

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido
6 ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
8 Judge Raul Pangalangan
9 Trial Hearing
10 Friday, 13 November 2015
11 (The hearing starts in open session at 9.30 a.m.)
12 THE COURT USHER: All rise.
13 The International Criminal Court is now in session.
14 PRESIDING JUDGE SCHMITT: Good morning, everyone, after this really extensive
15 break that we had.
16 Could the court officer please call the case.
17 THE COURT OFFICER: Good morning. Yes, Mr President.
18 Situation in the Central African Republic in the case of The Prosecutor versus
19 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
20 Fidèle Babala Wandu and Narcisse Arido, and the case reference ICC-01/05-01/13.
21 And for the record we are in open session.
22 PRESIDING JUDGE SCHMITT: Thank you.
23 I ask for the appearances of the parties. Please first Mr Vanderpuye.
24 MR VANDERPUYE: Thank you, Mr President. Good morning to you, good
25 morning your Honours, good morning everyone. Today the Prosecution is

1 represented by Nema Milaninia, seated to my right; behind him, Sylvie Wakchom; to
2 her left, Olivia Struyven; and in the back Jasmina Suljanovic, she is our case manager
3 for today. I am Kweku Vanderpuye.

4 PRESIDING JUDGE SCHMITT: Thank you. Ms Struyven is a little bit hidden. I
5 can't see her. Yes.

6 And now for the Defence please.

7 MR GOSNELL: Good morning, Mr President, your Honours. It's Christopher
8 Gosnell this morning on behalf of Mr Mangenda, accompanied by Nikki Sethi.

9 MR DJUNGA: (Interpretation) Good morning, your Honours. With me is
10 Steven Powles; Khady Mbengue; and myself, Maître Paul Djunga for Maître Kilolo
11 Musamba.

12 MR TAKU: Good morning, your Honours. My name's Charles Taku, I represent
13 Mr Arido. With me today is Michael Rowse.

14 MR KILENDA: (Interpretation) Good morning, Mr President, your Honours. We
15 have Maître Azama Shalie Azama Rodoma, co-counsel; and myself, Jean-Pierre
16 Kilenda Kakengi; and we have Adriana-Marie Manolescu, case manager, in Defence
17 of Mr Babala Wandu. Thank you.

18 MS TAYLOR: Good morning, Mr President, your Honours. I'm appearing for
19 Mr Bemba this morning with Ms Ines Pierre de la Brière. Thank you.

20 PRESIDING JUDGE SCHMITT: You can remain standing I think. I've been
21 informed you want to address the Chamber; is this correct?

22 MS TAYLOR: Yes, I did. Thank you very much, Mr President, your Honours.

23 The reason why I wish to address the Chamber is yet again on a disclosure issue, and
24 I believe we can do this in open session if I do not mention the country which I'm
25 referring to, and it's --

1 PRESIDING JUDGE SCHMITT: Yes.

2 MS TAYLOR: -- just taken for granted that I'm referring to a particular country and
3 particular authorities.

4 Now, Mr President, your Honours, after a previous witness testified and mentioned
5 being brought to a police station by force in a military fashion, and he mentioned the
6 same thing happening to another person, I wrote to the Prosecutor on 29 October to
7 request whether the Prosecution -- whether there were any audio recordings of the
8 other witness, who had been taken to the station, or whether there were any
9 transcripts of such recordings.

10 I was -- I received a response from the Prosecution on 29 October saying, "Thank you
11 for your email. First, there was no audio recording of" - and we're talking about
12 P-242 - "and that she was not considered to be a suspect."

13 Now, in the course of preparing for today's testimony, I was reviewing her witness
14 statements, and in her witness statements, and I specifically refer to

15 CAR-OTP-0075-0002, she was informed that her interview would be recorded.

16 And the Chamber may recall, from another witness from this country, that it's
17 standard procedure at the beginning of the interview that the authorities from that
18 country inform them that under the law of that country they had to record interviews.

19 In my email I also referred to the request for assistance directed to that country in
20 which the Prosecution had specifically requested the assistance of the authorities of
21 that country to bring that witness for the purpose of being interviewed in accordance
22 with Article 55 of the Statute.

23 After a repeated request that I receive a response by close of business, I received a
24 response yesterday night at 6.30 p.m. that the introduction of the witness was
25 recorded by the authorities in question, but the Prosecution does not have those

1 recordings in its possession.

2 Now, Mr President, your Honours, Rule 76 is not restricted to information in the

3 possession of the Prosecution. It refers to statements of witnesses which the

4 Prosecution intends to call. And in the decision ICC-01/04-01/06-718, it's a decision

5 of 17 November 2006, it was affirmed in the Lubanga case that Rule 76 is not

6 restricted to statements taken by the Prosecution and it's not restricted to statements

7 in the physical control of the Prosecution, and that the Prosecution indeed has a

8 positive obligation to collect such information when another entity has taken them.

9 And Mr President, your Honours, that's entirely consistent with Article 54(1) which

10 imposes a positive duty on the Prosecution to search for the truth.

11 The Appeals Chamber has affirmed the Lubanga Article 54(3)(e) decision that this is

12 not just a duty to investigate, it's a duty to investigate for the purposes of facilitating

13 disclosure which could be relevant to the Defence.

14 In this particular circumstance, this recording occurred at the request of the

15 Prosecution. The Prosecution was present when or around about in the environ

16 when this recording was taken, so they were aware of it, and we know they're aware

17 of it because the statement specifically refers to it.

18 And the Appeals Chamber has also found in the Banda case, the judgment, that it's

19 not enough to simply disclose a statement.

20 Rule 112 is *lex specialis*, if there is an audio recording or a transcript, that constitutes

21 the best evidence. That constitutes the full and complete record of what occurred.

22 And in those circumstances, the Prosecution can't simply disclose a witness statement

23 when recordings exist.

24 Now, Mr President, your Honours, we have a right to receive this information under

25 Rule 76 and we had a right to receive it before this witness came. And we had a

1 right to have it to prepare our cross-examination and not to have to go in here, again
2 ambushed at 6.30 p.m. at night, and try and elicit information on the stand and have
3 to anticipate potential answers we don't know what they might be.

4 It's possible that this person's status might have changed during this recording. We
5 don't know. But again, it should have been informed and disclosed to us in advance.

6 Thank you, Mr President, your Honours.

7 PRESIDING JUDGE SCHMITT: Thank you, Mrs Taylor.

8 This is perfectly clear that the Prosecution has to answer to that.

9 MR VANDERPUYE: My pleasure as always, Mr President. A couple of things I
10 think the Chamber should know.

11 The first thing is that the statement in question was disclosed to Ms Taylor and the
12 Bemba Defence back in February 2014. She's telling the Chamber that she was
13 reviewing the witness statement of 242 prior to her anticipated testimony as of last
14 week.

15 The information that she's going on about in terms of the existence of the recording is
16 plain in the statement, as she pointed out.

17 It is clear in the statement that there was a recording made of the initial introductions
18 between the authorities where the statement was taken and the witness prior to the
19 statement being taken.

20 That statement was taken pursuant to Article 55(1) of the Statute, not Article 55(2) of
21 the Statute which mandates its recording.

22 It is not required that the statement be recorded in respect of an Article 55(1)
23 statement, which is I think quite apparent and noticeably absent from her application
24 before the Chamber just now.

25 The introduction of the authorities engaged in the interview of the witness is an issue

1 that is not material to the substantive evidence of this witness, which has been at the
2 disposal of the Defence now for a year and a half. It seems to me that fundamentally
3 the application that Ms Taylor is making has no foundation in terms of its potential
4 impact on the preparedness of the Defence in this case. If she's telling this Chamber
5 she hasn't looked at that statement until a year and a half after it's been disclosed,
6 then there's a problem here, but the problem isn't one of disclosure, it's a problem of
7 the preparedness of the Defence and abdication of Defence's responsibility to review
8 the material that is disclosed to them, particularly incriminating material, as disclosed
9 prior to the confirmation proceedings in this case, well in advance of the confirmation
10 proceedings in this case, I should say, which didn't occur until, I think it was -- they
11 didn't begin until 30 June, I think, 2014 when the DCC was filed, to date.
12 There is absolutely nothing to suggest that there is anything substantive that the
13 Defence is not apprised of. And in the circumstances, it seems that, to the extent that
14 the witness is available to be questioned about the circumstances of that introduction,
15 if it becomes a material issue, which it may, I don't know because I haven't spoken to
16 the witness, if it becomes a material issue, then there would seem to be an appropriate
17 remedy that can be had, but at this point it seems to me premature to even assume
18 that it contains anything that's substantive in the way of a Rule 76 statement.
19 Second, it's not a statement that's in the possession of the Prosecution.
20 Third, it was the product of a procedure that was conducted by a State Party pursuant
21 to the laws of the State Party, not pursuant to the -- not pursuant to the direction of
22 the Office of The Prosecutor, which actually has no say on how those proceedings are
23 conducted in a given State.
24 And four, it would seem to me that the witness is perfectly capable of addressing
25 those issues.

1 So I would -- I would defer to the Chamber at this point, but I would suggest that let's
2 wait and see what the witness has to say about it. If it determines -- if it becomes an
3 issue that is substantive, dispositive in some manner with respect to the substance of
4 her statement, then we'll pursue an appropriate remedy at this stage. But at this
5 point I would suggest, A, there is no disclosure violation and B, even if there were,
6 there is no, even a hint, of prejudice to the Defence in terms of their preparedness to
7 examine this witness.

8 PRESIDING JUDGE SCHMITT: Yes, Mrs Taylor.

9 MS TAYLOR: Just quickly, Mr President, your Honours. I emailed the Prosecution
10 on 29 October. That was actually in the morning before the Chamber issued its
11 decision that this person would be called as a witness.

12 And as Mr President and your Honours will recall, we didn't have the request for
13 assistance before this trial started. The only reason I knew that this person had been
14 interviewed pursuant to Article 55 is because it was put in the RFA.

15 And if you look at Article 55, Article 55(2) applies to the procedure engaged in by
16 national authorities.

17 In any case, the recording exists. It has information, the Prosecution was aware of it.
18 We shouldn't have to debate whether we have a right to receive information coming
19 from a witness interviewed at the request of the Prosecutor. Thank you.

20 PRESIDING JUDGE SCHMITT: Thank you. Thank you, Mrs Taylor.

21 No, Mr Vanderpuye, I think you have made your point. I continue now.

22 MR VANDERPUYE: Thank you, Mr President.

23 PRESIDING JUDGE SCHMITT: We have also noted and we will in short notice
24 come back to that, that the Rule 68 request of the Prosecution we received yesterday,
25 so we will have to go back to that too, to this point too.

1 And I would suggest that we defer indeed what remedy could be if really the parties
2 think that an issue arises here that is of significance. We -- I think we are all
3 prepared for this witness, and we -- I have noted it, what you have said, Mrs Taylor,
4 and we have also noted and, as I said, we come back to that, Mr Vanderpuye, this
5 later request, Rule 68(3), we have -- we have to of course to ask the Defence what they
6 think of it, but I really would suggest, since this is, as we assume, the last witness that
7 the Prosecution is going to call for her case, for their case, that we go on with that and
8 we can come back at any time to this issue if really a significant and important issue, a
9 possible prejudice to the Defence arises.

10 MS TAYLOR: Thank you very much, Mr President, but we would also respectfully
11 request an order for disclosure because if we're being placed the onus of actually
12 showing prejudice, we can't show that prejudice if we don't know what we don't have.
13 And we would like a ruling as to whether this information does fall within the
14 Prosecution's disclosure obligations because otherwise we have to engage in a fishing
15 expedition with the witness which we shouldn't have to do. We should have had
16 the information beforehand.

17 PRESIDING JUDGE SCHMITT: Then we retire for a short deliberation. Please stay
18 in the room, between 5 and 10 minutes I would say.

19 THE COURT USHER: All rise.

20 (Recess taken at 9.46 a.m.)

21 (Upon resuming in open session at 9.56 a.m.)

22 THE COURT USHER: All rise.

23 PRESIDING JUDGE SCHMITT: We have to render the following decision. In
24 decision 1202, the Single Judge held that it is not a Rule 76 violation if the Prosecution
25 fails to take statements from its witnesses. It may, however, amount to an

1 investigative violation under Article 54(1)(a) of the Statute.
2 The same reasoning applies here. It is not a Rule 76 violation for the Prosecution to
3 not disclose an audio recording it does not have.
4 As to whether an Article 54(1) violation exists, the Prosecution could have made
5 efforts to get this recording. However, P-242's anticipated testimony is such that no
6 undue prejudice is caused by the Defence only having P-242's written statements.
7 The Chamber will not order any disclosure at this time.
8 Now we continue with the -- again with the procedural issue concerning 242.
9 The Chamber understands that the Prosecution wishes to make a Rule 68(3)
10 application in relation to P-242. We would like to address this now.
11 Mr Vanderpuye, you have the floor.
12 MR VANDERPUYE: Yes. Thank you, Mr President. We circulated I think it was
13 an email yesterday on this issue. In our view, this witness's evidence is really quite
14 limited. As I mentioned earlier, the statement concerning her evidence, and the
15 statements concerning her evidence were disclosed I think it was 14 February 2014.
16 Her statement was also listed on the Prosecution's list of exhibits I think at
17 confirmation and certainly at trial again, and then we sought to add this witness as a
18 Rule 68(2)(b)(3) witness, I believe, on the basis of her statement. And that
19 application was from 24 September 2015, to which I believe the Defence has
20 responded.
21 So I think everyone is really quite well apprised of the nature and the extent of her
22 statement, which we view as quite limited.
23 So I circulated this email yesterday to determine whether or not there was any
24 objection by the Defence to proceed with eliciting her evidence in accordance with
25 Rule 68(3).

1 Our position is that it would be the most efficient way in which to proceed in this case,
2 and that's our position effectively.

3 We would ask that you -- that you make a dispensation to allow us to proceed in this
4 way because, of course, of the Chamber's previous ruling for the 21 days' notice, but
5 we don't believe that it would cause any prejudice to the parties, to the Defence at all.

6 PRESIDING JUDGE SCHMITT: Any comments by the Defence? Any objections?
7 Mrs Taylor.

8 MS TAYLOR: Thank you, Mr President. Firstly, I note that the Prosecution
9 submitted a Rule 68(2) application quite a while ago, and there's no indication
10 whatsoever as to why they couldn't have been in a position to submit a Rule 68(3)(1)
11 somewhat earlier than the day before the witness testifies.

12 Another issue which we do raise is the fact that this witness at one point was an
13 Article 55 suspect. She was apparently read her rights. I don't know what rights
14 were read to her. And yet suddenly that transformed to a different witness. We
15 don't know why. During the statement she does not have a counsel. There's no
16 waiver of counsel. There is no waiver of recording. So there are a lot of issues there
17 that we are not in a position to explore and which should be explored through her
18 testifying rather than through the admission of a statement which appears to be
19 incomplete. Thank you.

20 PRESIDING JUDGE SCHMITT: Thank you. Any other comments? That is not
21 the (Microphone not activated).

22 Mr Gosnell.

23 MR GOSNELL: Mr President, we take no position on this application, but I would
24 just draw your attention to the fact, and it may be relevant to your deliberations on
25 this, that this is not an audio recording or a transcript. Just to -- just to draw to your

1 attention that fact.

2 (Trial Chamber confers)

3 PRESIDING JUDGE SCHMITT: So the following decision on that ruling on that
4 issue:

5 The Chamber does not consider that the Prosecution has justified the delay in filing
6 this application. Decision 1430, which permitted the addition of P-242 to the
7 Prosecution's witness list, was notified on 29 October 2015.

8 The Prosecution waited until yesterday to give notice that it would make this
9 application today.

10 Even recognizing that the Prosecution could not have given a full 21 days' notice for
11 its 68(3) application, in accordance with paragraph 23 of decision 1209, it has been
12 unduly late in requesting this relief.

13 The Chamber additionally notes that it is reasonable to expect that P-242's evidence
14 can start and finish today, even without recourse to Rule 68(3). This means that the
15 expediting effect of using this Rule is less than with other recent witnesses.

16 The Prosecution's application is therefore rejected.

17 The Chamber turns now to the upcoming testimony of Witness 242. Could we
18 please go now into private session because we have to discuss matters that should be
19 discussed in private session.

20 *(Private session at 10.03 a.m.) Reclassified into open session

21 THE COURT OFFICER: (Interpretation) Yes, we are now in private session, your
22 Honour. Thank you.

23 PRESIDING JUDGE SCHMITT: Thank you.

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Now we come to another procedural issue, which arises from the relationship of the
11 witness to Witness P-20.

12 I have already mentioned that Witness P-20 is the husband of Witness P-242. This
13 raises potential conflicts that the Chamber has to address.

14 The Chamber has decided to give an instruction to P-242 that she, as P-20's spouse,
15 cannot be compelled to answer any questions that might tend to incriminate her
16 husband.

17 The Chamber further considers that P-242 must be informed of this before testifying,
18 and should such an issue arise during P-242's testimony, it will be addressed on a
19 question-by-question basis.

20 The Chamber is aware that Rule 75 of the Rules does not squarely apply to the
21 present situation as this provision only concerns family members of an accused.

22 However, the Chamber considers that the same kinds of communications between
23 two married witnesses are covered by privilege in Rule 73(2) of the Rules. Such
24 communications are made in the course of a confidential relationship producing a
25 reasonable expectation of privacy and non-disclosure. The confidentiality between

1 married witnesses is essential to the nature and type of relationship between the
2 person and the confidante.

3 Finally, just as is the case with the relationships explicitly protected by Rule 75,
4 recognizing this kind of privilege would further the objectives of the Statute and the
5 Rules.

6 The Chamber does not consider that the existence of any Rule 74 assurances is
7 relevant in the present context. These assurances do not make persons immune from
8 all potential prosecutions in all contexts, as can be seen from Rule 74(3)(c)(2) of the
9 Rules.

10 Further and importantly, treating these communications between married witnesses
11 as privileged also protects the integrity of their relationship. The witness is in a
12 mental and emotional dilemma between her duty to tell the truth and the fear of
13 prejudicing or harming the family member. In a similar dilemma seen with family
14 members of the accused, the testimony of the wife could lead to proceedings against
15 her husband.

16 So whenever a question is asked whose answer would lead to the danger of
17 proceedings against the family member, the witness can refuse to answer on a
18 case-by-case basis.

19 This concludes the Chamber's oral rulings in advance of P-242's testimony.

20 And a remark by the Presiding Judge:

21 The Chamber would very much appreciate if counsel would take into account the
22 potential conflict of the witness during examination.

23 Mr Vanderpuye.

24 MR VANDERPUYE: Thank you, Mr President. I wasn't aware that the Chamber
25 would render a decision on this issue, but I have listened very carefully to your

1 instruction and your decision. I do want to note for the record that we do take
2 exception to it because we believe it extends beyond the scope of the protection that
3 should be afforded to a witness in this case, and particularly this witness, because the
4 nature of her evidence is such that it would in fact potentially incriminate her
5 husband because, as you know, her husband is in this case a suspect as having been
6 complicit in the charged crimes against these accused.

7 To the extent that her evidence bears upon his receipt of money, knowledge of money,
8 which he subsequently, per our position, lied about before this Court, the gravamen
9 of her evidence is such that it potentially incriminates her husband, he is not -- rather,
10 she does not benefit from protection under Rule 74. He is not an accused in this case,
11 nor does the marital privilege extend to the benefit of persons who are not accused
12 before this Chamber.

13 So to that extent we take exception. We're mindful of the Court's instruction. I'm
14 not entirely confident how we can negotiate that conflict that you've identified in
15 eliciting her evidence because, as I mentioned, the gravamen of her evidence is
16 precisely that. But we'll do our best to do so notwithstanding.

17 MR TAKU: Your Honour.

18 PRESIDING JUDGE SCHMITT: Mr Taku, please.

19 MR TAKU: Your Honours, I wouldn't let this occasion pass without rising to say
20 that I'm very pleased with this ruling.

21 It's consistent with international human rights treaties that this Court so uphold. It
22 is also consistent with all the principles of human dignity. International justice is
23 there to serve humanity, and I think the sanctity of family relations and privileged
24 relations has been safeguarded. I think this is one of the jurisprudence that has
25 actually helped in the development of international law in this area. Thank you very

1 much, your Honour.

2 PRESIDING JUDGE SCHMITT: Thank you.

3 Mr Kilenda, please.

4 MR KILENDA: (Interpretation) Thank you, your Honour, for allowing me to
5 address the Court.

6 We saw in your ruling that the witness about to appear will be in the middle of an
7 emotional dilemma given all the grounds set out in your ruling, I am wondering
8 whether it might be a good idea to listen, to hear from this witness. Perhaps it will
9 be best for the Prosecution to withdraw this witness.

10 PRESIDING JUDGE SCHMITT: That is of course not up to the Presiding Judge to
11 suggest.

12 I want to -- Mr Vanderpuye, just a moment.

13 I want to address what Mr Vanderpuye has said and try to explain the reasoning. I
14 think it was perfectly clear what the Chamber said in its ruling, but the conflict that
15 Rule 75 addresses when you have a witness, a family member, and she or he testifies
16 in a proceeding against the accused, this conflict that is addressed by Rule 75 is not
17 fundamentally nor substantially different if you have a witness, family member
18 testifying in this Court in the conflict that the testimony of this witness could lead to
19 proceedings that -- against another family member having been, as it is the case with
20 P-20, a witness before this Court.

21 And we also note that in other also domestic legislation, this potential conflict is
22 addressed, and you can, as we have done in our ruling very well, apply here Rule 73.
23 So the problem, Mr Vanderpuye, that you have addressed is a problem that arises
24 from this conflict and from this right that the witness has. And if it cannot be solved,
25 the witness can refuse to answer the question.

1 That is the result of this ruling.

2 MR VANDERPUYE: First, I appreciate that clarification.

3 In response to my colleague's request that we consider whether to withdraw the
4 witness, we're not withdrawing the witness. We intend to proceed with her
5 evidence in accordance with the Chamber's instruction.

6 But I would add that my understanding of the Chamber's ruling is such that it would
7 apply to any family member, not necessarily one that derives from a marital
8 relationship, because the marital privilege extends to the elicitation of testimony
9 against an accused, not a potential accused, not someone who might be charged, but
10 someone who is.

11 And in this case, as I understand it -- as I understand it, what's happening here is
12 because the husband has testified in this case, and as a result of this witness's
13 evidence may have -- may be subject to criminal sanction as regards his testimony
14 before this Chamber, then that would be an issue, but not with respect to his act as
15 concerns his testimony before the previous Chamber, which is what is at issue before
16 this Chamber now.

17 To the extent that her testimony bears upon his act as concerns the alleged crime,
18 which is before this Chamber, we would submit, or I submit, that that is relevant
19 evidence, that is not precluded by the Rules of Procedure and Evidence before this
20 Court under 73, 74 or 75.

21 With respect to her evidence as it may incriminate him before this Chamber, that is,
22 whether he told this Chamber the truth, is a different issue. By I just want to -- I just
23 want to make sure that I understand that distinction because otherwise it would
24 appear to me that what the Chamber's ruling does is effectively countenance and
25 protect or insulate this witness, the husband, from any potential acts that he

1 committed which are the subject matter of the crimes that are charged in this case,
2 because it would preclude his wife from testifying about acts that he is complicit in
3 that are charged against the accused regarding his testimony before Trial Chamber III.

4 PRESIDING JUDGE SCHMITT: First of all, when we are talking about family
5 members, we had only -- have only decided on a situation where we have husband
6 and wife like we had here.

7 Let me add a personal opinion: If we have a father and son, daughter and mother,
8 perhaps we would also apply it.

9 If any family member would fall under this ruling, to put it this way, we don't have to
10 decide it, and there could of course be distinctions in that respect.

11 And it means that the witness can refuse questions that tend to incriminate her
12 husband that -- we have said that explicitly. It does not mean the witness is not
13 allowed to answer the questions. Yes. We do that on a case-by-case basis.

14 And I would really -- we have also -- the Chamber has looked into the evidence, of
15 course, and we have looked into the transcripts of what P-20 has said and, I reiterate,
16 and this is also addressed to the Defence, we think with a preliminary assessment of
17 what we can expect from the witness today that the scope is really limited.

18 So we would really want to now start with the witness's testimony. We give her
19 these instructions, where they have to be of course adequate to the personality of the
20 person. We will see what we have in front of us then, and then we continue. And I
21 really would appreciate very much from all counsel to take into account what we
22 have said; first on the privilege, to put it this way, of the personal relationship, it's
23 better to say, and second, on the limited scope and possible relevance of this
24 testimony.

25 Mr Djunga.

Trial Hearing
Witness: CAR-OTP-P-0242

(Closed Session)

ICC-01/05-01/13

1 MR DJUNGA: (Interpretation) Thank you, your Honour. It is true that my
2 remarks may be irrelevant because you have responded to my earlier concern, but
3 just regarding this witness, we have all heard that this person has had only very
4 limited education, so I am wondering whether the possibility of her incriminating her
5 husband is there, and I do have concerns whether she has understood this particular
6 state of affairs.

7 Now, I believe that this witness (Redacted) and she may have
8 difficulties in fully understanding the entire situation. That is my concern, your
9 Honour.

10 PRESIDING JUDGE SCHMITT: Because of -- I agree with you, Mr Djunga.
11 Because of that, I addressed it now twice that everybody in the room should be aware
12 of the personal situation, of the personal background of this witness and of the scope
13 and potential relevance of her testimony.

14 So we go now into closed session I think and bring the witness in.

15 *(Closed session at 10.17 a.m.) Reclassified into open session

16 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.
17 (The witness enters the courtroom)

18 PRESIDING JUDGE SCHMITT: Good morning, Madam Witness. You are going to
19 testify before the International Criminal Court. I hope you had a nice travel to The
20 Hague.

21 On behalf of the Chamber, I would like to welcome you in the courtroom. This
22 Chamber has been established to try the case of the Prosecutor against Mr Jean-Pierre
23 Bemba Gombo and others. You are called to testify to assist us in our search for the
24 truth.

25 Madam Witness, you should have a card in front of you or a card is shown to you

Trial Hearing
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1 with a solemn undertaking to tell the truth. Could you please read out loud this
2 card.

3 Perhaps we wait. It's of course correct what Mr Halling tells me; we go into open
4 session for that. I've forgotten that. Before we do that, we go into open session.
5 Thank you.

6 (Open session at 10.21 a.m.)

7 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.

8 PRESIDING JUDGE SCHMITT: As you see, Madam Witness, the Presiding Judge
9 had forgotten something. So again it was my fault, to put it this way. Again,
10 would you be so kind to read out the solemn undertaking.

11 WITNESS: CAR-OTP-P-0242

12 (The witness speaks (Redacted))

13 THE WITNESS: (Interpretation) Could someone please help me read this
14 document?

15 PRESIDING JUDGE SCHMITT: What does the witness say?

16 THE INTERPRETER: Message from the -- the witness has just said: Can I read this
17 document?

18 PRESIDING JUDGE SCHMITT: Of course. Excuse me, Madam Witness, you can
19 read now. You can read now the solemn undertaking.

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

22 PRESIDING JUDGE SCHMITT: Thank you very much, Madam Witness. You are
23 now under oath. You have already been informed about the importance to speak the
24 truth. You have to speak the truth. And it is an offence within the jurisdiction of
25 this Court to give false testimony.

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1 Court officer, could we then go into private session, please.

2 *(Private session at 10.23 a.m.) Reclassified into open session

3 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

4 PRESIDING JUDGE SCHMITT: I will now explain to you protective measures that
5 the Chamber has put in place for your testimony. First, there is face distortion in
6 place, which means that no one outside the courtroom can see your face during the
7 testimony on the screen.

8 We will also use a pseudonym. In accordance with that, we will all refer to you only
9 as "Madam Witness," as I'm doing at the moment, to make sure that the public does
10 not know your name.

11 When you answer questions that will not give away who you are or might
12 incriminate you, we will do so in open session, which means that the public can hear
13 what is being said in the courtroom. When we are in open session, you can see this
14 because the light in front of you is red.

15 When you are asked to describe anything that relates specifically to you, for example,
16 you are asked to mention facts that might reveal your identity, your name, locations
17 where you live, persons close to you, we will do this in a private session. The light
18 in front of you will then be green.

19 We recognize that your security and well-being is important during the course of this
20 trial. If at any point you feel that you would like a brief break from giving your
21 testimony or you feel unwell, do not hesitate to let us know.

22 I would also like to inform you that you are not to require, and this is very important,
23 not required to answer any questions that you are worried might get your husband
24 into trouble. If you are ever worried about answering a question during your
25 testimony, then please let the Chamber know and address me personally.

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1 Do you understand this, Madam Witness?

2 THE WITNESS: (Interpretation) I've understood.

3 PRESIDING JUDGE SCHMITT: Thank you very much.

4 Now a few practical matters you should have in mind when giving your testimony.

5 Everything we say here in the courtroom is written down and interpreted into

6 English and French. It is therefore important to speak clearly and to speak at a

7 moderate or rather slow pace. We want to make sure that your words can be well

8 understood by the interpreters and then by the rest of us.

9 Also speak into the microphone and only start speaking when the person asking you

10 the question has finished. We have often the situation in this courtroom that we

11 have something what we call overlapping speakers, and that means that interpreters

12 cannot follow any more. So I recommend to you when the lawyer has asked you his

13 or her question, please count in your head to three and only then give your answer.

14 Again, if you have any questions yourself, if you are worried about anything, raise

15 your hand so we know you wish to say something. We will then give you the

16 opportunity to speak. Have you understood all that, too?

17 THE WITNESS: (Interpretation) Yes, I understand.

18 PRESIDING JUDGE SCHMITT: Thank you. We will then start your testimony.

19 Prosecution, you have the floor.

20 MR MILANINIA: Thank you, Mr President.

21 QUESTIONED BY MR MILANINIA:

22 Q. Good morning, Madam Witness. Madam Witness, my name is Nema

23 Milaninia. I represent the Office of The Prosecutor. You may remember me, we

24 briefly met yesterday during your courtesy meeting.

25 I'm going to add just two simple matters in addition to the practical issues Mr

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1 President raised. One is I'm going to ask you a series of questions. If there is
2 anything that I ask that is unclear, simply let me know and I'll rephrase my question.
3 If at any time you want me to repeat my question, also let me know and I'll be happy
4 to ask my question again.

5 Is that clear, Madam Witness?

6 A. Yes, that's clear.

7 Q. What I'm going to first do is ask you a series of questions concerning your
8 background and your relationship with this case. First, can you please state your
9 name for the record?

10 A. (Redacted).

11 Q. And what is the date of your birth?

12 A. (Redacted).

13 Q. And where were you born?

14 A. (Redacted).

15 Q. Where do you currently reside?

16 A. (Redacted).

17 Q. What town?

18 A. (Redacted)

19 Q. And how long have you been at that location, (Redacted)?

20 A. I have been there maybe since -- well, I need to think about this. I have been
21 there for about three years.

22 Q. By being there for three years, do you mean the current address in which you
23 reside in or in (Redacted)?

24 A. I was in another town previously before moving to the new city.

25 Q. And which town were you in before you moved to (Redacted)?

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1 A. I used to live in (Redacted). That was the town in which I lived when I arrived.

2 Then I later on moved to (Redacted).

3 Q. And just one final question on your address. Have you lived at the same
4 house or apartment in (Redacted) in the three years that you've lived there?

5 A. No, never.

6 Q. The interpreter has interpreted your answer as "No, never." Let me ask my
7 question again and in a different way: How many different houses or apartments
8 have you lived in in the three years that you've been in (Redacted)?

9 A. No, I didn't move house in (Redacted).

10 Q. Okay. And then one final question just for clarification. When was it that you
11 moved to (Redacted)?

12 A. I do not remember, but I think I arrived in (Redacted) in 2006.

13 Q. Thank you, Madam Witness.

14 Madam Witness, are you married at the moment?

15 A. Yes, I am married.

16 Q. And to who are you married?

17 A. My husband's names are (Redacted).

18 Q. And how long have you been married to (Redacted)?

19 A. I do not remember, but we got married in 1999.

20 Q. So I take it then that you've been living with him since you've moved to
21 (Redacted)?

22 A. Yes. We live in the same house.

23 Q. Thank you, Madam Witness. Are you aware that your husband (Redacted)
24 (Redacted)?

25 A. Yes, I was aware of it.

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1 Q. And how were you aware of that fact?

2 A. He told me that he was travelling, but I did not know that he was (Redacted)
3 (Redacted).

4 Q. Do you recall roughly when it was that he told you he was travelling?

5 A. No, I do not remember.

6 Q. Was it before he left to come to (Redacted)?

7 A. Please repeat your question.

8 Q. My pleasure. Did your husband tell you that he was coming to (Redacted)
9 before he actually flew (Redacted)?

10 A. He told me that he was (Redacted).

11 Q. Do you remember when he told you that in relation to when he flew?

12 A. I do not remember.

13 Q. Well, let me try it a different way. Do you recall the date in which your
14 husband left for (Redacted)?

15 A. No, I do not remember.

16 Q. Do you roughly recall what month it may have been in (Redacted)?

17 A. No, I do not remember.

18 Q. That's fine. Do you remember approximately what time his flight was or when
19 his flight was when he flew out to come to (Redacted)?

20 A. No, I have no recollection whatsoever.

21 Q. Were you in contact with your husband on the day that he left to fly to (Redacted)
22 (Redacted)?

23 A. Do you want to know when he came to (Redacted) or when he was still in (Redacted)?

24 Q. I'd like to know both actually, that is, when he was in (Redacted) and then when
25 he went to the airport in order to come to (Redacted).

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1 A. Well, we were in contact, but I do not remember the details.

2 Q. Well, let's see if I can orient you and so we can narrow the time frame a little bit.

3 Were you in contact in the morning before he left for the airport on the day that he
4 flew out to come to (Redacted)?

5 A. Yes, we were in contact with each other.

6 Q. Were you in contact -- well, let me ask a different question.

7 Did you see him leave to go to the airport?

8 A. Yes, I saw him.

9 Q. Did he leave for the airport -- well, when you saw him was it at your house, or
10 did you go to the airport with him?

11 A. No, I did not accompany him to the airport.

12 Q. (Microphone not activated) Excuse me, the mic was off.

13 So does that mean that you saw him leave from the house to go to the airport?

14 A. Yes, that is correct.

15 Q. Were you in contact with him when he was on his way to the airport?

16 A. I don't remember.

17 PRESIDING JUDGE SCHMITT: Mr Djunga.

18 MR DJUNGA: (Interpretation) Thank you, Mr President. I'm afraid we are
19 groping in the dark here because the witness is having trouble or remembering the
20 date on which the husband travelled (Redacted), and several times the question has
21 been put to her as to whether they had contact with each other. So we are really
22 groping in the dark here, Mr President, and she has no recollection. And I don't
23 believe that she knows much about this travel. That's my impression.

24 MR MILANINIA: Excuse me, your Honour, may I respond to that because I'm
25 concerned he might be coaching the witness.

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1 PRESIDING JUDGE SCHMITT: First of all, please speak only when Mr Djunga has
2 finished. Now you have the floor.

3 MR MILANINIA: Thank you, Mr President. I didn't mean to interrupt lightly.

4 My concern here is that Mr Djunga is telling the witness what she should or should
5 not possibly remember on that day.

6 I've asked more general questions as to what she remembers. She says she's having
7 difficulty remembering. I therefore started asking more specific questions about
8 specific matters to refresh her memory. At some point if she continues to say she
9 doesn't remember, I do intend to use documentation to refresh her memory, but until
10 I can go through those questions, then I cannot get to that point.

11 PRESIDING JUDGE SCHMITT: But what the witness has said and stated is that she
12 does not remember exactly when this was and what exactly was the sequence when
13 her husband left for the airport and so on.

14 I think we should move on on that respect and relatively quick come to what may be
15 relevant for the Prosecution case. We all know what this potentially could be.

16 MR MILANINIA: Yes, Mr President. If I may then have leave to just ask two more
17 questions on this point and then I'll move immediately to a separate topic.

18 Thank you, Mr President.

19 Q. Madam Witness, I understand you state that you don't know if you were in
20 contact with your husband while he was on his way to the airport. Do you recall
21 when he may have arrived (Redacted) that day?

22 A. No, I do not remember. These things happened a long time ago and I cannot
23 have a clear and precise recollection of them.

24 Q. Then, in accordance with my promise to Mr President, I have only one other
25 question on this subject which is: Did your husband contact you or did you contact

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1 your husband when he arrived (Redacted) that day?

2 A. He called me once to tell me that he had arrived safely. That's it.

3 Q. Thank you. Now, you indicated that before he left for the airport that you had
4 spoken to him on the day that he flew out. Can you recall what you discussed with
5 him that morning?

6 A. No. I think that matter was between himself and myself. But he didn't tell
7 me anything special.

8 Q. Would it help you if I showed you your statement to refresh your memory as to
9 what you may have discussed with him that day before he left for the airport?

10 PRESIDING JUDGE SCHMITT: Mr Gosnell.

11 MR GOSNELL: Objection. The witness has not said that she forgot. The witness
12 has not said that it's not a -- it's a question of recollection.

13 MR MILANINIA: Your Honours, I can ask a more specific question as to what --

14 PRESIDING JUDGE SCHMITT: Yes, please do that.

15 MR MILANINIA: Certainly.

16 Q. Madam Witness, your answer was that the matter was between himself and
17 yourself, that he didn't tell you anything special. What specifically did he tell you?

18 PRESIDING JUDGE SCHMITT: Mr Djunga.

19 THE WITNESS: (Overlapping speakers).

20 MR DJUNGA: (Interpretation) I think, Mr President, that this is the same question
21 relating to the conversation with her husband.

22 PRESIDING JUDGE SCHMITT: No, it's -- it's not the same, it's not exactly the same
23 question. The question before was different, and the objection of Mr Gosnell had
24 merit because she did not say that it was a matter of recollection and, because of that,
25 we have not allowed it, to show her the statement, at this point in time, but the next

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1 question I have allowed, and you have answered, but I don't have -- Madam Witness,
2 I don't have, heard your answer. Could you please repeat it?

3 THE WITNESS: (Interpretation) What I said, I believe, is that there was nothing
4 special in our conversation and that the conversation did not border on anything
5 special. It was a personal, private, intimate conversation.

6 Q. Can you be more specific as to what it is he said? What did you discuss?

7 MR TAKU: Your Honours, I think she said was an intimate conversation. I think
8 we'll stop it at there. It was nothing special, it was an intimate conversation. I
9 think the Prosecutor is not entitled to ask what intimate conversation she had with
10 her husband. He should ask questions that are relevant to the case.

11 MR MILANINIA: Your Honours, I can ask a different question along the same lines,
12 but I'm simply asking for the witness to give more specifics in terms of what the
13 character, what the topics of those discussions were.

14 PRESIDING JUDGE SCHMITT: May I just ask you something?

15 MR MILANINIA: Yes, Mr President.

16 PRESIDING JUDGE SCHMITT: Would it be a possibility, I don't know because
17 probably there is in these legal environments, this is not what you usually do, but the
18 husband of this witness has made a statement, and if you told her what her husband
19 has said, is that -- would that be a line that would meet no objections? I think -- and
20 we would be aware of that, that she has this privilege, please, yes? So this is -- I
21 would suggest, just to shorten this proceeding, or are there any objections? I see -- I
22 see even a nodding on the right side. You understand what I'm going to do here?

23 MR POWLES: Mr President, yes, absolutely. I think our concern would be it
24 would be preferable to ascertain what this witness's recollection is rather than simply
25 putting her husband's recollection and what he may have said in advance to her and

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1 simply asking her to confirm that. That would be our concern.

2 PRESIDING JUDGE SCHMITT: I'm not speaking from putting that to her in

3 advance. This is -- may be a last resort. So I would -- perhaps we can follow -- until

4 the break we can follow the following line.

5 You try to elicit a recollection by the witness, and if not, then we are more specific

6 after the break and we have bear always in mind what we have talked about, that she

7 is the spouse of Witness P-20.

8 MR MILANINIA: Your Honour, Mr President, I may be able to elicit the answer

9 with one further question before I try to refresh her recollection. With your leave, I'll

10 ask one additional question before I go down that route.

11 Q. Madam Witness, in your conversation with your husband that morning, did he

12 instruct you to do anything?

13 A. I do not remember, but maybe if you have any copy of my statement you can

14 show me.

15 Q. Certainly, Madam Witness.

16 To the Registrar, may I show CAR-OTP-0074-0817. Your Honours can find this in

17 tab 2.2 of your binder, the English translation is in tab 2.1. I'd like to go to

18 paragraphs 8 first.

19 Madam Witness, can you please read paragraph 8, or if you would prefer, I can read

20 it out for you.

21 PRESIDING JUDGE SCHMITT: I think we have first to ask the witness if she

22 understands the language that -- I think this French and we have a (Redacted)

23 interpreter. Perhaps it would be indeed better if you read it out and the interpreters

24 interpret it into (Redacted) for the witness. So this would be a clear thing to do.

25 MR MILANINIA: Certainly, Mr President.

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1 Q. Madam Witness, let me read out paragraph 8. And this is -- this is a paragraph
2 8 in the statement that you referred to earlier that you asked to be shown to you.

3 And it says, and I quote:

4 "Yesterday we spoke about money sent to me. I could not remember, but after
5 speaking to you, I tried to refresh my memory. And I realized that I had actually
6 received money and it was my husband who had given my name to a person that I
7 don't know to who -- that I don't know to send me the money."

8 A. (Speaks English) Okay.

9 MR MILANINIA: I'd like to show her paragraph 10 as well.

10 PRESIDING JUDGE SCHMITT: I would prefer that you go step by step in that case.

11 MR MILANINIA:

12 Q. Madam Witness, do you recall giving this statement in January 2014 to
13 representatives from the Office of The Prosecutor?

14 A. (Interpretation) Yes, that is indeed my statement. The question was not well
15 put to me and I did not understand it. Now that things have been clarified, let me
16 confirm here that this is indeed my statement.

17 Q. And does this refresh your recollection as to what you and your husband
18 discussed the morning before he flew to come to (Redacted)?

19 PRESIDING JUDGE SCHMITT: Mr Powles.

20 MR POWLES: Yes. There has been a number of -- well, a fair amount of leading on
21 the part of my learned friend in terms of the way that he puts the questions to the
22 witness. And I would just ask my learned friend to be cautious about timings and
23 what, when certain conversations took place, et cetera. There has been a lot of it
24 during the course of this morning. We've hesitated to rise, to raise it. We --

25 PRESIDING JUDGE SCHMITT: No, there is merit in it. This is sustained, yes.

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1 MR POWLES: Thank you.

2 MR MILANINIA: Your Honours, I can rephrase my question.

3 PRESIDING JUDGE SCHMITT: Yes, please rephrase your question. That is of
4 course the result of what I have said.

5 MR MILANINIA:

6 Q. Does this refresh your recollection as to what you may have discussed with
7 your husband?

8 A. Yes, it does refresh my memory. That is true.

9 Q. And when did this conversation occur, on what date?

10 A. Please, could the Prosecutor be asked to specify his question? The manner in
11 which he's putting questions to me doesn't make it possible for me to understand
12 easily.

13 Q. I understand. Let me try it another way. Do you know when this -- did this
14 conversation occur on the same day your husband flew out to come (Redacted)
15 (Redacted)?

16 MR POWLES: I do hesitate. It --

17 PRESIDING JUDGE SCHMITT: Yes, but it's really -- it's not wrong what you are
18 going to say. I assume what, I know what you are going to say, but I really -- I have
19 not only a recollection of what P-20 said, but also I have it in front of me here, so I
20 really don't see so much importance to -- let me put it this way, in these questions and
21 in what could result out of it. And because of that we have now 11 o'clock. We are
22 going into the break and we are going with this advice, or this, yes, this advice into
23 the break.

24 First of all, I want to know how long do you envisage your examination will be?

25 MR MILANINIA: Your Honour, I didn't envision an examination of more than 30

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1 minutes. At this stage it's very difficult to say, but I hope not to take longer than 30
2 to an hour.

3 PRESIDING JUDGE SCHMITT: By the Defence, any estimations as now, or do you
4 want to have -- want to tell us, the Chamber, after the break? But you know the
5 Chamber likes to have certainty when it has its coffee. No, I'm -- no, please.
6 Mr Kilenda -- excuse me, Mr Rodoma.

7 MR RODOMA: (Interpretation) Yes, Mr President, it will all depend on the
8 questions that the Prosecutor will put to the witness, but upfront we may not have
9 any questions for the witness, but at the end of the day we might have a few remarks
10 and observations to make. For now we don't intend to put any questions to this
11 witness.

12 PRESIDING JUDGE SCHMITT: This is of course fair to wait what the Prosecution
13 elicits or tries to elicit, so we go into the break.
14 And please bear in mind what the Presiding Judge tries to transmit by his remarks in
15 the last one and half hour.

16 THE COURT USHER: All rise.

17 (Recess taken at 11.00 a.m.)

18 *(Upon resuming in private session at 11.31 a.m.) Reclassified into open session

19 THE COURT USHER: All rise.

20 PRESIDING JUDGE SCHMITT: You have still the floor, please.

21 MR MILANINIA: Thank you, Mr President.

22 Q. Madam Witness, when we left for the break, I had shown you a paragraph in
23 your statement to refresh your recollection as to what your husband may have
24 discussed with you and I want to briefly go over that.

25 You state in that paragraph that you had actually received money and that it was

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1 your husband who had given your name to a person that you don't know who sent
2 you the money. Can you clarify or detail what exactly happened now that your
3 memory is refreshed?

4 A. You were not very clear, and that is why I did not quite understand your
5 question. Now, talking about the money, it is true after he travelled I received the
6 money. And this is what we had talked about.

7 Q. Now, you state that you had been -- that he -- that it was your husband who had
8 given your name to a person. Do you know who that was? Who was that person?

9 A. I did not know, but it was my husband who gave him my name. I did not
10 know that person. I just received the money without even knowing the sender.

11 Q. Were you contacted by anyone else that day, the day that you received or you
12 collected the money?

13 A. Yes, I was contacted but the person did not state his name.

14 Q. And how were you contacted?

15 A. I was contacted by telephone.

16 Q. In what form? Was it a phone call for instance, a text message?

17 MR KILENDA: (Interpretation) Mr President, the witness clearly responded that it
18 was a telephone contact.

19 MR MILANINIA: I could ask a different question actually in line with this.

20 Q. Did you speak with the individual?

21 A. He had sent me an SMS, and then subsequently he called me to find out
22 whether I had indeed received the money. But I did not know the person.

23 Q. What -- what did this person tell you in that SMS?

24 A. That person sent me the transfer number, the name and the amount of money
25 that was being sent.

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1 Q. What name did that person send you?

2 A. You want to know the name of that person or the channel through which he
3 sent me money? I would like to say it was through Western Union.

4 Q. Okay. Do you know who this money was intended for?

5 A. Yes. This money was intended for my husband.

6 Q. And how do you know that?

7 A. I had no idea, but my husband said that he had sent my number to someone
8 who was going to send me money. And I said yes. Later on that person sent me
9 the money and the details of the transfer.

10 Q. Did you show your SMS to anybody?

11 A. I showed it to my husband alone.

12 Q. And when you showed it to him, what was his response?

13 A. He did not say anything. He wrote down the details on a piece of paper. He
14 asked me to go and retrieve the money, and if I needed to spend some of it, I should
15 do so and keep the rest for him. And that is what I did.

16 Q. What details were written on that piece of paper that was given to you by your
17 husband?

18 A. There was the Western Union transfer number and the sender's name.

19 Q. You also indicated that in the SMS was listed the amount of the transaction.
20 Do you recall what that amount was?

21 A. It was 4,000 and something. It should -- I think it must have been 4,200. I
22 really do not remember precisely what the exact amount was, but it was around 4,000.

23 Q. Just for clarity, in what currency was that, was that payment, was that money?

24 A. It was in euros.

25 Q. Madam Witness, did you collect that money from Western Union?

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1 A. Yes, I went and fetched that money at Western Union.

2 Q. How long after receiving the SMS did you go and fetch the money from
3 Western Union?

4 A. It was on the same day.

5 Q. Do you recall how far away the address where you collect the money was from
6 your home?

7 A. Yes, it was a bit far.

8 Q. And do you recall how you travelled to the location to collect the money?

9 A. I took the bus.

10 Q. And approximately how long did it take you to get from your home to the
11 location?

12 A. I went by bus, but I can approximate the distance at 8 kilometres.

13 Q. And after collecting the money, did you go -- where did you go after collecting
14 the money?

15 A. I'm sorry, can you ask precise questions so that I can be able to answer, because
16 I'm a bit lost there.

17 Q. No, I understand. Now, you indicated that you took the bus to Western Union
18 and that you collected the money. After collecting the money, did you go directly
19 back home, or did you stop somewhere on the way?

20 A. I no longer remember. It is true that I spent some of that money, but I really do
21 not remember the details.

22 Q. I understand. Now, you indicated earlier that you received a call from the
23 same person who had sent you an SMS, a phone call, asking you whether you had
24 received the money. When did that call take place?

25 THE INTERPRETER: From the (Redacted) booth: The interpreter did not hear

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1 what the witness said.

2 MR MILANINIA:

3 Q. Madam Witness, I'm sorry, it appears that the interpreters could not hear your
4 response. Could you repeat your answer?

5 A. What answer do you want to hear, please?

6 Q. Let me try to be more specific actually. You said that you received a phone call
7 from the person who had sent you an SMS asking you whether you had collected the
8 money. Did that phone call occur before or after you collected the money from
9 Western Union?

10 A. I received the phone call after having collected the money.

11 Q. Did you speak to your husband after collecting the money from Western Union?

12 A. I do not recall.

13 Q. Now, Madam Witness, you indicated that you can't recall the name of the
14 individual who sent you the money, that you can't recall the specific date in which the
15 money was sent. Can you recall the specific time or roughly what time you received
16 or collected the money from Western Union?

17 A. No, I do not remember that. These events took place a long time ago, so I do
18 not remember those minor details.

19 Q. Would it help refresh your memory if I showed you a record of the Western
20 Union transaction?

21 A. Let's try and see. Please show me the record.

22 MR MILANINIA: Your Honours, I'd like to put to the witness CAR-OTP-0073-0274.
23 You can find this at tab 4 of your binders, at least printouts of it.

24 PRESIDING JUDGE SCHMITT: So let's try and see.

25 MR MILANINIA: I'd like to specifically go to tab 31, row 14. And I'd like to first

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1 start at row -- excuse me, at column W.

2 Q. Madam Witness, can you see the document on your screen in front of you?

3 A. Yes, I see it.

4 Q. The document that you see in front of you is a record of payments provided by
5 Western Union. I want to first take you to column W, row 14. Can you see that it
6 contains your name?

7 A. Yes, I can see my name.

8 Q. I want to go now to columns AF, AG, AH, and AJ.

9 For your Honours that's going to be page 3 of tab 4.

10 Madam Witness, again, focusing only on row 14, you can see in AF, AG, AH and AJ
11 an address. Do you recognize that address?

12 A. That is indeed my address.

13 PRESIDING JUDGE SCHMITT: The witness has confirmed that she has collected
14 the money. I recall that.

15 MR MILANINIA: Yes, Mr President.

16 Q. I'd like now to go to columns BA, BB and BC.

17 Your Honours, that's going to be page 5 of tab 4.

18 Madam Witness, again focusing on row 14, you'll see another address there. Do you
19 recognize that address?

20 A. Yes, I recognize it.

21 Q. What is that address?

22 A. It is the Western Union address where I went to collect the money.

23 Q. I'd like to go now to columns AN and AO.

24 Your Honours, for your benefit that's page 4 of tab 4.

25 Madam Witness, you'll see that in -- again focusing on row 14, that in column AN

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1 there is (Redacted), which stands for (Redacted) and then there is an amount in row
2 14 column AO of 4289.81.

3 Does that agree with your recollection of how much money you collected from
4 Western Union that day?

5 A. Yes, I already told you that I collected an amount of about 4,000. I did not
6 remember the precise amount, but I believe this is it.

7 Q. Thank you. I'd like to now go to column Z and AA. Your Honours that's
8 going to be located at pages 2 and 3 of tab 4.

9 Madam Witness, you can see that in column Z, again row 14 there is a date of
10 (Redacted). In column AA at row 14, there is a time of 5.56 a.m. Eastern Standard
11 Time, (Redacted).

12 Does that refresh your memory as to the time and day you collected the money from
13 Western Union?

14 A. The time of 5 o'clock I do not remember that. I was still at home at that time.
15 If it is 5 a.m. in the morning, it doesn't mean much to me. Counsel, please, can you
16 clarify, are you talking about 5 a.m. or 5 p.m.?

17 Q. No. That is -- and that is a very good question, Madam Witness. The 5.56 a.m.
18 in that column represents the time in New York, Eastern Standard Time, which in
19 (Redacted). So the question really to you is that does that refresh
20 your recollection as to whether or not you picked up the money from Western Union
21 at (Redacted)?

22 A. I no longer remember, but if you are showing it to me, then it is probably
23 correct.

24 I would like the Prosecutor to be precise. He should not ask me for too many details.
25 I have admitted having gone and collected the money.

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1 PRESIDING JUDGE SCHMITT: I think you cannot expect more from the witness
2 after these three and a half years, so you should move on to another issue.

3 MR MILANINIA: I agree, your Honour. I only have one more question therefore
4 relating to this document.

5 Q. I would like you to go to columns C and E, which can be found on page 1 of tab
6 4. Again, Madam Witness, focusing on row 14, you'll see a name in column C, Fidèle
7 Babala, and you'll see his telephone number in column E. Does that refresh your
8 memory as to who sent you the money via Western Union?

9 PRESIDING JUDGE SCHMITT: Yes.

10 MR RODOMA: (Interpretation) Mr President, there is one page only mentioning
11 Mr Babala. How can you expect a witness to give you a name other than the name
12 that appears on this page?

13 MR KILENDA: (Interpretation) In fact, even more than that, the number that
14 appears here is not his number.

15 MR MILANINIA: Your Honours, I can respond to both of the comments made by
16 my colleagues on the other side if you permit.

17 PRESIDING JUDGE SCHMITT: Yes.

18 MR MILANINIA: Your Honours, with regards to the first comment as to that this
19 being the only name, we've done this exercise before in the past whereas we put
20 documents to a witness to determine whether or not it's refreshed her recollection.
21 She is perfectly willing and able to say it doesn't or that she doesn't recognize the
22 name, if that's the case.

23 It is -- obviously this is a bench of professional Judges and they can accord whatever
24 weight they believe is necessary to that response.

25 As to the phone number, as to whether it is or is not Mr Babala's phone number, that's

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1 a matter of evidence that we can make a determination upon later.

2 PRESIDING JUDGE SCHMITT: On the second point I agree, that is correct.

3 On the first point, it is of course very suggestive to put this to a witness where only

4 one name is mentioned 20 times or 14 times in that respect.

5 But if you word it -- the wording also of your question was relatively suggestive too.

6 So if you could perhaps be more abstract and ask her if the name that she reads here,

7 only, and she focuses only on line 14 does ring any bell with her. Not more, not less,

8 please.

9 MR MILANINIA: Certainly, Mr President.

10 Q. Madam Witness, did you understand the question that was posed by the

11 President?

12 A. I believe that that is in fact the name.

13 Q. And just for clarity, the name of who?

14 A. Do you want me to read out the name?

15 Q. No, Madam Witness. You had indicated that you believe, and let me just

16 repeat what you say in the record, that you believe in fact that is the name.

17 What I'm asking is does that ring a bell to you as to who sent you this Western Union

18 transaction?

19 A. Yes, it is the name of the person who sent me the money.

20 Q. Thank you, Madam Witness. And does that recollect or refresh your

21 recollection as to who sent you an SMS earlier that day?

22 A. I didn't see the name of the person who sent me the SMS. I was just sent the

23 SMS with the amount and the person didn't introduce himself so to speak.

24 MR MILANINIA: I understand and I think we can move on to a separate topic

25 altogether.

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1 PRESIDING JUDGE SCHMITT: Mr Gosnell.

2 MR GOSNELL: Mr President, I'm just wondering whether we could move into
3 private session or semi --

4 PRESIDING JUDGE SCHMITT: I think we are in private session and I --

5 MR GOSNELL: Sir, what I meant was in open session.

6 PRESIDING JUDGE SCHMITT: Yes, of course. You know, that's a good question,
7 but sometimes we talked about (Redacted) and so, but I think we have left this now.
8 So you could perhaps assess better than all the other people here in the room if it is
9 adequate to go into open session.

10 MR MILANINIA: Mr President, I'm actually wrapping up my line of questions and
11 the last few questions I have do need to be made in private session.

12 PRESIDING JUDGE SCHMITT: Then we stay in private session. Please continue.

13 MR MILANINIA: Thank you.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. Thank you, Madam Witness. I want to cover, go back just briefly for a moment
25 on a subject. You had indicated that you were on the telephone with your husband

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1 when he was travelling (Redacted). Did he have his cell phone

2 with him at the time? Do you know if he did?

3 A. He called me with a (Redacted) number. I don't remember whether he had a
4 phone with him. In any event it was a number from (Redacted).

5 Q. Do you ever use or have you -- did you ever use your husband's cell phone in
6 (Redacted)?

7 A. No. How could I use my husband's telephone? It's his.

8 Q. Thank you. And just moving on to my last topic -- sorry, actually, before I go
9 to that last topic, when you saw your husband off to the airport, was this before or
10 after you had collected the money from Western Union in (Redacted)?

11 A. My husband left. After his departure I withdrew the money.

12 PRESIDING JUDGE SCHMITT: This has now been answered two or three times, so
13 you have to move on.

14 MR MILANINIA: Certainly, Mr President. I only have actually three more
15 questions.

16 Q. Madam Witness, does your husband know to your knowledge that you are here
17 today testifying before the Court?

18 A. Yes, I informed him.

19 Q. And what did you tell him with regards to your testimony today?

20 A. I didn't tell him anything about that because I myself didn't know what kind of
21 questions to expect, what questions I would be answering.

22 Q. And what did he tell you with regards to your testimony today?

23 PRESIDING JUDGE SCHMITT: No, no, no. Perhaps you ask her did he tell you
24 something, and then you can ask her.

25 MR MILANINIA: Certainly, Mr President.

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1 Q. Did he tell you something with regards to your testimony today?

2 A. No, he didn't tell me anything.

3 Q. Thank you, Madam Witness, for your patience and your time.

4 MR MILANINIA: Mr President, I no longer have any questions.

5 PRESIDING JUDGE SCHMITT: Thank you very much, but now I think it's the time

6 for the Defence to tell us how long they intend to question this witness. I think

7 perhaps we start with Mr Gosnell like always. We go around.

8 MR GOSNELL: No questions, Mr President.

9 PRESIDING JUDGE SCHMITT: Mr Djunga?

10 MR DJUNGA: (Interpretation) Perhaps one question for the witness, but Steven

11 will be putting the question to him.

12 PRESIDING JUDGE SCHMITT: Mr Taku?

13 MR TAKU: No questions for this witness, your Honour.

14 PRESIDING JUDGE SCHMITT: (Microphone not activated)

15 MR RODOMA: (Interpretation) We have no question for this witness. I think the

16 basics have all been stated during your ruling and during the examination-in-chief.

17 Thank you.

18 PRESIDING JUDGE SCHMITT: Mrs Taylor.

19 MS TAYLOR: Thank you, Mr President. We would have probably about 10 to 15

20 minutes. Thank you.

21 PRESIDING JUDGE SCHMITT: Then I think we should start with Mr Djunga, with

22 the one question that you want to put to the witness. Please, you have the floor. Or

23 Mr Powles of course.

24 MR POWLES: I think it falls to me to ask the one question.

25 QUESTIONED BY MR POWLES:

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1 Q. Good afternoon, Madam Witness. I'm just going to ask you one question --

2 A. Good afternoon.

3 Q. -- if I may. When you were interviewed in January 2014 about this matter, you
4 indicated that the amount that you received was approximately, was around 4,200
5 (Redacted), and in that statement that you gave in January 2014, you said that
6 that amount of 4,200 (Redacted)"represents nothing for my family. It is a small
7 amount of money." And that's at paragraph 12 of your witness statement,
8 CAR-OTP-0075-0009.

9 My question for you, Madam Witness, is is that correct? Does 4,200 (Redacted)
10 represent nothing for your family, and is it a small amount of money for you?

11 A. Yes, that is absolutely so. 4,200 represents nothing for my family.

12 MR POWLES: Thank you very much, Mr President.

13 Thank you, Witness.

14 PRESIDING JUDGE SCHMITT: Mrs Taylor. I don't hope this is a bad sign, Mrs
15 Taylor, that you -- I don't hope this is a bad sign, that you destroy your papers.

16 MS TAYLOR: Just ripping them out, Mr President. And my client was very kindly
17 reminding me to speak slowly.

18 Are we in open session or private session?

19 PRESIDING JUDGE SCHMITT: We are still in private session I assume, so you
20 could perhaps tell us if we can stay in private session -- or should stay in private
21 session or could go into open session.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MS TAYLOR: Thank you, Mr President.

9 (Open session at 12.12 p.m.)

10 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.

11 QUESTIONED BY MS TAYLOR:

12 Q. Good afternoon, Mrs Witness. My name is Melinda Taylor. I'm the counsel

13 for Mr Jean-Pierre Bemba, and I'll be putting just a few questions to you this afternoon.

14 Please let me know if any of my questions aren't clear.

15 Now, Mrs Witness, you were interviewed on 22 January 2014 and again, without

16 mentioning any information about locations or names, would you explain to us how

17 you were first informed that you were to be interviewed?

18 A. Could we go into private session so that I can answer that question?

19 MS TAYLOR: Yes.

20 PRESIDING JUDGE SCHMITT: Yes, we do. We go into private session. And I

21 think we should stay there then. Yes.

22 *(Private session at 12.14 p.m.) Reclassified into open session

23 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

24 (Redacted)

25 (Redacted)

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(Private Session)

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- 1 (Redacted)
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1 (Redacted)

2 PRESIDING JUDGE SCHMITT: Yes?

3 MR MILANINIA: Yes, Mr President, I understand where this line of questioning is
4 going. I just wanted to make a quick observation. This witness's evidence has
5 come out through her testimony in this case. Her statements have not been
6 requested or tendered for admission. Therefore the circumstances surrounding her
7 statement is not really at issue or relevant to her testimony given today before this
8 Court, which was led entirely live.

9 PRESIDING JUDGE SCHMITT: There is some truth in it, of course. It's correct
10 what you are saying. Nevertheless, I would allow further two or three questions in
11 that respect, because we have had these questions, similar questions put to her
12 husband. I understand that, so -- but I think you should quickly come to an end of
13 this line of questioning.

14 MS TAYLOR: Thank you, Mr President. But as you ruled this morning, we were
15 not provided with a recording of what happened at this event.

16 PRESIDING JUDGE SCHMITT: I allow the questioning.

17 MS TAYLOR:

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 MR MILANINIA: Mr President, I apologise once again, this line of questioning is
3 irrelevant to her testimony in this case. Given the fact that we haven't requested for
4 the admission of her statement, that all her evidence was led live, if there are
5 questions with regard to what she has testified today, that's relevant.

6 PRESIDING JUDGE SCHMITT: I think --

7 MS TAYLOR: If I could just respond just very briefly? The Prosecution several
8 times throughout her testimony used her prior statement to refresh her memory. So
9 the circumstances in which those prior statements were recorded and collected is
10 relevant.

11 MR MILANINIA: Your Honours, if I may respond to that inquiry?

12 PRESIDING JUDGE SCHMITT: Yes.

13 MR MILANINIA: First, it was used once, not several times. And then after it was
14 refreshed once, it was never used again. And, in fact, the witness was completely
15 open about the circumstances with regards to how she received a payment, her
16 conversations with her husband. That's the issue that's relevant, not the
17 circumstances surrounding a statement which has not been tendered for admission.

18 PRESIDING JUDGE SCHMITT: I think it's correct what the Prosecutor is saying. I
19 don't see -- if we are now discussing this for 15 minutes, I think we could have
20 finished it very quickly. So the last question was -- I also sense that the witness does
21 not even recognize or recall where these people were from who questioned her.

22 MS TAYLOR: Certainly, I'm going from that aspect.

23 PRESIDING JUDGE SCHMITT: This is something that I, may I say, that you could
24 sense, for example. It's a little bit too -- it's a very, very formal question now. Of
25 course, there has been one during the examination, once this former statement was

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1 put to her to refresh her recollection, and now you are putting these questions to her,
2 as I said, and that was the reason to balance this. This was not substantial, that is
3 true what you are saying, it was not a substantial part of your questioning, that's
4 absolutely true.

5 On the other hand, I tried to balance it to tell you that you quickly, with two or three
6 questions, of course, this is no mathematical equation, we know that, that you quickly
7 come to an end to this questioning. I also, to be honest, do not really see the
8 relevance in light of that this witness has given viva voce testimony to 95 percent here
9 or to 100 percent, to put it this way.

10 MS TAYLOR: Thank you, Mr President.

11 PRESIDING JUDGE SCHMITT: Mr Djunga?

12 MR DJUNGA: (Interpretation) Yes, I certainly understand. Now, these matters
13 were not really touched upon during examination-in-chief. It seems to me, your
14 Honour, that these are relevant questions insofar as they allow the Chamber to
15 understand the general background. And perhaps the word "pressure" could also be
16 used in relation to the circumstances under which the witness was examined. And
17 this is part of the general background, the context. And now that we have our
18 witness here today, I think we can understand, and this is very important for the
19 Defence that we truly understand the context in which she provided a statement.

20 MR MILANINIA: Mr President, just one tiny response. If the issue was whether
21 she was pressured to testify here today, that's one issue. But if the issue is whether
22 she was pressured to give a statement in 2014, which has not been tendered,
23 nor -- and used as you had mentioned yourself very briefly during the course of her
24 testimony, that's a separate issue altogether. And there is no questions that are being
25 asked by Ms Taylor with regards to the first issue, which is precisely why this line of

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1 questioning is irrelevant.

2 MS TAYLOR: If I just may, even very quickly -- sorry, my colleague -- even if this
3 witness's statement hasn't been admitted, that of her husband has been. They were
4 interviewed at the same time. And if we look at the husband's statement, he does
5 say that he was -- and, again, I shouldn't be discussing this in front of the witness, but
6 there are aspects there, direct aspects, and which we couldn't raise at the time because
7 certain aspects only came out when the last witness testified.

8 MR MILANINIA: Your Honour, just a brief response on that, if that's okay?

9 PRESIDING JUDGE SCHMITT: Yes, just one more time.

10 MR MILANINIA: Mr President, as we all know, that individual was here and
11 testified. Those questions were put to him. Those questions were answered by the
12 witness. It is not, therefore, for this witness to, therefore, go into issues which we
13 have already pressed to the other witness and which have been decided upon by this
14 Chamber in its recent Rule 68(3) application or -- excuse me -- decision, not
15 application.

16 PRESIDING JUDGE SCHMITT: Mr Taku?

17 MR TAKU: Your Honour, I rise to say that the issue, the question she asked for me
18 and for my client, your Honours, is important and relevant to the extent that it shows
19 the methods used by the Prosecutor in investigating this case, including witnesses
20 that came to testify about my client. It seems a consistent parting of conduct in the
21 manner in which the investigation was conducted, and if this witness, whose
22 testimony fits in the general trend, I think it is material and relevant.

23 PRESIDING JUDGE SCHMITT: Now we finish this discussion. I've said before
24 that I allow two or three more questions, and I think when I recall correctly, I've said
25 that because, as I said, we have had this issue with her husband, too, and this is the

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1 same what you were saying, was last what you were also saying. And I would ask
2 you now to continue with the questioning, but relatively we know what you are
3 heading at, but put this one or two questions to the witness and then we finish this.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MR MILANINIA: Just a brief mark of clarification, your Honour, can counsel read
17 out what the statement says, because I don't believe actually that's what the statement
18 says.

19 PRESIDING JUDGE SCHMITT: That is fair, Mrs Taylor.

20 MS TAYLOR:

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 MR MILANINIA: Mr President, I'm sorry to rise again, but this line of issue as to
3 whether the audio -- there was an audio recording of the interview has been
4 addressed by this Chamber already. It was addressed by this Chamber this morning.
5 I'm not entirely sure what the relevance of this line of questioning is.

6 PRESIDING JUDGE SCHMITT: With a very formalistic view, it's not incorrect what
7 you are saying. But sometimes we have discussions about matters here which
8 would be easier and more expeditiously solved if we just let the witness answer if she
9 recalls that her testimony was taped or not, and that can be answered relatively
10 quickly and then we move on or conclude the testimony of this witness.

11 MS TAYLOR:

12 (Redacted)

13 PRESIDING JUDGE SCHMITT: I think it would be better, yes.

14 MS TAYLOR:

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE SCHMITT: This is the last question in that respect.

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1 (Redacted)

2 (Redacted)

3 MS TAYLOR: Mr President, may I ask a follow-up question or should I move to
4 another issue?

5 PRESIDING JUDGE SCHMITT: One follow-up question.

6 MS TAYLOR:

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE SCHMITT: So you move on now to another point.

20 MS TAYLOR:

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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(Closed Session)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE SCHMITT: I think it would be better to respect that.

9 MS TAYLOR: Thank you, Mr President.

10 Thank you, Mrs Witness.

11 PRESIDING JUDGE SCHMITT: Any further questions by the Prosecution?

12 MR MILANINIA: No, Mr President, we don't.

13 PRESIDING JUDGE SCHMITT: So, Madam Witness, this concludes your testimony.

14 We thank you very much for being here. You are released and we wish you a safe
15 trip back home.

16 We go now in closed session to let the witness out of the courtroom.

17 Again, thank you very much, Madam Witness.

18 *(Closed session at 12.39 p.m.) Reclassified into open session

19 THE WITNESS: (Interpretation) Thank you.

20 THE COURT OFFICER: (Interpretation) Mr President, we are in closed session.

21 (The Witness is excused)

22 THE COURT OFFICER: (Interpretation) Mr President, we are in open session.

23 (Open session at 12.41 p.m.)

24 PRESIDING JUDGE SCHMITT: Thank you.

25 Now that witness's testimony has concluded, the Chamber would first like to ask the

1 Prosecution if it has called all witnesses it intends to call and formally submitted all
2 evidence it intends to submit during its presentation of the evidence?

3 MR VANDERPUYE: Thank you, Mr President. We have called all the witnesses
4 we intend to call. We have submitted the evidence we intend to submit. However,
5 before resting for the purposes of the record, I would like to have an opportunity to
6 assess the evidence that we have, particularly some documentary evidence that we
7 have on the list of exhibits that we filed earlier this year in order to determine
8 whether or not we have additional items to submit from the Bar Table. I don't know
9 what the Chamber's position is on that, but I would ask to have two to three weeks to
10 do that before formally resting on the record.

11 PRESIDING JUDGE SCHMITT: Two or three weeks would be too excessive in my
12 opinion at first sight.

13 MR VANDERPUYE: Okay.

14 PRESIDING JUDGE SCHMITT: I would say one week should be enough for that.

15 MR VANDERPUYE: Well, we'll do that.

16 PRESIDING JUDGE SCHMITT: Yes.

17 MR VANDERPUYE: I would also, I would also add this caveat, that to the extent
18 the documents have been deemed formally submitted, and we do recognize the
19 Chamber's position with respect to making a determination of the admissibility of
20 documents, we would prefer and it is our position that we should have at least prior
21 to resting on the direct case, the Prosecution's direct case, a decision on the
22 admissibility of these documents to determine whether in fact we have sufficient
23 evidence to have proven our case on the record and admitted in the case. At the
24 very latest, however, we would submit that that decision should be forthcoming in
25 advance of the closing submissions that may follow in this case.

1 We have addressed this issue with other chambers before the Court. This is I think
2 the only Chamber or the first Chamber in which a determination of admissibility will
3 not be made or is intended not to be made until the deliberation phase of the case.
4 So we understand that, but I think it's important for us to make the record in this case
5 that that's our position.

6 I know that I'm -- and I'm quite confident my colleagues would want to know what is
7 actually admitted into evidence before formulating the Defence case to the extent they
8 intend to present one, but I would say that as a caveat to the Prosecution's resting on
9 the record in this case, that that is also our position.

10 PRESIDING JUDGE SCHMITT: I think the Chamber should retire shortly, really
11 shortly for that, also for how much time we give you. So stay in the courtroom, we
12 will not be long.

13 Perhaps first, yes, Mr Gosnell.

14 MR GOSNELL: Just one brief observation, Mr President, and I would not express a
15 position in respect of the application that was just made by my learned friend,
16 although I would note that it would be actually a request for reconsideration of your
17 Honour's previous ruling because it would require a variation. But just one
18 observation on that, and that is that we would request and we would suggest that
19 there should be a moment when the Defence can say and rely on the fact that the
20 Prosecution case is rested and then we can move forward on that basis so that there is
21 no lingering conditionality or questions about whether or not certain evidence is
22 admitted.

23 PRESIDING JUDGE SCHMITT: That will be absolutely clear. That is, of course,
24 that is clear.

25 As I said -- no?

1 MS TAYLOR: Sorry.

2 PRESIDING JUDGE SCHMITT: Mrs Taylor.

3 MS TAYLOR: Very briefly. Just again without taking a position, just to note that
4 any time accorded to the Prosecution may have an impact on the deadlines for the
5 Defence, particularly given that we are preparing for a move, and that does have
6 some logistical constraints that we're dealing with there.

7 PRESIDING JUDGE SCHMITT: Everybody is preparing for a move and we have
8 that in our minds, not only with respect to the Defence teams, but also with respect to
9 the Judges in this room.

10 There are many people standing, but I think I saw Mr Taku first, so Mr Taku has first
11 the floor.

12 MR TAKU: Yes, your Honours. The question of admissibility should be on a
13 case-by-case basis, not a blanket admissibility of documents and probably giving the
14 Defence the possibility, your Honours, to actually make his position known on each
15 piece of evidence. If it were just a blanket admissibility the way the Prosecutor has
16 tried to proceed in this case, it's going to cause significant prejudice.

17 PRESIDING JUDGE SCHMITT: Mr Taku shortly, please -- excuse me.
18 Mr Vanderpuye. Now I'm -- yes, shortly.

19 MR VANDERPUYE: Thank you. I appreciate the views of my friends as well. I
20 also did want to point out that there are certain decisions that are yet to be made, in
21 particular one decision on the submissions of the elements of the offence that I think
22 is an important one to resolve in relation to the resting of the Prosecution's case. I
23 don't know where we are on that. I don't know what the Chamber's position is on
24 that. But in terms of conditioning the Prosecution's resting of its case, I think that is
25 an important one to bear in mind. We can make a formal submission on that if the

1 Chamber prefers, but I think it's also important to get that out on the table.

2 THE COURT USHER: All rise.

3 (Recess taken at 12.47 p.m.)

4 (Upon resuming in open session at 1.02 p.m.)

5 THE COURT USHER: All rise.

6 PRESIDING JUDGE SCHMITT: The Chamber recalls that it has already indicated
7 how it will proceed with regard to the admissibility of evidence. As to the
8 interpretation of the law in this case, the Chamber notes the confirmation decision's
9 interpretation of the law and the parties' submissions on these points. These issues
10 are all to be resolved at the end of the trial, and the Prosecution's requests amount to
11 reconsideration of these prior rulings.

12 The Chamber sees no good reason to revisit these rulings, which apply equally to
13 both the Prosecution and the Defence.

14 These rulings are also irrespective of the Chamber's powers under Article 69(3) of the
15 Statute.

16 The Prosecution must either request the submission of any outstanding items or file a
17 notice of the closing of its evidence presentation by the filing deadline on Friday, 27
18 November 2015.

19 This concludes the ruling of the Chamber. A remark by me. We've thought about
20 it together, the Chamber, and we thought perhaps one week would be too short, but
21 two weeks would be adequate then. It's just in the middle of what you requested.

22 Thank you very much, everybody. This then concludes the Chamber's at least
23 hearing schedule for this for 2015. The trial will resume in 2016 on a date to be
24 communicated by the Chamber in due course.

25 The hearing in 2016 will with all probability commence with the opening statements

1 by the Defence followed by the Defence presentation of the evidence.

2 I thank counsel, all counsel for professionalism and diligence in the courtroom this
3 year. This is not to say something nice at the end of the year, but it rather reflects
4 and expresses what the Chamber has experienced in the past weeks.

5 Thank you also everyone in the Registry who have contributed to making these
6 hearings possible. That was everything else than easy, and as a matter of course I
7 recall the constant sequence of witnesses without interruptions, even when they were
8 giving testimony via video link, and I recall the unproblematic extension of the
9 hearings to finish the testimony of a witness if need be.

10 I also want to thank the interpreters, especially for the indulgence with overlapping
11 speakers, I think everyone in this courtroom was guilty of this minor offence every
12 once in a while, and their flexibility in interpreting audio recordings that were
13 presented on the spot and had to be translated sort of on the spot.

14 Enjoy the break. We will see each other next year.

15 THE COURT USHER: All rise.

16 PRESIDING JUDGE SCHMITT: Mrs Taylor is rising first. Do you want to say
17 something?

18 MS TAYLOR: Yes, Mr President. I would like to respectfully inquire whether
19 given the hearing schedule that you've just set out that there will be no more hearings
20 this year, if there is a possibility to potentially have a status conference at some point,
21 if necessary, to resolve any issues that might be relevant to the presentation of the
22 Defence case.

23 There are some logistical issues that we are facing. For our perspective I'm not
24 currently allowed to go on mission because of my pro bono status, and that has not
25 been resolved. So there may be a need to seize the Chamber with relief so that we

1 can actually investigate effectively, and it might be more expeditious and efficient to
2 do it in a hearing.

3 PRESIDING JUDGE SCHMITT: We understand this request, and I would be
4 grateful if you file a written request in that respect and that we can consider that.
5 We have, of course, we have, the Chamber, has to think about when to continue and
6 have to put into consideration different aspects; you have mentioned before I think
7 the removal, that's one thing, obligations of the Chamber, of the Judges, and of course
8 the right of the Defence to have enough time to prepare their case. We will take all
9 that into consideration, but if you could file a request in that respect, we will then
10 react in either way. Thank you.

11 Mr Kilenda, please.

12 MR KILENDA: (Interpretation) Thank you very much, Mr President. With the
13 authorisation of all my colleagues here present, I know that there are more senior
14 ones like Mr Taku, I would like on their behalf to thank the Chamber for this first
15 phase which in principle is closing today. You made reference to 2016, and in case
16 we don't see each other even for a status conference as proposed by Ms Taylor, I
17 would like on behalf of all to present to you our best wishes for the holiday season
18 and for the new year. Thank you.

19 PRESIDING JUDGE SCHMITT: I would like to give this back to everybody in the
20 courtroom. Thank you very much.

21 THE COURT USHER: All rise.

22 (The hearing ends in open session at 1.08 p.m.)

23 RECLASSIFICATION REPORT

24 Pursuant to Trial Chamber VII's instructions, ICC-01/05-01/13-1209, dated

- 1 2 September 2015, this lesser redacted public version of the transcript is filed in the
- 2 record of the case.