

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 Tuesday, 22 March 2016
11 (The hearing starts in open session at 9.33 a.m.)
12 THE COURT USHER: All rise.
13 The International Criminal Court is now in session.
14 PRESIDING JUDGE SCHMITT: Good morning.
15 Could the court officer please call the case.
16 THE COURT OFFICER: (Interpretation) Yes, your Honour. Situation in the Central
17 African Republic in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, Aimé
18 Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse
19 Arido, in the case ICC-01/05-01/13.
20 We are in open session, your Honour.
21 PRESIDING JUDGE SCHMITT: Thank you, very much. Now I'll ask for the
22 appearances of the parties. Please, Mr Vanderpuye first.
23 MR VANDERPUYE: Thank you, Mr President. Good morning to you, your Honours.
24 Good morning everyone. The Prosecution is represented today by Hesham Mourad to
25 my right; behind him, Olivia Struyven; and to my left, Sylvie Vidinha. I'm Kweku

1 Vanderpuye. Good morning.

2 PRESIDING JUDGE SCHMITT: Good morning. And now for the Defence teams,
3 please.

4 MR POWLES: Good morning, Mr President. Your Honours, on behalf of Mr Kilolo
5 this morning is myself, Ms Lueka Grogga, and Ms Tara Nasrollahi.

6 PRESIDING JUDGE SCHMITT: Ms Lyons or Mr Taku.

7 MS LYONS: Thank you, your Honour. The Arido team is represented by Chief
8 Charles Taku; myself, associate counsel, Beth Lyons; the three case managers who were
9 here yesterday, Mr Kiel Walker, Tibor Bajnovic, and Michael Rowse; and our legal
10 assistant Tharcisse Gatarama; and our client is present, your Honour.

11 PRESIDING JUDGE SCHMITT: Thank you, very much.

12 And Mr Kilenda.

13 MR KILENDA: (Interpretation) Good morning, your Honour, your Honours. Our
14 team from yesterday is the same.

15 PRESIDING JUDGE SCHMITT: Thank you.

16 Mr Gosnell.

17 MR GOSNELL: Good morning, Mr President. Good morning, your Honours. Good
18 morning, colleagues. Subject to Maître Vercken's imminent arrival, appearances are the
19 same as yesterday for Mr Mangenda. Thank you.

20 PRESIDING JUDGE SCHMITT: Thank you very much.

21 And Mrs Taylor.

22 MS TAYLOR: Good morning, Mr President, your Honours. The Bemba team has the
23 same composition.

24 And I'd like to thank the Chamber for authorizing Mr Bemba's absence this morning.

25 The waiver has been filed in the record this morning. Thank you.

1 PRESIDING JUDGE SCHMITT: Thank you very much. And just for the record, of
2 course, Mr Bemba has been allowed to stay away from the Court today, to be not present
3 in the courtroom. He has waived his right to be present.

4 I have been informed that the Prosecution wants to raise an issue. So, Mr Mourad, you
5 have the floor.

6 MR MOURAD: Good morning, Mr President. Good morning, your Honours. Just
7 by way of clarification, to avoid possibly unnecessary objections, I intend to rely on one
8 of the emails which were subject to decision 1711, and I would like to clarify that I intend
9 to only use the relevant part that is relevant to the motive to go to France and not any of
10 the private information included there, in line with the directions of the Chamber.
11 Thank you.

12 PRESIDING JUDGE SCHMITT: Thank you very much for this information. We will
13 have, of course, have to see how it works out practically then and then we will decide if
14 there is an objection. But as you have foreshadowed, it seems at the moment to be that
15 we have not to interfere as the Chamber.

16 All parties I think have been provided, I hope so, with an email by the VWU concerning
17 the forthcoming testimony of Mr Arido. I hope so that this has been.

18 And the Chamber would like, if you want, of course, would like to hear oral submissions
19 on that in the course of this day. Of course, you are not compelled to do this, but we
20 would like to ask you on that matter so we have a transparent process in that respect like
21 we have had it always during this trial.

22 I think now we can -- yes, Mr Powles?

23 MR POWLES: I'm sorry, Mr President, but I've consulted with my case manager, and I
24 don't believe we've received the email.

25 PRESIDING JUDGE SCHMITT: So this -- but this should have been done, but I have

1 also seen nodding by Mr Vanderpuye. Any other nodding? Mrs Taylor is nodding,
2 Mr Gosnell, so I'm --

3 MR TAKU: We haven't seen the email, your Honour.

4 MS LYONS: We haven't seen it.

5 PRESIDING JUDGE SCHMITT: So 9.23 it was sent, so I -- it would be a little bit strange
6 if you were the only one to be excluded and if, of course, not deliberately. You can be
7 assured of that.

8 MR POWLES: We'll make inquiries.

9 PRESIDING JUDGE SCHMITT: Now we'll continue with the examination of Madam
10 Witness. We can bring her into the video location and connect the sound, please.

11 (The witness enters the video-link room)

12 PRESIDING JUDGE SCHMITT: Good morning, Madam Witness. We would like to
13 welcome you again in the courtroom. And as you are aware of, we are going to
14 continue your testimony, and this means that the Prosecution, Mr Mourad, has the floor.

15 MR MOURAD: Thank you, Mr President.

16 QUESTIONED BY MR MOURAD: (Continuing)

17 Q. Good morning, Madam Witness.

18 WITNESS: CAR-D24-P-0001 (On former oath)

19 (The Witness speaks Sango)

20 (The Witness testifies via video link)

21 A. Good morning.

22 Q. I have a few questions left for you, so I'll try to move on fast. And please try to
23 follow me and provide specific answers to my question.

24 PRESIDING JUDGE SCHMITT: Mr Mourad, you are aware that we are in open session,
25 yes? It's okay for the moment, but I just want to alert you, to put it this way, that we are

1 in open session so, if need be, we would have to go into private session, yes?

2 MR MOURAD: Thank you very much, your Honour, for the reminder. I, indeed,
3 intended to ask for a private session because my first question is revealing confidential
4 information.

5 PRESIDING JUDGE SCHMITT: Then we go into private session.

6 (Private session at 9.41 a.m.)

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9 (Open session at 10.16 a.m.)

10 THE COURT OFFICER: (Interpretation) Your Honour, we are in open session, and
11 there is no longer a video link.

12 PRESIDING JUDGE SCHMITT: (Microphone not activated) So I don't see any
13 preference for any sequence.

14 Mr Taku is rising because he would be the most concerned of the issue. Please,
15 Mr Taku.

16 MR TAKU: Yes, your Honour. As we had previously informed the Court, and we
17 will put it on record, that Mr Arido gave notice that he will testify for himself, but also
18 Mr Arido also informed the Court that he was going to evaluate a number of issues on
19 the evidence recorded so far, and we will inform the Court whether he will, indeed,
20 testify or not.

21 Indeed, we know that the right of an accused person to testify or to remain silent is
22 sacrosanct. On the spot, on listening to this witness, I cannot make -- give an answer to
23 this. I will need some time to talk to Mr Arido and get instructions from him and bring
24 to your attention as soon as I get the reply.

25 For the time being and for the exercise in order not to waste crucial time, maybe we can

1 have the discussion now and, as usual, I would defer entirely to your wisdom what
2 decision you take, taking into consideration about the position of my colleagues and that
3 of the Prosecutor. But we want the Court to take note that we will inform the Court
4 about whether Mr Arido intends, indeed, to testify or not.

5 PRESIDING JUDGE SCHMITT: We have taken note of that, but I think it makes sense
6 now to have these submissions in case we would have to address it later on. So are
7 there any opinions on that matter that has been raised by the VWU in their email?
8 Perhaps, Mr Vanderpuye, for the Prosecution?

9 MR VANDERPUYE: Thank you, Mr President. Good morning again. As far as I can
10 see from the email from the VWU, it seems that they have taken an entirely reasonable
11 approach to managing the concerns regarding Mr Arido's prospective testimony in the
12 case. The only thing that I didn't see in there, and maybe I missed it, but the only thing
13 I didn't see in there is from what period of time or to what extent Mr Arido may
14 properly have contact with his counsel.

15 Normally it would be a situation once he's actually on the witness stand that he wouldn't,
16 and I suppose to not having contact with counsel from the point of the otherwise
17 implemented familiarisation process, which wouldn't seem to make sense in the case
18 where he is the accused in the case. So that's the only thing that I didn't see in there.
19 But other than that, that's obviously within the purview of the Chamber to set. So other
20 than that, I don't have any concern about it.

21 The one thing I do have a concern about is that Mr Arido, as I understand it, and maybe
22 I'm wrong, is the last remaining Defence witness for all of the five in this case, and the
23 matter has been adjourned to the 4th of April to take his evidence, and it was done on
24 the assumption, I think, that he would testify at that time.

25 So, and it's entirely within and appropriate I think for Chief Taku to take time to

1 consider with his client very carefully whether he wants to testify in this case. But I
2 would ask, at least, that the Chamber set some sort of a period in which he should come
3 back to the Chamber to tell us whether his client wants to testify so that we can move on
4 with the proceedings, terminate the proceedings, whatever the Chamber wants to do.
5 But I think it's important that a deadline be set so that we know whether we need to
6 prepare or not.

7 Thank you, Mr President.

8 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Vanderpuye. The Defence
9 teams, any comments? Mr Taku?

10 MR TAKU: I think the submission of Mr Vanderpuye is entirely reasonable. We leave
11 everything to the wisdom of the Court. If the Court decides to set a time table or
12 anything, we will respect whatever decision the Court takes in this regard.

13 Yes, indeed, if Mr Arido decides to testify, he will be the very last witness for himself
14 and in respect of his case. And if there's a timetable, we will respect whatever ruling
15 the Court makes in this regard.

16 PRESIDING JUDGE SCHMITT: Two very preliminary remarks because we have to
17 think about it. I think it makes sense what Mr Vanderpuye has said, that we have to
18 have clarity at some point in time, so we have to look into that issue. Another idea that
19 comes to my mind is that it would of course be, but that is only at first thought, difficult
20 to restrict in any way the access of an accused to counsel. That is perfectly clear in my
21 opinion, my preliminary opinion.

22 So if there are no further submissions, then -- yes?

23 MS TAYLOR: Thank you, Mr President, your Honours. I just wanted to note that it
24 appeared that the practice during the trial thus far for witnesses who had duty counsel
25 was that they were allowed to consult with their duty counsel during the proceedings, so

1 it would make sense to continue this practice in this specific instance.

2 PRESIDING JUDGE SCHMITT: Thank you very much. So this concludes the hearing
3 for today. The next hearing will be or will not be, this depends on of course on the
4 decision of the Arido Defence, after the recess on 4 April. And since we have only three
5 days in this week and the Wednesday will be only a half a day because the Judges are
6 going to a retreat in Glion, so we will have to, the Judges will have to leave Wednesday
7 afternoon, we think about or we would think about extended hours for this Monday the
8 4th, Tuesday the 5th, and Wednesday the 6th, so to really try to have a consistent and
9 consecutive testimony if Mr Arido decides to testify.

10 So this concludes the hearing for today.

11 THE COURT USHER: All rise.

12 (The hearing ends in open session at 10.22 a.m.)