrival, the first thing was that I should discuss with him, so
8 we withdrew away from the Office of the Prosecutor representatives and the lawyer
9 and I had a discussion.

10 When we had finished, we came back to gather again with the OTP representatives
11 and I said that I was ready to talk to them. That's what happened.

12 Q. In your discussions with the Office of the Prosecutor following the meeting with
13 your lawyer, did you give a statement to the Office of the Prosecutor investigators
14 with whom you had interacted?

15 A. Could you please repeat the question. I did not quite grasp it.

16 Q. Yes, thank you. I apologise. It's a bit confusing the way I phrased it.

17 After you spoke to your lawyer and went back to meet with the members of the Office
18 of the Prosecutor, did you following that give a statement? Did they interview you
19 and did you give a statement?

20 A. When I had finished discussing matters with my lawyer, we went back to the
21 OTP representatives and they put a number of questions to me and I made a
22 statement in the presence of my lawyer because I requested that he be present to hear
23 everything I had to say. So for the entirety of the duration spent in the company of
24 the OTP representatives my lawyer was present. And the OTP put a number of
25 questions to me to which I responded.

1 Q. Did you discuss with your lawyer any conditions, terms or agreements with the
2 Office of the Prosecutor prior to your giving a statement or proceeding with the
3 interview on 2 April -- 2 and 3 April as you've indicated?

4 A. Upon the arrival of my counsel, I had him understand that the case that I had
5 got mixed up in was truly problematic for the simple reason that on the first occasion
6 I had been a witness in a case -- in the case concerning Mr Jean-Pierre Bemba and that
7 on this occasion where I obliged to tell the truth about everything that had happened
8 to the OTP members, I would have liked for my security to be guaranteed. And
9 firstly, the conditions would have to be notified to me for me to be able to have
10 discussions with them. And that's what was done.

11 Q. Did you discuss with your lawyer these conditions before -- before being
12 interviewed or continuing to be interviewed?

13 A. I had requested the assistance of this counsel for reasons of security first and
14 foremost. So I explained this to him. In order for me to be in a position to speak
15 with the OTP members, I had to have guarantees. I wanted my security to be
16 guaranteed. And I talked to this -- I talked to my counsel about this, the counsel that
17 the Court had assigned to me.

18 Q. Do you recall being presented with any written agreement concerning the
19 circumstances of your statement to the Office of the Prosecutor?

20 A. Yes. I agreed with my lawyer and we talked with the OTP members, and we
21 agreed to the fact that I would testify and they gave me two agreements -- or, they
22 gave me one agreement on two pieces of paper that I was then able to sign along with
23 one of the representatives of the OTP.

24 Q. All right. I'd like to show you a document, if I could.

25 For the Chamber's benefit it is at tab 1, binder 1. For eCourt purposes it's

1 CAR-OTP-0078-0303.

2 THE INTERPRETER: Message from the English booth: The interpreters would
3 request a binder, please. Thank you.

4 MR VANDERPUYE: I have some monitor issues. I was just wondering if it's
5 actually on the -- on eCourt yet. It is.

6 PRESIDING JUDGE SCHMITT: I see raising arms in the interpretation booth.

7 MR VANDERPUYE: We've got it now I think. Thank you very much.

8 Q. Are you able to see this document? If we could -- Witness, are you able to see
9 it?

10 A. Yes, I can see it.

11 Q. All right. Could we just go to the second page for a moment, please, that's
12 ending 0304.

13 All right. Without telling us -- well, we're in private session, do you recognize the
14 signatures that appear on this page?

15 A. Yes, I do recognize my signature.

16 Q. Which one is -- sorry. Which one is yours?

17 A. My signature is to be found in the bottom right-hand corner of the page.

18 Q. Do you recognize what this document is?

19 A. I would consider this document as being a commitment on my part that I signed
20 to tell the truth to the Court. And I signed this document along with one of the
21 representatives of the Office of the Prosecutor.

22 Q. Okay. And I think we can all see the date there as 2 April 2014; correct?

23 A. That is correct, yes.

24 Q. And if we could please go to the first page of this document for a moment.

25 I would like the witness to be able to see the title of it, please.

1 Do you recognize this document as the one you just referred to concerning your
2 undertaking to tell the truth?

3 A. Yes, I do recognize it.

4 Q. And did you have -- did you understand the conditions that are indicated in
5 this document and did you discuss those with your lawyer and did he explain that to
6 you, explain them to you before you signed the document?

7 A. This -- the reading of this document was -- or, the document was read out in the
8 presence of my lawyer on the spot, sentence by sentence, and the OTP representatives
9 explained the contents of this document to me. And when I had understood, I
10 merely appended my signature in approval, thereby saying that I would speak the
11 truth and nothing but the truth.

12 Q. Is -- the statement that you subsequently gave, was it true?

13 A. All the statements that I made after having signed this document are true.

14 Q. And you can confirm that to this Chamber today having sworn to tell the truth
15 here today; is that fair?

16 A. I can confirm that I will tell the truth.

17 Q. Maybe my question was inartfully put. I'll try again. Can you confirm to this
18 Chamber today that the statement that you gave on 2 and 3 April 2014 was true?

19 A. I can confirm before the Court that all statements that I made on the 2nd and
20 3rd are true.

21 Q. I want to ask you about the statement that you gave -- or, rather, the meeting
22 that you had with the Office of the Prosecutor on 29 April 2014.

23 All right. Can you tell the Chamber about the circumstances of that meeting, 29
24 April 2014?

25 A. I have a problem with my memory. I do not know what we said to each other.

1 Q. Okay. Do you recall who you met?

2 A. Yes. On the 29th, I met with (Redacted) once again. And I believe
3 that on this occasion he was in the company of another individual.

4 Q. Do you have a recollection as to who that individual -- you mean an individual
5 from the Office of the Prosecutor or another individual, first of all?

6 A. I recall that (Redacted) came to meet me with a member of the OTP and you,
7 yourself, senior trial lawyer were present.

8 Q. Okay. And we're talking about 29 April, right?

9 A. Yes, that was on 29 April.

10 Q. Do you recall who else, if anyone, was there during that meeting?

11 A. My counsel was also present.

12 Q. And do you recall what the circumstances were that led to that meeting? This
13 is the second meeting after -- well, this is the next meeting after your first meeting
14 with the Office of the Prosecutor, according to your previous evidence.

15 A. (Redacted) had come to see him because I had handed some documents over to
16 him. Some of these documents were preparatory documents, they were statements
17 or preparatory statements that I had to prepare on the occasion of the first trial. And
18 we had to file these documents in a specific order. Maybe he doesn't really
19 remember how he had -- I had given him these documents, and he was coming back
20 to me with a view to clarifying the situation of these documents. And that was the
21 purpose of this meeting.

22 Q. Do you remember what documents you either gave or showed to investigator
23 (Redacted)?

24 A. I remember having given him the documents all too well.

25 Q. And can you describe the documents that you gave (Redacted)?

1 A. I believe I gave (Redacted) at least four documents. The first was a Western
2 Union receipt that I had looked for in order to provide it for him. And I'd looked for
3 it and when I chanced upon it I then had to give it to him. Then I presented him
4 with three further documents. They were working documents, preparatory
5 documents that were filed into three categories. I can describe it as follows: They
6 were Annexes 1, 2 and 3. And these were preparatory handwritten documents,
7 written by my own hand that I had placed at (Redacted) disposal.

8 Q. All right.

9 If we could just have a quick look at -- for the benefit of the Chamber, beginning at tab
10 10, we'll take that one first, it is CAR-OTP-0079-1522. I'd like to go to the second
11 page of this document, please.

12 Do you recognize what you see there, Witness?

13 A. Yes, I do recognize what I see before me.

14 Q. What is it?

15 A. These were dates, dates that I entitled "Chronology of Events," and this
16 described how the events unfolded in the Central African Republic during that period.
17 So this document was prepared by myself as a form of mental preparation.

18 Q. And is this one of the three documents -- or, one of the four documents you just
19 testified about having given or shown to (Redacted)?

20 A. Yes, I can confirm that.

21 Q. And just before we move on to the next document, can you tell the Chamber
22 very briefly where did you get the information concerning the dates and the events
23 that are recorded in this document? Just very briefly and we'll come back to it at a
24 later point.

25 A. I was in contact with Mr Arido and this was in -- within the framework of my

1 testimony in favour of Mr Jean-Pierre Bemba. And everything that is written here is
2 part of the briefing or preparation that I had received from him.

3 Q. If you could take a look at the next document that is at tab 11. For the
4 Chamber's benefit, CAR-OTP-0079-1526. We'll have a quick look at that one as well.
5 All right, we've got that up on the screen now. If we can go to the next page, 1527.
6 Thank you.

7 Do you recognize this document?

8 A. Yes, I do recognize it.

9 Q. And what is it?

10 A. We were -- well, I think I would have to tell you the story from the outset to
11 explain to you how these documents were successively drawn up.

12 Q. Hang on a sec. Sorry to interrupt you, but we'll come back to that. I, just for
13 the moment, just want to establish what this document is. So if you could tell the
14 Chamber if you recognize it and if you do what is it.

15 A. This is still a preparatory document. It is a repeat of the first document entitled
16 "Chronology of Events." And this document is in fact a correction of the first
17 document. It provides further information to that contained in the first document.
18 It is mental preparation.

19 Q. Where did you get the information that is contained in this document or from
20 whom?

21 A. We were in Douala where we met Mr Kilolo upon his arrival. When we went
22 to the hotel my -- well, I was mentally aware, and everything that we had been saying
23 led to me -- led me to add further information to this document.

24 Q. All right. We'll come back to that as well. Can you confirm that this is one of
25 the four documents that you previously testified that you showed to (Redacted) or

1 gave to (Redacted)?

2 A. This is my writing, I recognize it. This was written with my own hand. I
3 recognize my handwriting. And these are the documents that I gave to Mr Ouete.

4 PRESIDING JUDGE SCHMITT: I think we have now reached a point where
5 we -- I know what you're going -- heading at, but I think we have to continue that
6 after the lunch-break.

7 Until 2.30, we have the lunch-break, and then we'll be back in the courtroom.

8 THE COURT USHER: All rise.

9 (Recess taken at 1.01 p.m.)

10 (Upon resuming in open session at 2.30 p.m.)

11 THE COURT USHER: All rise.

12 MR TAKU: Your Honours, for the record Mr Tharcisse Gatarama is here now.

13 Mr Michael Rowse has been assigned to other duties for today, so

14 Mr Tharcisse Gatarama, legal assistant, is here with us today.

15 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Taku.

16 Chamber will now issue an oral decision on three Arido Defence requests made this
17 morning.

18 And the word "decision" already shows, Mr Larochelle, that your label "housekeeping
19 matters" was not 100 percent correct, put it this way.

20 First, as to the request for outstanding payments from the VWU, the VWU has
21 confirmed to the Chamber that a list of payments for P-260 and P-245 can be
22 distributed to the parties by the end of today. This list would include dates,
23 amounts and the general purpose of the payments. To this extent the first request by
24 the Arido Defence is granted.

25 This said, the Arido Defence is reminded that when the Chamber asked for a formal

1 finding on an outstanding issue as it did with this issue, it should either proceed as
2 directed or explain to the Chamber why it could not make a written filing.
3 Second, as to the Arido Defence request for an extension of deadline to respond to the
4 Prosecution's judicial notice application, this is filing 1339, the request is granted.
5 The response deadline for this motion is now the filing deadline on Friday, 16
6 October 2015. This new deadline applies to all the Defence teams.
7 Third, as to the matter raised of the extent of the Prosecution's witness contact
8 disclosure, the Chamber has already concluded that information relating to inter alia
9 the fact and frequency of witness contacts does not per se impact on witness
10 credibility. This is decision 1309.
11 Particularly in view of the information already disclosed regarding P-260's contacts,
12 the Chamber does not have any reason to believe that the Defence teams lack
13 sufficient information to examine P-260 on these matters.
14 This concludes these oral decisions.
15 And then my question would be, do we continue in private session or in open session
16 with the examination of the witness?
17 MR VANDERPUYE: Thank you, Mr President. I think we have to continue in
18 private session. That's where we were when we left off I think.
19 PRESIDING JUDGE SCHMITT: Then we go into private session.
20 *(Private session at 2.33 p.m.) Reclassified as open session
21 THE COURT OFFICER: (Interpretation) We are --
22 PRESIDING JUDGE SCHMITT: Thank you. Please Mr Prosecutor, Mr Vanderpuye,
23 you may continue.
24 MR VANDERPUYE: Thank you, Mr President. If we could have in eCourt please
25 CAR-OTP-0079-1526. I believe this document was up in eCourt when we broke.

1 Then we'll need to go to the next page, which is 1527.

2 Thank you.

3 Q. Witness, I had asked you I believe before the break where you got the
4 information that's contained in this particular document. Do you recall that?

5 A. Yes, I do remember.

6 Q. Are you able to tell the Chamber where this information came from?

7 A. Well, before the break I was saying that the information found in this document
8 were a rereading of the initial document; in other words, after we met with Mr Kilolo,
9 in Douala, so I took up that document once again.

10 Q. All right.

11 If we can go to the next one that I wanted to show you. It's CAR-OTP-0079-1530.

12 That's behind tab 12 for your Honours' benefit. Now if we can please go to the next
13 page, 1531.

14 Do you recognize this document, Witness?

15 A. Yes, I do recognize it.

16 Q. Can you tell the Chamber what it is?

17 A. This is entitled "Chronological Fresco of the Events." It is the third rewriting of
18 the second document, which I have here.

19 Q. And can you tell the Chamber where you got this information -- or, the
20 information, rather, contained in this document?

21 A. As I said earlier, when Mr Kilolo got there and I approached him so that he
22 could make me available to members of the Court, who had been sent so that we
23 could give testimony in the place, in the city where we were, the information that is
24 here is information that I received after meeting with Mr Kilolo in the (Redacted)
25 Hotel.

1 Q. The record indicates that you said that this is information you received after
2 meeting with Kilolo. Can you tell us who provided you the information?

3 A. Well, once Mr Kilolo got there, he had brought a document with him. It was a
4 document that had been written after our initial meeting in Douala. And so that
5 information was there. So he asked me whether I remembered everything that I had
6 said beforehand. And so I received that document that he had in his possession.
7 And some information that you see there is information that I was able to glean from
8 that source.

9 Q. Just so we're clear, the information that you were provided with by Mr Kilolo,
10 did it contain information that you had provided him previously, or did it contain
11 other information, or a combination thereof?

12 A. It was a combination of two options because you are going to find
13 information -- earlier information and you will also find information subsequent to
14 our meeting that day.

15 Q. Are you -- are you now talking about what Mr Kilolo told you, or is this your
16 testimony? Maybe there is a translation issue.

17 A. You know, Mr Kilolo was the lawyer of Mr Bemba. So I was supposed to
18 testify in the favour of Mr Bemba. And so that information, he was the one who
19 provided -- who brought them. Because the first time we had a meeting in Douala,
20 the document that you just put up on the screen gave me the opportunity to rewrite
21 that because there was some questions, it was a series of questions that they asked me.
22 And in response to the series of questions, I found some information that had allowed
23 me to rewrite the second document. And in the third document that you are
24 showing here, when he got there and he received me, there was a document that he
25 had in his possession. Each one of us had the document. And, well, I didn't take it

1 to be a summary of what everyone had. See, everyone had his document. In my
2 document there was some part of the information that is shown here on the screen.
3 So when you ask me whether I remembered what I had said, I was obliged.
4 He provided me with a document, the document that he had with him, I read it and
5 he -- what do I -- how should I put this? He readjusted it. He said, "What you said
6 here wasn't right." So that's how it unfolded.
7 So as not to forget, I rewrote it so that when I went back to the hotel I could do mental
8 preparation. I think I had told you the last time that all -- all that event I did not take
9 part in that. And so, you see, it was mental preparation so that I could be able to
10 testify for the first time.

11 Q. All right. I think we understand your evidence. And as I mentioned, we'll
12 come back to some of this in a little while, but if we could now go to
13 CAR-OTP-0084-0056. And while that's coming up, let me just confirm with you that
14 this last document that you just commented on was among the four documents that
15 you either showed or gave to (Redacted). Can you confirm that for the Chamber?
16 THE COURT OFFICER: Mr Vanderpuye, we probably have not the right ERN
17 number. Could you please provide us with the number of the first page.

18 MR VANDERPUYE: 0084-0056. Is that the number I gave you? 55.

19 Q. Do you recognize the document on the screen, sir?

20 A. Yes, I do recognize the document that is displayed on my screen.

21 Q. Can you tell the Chamber what it is?

22 A. This is a receipt from Western Union. I was paid money, and the money came
23 from Mr Kilolo. I was in (Redacted) and he sent me the money so
24 that I could pay for the transportation and go back quickly so that I could testify.

25 Q. Is this the document that you were referring to as among the four documents

1 that you either provided to or showed (Redacted)?

2 A. Yes. It was among the four documents that I had given to (Redacted).

3 Q. I can see a date on this document, it says 24 May 2013. Do you see that at the
4 top of the -- to the top-right corner of that document?

5 A. Yes, I do see that date.

6 Q. And how does that relate to the date in which you actually used the funds for
7 transportation?

8 A. I was in (Redacted) at that time, and I got a phone call from a lady, who was asking
9 me to go back quickly to the place where I was because Mr Kilolo needed me so that I
10 could give testimony. And so in reply, I said to this lady that I didn't have any
11 money to pay for the transportation. Because they wanted me to take the plane
12 quickly and come back. And I explained that even if I took the plane, it was not
13 possible because the country was in -- very dangerous. But if I had money, there
14 was a state of unrest. And if I had money, I could go by road. And so that is how it
15 came to be that sometime thereafter Mr Kilolo called me and I told him the same
16 thing. And he said, "Just wait. I'll send you some money."

17 And that money here, he was the one who sent it to me. Once he sent me the money
18 and once I collected it, I travelled to give my testimony.

19 Q. Okay. Thank you for that clarification. Now I just want to ask you about the
20 next time that you met with members of the Office of the Prosecutor. Can you tell
21 the Chamber when that was? And we're just talking about the one on the 29th, I
22 believe it was, of April. Do you remember when was the next time you met with the
23 members of the Office of the Prosecutor?

24 A. Yes. I do remember that I had a meeting, another meeting with members of
25 the OTP, and at that time the senior trial lawyer was there as well.

1 Q. Do you remember approximately when that meeting took place? If you don't,
2 just say so.

3 A. I don't remember.

4 Q. If I were to show you a copy of the transcript of that meeting, would that help
5 assist -- would that, rather, assist your recollection of when that meeting took place?

6 A. Yes, I could remember then.

7 Q. All right. Let's have a look then, please, at CAR-OTP-0084-0412.

8 For your Honours' benefit, that's behind tab 13 of your binders.

9 Just have a look at what's on the screen in front of you and if you need to get a better
10 look, let us know. Read it over to yourself and then I'll ask you a question.

11 Have you had a chance to look at that, Mr Witness?

12 A. Yes, I've looked at the document.

13 Q. Do you remember approximately when that meeting took place?

14 A. Yes, 5 November 2014.

15 Q. And did that take place in the presence of your lawyer?

16 A. Yes, I can confirm that.

17 Q. Did you give a statement to the members of the Office of the Prosecutor on that
18 day?

19 A. Yes, a statement was given to members of the OTP on that day.

20 Q. And to your recollection was the statement that you gave on that date subject to
21 the same conditions as the statement that you gave previously in April?

22 A. Could you please repeat your question.

23 Q. Sure. Was the statement that you gave on 5 November 2014 subject to the
24 same conditions as the statement that you gave in April of 2014, 2 and 3 April 2014
25 with your evidence?

1 A. Yes.

2 Q. Did you have a chance to discuss those conditions with your lawyer prior to
3 giving the statement on 5 November 2014?

4 A. I believe that the first day when a lawyer was provided to me and that lawyer
5 asked me to tell the truth, I resolved that each time we had a meeting, I could not hide
6 what I had to say. So Mr (Redacted) was aware of everything that I might
7 have said.

8 Q. Okay. Did you understand from your conversations with your lawyer that one
9 of the conditions of your meeting with the Office of the Prosecutor and providing a
10 statement was to tell the truth?

11 A. I remember that one of the conditions was the -- was to tell the truth.

12 Q. Did you tell the truth on 5 November 2014 in giving this statement to the Office
13 of the Prosecutor?

14 A. I believe that everything I said on that day was subject to that first condition
15 which was to tell the truth. I must have said the truth to the members -- well, let's
16 say to the representatives of the Office of the Prosecutor.

17 Q. Okay. And you can confirm that to this Trial Chamber today; is that right?

18 A. I confirm that everything I said was only the truth, just the truth.

19 Q. All right. Thank you.

20 MR VANDERPUYE: We can go into public please, Mr President.

21 PRESIDING JUDGE SCHMITT: Yes, public session please.

22 (Open session at 2.56 p.m.)

23 THE COURT OFFICER: We're in open session.

24 PRESIDING JUDGE SCHMITT: And I understand, Mr Vanderpuye, that we are at
25 some point in time moving from what the witness has said in the past to what he is

1 saying today.

2 MR VANDERPUYE: Most definitely, Mr President, most definitely.

3 Q. I want to ask you some questions about your contacts with the Defence prior to
4 testifying in this case. So I'm going to ask you to be very careful not to reveal any
5 information that may tend to identify you as we're now in public session. Do you
6 understand that, sir?

7 A. Yes, I understand.

8 Q. I'm sorry. All right. Have you been in contact with any member of the
9 Defence, and you can see there are five of them over here, since the last time you met
10 with the Office of the Prosecutor?

11 A. I never met a member of the Defence since the time I met the representative of
12 the OTP -- correction -- the representatives of the OTP.

13 Q. Have you been in contact -- I'm sorry. Let me just see what your answer was.
14 All right. My question was whether you had been in contact with any member of
15 the Defence and your answer appears to be recorded in the record that you never met
16 with a member of the Defence. So let me ask my question, maybe it was not clear.
17 Have you been in contact other than meeting with any member of the Defence
18 involved in this case since the last time you met with the Office of the Prosecutor or
19 members of the Office of the Prosecutor?

20 A. I just said a few moments ago that when I met the members of the OTP, I had
21 never been, not a single time in contact with the members of the Defence.

22 Q. Thank you. Now we have it very clear in the record.
23 Let me ask this question then: Were you in contact with anybody claiming to be
24 associated with any member of the Defence in this case since the last time you met
25 with the Office of the Prosecutor?

1 A. I believe I came before this Court to tell the truth and nothing but the truth.

2 The day that I met with the representatives of the OTP, I had never met anyone at all
3 anywhere, and if someone told you that he had met with me, I am living proof and I
4 am before you that he -- with the evidence, such a person should state so.

5 Q. Just to be clear, nobody is accusing you of anything. I'm just asking questions
6 and if you could just respond to the -- respond to those questions, that will help move
7 things along, okay?

8 A. Okay.

9 Q. All right. I'm going to ask you this question now: Have you been in contact
10 with anybody associated with the Defence either directly or indirectly since the first
11 time you met with the Office of the Prosecution?

12 MR LAROCHELLE: This has been asked and answered I think we are --

13 PRESIDING JUDGE SCHMITT: I think it has not been asked -- it has been partly
14 asked and answered. It has not completely been answered in respect of the time
15 frame you are now pointing out. So I overrule it in so far.

16 Please answer the question.

17 THE WITNESS: (Interpretation) I have not understood the substance of the
18 purpose of the Prosecutor's question, your Honour.

19 PRESIDING JUDGE SCHMITT: I think Mr Vanderpuye you should rephrase it and
20 make clear what -- about what time we are speaking here.

21 MR VANDERPUYE:

22 Q. Since the first time you met with members of the Office of the Prosecutor in
23 April I think you said it was in 2014 until now, have you been in contact or has
24 anybody had contact with you that is, to your knowledge, related to any of the
25 accused in this case or any of the Defence teams in this case? That's my question. If

1 it's not clear, let me know.

2 A. I have already stated that from the time I met with the representatives of the
3 OTP, I have not had any contact with anyone else except people who have come from
4 the Office of the Prosecutor.

5 Q. All right.

6 MR VANDERPUYE: I'd like to go into private session if we could.

7 PRESIDING JUDGE SCHMITT: We go into private session.

8 *(Private session at 3.03 p.m.) Reclassified as open session

9 THE COURT OFFICER: We're in private session, Mr President.

10 MR VANDERPUYE:

11 Q. Witness, have you had an occasion to contact (Redacted) following your
12 meeting with the Office of the Prosecutor back in April 2014 by telephone?

13 A. Yes. I contacted (Redacted) when he came (Redacted)
14 (Redacted). At that time I left with my family (Redacted). So in the
15 evening I was on my way to the cybercafé when I met (Redacted). I had not
16 (Redacted). (Redacted) is the one who first saw me.

17 As soon as (Redacted) saw me, I was along the roadside, and (Redacted) started
18 shouting, (Redacted)

19 (Redacted) was shouting and screaming, but I

20 kept my cool and I did not want to react.

21 But thereafter I called (Redacted), and I told him that I was along the roadside and
22 there is (Redacted) who is taking it out on me and saying that (Redacted)
23 (Redacted).

24 So I called him to tell him about that because I believed that the Court could not
25 behave in such a way as to cause my arrest under those circumstances. That is why I

1 called (Redacted) to inform him accordingly.

2 Q. All right. I want to ask you a couple of clarification questions because I don't
3 know that the record reflects your answer. But if you could just clarify, in the record
4 it says that you called Mr Arido. Is that the case?

5 A. Mr Arido had been arrested by the Court, so I had no contact with him and I,
6 therefore, could not call him. So what I said is that I called (Redacted). Why did I
7 call (Redacted)? I called him because, in fact, I had a problem with (Redacted).
8 You see, I was walking along the road and (Redacted) met me and began to hurl
9 verbal insults at me.

10 Now, (Redacted), when he met me, had warned me and asked me to be careful not to
11 provoke people and not to do anything that will draw people's attention. So I saw in
12 that situation an opportunity to call him directly rather than talk to someone else.

13 And that is why I called (Redacted). I don't know if I answered your question.

14 MR LAROCHELLE: Just a correction on the transcript.

15 PRESIDING JUDGE SCHMITT: Yes, please.

16 MR LAROCHELLE: 68, line 2, it says in English fake bastard. In French it was (Redacted).
17 (Redacted). So I guess it's -- it should be corrected.

18 PRESIDING JUDGE SCHMITT: Although my French is also limited, to be honest, I
19 understand that this makes a difference. Yes, thank you for clarification.

20 Mr Vanderpuye, please continue.

21 MR VANDERPUYE:

22 Q. Yeah, I think that does clarify the record, Witness. Did you contact (Redacted)
23 with regard to any contacts you had with any other individuals by phone purporting
24 to represent the Defence of any one of the five accused in this case?

25 MR LAROCHELLE: This is very leading your Honour. I don't think it could be

1 more leading than that.

2 PRESIDING JUDGE SCHMITT: And will you -- would you want to continue with
3 this line of questioning? Or don't you think at some point in time the witness has
4 answered about the issue of having contacts with the Defence directly or with people
5 associated to the Defence? But it's -- of course, it's your line of questioning. I do not
6 want to interrupt you, but I think at some point in time we should move on with that.
7 Yes.

8 MR VANDERPUYE: I'm happy to do that, Mr President. I'm just -- asked a
9 question now that took about 5 minutes, which was clarifying the record in this case,
10 which recorded the witness's answer differently in English and in French although he
11 only spoke once.

12 PRESIDING JUDGE SCHMITT: (Overlapping speakers)

13 MR VANDERPUYE: So I'm trying to proceed as quickly as I can, but also as
14 meticulously as I can so the record is clear in the case.

15 I take it you sustained Mr Larochelle's objection.

16 PRESIDING JUDGE SCHMITT: Partly sustained, partly overruled. Please
17 understand it this way.

18 MR VANDERPUYE: Thank you, Mr President.

19 Q. Did you have any other phone contacts with any other individuals purported to
20 be related to or represent the Defence in this case?

21 A. I had already met with the representatives of the OTP. So it happened that one
22 evening I -- my phone rang and it was a lady on the phone. I was in a taxi and she
23 told me she wanted to talk to me. So I told her, "Hold on. Let me get out of the taxi,
24 then you can call me back."

25 So when I got out of the taxi a few minutes after, she called me and told me that she

1 was part of Mr Kilolo's team. She also told me that members of Mr Kilolo's team
2 wanted to meet with me.

3 But she said that she would put two questions to me first, and that if I would answer
4 those two questions, then she will disclose the rest of what she wanted to say to me.

5 The first question she put to me was the following: "Did you meet with
6 representatives of the OTP?"

7 And I said, "Yes."

8 Then she said: "Fine. So I cannot put the second question to you any longer."

9 One day after that, I think it was the next day, she called me again to ask me whether
10 it would be possible for us to meet and I said no, it was not possible.

11 At that time, I had already met with representatives of the OTP and therefore did not
12 intend to meet with anyone from the Defence because I felt that meeting with
13 representatives of the Defence would lead to a situation where they would put
14 questions to me which they would then use against me today. That is why I decided
15 not to meet with them.

16 Thereafter someone else called me claiming to be, and I forget his name, claiming to
17 be the representative of Mr Kilolo's lawyers and that he would like to meet me. And
18 he said that I did not have to resist the invitation because in any event they wouldn't
19 do anything to me.

20 He said they would come to Douala, they would do everything to meet me. So I told
21 him that I was not available. Then he sent me an email or an SMS explaining what
22 he wanted to do with me. Unfortunately the message which he sent to me was on
23 the SIM card, which I have already replaced because I had to change a number of SIM
24 cards.

25 If you have noticed, the record will show that I no longer use the first phone numbers

1 that I had, but I used the phone from the Court. So this is what happened.

2 Q. Can you recall what it is that that lawyer told you that was recorded on your
3 SIM card or in the message that you received? And if you don't, just let us know.

4 A. Well, I'm not ready to mislead the Court, but what happened was that he
5 actually insisted on meeting with me and I felt that it was inappropriate to do so. I
6 did not want to meet with him. So I called (Redacted) to tell him about it, that I was
7 not willing to meet, but that they were insisting to meet with me. I did not want to
8 have any contact with them which they would use today against me. That was my
9 feeling at the time. And it is for that very reason that I went ahead to call (Redacted).

10 Q. All right, there's two things that I'd like for you to clarify if you can. First of all,
11 you mentioned (Redacted). And just for the record, can you tell the Chamber
12 what (Redacted) name is and how you know her?

13 MR TAKU: Are we in closed session? Your Honours, I wonder if we're in private
14 session?

15 PRESIDING JUDGE SCHMITT: (Microphone not activated)

16 MR TAKU: Okay. Thank you, your Honour.

17 PRESIDING JUDGE SCHMITT: We are in private session. I think I should do it via
18 the microphone.

19 THE WITNESS: (Interpretation) Mr President, (Redacted)
20 (Redacted), and this doesn't change simply because we are in this
21 courtroom today. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 If I were to tell -- if I told you that we had that difference with (Redacted), or that
2 problem with (Redacted), I'm talking actually about (Redacted). I'm not talking
3 about (Redacted).

4 MR VANDERPUYE:

5 Q. Thank you, Witness. I appreciate that. And the other half of my question was
6 if you could give the Chamber her name so the Chamber can assess for itself whether
7 or not that your rendition of the facts and your knowledge of (Redacted) is accurate.
8 So if you could just tell the Chamber what her name is that would be helpful?

9 A. (Redacted), I do not know (Redacted) family name, (Redacted) surname that is.
10 I do not know it. You see, when I knew (Redacted) it was at the time when we were
11 at the -- in that town with Arido, but (Redacted) surname, which would be like my
12 surname (Redacted), I don't -- I don't know (Redacted)surname.

13 Q. What's (Redacted) first name?

14 A. I have forgotten (Redacted) first name. But I think that during the proceedings,
15 if I do remember (Redacted) first name, I will tell the Court.

16 Q. All right. You said that you had (Redacted).

17 A. Yes.

18 Q. How long have you known him?

19 A. (Redacted)
20 (Redacted).

21 Q. How often would you say you were (Redacted) until you became
22 an adult, say, reached military age?

23 A. (Redacted)
24 (Redacted)
25 (Redacted)

1 (Redacted)

2 (Redacted)

3 Q. All right. Before I move into the substance of your evidence, I just want to ask
4 this one last clarifying question. With respect to the woman that called you related
5 to the Kilolo Defence and the lawyer that called you purportedly representing
6 Mr Kilolo, do you have a present recollection of their names?

7 A. Your Honour, I do not remember their names. The lady who called me was
8 certainly a white lady. I do not remember their names, and I do not want to lie.

9 Q. Fair enough. Do you remember about when it was that you received those
10 calls and about when it was that you ran into (Redacted)?

11 A. The representatives of the Defence who called me did so at least three days after
12 my meeting with the representatives of the Prosecutor. Therefore, in fact at that time
13 I was in a taxi on my way back when my telephone rang. When my telephone rang I
14 picked it up and she told me that she wanted to ask me the question which I
15 mentioned a short while ago. Well, that's how things transpired exactly as I have
16 already told you. But this happened three days, three days after I had had contact
17 with the OTP.

18 You see, if I had not had contact with you and they had called me, I would have met
19 with them automatically because, you see, the representatives of the OTP had already
20 met me, and they called me after that meeting. And that got me thinking. I
21 therefore thought that it must be that those whom I talked to have already left with
22 the results of what they wanted. And the Defence was aware of what had happened
23 and it is for that reason that they wanted to meet with me. That was my
24 understanding.

25 Now, when it comes to (Redacted), the specific date, I don't remember, but if I

1 were to look through my notes -- unfortunately, I don't have my notes here. You see,
2 at the time I was in another neighbourhood, and it is when I left that neighbourhood
3 to move to where (Redacted) had (Redacted), I think at that time we had been there
4 just for about two weeks, two weeks (Redacted), it is at that time that I went out
5 and by the roadside ran into (Redacted).

6 Q. Okay. What was the reason that you were moved into the new house?

7 A. Are you talking about the house in the neighbourhood where (Redacted)
8 met me, or are you talking about another house in another location?

9 Q. Well, you just said that you were (Redacted) where (Redacted)
10 (Redacted). Do you remember that?

11 A. Yes.

12 Q. My question is what is the reason that you were (Redacted)?

13 A. I went to that (Redacted) because I had my family with me. I went to (Redacted)
14 to get my family. While I was with the Court, (Redacted)

15 (Redacted)

16 (Redacted), and that is how I

17 explained the situation (Redacted)

18 (Redacted)

19 (Redacted), I went to an apartment, and that is how I ended up

20 in that neighbourhood.

21 Q. Why were you in (Redacted) to begin with?

22 A. Well, you know that ordinarily, and this is the practice, when the Court wants
23 to hear a witness, be it Defence or Prosecution witness, (Redacted)

24 (Redacted). I had come from (Redacted).

25 And once I received the money I went back in a hurry. When I got there, (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. Was that in relation to the testimony that you provided for the Defence in the
6 Bemba case?

7 A. Yes.

8 Q. When was it that you first became aware of the prospect of your giving
9 testimony in the Bemba trial?

10 A. One day I was with Mr Arido and he informed me that they had found a way
11 out or a job for me. The word used is trouvé un topo, which meant that an
12 opportunity had been found for me. And then he said at the right time we will talk
13 about it.

14 I think this happened one week after, and he called me to ask me to meet him
15 somewhere. So I left the place where I was sleeping and then we met at a junction
16 (Redacted), which is (Redacted)
17 (Redacted)

18 So I went to that junction and I met him there and he explained to me the rationale
19 behind the topo, which is the job which he had mentioned. In that explanation he
20 told me that it was about finding witnesses who can testify in the Bemba case.
21 He then told me that the person who came up with that idea -- can I give his name in
22 open court, your Honour?

23 MR VANDERPUYE: You're in private session.

24 PRESIDING JUDGE SCHMITT: I think we're in private session, aren't we? We're
25 in private session.

1 THE WITNESS: (Interpretation) All right. So he told me that the person who was
2 handling this was (Redacted), otherwise known as (Redacted). I could
3 not immediately react because prior to that he had put me in contact with (Redacted)
4 (Redacted) in relation to another situation. And since the relationship with him did
5 not quite work out, when he again mentioned that it was (Redacted) who was
6 involved in -- or who was in charge of this job of locating witnesses, I had a reaction.
7 And after stating my reaction, he told me that I did not have to react in any particular
8 way because he himself was there to handle the situation himself.
9 So he went on to explain to me as follows: "From today you will be a sub-lieutenant.
10 You will begin to behave as a sub-lieutenant from today. And in a short while I will
11 put you in contact with Bemba's lawyer and you will explain to him that you are
12 sub-lieutenant (Redacted) using my name, and you will then ask him
13 whether what he is looking for is true."
14 And I said okay.
15 Then on the spot he called Maître Kilolo. The first time the phone didn't go through,
16 but afterwards he was able to get Mr Kilolo, with whom I talked. I said hello to
17 Mr Kilolo and he said hello to me.
18 Then I put the question to him: "Now, what Lieutenant Arido is saying to me, is it
19 correct, because he is in that need?"
20 So I said -- so he said, "Yes, that is true. We are looking for witnesses who were part
21 of the experience of what happened, witnesses who can come to testify here or who
22 can come to testify in The Hague.
23 But being on the phone, he said that he would come to Douala, where we would then
24 discuss the matter in detail. That was what we said on that first contact.
25 Thereafter, one month after that, Mr Kilolo came to Douala. In the meantime prior

1 to coming, he had called Mr Arido and told him to bring all the people who were to
2 testify to Douala. That is how Mr Arido, myself, (Redacted) and (Redacted)
3 (Redacted) who unfortunately did not testify, four of us, we took a bus to go to that
4 city in order to meet Mr Kilolo.

5 Q. I apologise to interrupt you, but there is a few things I want to clarify on the
6 record, and then we can proceed so that the Chamber can understand what you have
7 to say. Is that okay?

8 A. Okay.

9 Q. The first thing I want to ask you is about when was it that Mr Arido first
10 approached you if you can remember to discuss this matter, about when?

11 A. Your Honour, it's really a pity. I didn't remember that date, but I can tell you
12 that (Redacted) with Mr Arido (Redacted) and I must have been talking to Mr Kilolo
13 the same day. And one month after that Mr Kilolo arrived in February 2012, he
14 arrived in Douala and so we left so that we could go and meet him at the hotel where
15 he was staying, Hotel (Redacted).

16 PRESIDING JUDGE SCHMITT: Yes, please.

17 MR GOSNELL: I'm sorry, Mr President. As was delicately put by my colleague the
18 other day, my client has a call of nature and I was wondering if we could just briefly
19 pause to --

20 PRESIDING JUDGE SCHMITT: (Microphone not activated) Of course we do that,
21 yes. But maybe we remain in the room and -- yes, okay.

22 MR GOSNELL: Indeed. Thank you, Mr President.

23 PRESIDING JUDGE SCHMITT: No problem.

24 (Pause in proceedings)

25 MR GOSNELL: Thank you very much, Mr President.

1 PRESIDING JUDGE SCHMITT: Of course, yes.

2 Mr Vanderpuye, it's your turn, to put it this way.

3 MR VANDERPUYE: Thank you very much, Mr President.

4 Q. You indicated that you left to go see Mr Kilolo at the Hotel (Redacted). I want to ask you
5 two things: One, where did you leave from and, two, where is the Hotel (Redacted)?

6 A. We had come from (Redacted) when we got to Douala, and when we got to
7 Douala we went to (Redacted) in an area called (Redacted), and that is where
8 we had spent the night. And when we got there, well, first it was (Redacted)
9 who had arrived to talk to us with Mr Arido at the hotel. And then, after that, he
10 gave us to understand that Mr Kilolo was on his way, would be arriving, and he had
11 to go to the airport to fetch him. So they left for the airport to fetch him and -- well,
12 to greet him.

13 And they brought him to Hotel (Redacted) from the airport. And they went -- reverted to
14 us at the hotel to give us some money that the lawyer had sent because we hadn't
15 eaten. And so he shared -- I think it was 10,000 francs so that we could have a meal
16 that evening.

17 And so we went off to have a meal, and then the next day in the morning the schedule
18 was made.

19 Now, we had come from (Redacted), we were there first, and then the (Redacted)
20 (Redacted) went. That's how it happened.

21 Q. Before Mr Arido and (Redacted), as I understand it, went to go get Mr Kilolo
22 from the airport, did you have a conversation with them? You I mean plural, the
23 group of individuals you were with.

24 A. Well, when we got to Douala we spent the night at the (Redacted) hotel.

25 There were four of us and we took some rooms. And actually I spent that night in

1 the same room with Mr Arido and the two others shared another room. And
2 already (Redacted) already, you see, they came and met up with
3 us there and we had a briefing with (Redacted). And we talked about what we
4 would say on the day that we would come before the Court and give testimony. So,
5 you see, there was a briefing.
6 (Redacted) gave us to understand that he -- he explained to us that what we were
7 going to do, if we did it right, we would get money, and we would -- would be able to
8 leave and come to Europe here. So that was an opportunity already.
9 For him as such, he wanted -- he just wanted that Mr Bemba provide *him with some
10 gear and that really means a kind of weapon that he could go down to (Redacted) and
11 set things straight there because the situation was not good there. So he explained to
12 us that we *should not think about the money too much.
13 Now, I forgot to tell you that the contract for which we had -- well, that -- to testify.
14 If we testified we would get *10,000,000 CFA francs each and the opportunity to leave
15 Africa and go to Europe. So there you have it. That was our motivation.
16 And when we were in Douala that day when he spoke to us with Mr Arido, he
17 explained that we shouldn't look at the money too much or think of it, but we should
18 really see the possibility, the opportunity to leave such a precarious situation because
19 we were going to be able to leave Africa and go to Europe. That is what was said on
20 that day.
21 Q. Let me just ask you, if I can, to clarify a couple of things. You mentioned that
22 you were supposed to receive -- or, your understanding was that you were supposed
23 to receive some sum of money. Can you tell the Chamber how much money you
24 were supposed to receive?
25 A. We assumed that 10 million CFA francs would be given to each person. That

1 was the deal. And even in Douala during our discussion with (Redacted) that
2 money was mentioned, and he advised us saying "Listen, you have an opportunity.
3 Once you're here in Europe, before you go to the courtroom to give testimony, you
4 have an opportunity to ask for the money to be given to you before you testify, given
5 right to you, right into your hand." That's what he said that day.

6 And so after that now he said, "Don't really look at the money too much, don't think
7 about it too much because when you leave there to go here, your life will change."
8 That's what was said.

9 Q. Who said that?

10 MR LAROCHELLE: Just -- he was clear.

11 PRESIDING JUDGE SCHMITT: Please, Mr Larochelle, only when you get the floor,
12 please, yes.

13 MR VANDERPUYE:

14 Q. Who said that?

15 A. Well, before we were able to go to Douala, those were the conditions that bound
16 us to Mr Arido because he was the go-between. He himself, he said so directly in his
17 own words. And that was the commitment. That is what led me to agree to testify
18 because without that money, I couldn't testify. The money was my motivation, the
19 10 million francs.

20 You testify, you get 10 million CFA francs. And the other thing was you will change
21 continents.

22 And that same -- the same problem we put on the day that (Redacted) was there with
23 us, and that's when he said, "Don't think about the money too much. Go do it and
24 you'll have the opportunity once you're here to ask for the money before you go into
25 the courtroom to testify."

1 Q. Did you ever get that money?

2 A. I never got that money myself, but I did receive something else from Mr Kilolo.

3 The amount that I got from him was 550,000 francs, and the money that he sent me to
4 pay for the transportation when I got -- well, we had asked for some money, but no
5 one got the 10 million. Myself, I never got the 10 million.

6 Q. The money that you received -- you received from Mr Kilolo, can you tell the
7 Chamber how that came about? Under what circumstances did you receive it?

8 A. I went there from (Redacted), and I went to his hotel. And I couldn't -- well, I
9 didn't know the name of the town. I called (Redacted) so that he would give
10 me the lawyer's number. And he said to me that he didn't have the number and I
11 would have to wait for a while. And intuitively I took out the card of Mr Kilolo and
12 I had his number and I called the number, the European number, and I got the
13 answering machine and I left him a message. And I said that I had already got to the
14 town and that if he needed me he should just contact me.
15 So that's how it happened. And not even 5 minutes later, the telephone rang and it
16 was he himself, and he said that he had got there. And at Hotel (Redacted), that is
17 where I got the money when I was supposed to testify.

18 Q. When you met with Mr Kilolo at the Hotel (Redacted) I think you said, was he
19 alone? Was he with anybody else? Can you tell the Chamber?

20 A. Mr Kilolo had one of the members of his office with him, a white lady. I would
21 recognize her if she were here. So he was with her. They had come to Douala.

22 Q. Was she introduced to you?

23 A. He introduced her to me saying that she was a member of his team. And he
24 said that she was someone that he worked with, because when he asked me, the lady
25 was taking notes.

1 Q. Okay. So just so that we're clear, when you met with Mr Kilolo at the Hotel
2 (Redacted), was that in the context of your speaking to him in an interview or some
3 other -- or in some other context?

4 A. For me it was the first time I had met him. In principle, Mr Kilolo wanted to
5 make sure, I thought that he wanted to make sure that if the people were going to
6 testify, that they would be introduced to him. So he had come to Douala in order to
7 see these people who were supposed to give testimony, who had promised to testify.
8 So that was the context.

9 He received me in his room, which he had turned into an office, and we spoke to one
10 another. And, you see, he received me. And he also received (Redacted) and others.
11 And each time when I went back to his room, she introduced me -- correction -- he
12 intro -- correction -- she introduced him to me as the person she worked with. So
13 there were the introductions and then we began the discussion. Once we had
14 finished, he accompanied, and that's how it happened.

15 Q. Other than the woman that he was with, was he with anybody else?

16 A. I don't remember, but I believe that he had this lady with him, you see, a white
17 lady.

18 Q. You mentioned that you went into his room and you spoke to him. Was that
19 recorded to your knowledge, your conversation with Mr Kilolo at that time?

20 A. Yes. But the same instruments that you use, the same tools, the representatives
21 of the OTP had gone to see me there. And what do you call that thing? They took
22 my photograph and then there was a little device like this, this size, which recorded.

23 Q. And during the course of that discussion that you had that was recorded, was it
24 Mr Kilolo who asked you the questions? Was it the woman that he was with that
25 asked you the questions? Do you remember? Can you tell the Chamber?

1 A. It was the lawyer himself who asked the questions. He had some sheets of
2 paper. It was kind of organised. So he would put the questions and you would
3 answer, and he was taking some notes, the lady was also taking notes.

4 Q. And you mentioned earlier in one of your answers that there were also others
5 who met with Mr Kilolo. Could you just tell the Chamber who they were?

6 A. There was myself. There was (Redacted). There was (Redacted). There
7 was (Redacted). There was (Redacted). Mr Arido was there.
8 (Redacted) was there as well. So he started with the people who had come
9 from -- from the other place, the other town, and then he took (Redacted)
10 (Redacted) after that.

11 Q. Did each one of these individuals to your knowledge meet with Mr Kilolo and
12 the woman?

13 A. I was telling you earlier that we were all together. It was like a team. We
14 were a team. And the whole team had to meet.

15 Q. What I'm getting at is did you meet as a group with Mr Kilolo or individually
16 with Mr Kilolo and the woman or both?

17 A. I will be specific. We travelled as a group. And each person in turn was
18 supposed to meet each person one after another. So we moved as a group and each
19 one was supposed to meet him one after another.

20 Q. And were you aware of what each one of you was supposed to tell him before
21 meeting him?

22 A. But of course, we had been briefed. Each one of us knew what side he was on.
23 He was with -- well, with his level he knew his company. He knew what his duties
24 were, and he knew what he had to say to Mr Kilolo and each person was supposed to
25 say. We were all briefed. And what's more, when we met up together, we

1 reviewed what we said so that we wouldn't contradict one another.

2 Q. And when you reviewed what the other said, was that before or after you met
3 with Mr Kilolo and this lady?

4 A. The briefings were before we met Mr Kilolo. When we met Mr Kilolo, that was
5 at Hotel (Redacted) that day. It was a day when we were supposed to go see Kilolo
6 and say who we were so, that is to say, give our identity, provide one's identity card,
7 birth certificate, explain, have a conversation with him, talk to him. So each one of
8 us did that. And when we left Mr Kilolo's office, well, we said to ourselves, "Well,
9 what did you tell him" and so on and so forth. That's what we did.

10 MR VANDERPUYE: Just a last question before we break, Mr President, if that's
11 okay?

12 PRESIDING JUDGE SCHMITT: Microphone not activated.

13 MR VANDERPUYE: Thank you, Mr President.

14 Q. In respect to what each of you were to tell Mr Kilolo or the subject of your
15 individual or collective briefings, was that information to your knowledge true?

16 A. I have great respect for this august Chamber. A few moments ago when I was
17 talking here, I gave you my identity. I'm not a soldier. So the question you're
18 putting to me would be like saying to me, yes, what I said -- what we said was the
19 truth or that was not a truth. It was a group of lies that had been organised and put
20 together. That's all. I don't know whether I've answered your question.

21 Q. You have, Mr Witness.

22 MR VANDERPUYE: Mr President, thank you.

23 PRESIDING JUDGE SCHMITT: Mr Witness, thank you for answering the questions
24 today. You recognize obviously that this is -- your testimony has not finished yet.
25 Tomorrow we will continue with your testimony. In the meantime please have in

1 mind you must not, and I repeat, you must not discuss your testimony with anyone,
2 neither with family nor with friends who you may be in contact with tonight. Do
3 you understand this?

4 THE WITNESS: (Interpretation) Yes, your Honour.

5 PRESIDING JUDGE SCHMITT: Then have a good rest, and we will see you again
6 tomorrow.

7 That concludes today's hearing. We will resume tomorrow at 9.30 as always you can
8 say now at the moment. Thank you everyone, good afternoon. And the court
9 officer can also then escort the witness out of the courtroom.

10 THE COURT USHER: All rise.

11 *(The hearing ends in private session at 4.02 p.m.) Reclassified as open session

12 RECLASSIFICATION REPORT

13 Pursuant to Trial Chamber VII's instructions, ICC-01/05-01/13-1209, dated
14 2 September 2015, this lesser redacted public version of the transcript is filed in the
15 record of the case.