

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 International Criminal Court
2 Trial Chamber VII - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido - ICC-01/05-01/13
6 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
7 Judge Raul Pangalangan
8 Trial Hearing
9 Wednesday, 2 March 2016
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 PRESIDING JUDGE SCHMITT: Good morning, everybody. Could the court officer please
14 call the case.
15 THE COURT OFFICER: (Interpretation) Good morning. Yes, your Honour. Situation in
16 the Central African Republic in the case of The Prosecutor versus Jean-Pierre Bemba Gombo,
17 Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse
18 Arido, in the case reference ICC-01/05-01/13.
19 And we are in open session.
20 PRESIDING JUDGE SCHMITT: Now I ask for the appearances of the parties. Please,
21 Mr Vanderpuye.
22 MR VANDERPUYE: Thank you, Mr President. Good morning to you, your Honours.
23 Good morning everyone. Today the Prosecution is represented by Sylvie Wakchom, seated
24 to my left; Nema Milaninia, seated to my right; behind him, Olivia Struyven; and to her left,
25 Sylvie Vidinha. I'm Kweku Vanderpuye. Good morning.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: Good morning.

2 Then for the Defence, please, Mr Djunga.

3 MR DJUNGA: (Interpretation) Good morning your Honour. Good morning, your
4 Honours. Steven Powles, Lueka Grogga, Camille Strosser, Ms Mbengue and myself,
5 Paul Djunga, for the Defence of Aimé Kilolo.

6 PRESIDING JUDGE SCHMITT: Thank you very much.

7 Mr Taku.

8 MR TAKU: May it please your Honours. I appear for Mr Arido who is present here today.

9 With me is my good friend, Beth Lyons; Mr Tharcisse Gatarama, our legal assistant; Mr Kiel
10 Walker; and Mr Michael Rowse will be here in a while. Thank you so much, your Honour.

11 PRESIDING JUDGE SCHMITT: Thank you very much.

12 Mr Kilenda, please.

13 MR KILENDA: (Interpretation) Thank you very much, your Honour. Good morning,
14 your Honours. The Defence team of Mr Fidèle Babala has been enriched with a new person,
15 namely Coralie Klipfel, who is also our case manager who you know. Everyone else, the
16 same.

17 PRESIDING JUDGE SCHMITT: Thank you very much.

18 Mr Gosnell.

19 MR GOSNELL: Good morning, Mr President. Good morning, your Honours.

20 Christopher Gosnell representing Mr Jean-Jacques Mangenda to my left, assisted by Jeanne
21 Manga Safi and Mr Rita Yip. Thank you, your Honours.

22 PRESIDING JUDGE SCHMITT: Finally for the Defense, Mrs Taylor.

23 MS TAYLOR: Good morning, Mr President, your Honours. Melinda Taylor on behalf of
24 Mr Bemba and to my left is Natacha Lebaindre and Ms Ines Pierre de la Brière. Thank you.

25 PRESIDING JUDGE SCHMITT: Thank you. Then I would like to welcome Mr Ngondji,

1 but I'm not sure that the camera is connected, so we would perhaps first try to establish that.

2 MR NGONDJI: (Via video link) (Interpretation) I am Mr Ngondji, and I represent the
3 witness. I'm assisting the witness.

4 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Ngondji Ongombe. We'll come
5 back to you in a moment to discuss the Rule 74 assurances and also the protective measures
6 for your client. Thank you and a very warm welcome.

7 As preliminary items, the Chamber wishes to briefly address the concerns the Defence
8 raised with the Registry and also expressed in the courtroom at the end of the hearing
9 yesterday.

10 As for the question of having one room for each Defence team, CSS has explained
11 since yesterday's hearing that two meeting rooms and two consultation rooms are
12 available for this purpose. Absent any further indication, this issue appears to be
13 resolved, I would say; perhaps a little bit optimistically, but this is what we or what
14 the Registry can do at the moment.

15 CSS also informed the Chamber that they are actively seeking a solution with ICC
16 security so that Mrs Taylor can have private conversations with Mr Bemba while he is
17 in the holding cells. As such, the Chamber does not consider that any such direction
18 in this regard is necessary at this time.

19 I assume that you would come back to the Chamber if the problem cannot be solved.

20 As for the concerns raised regarding how the accused may have been treated in the
21 building during non-hearing hours, the Defence make no indication that they have
22 raised any such concerns with the Registry.

23 The Defence are reminded that it must try and resolve these kinds of issues with the
24 Registry prior to seizing the Chamber. We would very much appreciate that.

25 If it cannot be solved with the Registry, then we have to think about it as a Chamber,

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

1 but only then.

2 This concludes what the Chamber wishes to say on these items. We turn now to the
3 upcoming testimony of Witness D21-3.

4 As a preliminary matter, the Kilolo Defence has requested by way of email on 26
5 February that it be given three hours instead of its previous estimate of two hours to
6 examine D21-3. This request is granted.

7 We will now discuss protective measures and Rule 74 assurances. For this we need
8 to go to private session.

9 (Private session at 9.38 a.m.)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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12 (Redacted)
13 (Redacted)
14 (Open session at 9.46 a.m.)
15 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.
16 THE INTERPRETER: Microphone.
17 PRESIDING JUDGE SCHMITT: (Microphone not activated)
18 Excuse me. Mr Witness, good morning. You could not hear me because I did not
19 have my microphone on.
20 You are going to testify before the International Criminal Court. On behalf of the
21 Chamber, I would like to welcome you into the courtroom. This Chamber has been
22 established to try the case of the Prosecutor against Mr Jean-Pierre Bemba Gombo and
23 others. You are called to testify to assist us in our search for the truth.
24 Mr Witness, there is a card in front of you with a solemn undertaking to tell the truth.
25 Could you please read out loud this card.

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

1 WITNESS: CAR-D21-3

2 (The witness speaks French)

3 (The witness gives evidence via video link)

4 THE WITNESS: (Interpretation) Thank you. Solemn undertaking. I solemnly declare
5 that I will tell the truth, the whole truth, and nothing but the truth.

6 PRESIDING JUDGE SCHMITT: Thank you, Mr Witness.

7 Mr Witness, you are now under oath. You have already been informed about the
8 importance to speak the truth; nevertheless, I want to reiterate to you that as you have
9 just promised, you have to speak the truth and that it is an offence within the
10 jurisdiction of this Court to give false testimony.

11 Court officer, could we go into private session now, please.

12 (Private session at 9.48 a.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Page redacted – Private session

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Page redacted – Private session

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 (Redacted)

2 (Open session at 10.04 a.m.)

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

4 MR DJUNGA: (Interpretation)

5 Q. Witness, could you tell us whether you met people from the OTP as within the context
6 of this case?

7 A. Yes, I did meet with them.

8 Q. Do you remember how many times you met with them?

9 A. Thank you. I met with them just one time, but we worked together for a number of
10 days.

11 Q. Do you remember the date of this meeting?

12 A. No.

13 Q. Would you like me to refresh your memory?

14 A. Yes.

15 Q. Could we have document CAR-OTP-0085-0617 displayed on the screen?

16 MR MILANINIA: Your Honour, I rise just quickly just to note that the cover page of that
17 document contains private information, so we ask that it not be displayed to the public.

18 PRESIDING JUDGE SCHMITT: Okay.

19 MR DJUNGA: (Interpretation)

20 Q. Can you see the document, sir, page 617? Have you had a look at the document?

21 A. Yes.

22 Q. Could you look at the third line, and you will see a date there.

23 A. Yes, I do see that date.

24 Q. Do you think that date corresponds to the date on which you met with people from the
25 OTP?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 A. I do know that we did meet in (Redacted).

2 Q. Okay.

3 MR MILANINIA: Your Honour, I apologize again. The location of where the OTP met
4 with the witness should be dictated in private session.

5 PRESIDING JUDGE SCHMITT: That is correct, of course.

6 MR DJUNGA: (Interpretation) Thank you.

7 Q. At least do you remember who was present during that meeting, Mr Witness?

8 A. Yes. One name comes to mind, (Redacted).

9 Q. Witness, did you agree freely to meet with the people from the OTP during that
10 meeting?

11 A. Yes.

12 Q. Witness, as part of this meeting on 21 November 2014, were you subjected to any
13 pressure? Did you receive any threats? Were you intimidated by members of the OTP?

14 A. Yes.

15 Q. Could you tell us, please, who pressurised you, who threatened you?

16 A. Yes, of course. It was (Redacted).

17 Q. Witness, could you tell us exactly what sort of pressure you were subjected to, what
18 kind of threats or intimidation you were subjected to? Could you tell us about that?

19 A. Thank you, your Honour.

20 THE INTERPRETER: The witness continues.

21 THE WITNESS: (Interpretation) When I met with -- well, when the team from the OTP
22 arrived in (Redacted), they called me using my number. I answered, I said I was there, and
23 they told me where we were going (Redacted)
24 (Redacted)

25 PRESIDING JUDGE SCHMITT: Of course, now we are revealing information that should

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

1 not be revealed in public session, so we should think about if we go into private session, I
2 would say.

3 MR DJUNGA: (Interpretation) I think we can stay in open session, and we will try to be
4 very careful, and we will remind the witness not to mention places, locations, the name of the
5 city. We shall keep a very careful eye on that sort of thing. We make that commitment.

6 PRESIDING JUDGE SCHMITT: We tried this way in the foregoing questioning, but we are
7 vigilant, of course, of this aspect.

8 MR MILANINIA: Mr President, may we briefly go into private session as well? I need to
9 make a comment about the names that are being mentioned.

10 PRESIDING JUDGE SCHMITT: Then we go shortly into private session.

11 (Private session at 10.13 a.m.)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Page redacted – Private session

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

1 (Redacted)

2 (Redacted)

3 (Open session at 10.16 a.m.)

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

5 MR DJUNGA: (Interpretation)

6 Q. We had asked you, sir, to tell us what sort of pressure you were subject to, what kind of
7 threats, intimidation you were subjected to. I'd just like to remind you, please don't mention
8 any names of staff of the OTP, anyone you referred to. Please just refer to that person in
9 question as "the investigator." Please be careful not to give any actual names of members of
10 the OTP. Just speak of the investigator. If you could answer the question, please. So what
11 threats did you receive? What pressure were you subjected to?

12 A. Thank you. Well, I was saying a few moments ago that when they got there, they
13 called me, I turned up. I went to the place where they were staying. They received me.
14 And unless I'm mistaken, there were four of them, four members of the OTP. There was also
15 the lawyer who had been assigned to me and myself.
16 As soon as I arrived -- well, the initial discussion was not recorded. And then that
17 was when the investigator began briefly to talk to me about Bangui, and he
18 mentioned a number of places in Bangui just so that I would realise and understand
19 that he came from there.

20 And he said he had all the information about me from Bangui and that it was in my
21 interest not to lie if I had not said something before the Court, that I could go back to
22 that and that -- he promised me at the same time that if I said the truth about what I
23 had said before the Court about the investigations, I would be treated mercifully, and
24 I would sign this document that would protect me from possible prosecution.

25 And I agreed and I said to him, in my opinion, that I was in favour of telling the truth

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 and these things were private, secret, personal, and I thought it wasn't useful for me
2 to say everything in front of Court because everyone has a secret. So I thought it was
3 best to say the truth that they were looking for as long as, of course, I signed the
4 document that would protect me from possible prosecution, as I said earlier. That's
5 how it started.

6 And then we got down to the serious business. They assigned me a lawyer, because
7 I didn't have the resources to have a lawyer, and then the interview began. So that's
8 how it started.

9 MR DJUNGA: (Microphone not activated) (Interpretation) I beg your pardon. I didn't
10 have my microphone on.

11 Q. Now, during this interview with the OTP members, did they tell you what they
12 expected of you? Did they tell you exactly what they expected of you?

13 A. Yes. What they expected of me, they -- well, they had said to me they wanted me to
14 tell the truth about the investigations they conducted, there were some things I hadn't said or
15 I shouldn't have said during the first trial and that they had information about me from
16 Bangui, and so I was to tell -- to tell these hidden secrets -- the hidden truths, rather, about me,
17 and then the document would be signed that would protect me from possible prosecution. If
18 I made a mistake about a date somewhere or something or an event, that's what they expected
19 of me.

20 Q. Now, did the OTP members give you their version of events regarding this whole case
21 of corruptly influencing witnesses? Did they give you their version of what happened?

22 A. No.

23 Q. Did they give you complete freedom to provide your version of what happened?

24 A. No.

25 Q. So what happened? When you say no, that they didn't give you free reign to provide

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 your version of what happened, can you be more explicit?

2 A. Yes. Thank you. First of all, I remember that throughout my entire life, this was the
3 first time I was before a court answering questions. I don't necessarily know the rules. And
4 when someone asks you a question and you tell them what you know and this person really
5 insists, really and truly insists and asks you to provide a date or to say this or say that really
6 with a lot of pressure, you don't get out of there. You have the impression that you've
7 become a liar or that you've made something up so that the person is satisfied.
8 That's -- that's what it was, the pressure that I was talking about.

9 Q. Witness, now, you said something about they told you to say this or that. Could you
10 tell us more about that?

11 A. Yes. Thank you. Let me give you an example. When the investigator asked me
12 about the date on which I arrived in (Redacted), I had mentioned 2011, and he insisted, as if
13 they knew too much about the agreement that was promised to me at first. And I thought to
14 myself, well, they're right from Bangui -- he's right from Bangui. They must know more. I
15 have to give him the exact date of my arrival here in (Redacted).
16 I perhaps had not quite assessed the importance of that to the trial because I said to
17 myself, well, officially it was 2011 when I got to (Redacted). Unofficially, in terms of
18 my personal situation, I got there -- correction, I got here earlier. So that sort of
19 pressure to provide an exact date, I thought it was a bit too much, too strong. So
20 there you have it.

21 Q. Thank you. Just one question to clear one thing up. Did you feel that you were
22 harassed? Did you feel harassed?

23 A. Yes, of course. Of course. We worked that day for quite a long time even though we
24 did have a few short breaks, two, three, four, five minutes, but it really was under pressure.
25 The pressure was too much. And what seemed strange to me was that the lawyer who was

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 supposed to help me and guide me in my answers seemed to be there to lead me into the
2 discussion -- well, he didn't say anything at all. He was just there. He'd just ask for a break
3 when he saw that I had got worked up, and I was taken into the adjoining room so I could
4 calm down, that's all. So I think his role was limited to that. That's what it seemed -- that
5 seems strange to me, a bit strange.

6 Q. Did you have the impression that the Prosecution was trying to put words in your
7 mouth? Was there a truth that the Prosecution wanted to hear, or did they give you free
8 reign to tell them your own truth?

9 PRESIDING JUDGE SCHMITT: Mr Witness, before you answer, we have to clear something.
10 Please.

11 MR MILANINIA: Mr President, I have two objections, actually. One is the question is very
12 leading and you've permitted leading questions so far. The second is this question has
13 actually been asked and answered. Prior to this question the question was put to the witness
14 as to whether the -- and I can quote the Defence -- whether they put words -- the Prosecution
15 put words into the witness's mouth, and he answered that question. So on those two bases,
16 we object to this question.

17 PRESIDING JUDGE SCHMITT: Mr Djunga, the question is indeed -- has indeed, to put it
18 this way, leading elements. So I would appreciate it if you would rephrase it. And this is, I
19 think, the last question that we would permit in that respect. I know sometimes
20 you -- counsel wants to follow a Defence line and do not want to be restricted to one -- to one
21 question in that respect, but please rephrase it, and then we continue after the witness has
22 answered.

23 MR DJUNGA: (Interpretation) Thank you. Yes, the question was answered, but I wanted
24 more details, more information. That was the point of the question.

25 Q. Witness, do you remember giving testimony in the case of the Prosecutor versus

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

1 Mr Jean-Pierre Bemba Gombo, what we call the main case? Now, of course, you mentioned
2 your difficulties in remembering dates, but can you remember the date of your testimony in
3 the main case?

4 A. Thank you. I don't have the specific date, but I remember the month and the year. It
5 was in November 2013.

6 Q. Thank you.

7 MR DJUNGA: (Interpretation) Your Honour, with your leave, if we could go into private
8 session.

9 PRESIDING JUDGE SCHMITT: Court officer, we go, please, into private session.

10 (Private session at 10.31 a.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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20 (Redacted)

21 (Open session at 10.38 a.m.)

22 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.

23 MR DJUNGA: (Interpretation)

24 Q. Witness, could you tell us if Mr Bob told you anything about his role and his functions

25 in relation to Mr Kilolo and the Defence team of Mr Bemba?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 A. No.

2 Q. When Mr Bob approached you, did he tell you things, or did he have behaviour that
3 would suggest that he had been sent by Mr Kilolo?

4 A. No.

5 Q. Did Mr Bob tell you that he was looking for witnesses to testify in favour of Mr Bemba
6 for any kind of advantage whatsoever?

7 A. No.

8 Q. Witness, could you tell us how many times you met Mr Kilolo physically, how many
9 times you met him?

10 A. Thank you. I met Mr Kilolo physically, if I'm not wrong, twice.

11 Q. Now, without mentioning the name of the town, could you tell us if that was the town
12 in which you currently live?

13 A. Yes, of course.

14 Q. I understood that you found dates difficult, but can you remember the year?

15 A. I don't remember.

16 THE INTERPRETER: Message from the interpreters. Could counsel's microphone be
17 switched off when the witness is speaking?

18 MR DJUNGA: (Interpretation)

19 Q. During your testimony --

20 A. Yes, of course.

21 Q. A lot of time --

22 PRESIDING JUDGE SCHMITT: Mr Djunga, may I interrupt you? The interpreters
23 urge -- exactly -- urge you to close down your microphone when the witness is speaking.
24 Thank you very much.

25 MR DJUNGA: (Interpretation) Thank you very much, your Honour.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR MILANINIA: Mr President, we didn't get the question, so can counsel please repeat it
2 because it never came through the English translation.

3 PRESIDING JUDGE SCHMITT: That is correct. The last question is not -- not on the record,
4 and we have not understood it fully.

5 MR DJUNGA: (Interpretation)

6 Q. Witness, we were asking you if the meeting, the physical meeting with Mr Kilolo, took
7 place a lot of time before your testimony before this Court?

8 A. Yes, of course.

9 Q. Thank you. Do you know who was present during this meeting with Mr Kilolo?

10 A. I haven't understood the question. You're speaking about a physical meeting?

11 Q. Yes. I was speaking about a physical meeting, first physical meeting with Mr Kilolo.

12 Do you remember who was present? Who was Mr Kilolo with during this meeting?

13 A. Thank you. I remember this meeting. There were two of them. There were two of
14 them. He was accompanied by a white woman, who I think was also a lawyer.

15 Q. Thank you. Do you remember the name of the white lady?

16 A. No.

17 Q. Thank you. Witness, the white lady, was she present during the entire interview with
18 Mr Kilolo? Was she present when you spoke with Mr Kilolo?

19 A. Yes, of course.

20 Q. Witness, do you remember what was discussed during this first meeting with
21 Mr Kilolo?

22 A. Yes. Thank you. When they received me in a hotel at the square, we were sat in the
23 hall. And when we sat down, I was accompanied by my wife. They greeted us. They
24 started to ask us questions, what we had to do with the events in 2002-2003. We spoke about
25 the history. And they asked us for documentation, if we had documents, laissez-passer, for

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 example. We answered no, we had no documents. But we did have my birth certificate
2 and that of my wife. As regards to the children's papers, they had been lost. That was the
3 subject of our first meeting.

4 Q. Thank you. Witness, was there a second meeting?

5 A. Yes.

6 Q. Could you tell us how this second meeting went? Was counsel Kilolo accompanied?
7 What was the objective of this second meeting?

8 A. Thank you. He was accompanied by another lawyer. I don't have the name of that
9 lawyer. There were two of them. They called my wife and myself, and we met at the hotel
10 at the square, and we sat in the hall. We had discussions. They spoke to us about the
11 presence of (Redacted) were
12 going to take us to the hotel where they were residing, and that's what they spoke to us about.

13 Q. Thank you. Witness, do you remember having had telephone contacts with Counsel
14 Kilolo before, during or after giving testimony?

15 PRESIDING JUDGE SCHMITT: Yes.

16 MR MILANINIA: The question is leading, your Honour.

17 PRESIDING JUDGE SCHMITT: I allow it in that respect. I think that this could really
18 expedite also the questioning. The witness can answer the question -- or perhaps you'll
19 repeat it, Mr Djunga.

20 THE WITNESS: (Interpretation) Thank you, your Honour.

21 MR DJUNGA: (Interpretation)

22 Q. Witness, I have to repeat my question. I was asking you if you had had telephone
23 contact with Mr Kilolo. Obviously apart from physical contact, afterwards was there
24 telephone contact with Mr Kilolo?

25 A. Thank you. Yes, there was telephone contact.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Q. Thank you. During these two physical meetings or during telephone conversations,
2 did Mr Kilolo give you instructions with regard to the content of your testimony? Did he
3 give you precise instructions concerning your testimony?

4 PRESIDING JUDGE SCHMITT: Mr Djunga, when it comes to the more material aspects of
5 or the content of what has been talked about, we would appreciate it if your wording was a
6 little bit more general and you would more cautiously lead to where you -- the questions you
7 want to ask. I think you understand when I mean. This is indeed a little bit -- this is
8 leading too much, I would say. Yes, perhaps rephrase this question.

9 MR DJUNGA: (Interpretation)

10 Q. Witness, could you tell us more or less what you spoke about with Mr Kilolo during
11 these two meetings or these telephone conversations?

12 A. Thank you. Where it concerns the physical meetings, I already gave you my answer.
13 Now, where it concerns the telephone conversations, the first telephone contact was before
14 our physical meeting when he called me for the first time.
15 The second call took place after our physical meeting. That was to tell me the ICC
16 staff. Which ones? I don't know. The ones who were meant to speak to me by
17 phone, I was meant to speak to them within the framework of giving my testimony.
18 And there was another call -- well, I will try and think of that, if I have the time to
19 think of anything else.

20 Q. Thank you. Did Mr Kilolo make proposals of money in exchange for your testimony,
21 anything at all?

22 PRESIDING JUDGE SCHMITT: Mr Djunga, perhaps a suggestion would be to ask the
23 witness: What did you talk about with Mr Kilolo? Do you remember it? And in so far
24 you remember it, please tell us, something on the line of that. And what results out of the
25 answers you could continue then with your line of questioning.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR DJUNGA: (Interpretation) Thank you, your Honour.

2 Q. Witness, did you understand the question as the Presiding Judge put it?

3 A. No, no, I didn't understand it well.

4 Q. Do you remember the content of the conversations that you had with Maître Kilolo
5 during these two meetings, physical meetings, telephone meetings? Do you remember what
6 was said?

7 A. Thank you. Well, that's what I was explaining to you. The first time it was to listen to
8 my testimony. After it was to say that he was coming to (Redacted) to meet me, that was the
9 telephone conversation that I had with him, and that I also had to speak to court staff on the
10 phone. It was quite simply that, what I spoke to him about.

11 THE INTERPRETER: Your Honour, could counsel be reminded to switch off the
12 microphone as we're picking up a typing sound over the witness.

13 MR DJUNGA: (Interpretation)

14 Q. Thank you very much, Witness.

15 With regard to what you said during your testimony before the Chamber in the main
16 case, does it accord with your own truth?

17 MR MILANINIA: Your Honour, if I may, the question again is leading as to whether --

18 THE WITNESS: (Interpretation) Yes.

19 MR MILANINIA: I think the question has been answered, but our objection would have
20 been the question is leading.

21 PRESIDING JUDGE SCHMITT: Mr Djunga.

22 MR DJUNGA: (Interpretation) Your Honour, I was just asking the witness to say whether
23 he told us his own truth during his testimony before the Chamber in the main case.

24 PRESIDING JUDGE SCHMITT: Mr Gosnell.

25 MR GOSNELL: Mr President, it's of course not my role to fight the battles of Maître Djunga,

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 but I did just want to make one comment about the leading proposition, and that is that if the
2 Defence is merely putting a proposition that is part of the Prosecution's allegations, then that
3 is, I would suggest, appropriate, particularly after there has been an effort to adduce
4 information openly.

5 So I do believe, your Honour, that at some point there is a point when the proposition
6 can be put, and I do believe that's what Maître Djunga is now doing.

7 MR MILANINIA: I have just a small comment on that. There is no exhaustion of remedies
8 that allows an attorney to resort to leading questions when he cannot bring out the
9 proposition in which he wants to establish through opening questions. So on that basis I
10 disagree with my learned colleague. So in this event, the question that Mr Djunga did
11 present to the question, i.e., whether his testimony effectively comports with what he told
12 Mr Kilolo is leading and infers the answer.

13 PRESIDING JUDGE SCHMITT: I understood the question differently. I understood it in a
14 way that the witness was asked if before Trial Chamber III he has told the truth, or have I
15 misunderstood the question? The truth how the witness understood it, so I've understood.
16 Could you clarify what was it, the question?

17 MR DJUNGA: (Interpretation) That is it, your Honour. I think that you've perfectly
18 understood me. I asked the witness if, quite simply, if he had told the truth, his own truth
19 when he testified.

20 PRESIDING JUDGE SCHMITT: The objection is overruled and the witness may answer the
21 question.

22 THE WITNESS: (Interpretation) Yes, thank you. During the first hearing in the main case,
23 I was under oath when I gave my version of the facts. They were truthful facts and that was
24 my position.

25 PRESIDING JUDGE SCHMITT: I think we can now have the coffee break, and we will

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 reconvene at 11.30.

2 THE COURT USHER: All rise.

3 (Recess taken at 10.58 a.m.)

4 (Upon resuming in open session at 11.32 a.m.)

5 THE COURT USHER: All rise.

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

7 PRESIDING JUDGE SCHMITT: Mr Djunga, you still have the floor. Please continue with
8 your examination.

9 MR DJUNGA: (Interpretation) Thank you, your Honour.

10 Q. Mr Witness, earlier you said that everything you had said in the main case
11 corresponded to your own truth. My question is this: At any particular point in time, did
12 Mr Kilolo attempt to have an influence on what you were going to tell the judges or have you
13 change your account?

14 A. No.

15 Q. Thank you. Now, in the main case, did you receive any money for any reason
16 whatsoever?

17 A. Yes.

18 Q. Thank you. Could you tell us why you received money in the course of the main case?

19 A. Yes. Thank you. I received that money because I had to have my son, who is in
20 Bangui, come and join me, and that was a request that I had made to the VWU staff. And I
21 really insisted, actually, about that. And since my request was not agreed to, I explained as
22 well to Mr Kilolo, and he told me that he didn't have any money, but he too was a father, and
23 if he had any money, he would help me directly. But he could approach some people and
24 ask for assistance in sort of a humanitarian kind of way.

25 Q. Thank you. Do you remember the amount that you received, this assistance that you

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 had requested?

2 A. 390,000 CFA if I recall, CFA -- correction, 319,000.

3 Q. And what would that represent in dollars?

4 A. I lost the document for the transfer, so I couldn't tell you what the dollar amount was.

5 Q. Thank you. How did you receive the money?

6 A. Thank you. I received a call from Kinshasa, and the person who had called me said he
7 was going to send the transfer codes by SMS, and that is what happened.

8 Q. Thank you. Now, if I've understood, you made a request. I don't know whether I've
9 quite understood. Could you tell us more? Whom did you turn to exactly?

10 A. I asked (Redacted).

11 PRESIDING JUDGE SCHMITT: Perhaps, Mr Djunga, we can, when you put these questions
12 to the witness that call for naming of persons, you could advise him beforehand not to speak
13 out which persons he is talking about concretely. Thank you.

14 MR DJUNGA: (Interpretation) Thank you, your Honour.

15 Q. Witness, you said that you had asked for this money, first of all, from the VWU and then
16 you asked Mr Kilolo. And it was to have one of your children travel. Could you tell us
17 exactly what you wanted the money for?

18 A. Thank you. I hadn't asked for money. It wasn't money I asked for. I asked for
19 assistance, help so I could have my child go from Bangui to join me, meet up with me. But it
20 wasn't money I was asking for. I was asking for assistance, maybe an airline ticket,
21 whatever.

22 Q. Thank you. Why did you not travel with your child when you left your country of
23 origin?

24 A. Thank you. (Redacted)

25 (Redacted)

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. I remind you, we are in open session. I think that a name was given.

8 I'm sorry, I was asking you, with that money, were you indeed able to have your child

9 go from where you were to your current residence? Was the money really used for

10 that?

11 A. Yes, of course. That was the purpose.

12 Q. Thank you, Mr Witness. Now, this money, Mr Witness, did this money have any

13 influence whatsoever on your testimony in the main case?

14 A. No, not at all. Since I'm not going to do something like that for that amount of money,

15 I mean, the testimony was well before the money. The VWU responded -- if they had

16 responded favourably, I don't think that would have had any influence on my testimony.

17 Q. Thank you. Now, Mr Witness, what would your reaction be if it were put to you that

18 the money was compensation paid to you in exchange for false testimony before the case in

19 the main -- correction, before the Court in the main case? What would your reaction to that

20 statement be?

21 A. Thank you. My reaction would be surprise. I would like anyone who made such an

22 accusation to provide evidence, real evidence to show that I had changed anything in my

23 testimony in exchange for that money. Would they have a document or something else

24 about my testimony, anything like that? I was facing an honest person, dealing with a

25 human, a humanistic person, another African, and also, you see, there is the human tie

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 between the two, between the two of us.

2 Q. Thank you, Witness. Could you tell us why you absolutely wanted to testify in the
3 main case?

4 A. Thank you. Well, I would just like to remind you of one thing. Well, I'm not really
5 reminding you, but I think I've already said that I had made a number of attempts to lay a
6 complaint in Bangui. I had contacted various people and all of that. I had received some
7 advice. I was told that a complaint would go nowhere at that time because the perpetrator,
8 once in -- correction, once in power, most of these people would be in the Presidential Guard
9 at that time. So I attempted many times to no avail in 2009. I tried once again, no outcome.
10 And then I then mentioned the case of (Redacted). Yes, I had taken a
11 number of examples of other cases to associate with my case so that we could lodge a multiple
12 or collective complaint. It didn't go anywhere, and so I had to go away.

13 But I still had in my mind the thought that one day this story would be revealed,
14 either in another country or at the international level. I had this idea of mine, and
15 I've kept that idea. Today I realise that perhaps I was wrong, because my testimony
16 didn't serve much purpose.

17 Nowadays I'm dealing with the principles of the Court, other facts. So I thought that
18 my testimony would have shed light on these issues. I would have had some
19 attention given to these things. But with this second case, I wanted to give public
20 testimony so that the entire world, you see, I had a message that I wanted to give to
21 the entire world that some people may not have the money, the means to tell their
22 story; or some people have truths, but sometimes they are not believed just because
23 the course or certain courts have very excessively complicated rules or principles.
24 That's why I wanted to give public testimony so that the world could see me and hear
25 me and maybe that would make something happen so that the Court would take note

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 of some of this, of what happened.

2 Now, you mentioned 319,000 CFA francs. Well, I think, I think I could have
3 expected a million dollars if I were -- millions of dollars if I were to be bribed, not an
4 amount like that, and then I would go to some quiet spot in the world and take it easy
5 with my pot of money, but --

6 Q. Thank you, witness. Now, just one question to clear up one point. Why do you think
7 that your testimony was important? What was special about your testimony? Why do you
8 feel frustrated now after giving testimony about what you saw, about what you experienced?

9 A. Thank you. My testimony may not be special, but I would just remind you that I'm still
10 living with the same woman. I've had two children after the whole incidents with the same
11 woman, and I don't know, I don't know -- well, I'm the only one who really knows what it's
12 like. No one else can understand this.

13 Q. Thank you, Mr Witness. Now, you met with members of Mr Kilolo's Defence team as
14 part of this case. Do you remember? I remind you that, well, I realise you have problems
15 with dates, but do you remember how many times you met with Mr Kilolo's Defence team,
16 the number of times in a year?

17 A. Thank you. Unless I'm mistaken, I believe twice, I believe. I really can't remember the
18 exact dates, but I think there were two meetings.

19 Q. Thank you. Now, do you know who within Mr Kilolo's Defence team you met with,
20 which member of the Kilolo Defence team you met?

21 A. Yes. Thank you. Well, a few moments ago I mentioned two meetings, and I
22 remember that the first time it was Mr Djunga himself, and the second time he was with
23 Mrs Lueka Grogga, and the third time with Mrs Rosalie. That's what I believe. That's what I
24 seem to recall.

25 Q. Thank you, Mr Witness. Now, during the various meetings, did anyone in Mr Kilolo's

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Defence team offer money to you or make a promise to you so that you would come and give
2 testimony today?

3 A. Thank you. Let me go back to my first testimony in the main case. After I gave
4 testimony before the Court, the Presiding Judge of the Court gave me an opportunity to speak
5 at the end of my testimony. And I had explained at that point that I would always be
6 available to the Court when the Court needed me. I even signed some documents here
7 (Redacted)

8 Q. Sir, please avoid --

9 A. Yes, I was saying that I had signed some documents about my availability, that I would
10 always be available at the disposal of the Court. It wasn't -- I haven't come here today
11 because I was promised anything, not today or beforehand. Thank you.

12 Q. Thank you, Mr Witness. I think I will put my last question to you. Now, ever since
13 the time you were notified that you were not to contact Defence member teams, particularly
14 with the Kilolo Defence team, have you received any call or did you call a member of the
15 Kilolo Defence team, myself or Mr Powles, my learned friend, or one of the case managers?

16 MR MILANINIA: I apologise, Mr President. My colleague can correct me, but I don't recall
17 anything in the evidence or in the record that indicates that he was informed not to have
18 contact with the Defence. Maybe we can articulate that through a question and then
19 facilitate the subsequent question that Mr Djunga wants to ask.

20 PRESIDING JUDGE SCHMITT: This is overruled. The witness may answer the question.

21 MR DJUNGA: (Interpretation)

22 Q. Would you like me to put the question to you again? I will put the question again if
23 the Presiding Judge doesn't mind.

24 Now, we are all here together, as Mr Kilenda was saying yesterday or the day before,
25 to come to the truth. We are very familiar with the context of this case. We know

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 why our learned friend is being prosecuted. And through this question we want to
2 obtain a specific answer because we want to avoid -- and I think you'll understand,
3 your Honour, that given the objection, we are defending our client with elegance,
4 very firmly with --

5 MR MILANINIA: Is there a question that's going to be asked?

6 PRESIDING JUDGE SCHMITT: Mr Djunga, you're describing perhaps what was behind the
7 short decision of the Presiding Judge on that. So please would you be so kind to repeat the
8 question. Obviously because of this back and forth, the witness is not prone now to -- does
9 not know exactly what to do. So please repeat the question and the witness may answer.

10 MR DJUNGA: (Interpretation) Thank you, your Honour. I shall repeat my question.

11 Q. Mr Witness, my question was this: Ever since you were notified that you were no
12 longer to have contact with members of the Defence team, in particular members of
13 Mr Kilolo's Defence team, did anyone within the Kilolo team contact you after that date or did
14 you contact anyone from the Kilolo Defence team?

15 A. No.

16 MR DJUNGA: (Interpretation) Thank you, your Honour. That was my final question.

17 PRESIDING JUDGE SCHMITT: So we have now to think about how to continue. I would
18 suggest that first the Defence teams decide amongst each other if they have questions, and if
19 also the sequence of the Defence team, who wants to start and who wants to continue then.
20 So my question would be are there questions by the other Defence teams?

21 MR KILENDA: (Interpretation) Your Honours, may I announce that Mr Babala's Defence
22 team has no questions for this witness.

23 MR TAKU: Your Honours, I have just one question, a contextual question for clarification
24 only.

25 PRESIDING JUDGE SCHMITT: And the other Defence teams?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR GOSNELL: No questions, Mr President.

2 MS TAYLOR: No questions either, Mr President.

3 PRESIDING JUDGE SCHMITT: Then I give Mr Taku the floor for his question.

4 QUESTIONED BY MR TAKU:

5 Q. Good morning, Witness. I'm counsel for Mr --

6 A. Good morning.

7 Q. I'm counsel for Narcisse Arido. Do you know Mr Narcisse Arido?

8 A. No.

9 Q. Now, a while ago, I'm referring to the English transcripts at page 40, lines 14 to 16, you
10 said that you intended, you thought about filing a complaint, but you advised yourself
11 against because the perpetrator, once in power, most of the people will be in the Presidential
12 Guard.

13 Are you referring to the Presidential Guard of President Bozizé, François Bozizé?

14 A. Yes, of course.

15 Q. Thank you very much.

16 MR TAKU: That will be all for the witness, your Honour.

17 PRESIDING JUDGE SCHMITT: Thank you very much. Then it would be time for the
18 Prosecution for their examination. So whoever wants to question the witness has the floor.

19 MR MILANINIA: Certainly, Mr President. A quick question, is it appropriate to ask that
20 we take the lunch-break now and then resume? That way I can finish the entirety of my
21 cross-examination after the lunch-break without any break in between.

22 PRESIDING JUDGE SCHMITT: Normally I would be very positive in that respect, but we
23 have -- I personally have a lunch obligation too, and I do not want, as I said yesterday, to
24 establish these over-long lunch breaks. So I would, yes -- because we cannot restart before
25 2.30, so you see what I mean, so because of that I would really appreciate it if you could start,

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 and then perhaps we can make it any time shortly before 1 o'clock, we can make the
2 lunch-break, yes.

3 MR MILANINIA: Certainly, Mr President. I can begin now then.

4 PRESIDING JUDGE SCHMITT: Then please start.

5 QUESTIONED BY MR MILANINIA:

6 Q. Mr Witness, in line with Mr Djunga, I'm going to be seated when asking you your
7 questions. I just want to reintroduce myself. We spoke briefly yesterday. My name is
8 Nema Milaninia. I represent the Office of the Prosecutor.

9 Mr Djunga and the Court have articulated some instructions for you. I'm just going
10 to repeat some of those just so we're clear. If you have any questions about those
11 instructions, please ask me.

12 First, if you cannot hear my question, please tell me and I will ask you that question
13 again. Second, if you do not understand the question, please let me know and I will
14 ask my question in a different way. And then finally, and this is important,
15 Mr Witness, I'm going to ask you very specific questions, so please only answer those
16 questions that I ask.

17 Mr Witness, do you understand these instructions?

18 A. Yes, I've understood well.

19 Q. Thank you. I want to actually begin where you left off with Mr Djunga, namely, your
20 contacts with the Defence in this case. You were interviewed by Mr Kilolo's first lawyer, Mr
21 Ghislain Mabanga, on 18 April 2014; isn't that true?

22 A. Yes.

23 Q. And then you were interviewed one year later on 4 April 2015 by Mr Djunga, correct?

24 A. Yes.

25 Q. And then you were interviewed again by Mr Djunga on 20 September 2015, correct?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 A. Yes.

2 Q. Now, apart from these three interviews, were you ever contacted by Mr Kilolo's Defence
3 between 29 August 2013, which is the day, the last day you testified in the main case, and
4 today? And to articulate, to be clear, by "contact," I mean all forms of communication,
5 including telephone calls, face-to-face meetings, SMSs and emails.

6 A. I haven't understood the question well.

7 Q. Let me ask again then. Between 29 August 2013, when you testified in the main case,
8 and today, your appearance today, have you had any other contact with the Defence apart
9 from the three interviews you mentioned including emails, telephone calls, face-to-face
10 meetings or text message?

11 A. I'm sorry, but I still don't exactly understand the question.

12 THE INTERPRETER: There is a voice asking for the Judge to suspend.

13 THE WITNESS: (Interpretation) Your Honour, please, could we suspend for a moment so
14 that I can consult my lawyer?

15 PRESIDING JUDGE SCHMITT: When you mean by suspend that you are given the chance
16 to speak to your lawyer, then this is granted. Let's say for five minutes you can talk with
17 your lawyer, and then we come back to the question that has been put to you, and you would
18 answer it please then. So you can talk now with your lawyer.

19 (Pause in proceedings)

20 PRESIDING JUDGE SCHMITT: It seems to be that we can now continue. Mr Witness, are
21 you in the position to answer the question now?

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

23 PRESIDING JUDGE SCHMITT: Then please do so.

24 THE WITNESS: (Interpretation) Yes. What I can say is that after I testified in the first case,
25 there wasn't a Defence team for Mr Kilolo until Mr Kilolo -- well, he was accused, there were

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 accusations against him, the current ones. Now, during this interval, I didn't have contacts
2 with anyone.

3 MR MILANINIA:

4 Q. Then after that interval, when Mr Kilolo was identified as an accused in this case, apart
5 from those three interviews that we have just mentioned and discussed, did you have any
6 email exchanges with Mr Kilolo's Defence?

7 A. No.

8 Q. Did you exchange any SMSs with Mr Kilolo's Defence?

9 A. No.

10 Q. Did you have any telephone calls with Mr Kilolo's Defence?

11 A. Well, things have to be clear. When Mr Kilolo, when he was accused, the first team
12 that contacted me was Mr Mabanga's team contacted me. I don't know the date it was on.
13 The second was Maître Djunga's, he took over until this day. That's it.

14 Q. Okay. So if I understand your answer correctly, you only had two telephone
15 exchanges with Mr Kilolo's Defence before your testimony today?

16 A. That's not what I said. I said that the first team that contacted me in the Kilolo case was
17 Mabanga's team. The second team was Djunga's team. That was it.

18 Q. Approximately how many phone calls did you have with Mr Kilolo's Defence?

19 A. Thank you. I was contacted for the first time by Mabanga's team and afterwards, well,
20 the number of times with Mr Djunga, Mr Djunga, well, it was the three contacts that I had
21 with him.

22 Q. And what was the nature of your conversation? What did you discuss?

23 A. Maître Mabanga, it was to tell me that he was coming where I was. Maître Djunga as
24 well, he called me to explain to me that he had taken over, it was no longer Maître Mabanga,
25 but him, and he also had to go to where I am.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Q. Okay. And apart from the three interviews that we've discussed, did you have any
2 other face-to-face meetings with Mr Kilolo's Defence, Mr Mabanga, Mr Djunga?

3 A. Please could you ask your question again?

4 Q. Yes. We know that you had three interviews with the Kilolo Defence on 18 April 2014,
5 the 4 April 2015 and 20 September 2015. Apart from those three meetings, did you have any
6 other face-to-face interactions with the Kilolo Defence after 29 August 2013?

7 A. Thank you. Well, first of all, I'd like to state that I don't have the dates. I know the
8 amount of times that I took up contact with Kilolo's Defence. I have no notes with me in
9 order to certify the dates that you're giving me. But I would also like to say that I also called
10 Maître Djunga's assistant in order to make my request for protection with the VWU. The
11 other calls were more with the two assistants, the two assistants that concerned my request for
12 protection with the VWU.

13 Q. Okay. We'll get back to that topic if we need to, but let me move on to Mr Mangenda
14 and his lawyers. Did you ever have or have you had contact or been contacted by
15 Mr Mangenda or his lawyers since 29 August 2013?

16 A. Thank you. I would remind you that I have a problem with regards to dates, so I don't
17 want to state anything with regards to the dates that you're giving to me. What I simply
18 want to say is that Maître Mabanga at the time, the person -- and when I talk about the call, he
19 wasn't the person who called me the first time, no.

20 Q. I'm sorry, Mr Witness, I think we're mixing names. Not Mr Mabanga, but
21 Mr Mangenda. Has he or any of his lawyers contacted you or have you contacted him since
22 your testimony in the main case?

23 A. I don't know the name.

24 Q. What about Mr Babala, has he or any of his lawyers contacted you or have you
25 contacted him or any of his lawyers since your testimony in the main case?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 A. Thank you. I don't know Mr Babala personally. Personally, I don't know him. But
2 his lawyers, not that long ago, I've forgotten the date, they were here. And once, first of all,
3 he called me. Well, they called me to say they were going to come, they were there, and we
4 went to a hotel at the square, and I met, I answered their questions, that was it. I didn't have
5 any further contact with them. I don't even have their telephone numbers.

6 Q. And generally speaking, what were their questions to you, Mr Babala's lawyers?

7 A. Thank you. Well, they asked me if I knew Mr Babala.
8 I said no.

9 Had he already called me once, had he already contacted me?

10 I said no, I didn't know him. I didn't have any contact with him, any contact,
11 whether it came from him, I didn't know.

12 It was this type of question that was put to me.

13 Q. And did they ask you anything else?

14 A. No. They were very brief, very brief. That was it.

15 Q. Approximately how long did that meeting with Mr Babala's lawyers last?

16 A. It didn't last a long time.

17 Q. Okay.

18 A. It was very quick.

19 Q. Has Mr Arido or any of his lawyers contacted you or have you been in contact with
20 them since your testimony in the main case?

21 A. I don't know this man whose name you're giving. I don't know him. And I don't
22 know his lawyers.

23 Q. Okay. And Mr Bemba, has he or any of his lawyers been in contact with you or have
24 you contacted them since your testimony on his behalf in the main case?

25 A. No. Mr Bemba is in prison as far as I know. Maître Kilolo was his lawyer. He's also

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 concerned in this case. So I haven't been contacted by either of them.

2 Q. One question back to Mr Babala. Did he ever inform you that you had been listed as a
3 witness for his Defence in this case?

4 A. Yes, yes. I think that during the meeting I had with them, this brief meeting that I
5 spoke about, yes, they spoke about that, yes.

6 Q. And do you know why he would list you as a witness if you don't know anything about
7 him?

8 A. No idea.

9 Q. Okay. Did you ever try to contact Mr Kilolo after your testimony in the main case?

10 A. Yes, once.

11 Q. How did you try to contact him?

12 A. I tried to send an SMS when I heard that he had been arrested on television. I saw it on
13 TV. I tried to send him an SMS. I don't know if he received it. And in the SMS I told him
14 exactly that my wife and I were thinking of him. We're praying for him. And if we could
15 help him overcome the problems, that we were thinking of him, praying for him to support
16 him.

17 Q. Mr Witness, you showed the Prosecution investigators that SMS when you met with
18 them in November 2014, correct?

19 A. Yes, I showed them the SMS.

20 Q. And you read them the SMS; isn't that true?

21 A. I showed them the SMS.

22 Q. Okay. Let me read what the SMS says, and tell me if this accurately reflects your
23 memory. And I'll speak in my very broken French: (Interpretation) "The whites through
24 the ICC finding a means to harm Africa, but God will help us. Counsel, you are an honest
25 and serious person. My wife and I support you."

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 (Speaks English) Was that what your SMS said?

2 A. Yes, that was it. But when I said "we support you," it was in prayer.

3 Q. Okay. Now, when you met with the Defence, Mr Kilolo's Defence, did they tell you
4 anything about this case, specifically the evidence the Prosecution has, in their conversations
5 with you?

6 A. I don't remember.

7 Q. Are you aware that the Prosecution has recordings of telephone conversations between
8 Mr Kilolo and witnesses who testified for Mr Bemba in 2012 and 2013?

9 A. I haven't understood the question.

10 Q. Okay. Let me repeat it again.

11 PRESIDING JUDGE SCHMITT: Wait a moment please.

12 Mr Djunga, you have the floor.

13 MR DJUNGA: (Interpretation) Thank you very much, your Honour. I think that the
14 Prosecution could be a bit more precise when they ask this question. Do they mean that
15 there is one recording between Maître Kilolo and the witness who is present or with all the
16 other witnesses? We are concerned that this could lead the witness into error.

17 PRESIDING JUDGE SCHMITT: This is sustained. It is indeed so that we have a witness
18 here who has -- is a witness to testify about matters that he has knowledge of and, therefore, I
19 would appreciate it if the question would be worded in a way that has a relation to this
20 witness specifically.

21 MR MILANINIA: (Microphone not activated)

22 Q. My apologies. Mr Witness, were you told if the Prosecution has recordings of
23 telephone conversations between you and the Defence of Mr Bemba, including Mr Kilolo?

24 A. I don't understand the question well. Please could you ask it again?

25 Q. Sure.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR DJUNGA: (Interpretation) Your Honour, once again, your Honour, I allow myself to
2 stand. Could the Prosecution be precise, is there a reference with regards to this statement?
3 Is there any kind of reference? There it's possible to be a bit more precise.

4 MR KILENDA: (Interpretation) Your Honour, in other terms, when the Prosecution asks a
5 question to the witness, there has to be a factual basis.

6 MR MILANINIA: Your Honour, my question is very simple, which is whether this witness
7 knows about the evidence the Prosecution has in its collection. And this is to get at the
8 conversations he had with the Defence during his meetings with the Defence prior to his
9 testimony in this case.

10 PRESIDING JUDGE SCHMITT: Mr Gosnell.

11 MR GOSNELL: I've just heard that explanation, which to some extent anticipates the
12 objection I was going to make, but it doesn't actually respond to the objection, which is
13 relevance. I'm not actually sure what the relevance of this question is.

14 MR MILANINIA: Your Honours, the relevance becomes obvious. I think the relevance
15 comes to credibility of this witness's testimony. Obviously if he is told certain things about
16 the evidence that the Prosecution has in its possession, then it may impact on the credibility of
17 the witness's evidence in this case.

18 PRESIDING JUDGE SCHMITT: So I've decided before that if the question has a relation to
19 this witness specifically, the question will be allowed, and this stands like it is. But we want
20 relatively quickly to see where you're heading at.

21 MR MILANINIA: Certainly, Mr President.

22 Q. Mr Witness, I'll actually touch upon a separate subject, which is are you aware that the
23 Prosecution has in its possession or were you ever told that the Prosecution has in its
24 possession logs of telephone conversations that you had with Mr Kilolo in 2013?

25 A. Thank you.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR POWLES: Mr President --

2 THE INTERPRETER: Overlapping speakers.

3 THE WITNESS: (Interpretation) If I can speak, I would like to consult my lawyer.

4 PRESIDING JUDGE SCHMITT: Yes, this is of course allowed. You have time to consult
5 your lawyer.

6 In the meantime, we could hear Mr Powles of course.

7 MR POWLES: Yes. I'm very grateful, Mr President. I mean, the question is a little bit
8 confusing because it implies to the witness that the Prosecution does have recordings, and if
9 they do, then of course they should be disclosed. And as far as we're aware, no such
10 recordings have been disclosed to the Defence. So if the Prosecution is in possession of that,
11 then that should be disclosed. But if not, then the question should be clear as to whether
12 they have the recordings or not.

13 MR MILANINIA: Your Honour, may I quickly respond?

14 PRESIDING JUDGE SCHMITT: First of all, I would very much appreciate if there would be
15 a sort of order in objection and answering to objections, meaning that of course you also stand
16 up like everybody when you address the Court and give everybody the time to speak to the
17 end and then step in.

18 Now you have the floor.

19 MR MILANINIA: My apologies, your Honour.

20 The question was specific to call logs, that is simply whether or not he was aware that
21 we have call logs, that is logs of conversations that he had with the witness; and it is
22 only to that that the question was asked. And that evidence has been disclosed to
23 the Defence, and it is in the possession of the Prosecution.

24 PRESIDING JUDGE SCHMITT: So but let me allow the remark that this was not clear from
25 the outset in my opinion. So this is a clarification, and in that respect, you can continue.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 But initially one could have the impression that you're referring to intercepted telephone
2 communication. And I think Mr Powles referred to this in his objection.

3 MR POWLES: Yes. I'm grateful, Mr President. Thank you.

4 PRESIDING JUDGE SCHMITT: So when this is now clear that we're talking about the logs,
5 then perhaps you could explain also to the witness what "logs" mean. Perhaps he has
6 difficulties to understand that. Then it is permitted to continue this line of questioning.

7 MR MILANINIA: Certainly.

8 PRESIDING JUDGE SCHMITT: Mr Witness, are you able to continue?

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

10 PRESIDING JUDGE SCHMITT: Then you have the floor again.

11 MR MILANINIA:

12 Q. Now, Mr Witness, let me be clear and clarify what I mean by call logs. I mean were
13 you ever told that the Prosecution has in its possession records of the number and frequency
14 of calls between you and Mr Kilolo in 2013 and -- in 2013? Were you ever told about that
15 evidence?

16 A. Thank you. I don't know anything about that, because the Prosecutor is here -- the
17 Prosecutor was here. They didn't show me anything like that.

18 Q. Okay. One last question on this topic and then I'll move on. Were you ever told by the
19 Kilolo Defence that the Prosecution has in its possession records from Western Union of
20 money transfers to you in 2013?

21 A. No.

22 Q. Okay. We'll move on to a separate subject now, which is your testimony at this Court
23 in 2013. Mr Witness, to be clear, and the record is -- the record is set on this, which is you
24 testified as a witness on 28 and 29 of August 2013. Do you remember that?

25 A. Yes, I remember my testimony.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Q. And your wife testified the very next day after you. Do you remember that?

2 A. Yes, she also testified.

3 Q. Now, on your -- during your second day of testimony on 29 August 2013, you testified
4 about MLC crimes in Mongoumba. Do you remember that?

5 A. No, I don't remember talking about that. Now, I was asked a clear, specific question
6 about that, whether I was aware of the events in Mongoumba, yes. And I said yes, I had
7 heard about that. But I just heard about it indirectly, people talking about it in general.

8 Q. Right. That's what you testified to. You said you heard about what happened in
9 Mongoumba indirectly based on your -- based on your understanding of things. That's what
10 you testified to during your testimony in the main case, correct?

11 PRESIDING JUDGE SCHMITT: Mr Djunga.

12 MR DJUNGA: (Interpretation) Thank you, your Honour. I rise once again just to draw
13 the Prosecution's attention to the fact that the version in the main case is that, you see, as was
14 said before this Court, it was not a matter of comparing what the witness had stated in the
15 main case. I think this might be a very slippery slope both for the witness and for the
16 Defence.

17 PRESIDING JUDGE SCHMITT: Yes.

18 MR MILANINIA: Mr President, I'm not trying to elicit evidence about the substance of
19 whether or not crimes were or were not committed in Mongoumba. Rather, what I am
20 trying to elicit is what he testified to to compare it as this case is entirely about what he was
21 told and coached about.

22 PRESIDING JUDGE SCHMITT: The Chamber is relieved to hear that, because we have said
23 from the outset in the decision and repeated it several times that we are not going to re-litigate
24 the main case, and this is what Mr Djunga was referring to. So if this is the purpose of your
25 questioning, then please continue.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR MILANINIA: Thank you, Mr President.

2 Q. Mr Witness, would you like me to repeat my question again or can you answer it?

3 A. No, I don't feel like answering.

4 Q. You don't feel like answering or you cannot answer the question?

5 A. I can't answer.

6 Q. Okay. Then let me ask the question again. Actually let me be more specific. Do you
7 remember how during your testimony in the main case you testified that a girl had been
8 raped in Mongoumba? Do you remember that?

9 A. I said earlier that I would not answer because that doesn't have anything to do with
10 anything.

11 Q. But, Mr Witness, actually it does have something to do with things, and so I am going to
12 ask you to please answer the question. Do you remember that that was your testimony in
13 2013 in the main case on behalf of Mr Bemba?

14 A. I would voluntarily answer questions about the money transfers in the current case.

15 Q. So just to be clear, are you refusing to answer my question, Mr Witness?

16 MR TAKU: Your Honours --

17 PRESIDING JUDGE SCHMITT: Mr Taku.

18 MR TAKU: Your Honour, I'm afraid that this question leads into the evidence that was
19 given in the main case. Our colleague clarified when he was answering to the objections that
20 he wanted to ask questions about alleged coaching. But when he starts asking him whether
21 he testified about rape and other things, it's completely out of the context of this particular
22 case, your Honour. And I think our colleague should keep to the promise he gave that was
23 asking about the alleged coaching. What he said or didn't say in that particular case is not
24 material. What's material is that he should ask questions about alleged coaching if that is the
25 charge for which my colleague -- about which the cross-examination relates to.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR MILANINIA: Mr President, I have two responses. Obviously the substance of his
2 evidence in the main case is relevant to ascertaining whether or not he was told to testify
3 about a matter. But, secondly, your Honour, frankly, I don't need to go down this line
4 anymore. The witness is refusing to answer the question. I can point the Chamber's
5 direction to the transcript in the main case where he did in fact testify about these matters and
6 then move on from there.

7 PRESIDING JUDGE SCHMITT: But what I would really appreciate is if you, let me put it
8 this way, dwell into the facts and matters of the main case that you relatively early or
9 preferably from the outset show the connection to our case. And Mr Taku has correctly
10 pointed out and also Mr Djunga where this connection lies, and we have said that as I
11 repeated several times also as the Chamber.
12 So continue with your questioning. I understand that you follow now another line
13 of questioning, okay.

14 MR MILANINIA: Yes, Mr President. I'm going to actually just simply direct the Court's
15 attention to transcript page 53 of the French version of the main case transcript, which is T-339,
16 it's in tab 17. And that will cover the testimony that I was going to elicit to this witness.
17 And I'll move on to a related but different subject from this issue.

18 Q. Mr Witness, do you remember how on your first -- excuse me, your second day of
19 testimony, on 29 August 2013, you broke for lunch at around 1.27 p.m. that day?

20 A. Thank you. I don't remember the exact time.

21 Q. Okay. You may not remember this as well then. You resumed your testimony at 3.17
22 p.m. after about a two hour lunch-break on 29 August 2013. Does that sound about right?

23 A. I just remember that I testified for two days and, well, as for the times, you're the one
24 who has the times. I really don't know. I don't have those times.

25 Q. That's fine. Okay. I want to play you an excerpt from a telephone conversation,

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Mr Witness, that we took on Mr Kilolo and Mr Mangenda's telephone lines. This
2 conversation took place, to be clear, on 29 August 2013 at 1.55 p.m. That is during the
3 lunch-break of your testimony. I'm going to ask you questions about this conversation, but
4 for now I want you to listen to it very carefully.

5 MR TAKU: Your Honour, I'm sorry, your Honour.

6 PRESIDING JUDGE SCHMITT: Mr Taku.

7 MR TAKU: How would Witness answer a question about a telephone conversation between
8 two different individuals in which he was not a participant? I think he has to lay a
9 foundation on how he is connected here. Was he a party to this telephone conversation or
10 was Mr Mangenda and Mr Kilolo? He can put those questions to him, your Honours.

11 MR MILANINIA: May I respond, your Honour?

12 PRESIDING JUDGE SCHMITT: Yes.

13 MR MILANINIA: Your Honour, as a matter of law, a party can put any document which he
14 alleges relates to that witness, irrespective of whether the witness was a participant in that
15 conversation, author of that conversation, or even knew about the conversation. And, in fact,
16 I remind the Court that during the examination of D2, Mr Taku himself put a document to
17 that witness which the witness neither authored, neither was a participant in, nor in fact was
18 actually mentioned directly in; but because of his position that it related to that witness, he
19 was permitted to put that document to the witness.

20 Here, your Honour, it is the Prosecution's position, and we should be allowed to put
21 this to the witness, that the conversation that was had that we wish to show to the
22 witness was about him. And in that sense it relates to the witness and, therefore,
23 should be put to him to see if he knows the contents of that conversation.

24 PRESIDING JUDGE SCHMITT: Any other comments by the Defence?

25 MR TAKU: Yes, your Honours, because he mentions D2. Mr Arido was facing his accuser.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 He was a Prosecution witness. And the testimony, it was relevant to the charge against
2 Arido. This is a Defence witness. This witness is not on trial, this witness is not an accuser
3 and, therefore, the context is different.

4 PRESIDING JUDGE SCHMITT: Mr Gosnell.

5 MR GOSNELL: Thank you, Mr President. My learned friend referred to this as being
6 permissible as a matter of law. I don't know what law is being referred to by my friend, but I
7 would suggest that what is appropriate, in fact, what my friend appears to be doing is to wish
8 to put a proposition to the witness about the substance of the exchange. But to play an audio
9 recording of which the witness has no knowledge is blatantly prejudicial, blatantly designed
10 to excessively prejudice the witness, and actually is really a matter more of argument than of
11 questions to the witness.

12 So I'd suggest that if my friend has a proposition that he wants to put to the witness
13 about his testimony, specific propositions, then those can be put and there is no need
14 for this prejudicial exercise of bringing in information of which he has absolutely no
15 knowledge.

16 PRESIDING JUDGE SCHMITT: First further comments by the Defence?

17 Then I would give you the floor.

18 MR MILANINIA: Thank you, Mr President. Let me answer -- I think Mr Djunga might
19 actually have a comment and maybe I can address all three of them together.

20 PRESIDING JUDGE SCHMITT: Then we start with Mr Djunga, please.

21 MR DJUNGA: (Interpretation) Thank you, your Honour. I entirely agree with earlier
22 remarks made by my learned friends. I would just like to add that this is a matter of loyalty
23 in relation to the witness, to submit a discussion to him that he was not a party to, this is just
24 not fair to the witness.

25 MR MILANINIA: Yes, Mr President, let me respond to the comments made by my learned

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 colleagues in turn. First to Mr Arido, there is nothing that distinguishes whether you can
2 put a document to a witness depending upon whether he's a Prosecution witness or a Defence
3 witness. In fact, that would violate the very basic principle of equality of arms. So putting
4 that one aside.

5 To Mr Gosnell, Mr Gosnell says I don't cite a legal principle, so let me cite a few for
6 him right now. This is from decision 619 in the Ntaganda case, paragraph 31, and I
7 quote, "Parties may show documents to a witness whose testimony has a connection
8 with that item and have the witness comment on it."

9 This is from decision 847, paragraph 26, of the Ruto and Sang case. Quote, "Each
10 item of evidence shall in principle be introduced by the tendering party through a
11 witness whose testimony has a connection with that item of evidence."

12 And let me, your Honours, note that this is consistent with the practice of this Court.

13 I quote from transcript page 21, lines 16 to 23 of page 7, that Mr Taku put such a
14 proposition to a witness. I also note that Mr Djunga did exactly the same thing with
15 a Prosecution witness, asking questions about a document that the witness was not an
16 author of, that the witness did not prepare, but which it was the position of the
17 Defence related to that witness, and that is exactly what we are doing here.

18 Now, whether or not this witness knows the contents of this conversation, we don't
19 know that, we haven't played it for him, and that's exactly what we're trying to elicit.

20 But also as to its relevance, we need to hear the tape first.

21 PRESIDING JUDGE SCHMITT: Mrs Taylor.

22 MS TAYLOR: Thank you, Mr President. I'll be very brief. Since my learned colleague has
23 raised issues concerning the case law of the Court, I'm very happy to transmit during the
24 break old decisions from the Lubanga case and other cases which have underscored that it is
25 neither appropriate nor useful to put the contents of documents to witnesses if they haven't

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 authored the document and have no personal knowledge of the document. So I'm happy to
2 address those precedence to the Chamber if that would assist.

3 I would also like to slightly refer to an issue that was raised during a prosecution case
4 concerning the dangers of telegraphing cases or positions to the witness. Thank you.

5 PRESIDING JUDGE SCHMITT: Mrs Lyons.

6 MS LYONS: Yes. I would also like to raise the generally accepted procedural principle in
7 evidence of authenticity. There has been no foundation laid as to what this is, where it
8 comes from, who the parties are who made it, its source and its origin. And as a technical
9 but important procedural matter, there is a question as to the authenticity or ver -- not
10 veracity, I use the word "authenticity" of what it is that the Prosecution wants to use at this
11 time in addition to the other arguments raised.

12 PRESIDING JUDGE SCHMITT: So we have two last remarks, the first, Mr Gosnell, and then
13 you can answer to everybody from the Defence side. Mr Gosnell, please.

14 MR GOSNELL: I'll be brief, Mr President. My friend clearly came prepared this morning
15 and takes me by surprise. I don't have to hand all of those decisions.

16 But one of the quotations that was mentioned by my friend referred to that notion of
17 connexity and connection. And indeed I would suggest that it's the level of
18 connection. True, there may not be any specific categories of connection that make it
19 permissible or improper to use the document, but the general idea is what level of
20 connection is there to the document in question and, conversely, what is the potential
21 prejudice of using the document. And I would suggest that this is a case where you
22 have prejudice outweighing the level of connection.

23 And my friend can accomplish what he wants to do, namely, put the proposition to
24 the witness and see if he has anything to say about it.

25 MR MILANINIA: Your Honours, a brief response. First is I'll try not to touch upon I

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 think -- I think Ms Taylor's comment is very valid. I'll try not to touch upon the substance.

2 I'll just note a couple things.

3 One, the audio that we want to play is CAR-OTP-0074-0926. That document has
4 already been admitted as formally submitted. In other words, its authenticity and its
5 reliability, the arguments for that have already been advanced to the Court and
6 accepted as a prima facie matter.

7 As to Mr Gosnell's position, once again, it is our argument, it is our position that in
8 this conversation that there are discussions that relate to this witness and for that
9 purpose there is a connection that we wish to bring out.

10 PRESIDING JUDGE SCHMITT: So we conclude this for the moment, the discussion. And
11 Mrs Taylor has already mentioned the lunch-break, and since we have 30 minutes until
12 1 o'clock, and this is a matter that has to be reflected on by the Chamber, we will now have
13 our lunch-break until half past 2 and we will come back with a decision.

14 THE COURT USHER: All rise.

15 (Recess taken at 12.47 p.m.)

16 (Upon resuming in open session at 2.39 p.m.)

17 THE COURT USHER: All rise.

18 THE COURT OFFICER: (Interpretation) Your Honour, we are in open session.

19 PRESIDING JUDGE SCHMITT: I think we would have during the reading out of this
20 decision, we would have to disconnect for a short time the video link, please.

21 Now, this is the oral decision on Prosecution attempt to play Kilolo Mangenda
22 recording to D21-3.

23 The Presiding Judge takes note of the objections raised at the end of the last session as
24 to whether the Prosecution may play an audio conversation allegedly attributed to
25 Mr Kilolo and Mr Mangenda.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 The Defence objects on grounds that the Prosecution has laid no foundation for
2 playing this recording.

3 Further, the Mangenda Defence argues that playing the recording is unduly
4 prejudicial and submits that the Prosecution should simply put specific propositions
5 to the witness instead.

6 The Prosecution responds that this recording is related to D21-3 and that the
7 recording should be played on this basis.

8 Irrespective of whether these kinds of questions have been allowed in other contexts,
9 this is not so sure if you look at the transcript of the Prosecution case. On this
10 occasion, the Presiding Judge considers that the connection between these calls and
11 D21-3 is such that it is unduly prejudicial to play them directly to the witness.

12 The Prosecution may put specific propositions to the witness regarding his
13 interactions with Mr Kilolo and/or Mr Mangenda in this time period, but must do so
14 without playing the calls themselves.

15 The Presiding Judge sees no unfairness from taking such a course, particularly as
16 these recordings are already recognized as formally submitted by the Chamber.

17 The witness is not a party to the calls the Prosecution wishes to play and certain
18 comments Mr Kilolo and Mr Mangenda allegedly make in relation to D21-3 might
19 disproportionately affect the way this witness answers subsequent questions.

20 Playing such remarks directly to the witness is unnecessary in order for the witness to
21 confirm whether he knows of the facts underlying the contents of these calls.

22 Another remark, the Prosecution would have to put anyway his propositions to the
23 witness.

24 This concludes the ruling.

25 So would you please then continue with your examination?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 MR MILANINIA: Certainly, Mr President.

2 PRESIDING JUDGE SCHMITT: First of all, we would have, of course, to establish the video
3 link again.

4 So there seems to be at least a sort of connection.

5 THE COURT OFFICER: (Interpretation) Your Honour, we are connected once again.

6 PRESIDING JUDGE SCHMITT: The examination, please.

7 MR MILANINIA: Thank you, Mr President.

8 Q. Mr Witness, can you hear me?

9 A. Yes, I can hear you.

10 Q. Mr Witness, before we left off, I put to you a number of propositions. One, the fact that
11 on 29 August 2013, you had testified about crimes committed by the MLC in Mongoumba. I
12 also noted the fact that your wife testified the very next day after you on 30 August 2013. Do
13 you remember me asking you these questions?

14 A. Yes, I remember.

15 Q. I also established how there was a lunch-break between 1.30 and 3.30 on 29 August 2013.
16 Do you remember me putting that to you?

17 A. Yes.

18 Q. The Prosecution has put forward to this Chamber an audio call which we established is
19 between Mr Kilolo and Mr Mangenda that took place during that lunch period. Were you
20 ever told by Mr Kilolo or Mr Mangenda that they spoke about you or what we believe to be
21 about you during the break in your testimony on 29 August 2013?

22 PRESIDING JUDGE SCHMITT: Mr Gosnell?

23 MR GOSNELL: Objection. For starters, I think the question should be asked whether there
24 was any communication between the individuals cited and the witness before you get into the
25 content. I do believe at least that foundation should be laid. I don't believe that question

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 has been asked or answered yet, unless I'm mistaken.

2 PRESIDING JUDGE SCHMITT: Mr Djunga, Mr Djunga?

3 MR DJUNGA: (Interpretation) Thank you, your Honour. I had practically the same
4 remark to make in relation to the witness, who was not part of the conversation and this did
5 not have anything to do with him.

6 MR MILANINIA: First of all, Mr President, I would caution my colleague from discussing
7 the merits and substance of the contents in front of the witness.

8 But to go to Mr Gosnell and Mr Djunga's primary objection, we note that we've
9 already established through foundation questions that there were a number of
10 communications and meetings between the Defence and this witness, and it could be
11 through those conversations that he was told about these calls. Now, whether or not
12 he spoke specifically to Mr Kilolo and Mangenda is actually quite irrelevant frankly
13 because the foundation that there had been conversations with this witness have
14 already been established.

15 PRESIDING JUDGE SCHMITT: I see the witness raising his hand. You have the voice,
16 Mr Witness.

17 THE WITNESS: (Interpretation) Thank you, your Honour. I would like to ask you if you
18 could be patient. I was asked to come here as a witness, and I will only give testimony about
19 things that concern me directly. Already I have difficulty remembering dates. If I'm asked
20 questions about things that I don't know anything about, I will not be in a position to answer
21 the question because it would only make matters worse.

22 Thank you, your Honour.

23 PRESIDING JUDGE SCHMITT: The Chamber assures you that we are patient with every
24 witness because we know that this is not an easy situation for any witness appearing before
25 this Court. But it's also the case that we have a certain structure of questioning when

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 witnesses appear. We have this type of questioning by the calling party and we have the
2 questioning that is called cross-examination in the common law system by the non-calling
3 party, which is now taking place.

4 And every witness sort of imposes himself or herself to this regime, to put it this way.

5 So it is not up to the witness to choose which question to answer or not. This is as
6 you may have recognized in the morning and also in the afternoon now, this is
7 sometimes a very complicated process, what questions are allowed to put to the
8 witness or are not allowed to put to the witness.

9 So we as a Chamber, after asking the parties, are deciding on which questions to
10 allow or not. And if you have anything that you want to say in that respect, you can
11 put this to the Chamber in your answer.

12 To the merits now of the objection, if we understand it this way that -- or if you
13 perhaps, I think you would anyway to repeat, have to repeat this question, if you
14 make clear that we are referring to any communication, then I have no problem with
15 the question. If you want to establish that there has at a certain point in time been a
16 discussion on this, then you would have to establish it.

17 MR MILANINIA: Certainly, Mr President.

18 Q. Mr Witness, at any time did anyone tell you about the fact that Mr Kilolo and
19 Mr Mangenda had conversations about you in the middle of your testimony?

20 MR DJUNGA: (Interpretation) I beg your pardon, your Honour. I wish to speak. Now
21 the witness said he did not know Mr Mangenda. He said that earlier today. And now he is
22 being asked about a conversation between Mr Kilolo and a person whom he said he doesn't
23 know, so I really don't see how the witness could answer this question.

24 PRESIDING JUDGE SCHMITT: This is overruled because it's of course he knows or he has
25 said that he knows Mr Kilolo, and it could be theoretically, we will have to listen to the

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 answer that the witness will give us, it could be theoretically that he has been told by anybody,
2 by Mr Kilolo, for example, about such a conversation.

3 So this is overruled and the witness, please, answers the question.

4 MR MILANINIA:

5 Q. Mr Witness, did you remember my question or would you like me to repeat it?

6 A. Please repeat it.

7 Q. My question is: Have you been told by anybody about the fact that Mr Kilolo and
8 Mr Mangenda discussed your testimony during the lunch-break that you had on 29 August
9 2013?

10 A. I'm not aware of that.

11 Q. Has anyone told you that during that conversation Mr Mangenda said that your
12 testimony was déconné vraiment déconné because of your testimony concerning the crimes
13 committed in Mongoumba?

14 A. I don't have that information.

15 Q. Has anyone told that you Mr Mangenda also told Mr Kilolo during that call that he
16 thought your testimony was beaucoup désolé?

17 PRESIDING JUDGE SCHMITT: Mr Gosnell?

18 MR GOSNELL: At some point, Mr President, it just goes too far. The witness has already
19 answered two questions indicating quite clearly he doesn't know about this conversation,
20 which encompasses its content. And now we're just getting into what I would suggest is a
21 hortatory rhetorical exercise, which the Prosecution can indulge in all it wants in closing
22 arguments.

23 MR MILANINIA: Mr President, I just have two responses. One is I do plan on moving on
24 after this one point; and second of all, I note that it appears that Mr Kilolo has called this
25 witness as a character witness. And in that regards as well, what this witness knows or does

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

1 not know with regards to conversations that Mr Kilolo had with Mr Mangenda or other
2 accused is relevant to establishing the veracity of that testimony.

3 PRESIDING JUDGE SCHMITT: First of all, I note that you say that you move on afterwards.
4 So second thing is, it could be imagined, to put it a little bit theoretically, what the answer will
5 be. So the witness may answer this last question on this point.

6 MR MILANINIA:

7 Q. Mr Witness, would you like me to repeat my question?

8 A. Yes.

9 Q. My question is, my question is has anyone told you about the fact that during the
10 middle of your testimony on 29 August 2013, that during a phone call between Mr Mangenda
11 and Mr Kilolo, Mr Mangenda expressed to Mr Kilolo that because of your testimony, that
12 your testimony was, and I quote, "beaucoup désolé." Has anyone told you about that fact?

13 A. I am not aware.

14 PRESIDING JUDGE SCHMITT: Now you please move on to another subject.

15 MR MILANINIA:

16 Q. Mr Witness, I want to now move on to another topic now, which is to ask you questions
17 about the individual that we've pseudonymed as "Bob." My first basic question is do you
18 feel threatened by Bob if you were to testify about him before this Court?

19 A. I don't know that gentleman.

20 MR MILANINIA: Your Honour, may we quickly just go into private session?

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

22 (Private session at 2.55 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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Trial Hearing
Witness: CAR-D21-3

(Private Session)

ICC-01/05-01/13

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23 (Open session at 3.01 p.m.)

24 MR MILANINIA:

25 Q. Now, Mr Witness, during your interview with the Prosecution in November 2014, you

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 told Prosecution investigators that you met Bob two times in 2012; isn't that correct?

2 A. I am not sure about the year, but it is correct that I met him twice.

3 Q. Well, let me ask you: You met him before you met the white woman and Mr Kilolo in
4 April of 2012, correct?

5 A. Yes, that is correct.

6 Q. The first time you met Bob, you met him alone, isn't that true, by yourself without your
7 wife?

8 A. Yes, that's correct.

9 Q. And it's correct, isn't it, that during that first meeting Bob told you that because you
10 were victims of crimes, that if you testified at the ICC, you might be remunerated in light of
11 the harms that were inflicted on you, correct?

12 A. No, not exactly. (Redacted) explained to me was something I was not familiar with. I
13 wasn't familiar with the workings of the justice system. And mindful of my story, it might
14 be possible for me to apply for reparations, but all he did was to explain the rules to me.

15 Q. Okay. And what did you believe reparations meant? Did you believe reparations
16 could mean money?

17 A. Well, reparations, first of all, is a matter of justice and then compensation for victims.

18 Q. Okay. So you understood him to say reparations and to -- that reparations include
19 compensation, correct?

20 A. Yes, of course.

21 Q. Now, you met Bob the very next day; that is, the day after your first meeting with him
22 in 2012; isn't that true?

23 A. What I said earlier is that I met him twice.

24 Q. Okay. That's fine. The second time you met him, however, you met him with your
25 wife, correct?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 A. Yes, that is correct.

2 Q. And it's also correct that during that second meeting with you, Bob and your wife that
3 Bob repeated that if you and your wife testified for Mr Bemba, that you could claim
4 compensation for the crimes that were committed against you, correct?

5 A. No, that is not how things happened. He talked about international justice. He said
6 that those who had been victims of the events from 2002 to 2003, that there would be a
7 judgment in that connection and that victims should tell their stories and that the Judges
8 would come to a determination, whereby, compensation may be provided should a victim
9 apply for such compensation.

10 Q. Okay. So let me -- let me actually repeat what you told the Prosecutors Mr Bob told
11 you during that second meeting. He said: (Interpretation) "You can even ask for
12 reparations in relation to what happened to your family."

13 (Speaks English) Isn't that correct?

14 PRESIDING JUDGE SCHMITT: Just a moment, please.

15 Mr Powles.

16 MR POWLES: I would just ask if my learned friend could give us the reference that he's
17 referring to, so of course it would make it easier to follow.

18 PRESIDING JUDGE SCHMITT: No. Absolutely correct. Please give the reference.

19 THE INTERPRETER: The interpreter corrects. The reference was in relation to what
20 happened to your wife and not to your family. The interpreter corrects. Thank you.

21 MR MILANINIA: Thank you and I apologize. The reference is CAR-OTP-0085-0673 at
22 0682, which is in tab 7 of your binders, and the lines are 293 to 296.

23 Q. Do you remember Mr Bob telling you what I just quoted from your testimony -- excuse
24 me -- from your interview with the Prosecution investigators in November 2014?

25 A. Yes, I do remember.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Q. Now, when you met Bob for the second time, you and your wife agreed to testify for
2 Mr Bemba, and Bob told you that he would give your phone number to Mr Kilolo; isn't that
3 correct?

4 A. No. That is not exactly the understanding, namely in relation to my testimony on
5 behalf of Mr Bemba. I think that when I testified, it was not in favour of Mr Bemba as such.
6 I simply told my story to the Court. That's all I did. And I did not have in mind, so to
7 speak, that I was testifying in favour of Mr Bemba. No. I didn't perceive things that way.

8 Q. I understand. My question is actually far simpler than that, which is, during that
9 second -- during that second meeting, Mr Bob told you, isn't it true, that he would give your
10 phone number to Mr Kilolo so that Mr Kilolo could contact you?

11 A. Well, when I was answering to the questions from the Prosecutor, I knew what the
12 circumstances were. As I said, there was a lot of pressure at the time. Maybe there were
13 things which I should not have said but which I said under pressure, but I'm willing to clarify
14 those matters before this Court speaking under oath.

15 The first meeting took place and the witness mentions a name. I was with him alone,
16 and the second meeting was with my wife briefly. And then secondly, on the same
17 day, he said that we could meet at (Redacted) and would be introduced to Mr Kilolo
18 and the white lady who was there.

19 This is the truth, and I'm answering you in all truthfulness because I'm not under any
20 pressure whatsoever.

21 Q. Mr Witness, let me read to you what you told the Prosecutors, and you can tell me if this
22 is still accurate. And for the Defence and for the Court, I'm going to reference
23 CAR-OTP-0085-0673 at 0685, which is tab 7, lines 420 to 422. You were asked, and let me
24 quote: (Interpretation) "You have just explained to me that Bob told you that Kilolo would
25 call you."

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 (Speaks English) And then your response was: "Oui, ils m'ont annoncé ça."

2 A. Yes, he told me that.

3 Q. Do you remember that? Is that still accurate?

4 A. I'm sorry. Can you read that out in French? I didn't understand you.

5 Q. Trust me, I don't understand myself when I speak French. So let me show you the
6 passage, if that would make it easier for you. Can the court registry please show the witness
7 CAR-OTP-0085-0673, and then we'll need to go to page 0685.

8 Mr Witness, I want you to look at lines 420 to 422 where you're asked whether or not
9 Bob told you that Kilolo would call you -- that Kilolo would call you. And you
10 answered, "Yes, he told me that."

11 A. Thank you. Now I understand the question.

12 Now this is what I have to say by way of answer: When I met with the OTP, things
13 went very poorly. We had an initial understanding, but the document of our
14 agreement between the Prosecutor and myself was not signed, and so I provided
15 some answers under a lot of pressure. These are the types of things that maybe I
16 should not have said if I were faithful to my conscience. I did not see the document,
17 I did not sign it, the agreement was not respected; and therefore, I do not recognize
18 those facts.

19 Q. Mr Witness, my question is actually simple. Is that the truth? What you said to the
20 Prosecution in the lines that I just referenced, is that the truth?

21 A. This is what I'm attempting to explain to you. There were some confessions that were
22 obtained under pressure and that what I'm saying is that these confessions were not the
23 reflection of the truth.

24 The Prosecutor knows, knows very well that the answers were provided under
25 certain circumstances. I had contact with Mr Bob on two occasions. The first time

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 he had already given my number -- he had already forwarded my number even at the
2 time of the first meeting, he had given my phone number to Mr Kilolo, who actually
3 called me.

4 And then at the second meeting, we had an appointment with my wife, and we had a
5 brief conversation. He took us to (Redacted), and the white lady and Mr Kilolo were
6 there. We sat down somewhere, and he went off and we never saw him again.

7 Q. Let's touch upon the first point you just said. You just said right now that Mr Bob
8 during the -- after the first meeting with Mr Bob, Mr Kilolo called you, and that Mr Bob gave
9 him the phone number. Isn't that correct? It was Mr Bob who gave Mr Kilolo the phone
10 number -- your phone number, excuse me, to Mr Kilolo?

11 A. Yes. Yes, that is correct.

12 Q. And you know -- and you know that's correct because Mr Bob told you he was going to
13 give your phone number to Mr Kilolo, correct?

14 A. Yes, that is correct.

15 Q. You also just mentioned that Mr Bob was at the hotel that you just referenced when you
16 met with Mr Kilolo and the white lady; isn't that correct?

17 A. Yes, that's correct.

18 Q. We'll get back -- we'll get back to that in a moment. When Mr Kilolo contacted you for
19 the first time after your first meeting with Mr Bob, he told you, isn't that correct, that Mr Bob
20 had given him your phone number?

21 A. Well, he had not given me Mr Bob's name, but -- although I knew the answer, I asked
22 him later on how he had gotten my number, and then he told me that he had come into
23 possession of my number through his contacts.

24 Q. Mr Witness, when you met with the Prosecution's investigators in November 2014, do
25 you remember that you had -- you told the investigators that during your first call with

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Mr Kilolo, Mr Kilolo told you that he received your contact information from Mr Bob? And
2 for the parties that's CAR-OTP-0085-0628 at 00 -- at, excuse me, at 0660 to 0661, lines 1110 to
3 1117, which is in tab 6.

4 PRESIDING JUDGE SCHMITT: Mr Djunga.

5 MR DJUNGA: (Interpretation) Thank you, Mr President. The witness told you a short
6 while ago that he was under pressure. Now a statement is being put to him which he neither
7 signed nor approved. That, I believe, is an internal note of the OTP. And as far as we
8 understand it, he neither signed nor approved of that statement.

9 MR MILANINIA: Mr President, once again, we need to be cautious about feeding the
10 witness answers to the Prosecution's questions on cross-examination. I find what Mr Djunga
11 has now done repeatedly to be entirely inappropriate. It is a form of coaching, he knows it's
12 a form of coaching.

13 That being said, the statement is being put to him to demonstrate what he told the
14 Prosecution. Now, if he wants to say that he lied to the Prosecution, he can say he
15 lied to the Prosecution. The Prosecution should be enabled to put the question to the
16 witness by showing him what he said.

17 MR TAKU: Your Honour, I just rise --

18 PRESIDING JUDGE SCHMITT: Mr Taku.

19 MR TAKU: Yes. With your permission I do rise, your Honours, to say that this language,
20 coaching, coaching, has been repeated in this case from the inception with absolutely no
21 definition, nothing about. So I think my colleague should use the appropriate language in
22 describing what took place here rather than use the word "coaching," which has been
23 interpreted even in the charges and for which, up to this moment, we do not even know what
24 the alleged coaching is about.

25 PRESIDING JUDGE SCHMITT: Now the Presiding Judge is speaking. No further

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 submissions in that respect.

2 There are two aspects in that. First of all, the perception of the Chamber is not such
3 that there is any indecent behaviour by any of the parties until now, and this extends
4 also to this objection. Nevertheless, the objection is overruled. You may continue
5 with your questioning.

6 MR MILANINIA: Thank you, Mr President.

7 Q. Mr Witness, do you want me to repeat my question, or do you understand the question
8 I put to you?

9 A. Please repeat your question.

10 Q. I said, do you remember how when you spoke to Prosecution investigators in
11 November 2014 and you were asked specifically what Mr Kilolo told you the first time he
12 called you that Mr Kilolo told you that he had received your phone number from Bob, from
13 Mr Bob? Do you remember that?

14 A. Yes. This is what I've been trying to explain to you, namely that I have referred to the
15 conditions under which I provided some answers to the Prosecution and this mainly in
16 relation to the initial agreement we had, which I did not sign, as far as I recall.

17 I, therefore, want to say that I am not aware or I have no knowledge of that document
18 as well. All I want to say, therefore, is simply that the Prosecution obtained some
19 answers from me under pressure. Now I am testifying under oath and I don't know
20 whether the Prosecutor is also under oath when it comes to the matter relating to the
21 pressure that I had to endure.

22 I believe that the Prosecution could also confess that I was under pressure and if that
23 were the case, then that would be a good thing. It would enable me to continue to
24 give my testimony truthfully, which is what I am doing now.

25 Q. Mr Witness, I'm going to put your answer to the Prosecution investigators, then, so you

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 can see it.

2 MR MILANINIA: Your Honours, may we have on the witness's screen CAR-OTP-0085-0628,
3 page 0660. And I'd like to go to the bottom of that page, lines 1111 to 1114 -- excuse me to
4 11 -- yes, 1114.

5 Q. Mr Witness, I want you to read 1111 to 1114. And you see there you're recounting to
6 the Prosecution investigators what Mr Kilolo told you the first time he called you. And you
7 know this relates to the first call that you had with him because if you look above, you say,
8 "Are we talking about my first contact?"

9 And the investigator says, "Um-hmm."

10 And then you say: (Interpretation) "Well, I'm calling you on behalf of Bob. Do
11 you know him?"

12 (Speaks English) To which you responded: (Interpretation) "Yes, I know him."

13 (Speaks English) And then to which he retorted: (Interpretation) "Okay. Very
14 well. He told me that you have a story to tell me."

15 (Speaks English) Does that accurately reflect your first conversation with Mr Kilolo?

16 A. Yes, of course.

17 Q. Now we can move on. Mr Witness, I want to fast-forward in time now. Before you
18 were to testify at this court in August of 2013, you met with representatives of the Court at a
19 (Redacted); isn't that true?

20 A. Yes, that is correct.

21 Q. And it's correct that this meeting occurred just a few days before you --

22 MR DJUNGA: (Interpretation) Mr President, sir.

23 PRESIDING JUDGE SCHMITT: Mr Djunga.

24 MR DJUNGA: (Interpretation) Mr President, the name of a town has been mentioned.
25 Could it be taken out?

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: Thank you very much.

2 MR MILANINIA:

3 Q. Mr Witness, that meeting at the hotel in the location I just mentioned, it occurred just a
4 few days before you testified or began your testimony in August 2013, correct?

5 A. Yes, that is correct.

6 Q. And it's correct that you traveled to that location by taxi, correct?

7 A. Yes, four of us by taxi, yes.

8 Q. Four of you. And that would be you, Mr Kilolo, Mr Mangenda and your wife, correct?

9 A. Yes, correct. Myself, my wife, Maître Kilolo and the other lawyer who was there.

10 Q. And during that taxi ride, you told Mr Kilolo and Mr Mangenda that you were going to
11 ask the representatives of the Court when you met with them to help you bring your son from
12 the Central African Republic to the Court; isn't that true?

13 A. Yes. That is correct.

14 Q. And that was your wife's idea; isn't that correct?

15 A. Yes, that's correct.

16 Q. And she was the one who also suggested, isn't it true, to get the ICC to provide you
17 money or assistance with transportation to move your son from the Central African Republic
18 to the location you're currently at; isn't that correct?

19 A. I did not ask for money, and I have said so repeatedly. I suggested to the victim -- the
20 VWU team that was in the hotel, which you mentioned, to help us to relocate the child whom
21 you mentioned. That is what I said.

22 Q. And am I correct that Mr Mangenda was also at that meeting with the representatives
23 from VWU at the hotel that we've already discussed?

24 PRESIDING JUDGE SCHMITT: I think we had the answer before the lunch-break that he
25 does not know the person. So perhaps you would have to phrase it differently.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Mr Gosnell?

2 MR GOSNELL: Mr President, just for the record, I'm going to add an objection to that
3 comment which follows on that comment, which is that you're absolutely right, that was the
4 answer that was given previously; and now the name has been mentioned repeatedly in order,
5 I would suggest, to induce a particular response, for which there already has been an answer
6 and for which there's no foundation. So I do object to the repeated references to the name.

7 PRESIDING JUDGE SCHMITT: That is correct and that is sustained. So please circumscribe
8 it or whatsoever, but not mention the name again, because this has been addressed two or
9 three times now and has been answered.

10 MR MILANINIA:

11 Q. Mr Witness, when you were meeting with representatives of the Court at the hotel that
12 we just mentioned, was there a colleague of Mr Kilolo's also at that meeting?

13 A. What I can say is that when they took us to the hotel, they had more conversations with
14 the staff there. There was a discussion between them, and then they left, and then I
15 continued the discussions with the ICC team that was at that location.

16 Q. Okay. So Mr Kilolo was at the location, he arrived with you, and so was the other
17 individual that was in the taxi with you, correct?

18 A. Yes, that's right. When I speak of that gentleman, well, I don't know him
19 because -- well, he didn't speak to me. Ever since the time I met him, he did not speak to me,
20 he did not speak to us until we were at that hotel, and that is why I say I don't know him.

21 Q. Did Mr Kilolo introduce you to him and say, "This is, for instance, my colleague" and
22 then tell you his name?

23 A. He introduced us. He said, "I'm not alone, I'm with a colleague here." And when he
24 said that, the colleague was not actually physically present. He was in the hotel room. And
25 I think he said -- well, there later he said, "Oh, there's that colleague I was mentioning to you."

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Q. So you saw the colleague that Mr Kilolo was mentioning, that is, you know what his
2 face looks like, correct?

3 A. Yes, of course.

4 Q. And how do you know he was a lawyer?

5 A. Mr Kilolo mentioned a colleague. So a colleague -- well, he's a lawyer, so his colleague
6 must be a lawyer.

7 Q. Okay.

8 MR MILANINIA: Your Honour, may I have the individuals who operate the cameras to put
9 the camera on Mr Gosnell's client so I can ask the witness whether he identifies that
10 individual as the person he's referring to?

11 PRESIDING JUDGE SCHMITT: Yes.

12 MR MILANINIA: I'd like the technicians to please focus the video on Mr Gosnell's client.

13 PRESIDING JUDGE SCHMITT: Mr Djunga?

14 MR DJUNGA: (Interpretation) Thank you, your Honour. Just a suggestion. Might it be
15 preferable to --

16 THE INTERPRETER: Inaudible.

17 MR DJUNGA: (Interpretation) -- and he might be able to pick out the person in question.

18 PRESIDING JUDGE SCHMITT: To be honest, there was a problem with the translation now.
19 Could you please repeat the first part of your remark?

20 MR DJUNGA: (Interpretation) I was wondering whether it might be appropriate for us to
21 show the images of the accused persons rather than focusing on one specific accused person
22 because that might be quite leading.

23 PRESIDING JUDGE SCHMITT: Absolutely. This is, of course, very suggestive if you point
24 out one person. That is absolutely true what you're saying. So it would be much more
25 preferable if we had, so to speak, a selection of different personalities from which the witness

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 could choose, so to speak. So this would, by far, be preferable.

2 MR MILANINIA: Mr President, I'm okay with that if the camera technicians can show all
3 the accused, and then he can identify the individual who was with Mr Kilolo.

4 MS LYONS: Your Honours, if I may, on the issue of suggestiveness, which you've already
5 mentioned, it may be possible rather than to focus -- that the cameras focus on the whole
6 courtroom, I mean, because it's --

7 PRESIDING JUDGE SCHMITT: That was exactly what I was thinking before you started,
8 indeed.

9 MS LYONS: Okay, yes, not on the --

10 PRESIDING JUDGE SCHMITT: Indeed, indeed.

11 MS LYONS: Okay, thanks.

12 PRESIDING JUDGE SCHMITT: I think it should be possible for the technicians to, yes,
13 portray the whole courtroom, to put it this way.

14 MR MILANINIA: Well then, Mr President --

15 PRESIDING JUDGE SCHMITT: Also your side of the spectre, to put it this way.

16 MR MILANINIA: It certainly would be interesting if he identified me. Mr President, what
17 I would ask, therefore --

18 PRESIDING JUDGE SCHMITT: Let me give this remark from former experiences, strange
19 things can happen, I can tell you. Yes.

20 MR MILANINIA: Mr President, what I ask is, instead of panning the entire courtroom,
21 because I don't know how big the monitor is for this witness, that the technicians go row by
22 row.

23 PRESIDING JUDGE SCHMITT: It's okay.

24 Yes, Mr Gosnell.

25 MR GOSNELL: There's also one more problem, Mr President, and that is that my face has

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 been shown -- and perhaps we could just cut -- could we mute what I'm saying to the witness,
2 because I don't want to be accused of contaminating or coaching.

3 PRESIDING JUDGE SCHMITT: Okay. We can do that perhaps then. Felipe, please.

4 THE COURT OFFICER: (Interpretation) Yes, your Honour. If you could bear with us for
5 one moment.

6 (Pause in proceedings)

7 THE COURT OFFICER: (Interpretation) We have cut off the sound, your Honour, and the
8 witness no longer can hear what is going on in this courtroom. All the same, we are still in
9 open session.

10 PRESIDING JUDGE SCHMITT: Thank you very much.

11 Mr Gosnell?

12 MR GOSNELL: Thank you, Mr President. The other difficulty that we have is that now the
13 person to be identified has been repeatedly referred to as my client. And even though I
14 didn't want to have to get up several or even many times during this hearing, I have. And I
15 believe the witness is more than capable of identifying me and, therefore, will be identifying
16 very easily the person that the Prosecution wants to have identified as the person sitting next
17 to me.

18 So unless we all move around, I'm afraid this entire exercise is, I would suggest,
19 utterly useless or at least so suggestive as to be very close to useless.

20 PRESIDING JUDGE SCHMITT: Yes, Mrs. Taylor.

21 MS TAYLOR: Thank you, Mr President, your Honours. As the Prosecution would be well
22 aware, the dangers of in-court identification have been dealt with by the ICTY, by the ICC, in
23 the Prosecutor versus Limaj, in the Prosecutor versus Dukic. There is clear decisions on the
24 procedural safeguards that need to be in place, and those safeguards definitely stipulate that
25 you cannot have identification when the accused is in the courtroom. It becomes a simple

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 process of elimination, particularly in a highly publicized case like this.

2 So they're aware of this case law. They would have known before this hearing there
3 are very strict guidelines of how this should take place, and that to simply point out
4 an accused has absolutely no evidential value. Thank you.

5 MR MILANINIA: Mr President, may I respond to the comments made by my two
6 colleagues?

7 PRESIDING JUDGE SCHMITT: Yes, please.

8 MR MILANINIA: With regards to Mr Gosnell, whether or not the answer is suggestive can
9 be a determination made by the Chamber when assessing and determining what weight to
10 give to the evidence. In fact, the Chamber has made similar rulings with regards to answers
11 elicited from leading questions, and we would suggest the same principle applies here.

12 With regards to my colleague Ms Taylor's comments, the cases that she cites are
13 single-accused cases, and that's why, for instance, asking that question is suggestive
14 because there's only one individual on the stand. Here, however, as you can see
15 from the other side of the aisle, we have a lot of people, in fact, many, many people,
16 therefore, it's the same procedures and issues do not apply.

17 I would suggest that we proceed, ask the question. If the witness cannot answer that
18 question, we can continue with the examination.

19 MR POWLES: Mr President, so just --

20 PRESIDING JUDGE SCHMITT: Mr Powles, please.

21 MR POWLES: Thank you very much, Mr President. I was just going to respond to the last
22 comment by my learned friend on behalf of the Prosecution with regards to the case of Limaj
23 being a single-defendant case. I was in that case for the best part of two years, and I'm fairly
24 confident that there were three accused every morning who arrived at court in those
25 proceedings rather than a single accused.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Leaving that aside, there are of course very real problems with conducting in-court
2 identifications, as my learned friend Mrs Taylor has already outlined. There are very
3 clear rules and guidelines as to how these sorts of identification procedures should be
4 carried out.

5 Certainly in the UK there would be a minimum number of people of a similar
6 appearance, similar size, similar identity to the person who the police were seeking to
7 be identified by the -- by the individual witness.

8 In this case, there are differences, clear differences, between the five accused who sit
9 in this courtroom. Everyone else is clearly identified as not being accused because
10 we're all wearing these very ghastly robes. So the procedure and the process is, as I
11 think many colleagues on this side of the floor have already said, completely pointless
12 in many regards.

13 MR MILANINIA: Mr President, one small comment, and I think this will resolve the issue.
14 With my colleagues' leave, what I could do is then, in fact, simply ask questions about the
15 features of the individual, whether he wore glasses, whether he didn't wear glasses.
16 At the end of the day, the size of the Bemba Defence case is not that large. There
17 were not that many individuals in that case. So I think through the process of
18 elimination, through the form of questions, I can elicit the same answer.

19 PRESIDING JUDGE SCHMITT: So, of course, if this problem would be solved by
20 withdrawing this -- this attempt of identification, this would, of course, I think, yes, solve -- be
21 a solution that everybody would be satisfied with. And indeed, of course, the in-court
22 identification, especially under the circumstances outlined by Mr Gosnell, Mr Powles,
23 Mrs Taylor is highly suggestive, we can say that.
24 So anyway, what I would suggest is since we have to address also questions of case
25 management that we do that, and then we can continue with the examination of the

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 Prosecution tomorrow. So perhaps we should now, again, go to public session that
2 everybody can hear us and then we can continue with that.

3 MR MILANINIA:

4 Q. Mr Witness, can you hear me? No?

5 THE COURT OFFICER: Monsieur le Président, le témoin nous entend maintenant.

6 PRESIDING JUDGE SCHMITT: Thank you very much.

7 Mr Witness, we have now to address other matters that have nothing to do with you
8 immediately, so we defer your further questioning to tomorrow. Thank you for
9 answering the questions today. Tomorrow, as I said, we will continue with your
10 testimony. In the meantime, please have in mind you must not, and I repeat, you
11 must not discuss your testimony with anyone, neither with family nor with friends
12 who may be in contact with you tonight. Do you understand this, Mr Witness?

13 THE WITNESS: (Interpretation) Yes, I've understood.

14 PRESIDING JUDGE SCHMITT: Thank you again, Mr Witness. Have a good rest, and we
15 will see you again tomorrow.

16 So we can then disconnect the video link.

17 (Video link disconnected)

18 PRESIDING JUDGE SCHMITT: I will now issue a brief ruling on a pending request.

19 Earlier today, the Defence of Mr Kilolo requested that Mr Kilolo be excused from court next
20 week on Tuesday 8 March and Friday 11 March, 2006. The Prosecution submitted that it did
21 not object to that request. Subject to Mr Kilolo signing a waiver of his right to be present at
22 trial, the request is granted. The reasons for the exceptional absence of Mr Kilolo that have
23 been brought forward are legitimate. Furthermore, the rights of Mr Kilolo will be fully
24 ensured in his absence by Mr Djunga and Mr Powles. Mr Kilolo is to sign a waiver of his
25 right to be present at his trial, and this signed waiver must be filed into the record of the case

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 as soon as possible, please, in line with the previous practice of the Chamber. This will be
2 valid, in the end, as I would estimate and assess, only for Friday 11 March. It is probable
3 that we will not have a court hearing on 8 March.

4 What we also have to address is the Chamber directed the Mangenda Defence to
5 consult with the Registry on the earliest practical video link date for -- I think we can
6 say the name -- for Professor Lagodny.

7 Mr Gosnell, please inform the Chamber as to these consultations.

8 MR GOSNELL: Yes, Mr President. Thank you. I also have sent an email earlier in the day
9 to set out the nature of the consultations that have taken place.

10 Just to very briefly recapitulate and to report to everyone, essentially the -- apparently
11 4 March is not possible because there are certain notices that need to be given in
12 compliance with the statute in order for such an event to occur on the territory. So
13 the 4th apparently -- and also logistical issues. The 4th is, therefore, apparently not
14 feasible. The 7th the witness is not available. And on the 8th, the witness is only
15 available very early in the day for 2 hours and 45 minutes. And even if that
16 day -- even if that was possible, apparently it would be very difficult to accomplish
17 the formal and logistical requirements by that date.

18 So a fourth date, even though your Honours had not mentioned it, a fourth date was
19 discussed between the Registry and myself. Apparently that date is feasible from
20 the perspective of the witness, but there remain still logistical arrangements that need
21 to be looked into. The Registry seems cautiously optimistic, I would say.

22 And then the remaining issue is whether or not that fits in with the schedule of other
23 witnesses, which I understand is not 100 percent clear. So your Honours, that's
24 where the matter stands at the moment. If there's any other questions you may have
25 about that --

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: Are you speaking of the 11th of March?

2 MR GOSNELL: Indeed, Mr President. 11th of March.

3 PRESIDING JUDGE SCHMITT: Okay. Then provisionally we have in mind to hear next
4 week D21-9 on Wednesday and perhaps probably Thursday. So the estimate would be that
5 we would be able to hear Professor Lagodny on Friday the 11th. Any remarks by the
6 Defence in that respect or the Prosecution -- by the Defence first?

7 MR GOSNELL: Sorry, Mr President. Could I just interject one more point?

8 PRESIDING JUDGE SCHMITT: Yes. Go ahead.

9 MR GOSNELL: And that is that one of uncertainties that, perhaps, could be assisted by the
10 Prosecution would just be that if possible at this stage, and I know it may be early, but if there
11 is any possibility of preliminary cross-examination estimates for any of the witnesses next
12 week, that would also assist in knowing the timing for Friday.

13 PRESIDING JUDGE SCHMITT: Yes. That is, of course, true. We are speaking, then,
14 about D21-9, and we are speaking of the probable/possible witness for Friday next week.

15 MR VANDERPUYE: Thank you, Mr President. Good afternoon to you. I take it you were
16 addressing that to me with respect to the estimates concerning D9. I haven't formulated
17 really an estimate with respect to the cross-examination of D9, D21-9, I think it is. I hope I've
18 got that right.

19 In any event, what I do want to assure the Chamber is it's our intention to go short
20 rather than long. I don't know what the estimate is by the Defence off the top of my
21 head. Maybe somebody can remind me.

22 MR POWLES: Mr President, it was two hours, I think, for examination-in-chief.

23 MR VANDERPUYE: Okay. I cannot imagine going two hours on cross-examination with
24 this particular witness. I'm hesitant to give it off the top of my head, but I will say that it will
25 be less than two hours for sure.

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: I think then -- yes. Mrs Taylor?

2 MS TAYLOR: Sorry, Mr President. Just to add that the witness for the Defence of
3 Mr Bemba is also scheduled next week. We are happy to try and keep it short and to sit
4 extended hearing hours, if necessary - we've discussed this with my learned colleague - but
5 that will also depend on the possible cross-examination time of the Prosecution. We hope to
6 keep our examination-in-chief to around two hours, but, again, that will depend on things
7 outside our control. Thank you.

8 MR VANDERPUYE: The same principle applies, Mr President. I will try to keep it short.

9 PRESIDING JUDGE SCHMITT: So we give it a try.

10 MR VANDERPUYE: We will communicate our estimates also to the Defense --

11 PRESIDING JUDGE SCHMITT: Yes.

12 MR VANDERPUYE: -- as soon as I have a better picture.

13 PRESIDING JUDGE SCHMITT: So to have it for the record, I'm -- Mrs Lyons?

14 MS LYONS: Yes. On a different issue but a procedural --

15 PRESIDING JUDGE SCHMITT: Then perhaps wait until we have --

16 MS LYONS: I'll wait. Yes. I'm sorry, your Honour. Yes.

17 PRESIDING JUDGE SCHMITT: -- dealt with this first issue, and then you have the floor.

18 So to have it for the record, because this was a request by the Mangenda Defence of
19 reconsideration, under the circumstances the Chamber is willing to reconsider its
20 decision in view of the arrangement the Mangenda Defence and the registry have
21 discussed.

22 The Chamber emphasizes that this kind of reconsideration is exceptional and is
23 necessary to prevent an injustice because Mr Lagodny is Mangenda's only witness
24 and hearing him via video link now seems to be the only way he is willing to testify.
25 The Chamber wishes to hear Professor Lagodny on the first day that the video link is

Trial Hearing
Witness: CAR-D21-3

(Open Session)

ICC-01/05-01/13

1 available. As it stands today, this is 11 March 2016.

2 This concludes this short ruling, and now I give Mrs Lyons the floor.

3 MS LYONS: Thank you, your Honour. The Prosecution has met with two potential
4 witnesses who have appeared on our list that we've submitted, D24-002 and D24-003. We
5 want to know when we can expect to receive the audiotapes so that we can make a final
6 determination in respect to our Defence presentation. We have no indication yet from the
7 Prosecution when the audiotapes and the transcripts will be available, and for obvious
8 reasons need them to pursue our Defence.

9 PRESIDING JUDGE SCHMITT: Who wants to answer from the side of the Prosecution?

10 MR VANDERPUYE: Mr President, we disclosed the audios on Friday. They have both
11 been submitted for transcription and translation is my understanding; and as soon as those
12 are done, then we will also disclose that as well.

13 PRESIDING JUDGE SCHMITT: Okay. Thank you. There seems to be no other issue at
14 the moment, so this concludes the hearing for today. We will resume tomorrow at 9.30 and
15 continue with the examination by the Prosecution of the witness.

16 THE COURT USHER: All rise.

17 (The hearing ends in open session at 3.52 p.m.)