

Trial Hearing
WITNESS: CAR-D21-P-0009

(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, 9 March 2016
10 (The hearing starts in open session at 9.01a.m.)
11 THE COURT USHER: The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: Court officer, could you please call the case.
14 THE COURT OFFICER: Good morning. Yes, Mr President.
15 Situation in the Central African Republic in the case of The Prosecutor versus
16 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
17 Fidèle Babala Wandu and Narcisse Arido, in the case reference ICC-01/05-01/13.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SCHMITT: Thank you very much. Now, I ask like always for the
20 appearances of the parties. And we start like always with the Prosecution.
21 MR VANDERPUYE: Good morning, Mr President, your Honours. Good morning
22 everyone. The Prosecution is represented today by Mr Nema Milaninia seated to my left and
23 Ms Sylvie Vidinha also to his left. I'm Kweku Vanderpuye. Good morning again.
24 PRESIDING JUDGE SCHMITT: And now for the Defence teams, please.
25 MR DJUNGA: (Interpretation) Good morning, your Honours. Mr Steven Powles is here

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1 today, associate counsel; Ms Rosalie Mbengue and Lueka Grogga, case managers; and I am
2 Paul Djunga.

3 PRESIDING JUDGE SCHMITT: Mr Taku.

4 MS LYONS: This morning Ms Lyons, your Honour.

5 My name is Ms Lyons, I'm associate counsel for Mr Arido. To my right is lead
6 counsel, Chief Taku. To my left is my client, Mr Arido. And in the row behind is
7 Mr Tibor Bajnovic, who is here today. He is serving as our case manager. Thank
8 you.

9 MR KILENDA: (Interpretation) Good morning, your Honours. Mr Azama Rodoma is
10 here today, as well as Mr Antoine Robert, who is our third case manager. Behind us is Mr
11 Godefroid Bokolombe --

12 THE INTERPRETER: Inaudible.

13 MR KILENDA: -- along with Mr Babala. Thank you.

14 PRESIDING JUDGE SCHMITT: Mr Gosnell.

15 MR GOSNELL: Good morning, Mr President, your Honours. Christopher Gosnell this
16 morning representing Mr Mangenda, assisted by Agnes Hugues. Thank you.

17 MS TAYLOR: Good morning, Mr President, your Honours. It's Melinda Taylor on behalf
18 of Jean-Pierre Bemba; and I'm appearing today with Ms Natacha Lebaindre and Ms
19 Ines Pierre de la Brière. Thank you.

20 PRESIDING JUDGE SCHMITT: I have been informed that the Defence of Mr Arido would
21 like to raise some matters. Mrs Lyons or Mr Taku, you have the floor.

22 MS LYONS: Thank you, your Honour. And we appreciate you acknowledging it was late
23 notice this morning.

24 PRESIDING JUDGE SCHMITT: Excuse me that we have to interrupt. We don't have sound
25 here, so this should be solved first. Excuse me.

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1 MR POWLES: Forgive me, Mr President, your Honours. It's the same for my headphones,
2 I don't have --

3 PRESIDING JUDGE SCHMITT: Okay. So we have to solve this technical matter first.

4 MS LYONS: Also Mr Arido doesn't have sound.

5 THE COURT OFFICER: (Interpretation) With your leave, your Honour, in actual fact, the
6 consoles are working; the volume is working. It's just a matter of pressing the button several
7 times, the volume buttons several times to increase the sound. And I will provide assistance
8 to anyone who needs help with their console. Thank you.

9 PRESIDING JUDGE SCHMITT: So perhaps we can make the practice test for everybody.
10 Does it function now? Mr Vanderpuye, Mr Milaninia, does it function?

11 MR VANDERPUYE: Mr President, my equipment is working fine.

12 PRESIDING JUDGE SCHMITT: This seems to be only a partial problem then, but we don't
13 make anybody responsible.

14 So we give it another try, Mrs Lyons.

15 MS LYONS: Yes. Thank you. And also, just for the record, Mr Arido's equipment has
16 been fixed. It works.

17 PRESIDING JUDGE SCHMITT: Okay.

18 MS LYONS: Okay?

19 PRESIDING JUDGE SCHMITT: And we give it another try, Mrs Lyons.

20 MS LYONS: Okay. Thank you. Once again, respect to technology.

21 There are two issues we wanted to raise this morning. First, the Arido team still
22 needs the transcripts that were referred to and promised by the Prosecution at the end
23 of last week for witnesses D24-002 and D24-003. These are the English and French
24 translations for the audiotapes, which we have. And I would ask whether the
25 Prosecution has some better idea of when we will receive these because we need them

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1 for our preparation, or perhaps is there, as they say, a quote, "date certain" when we
2 will get these?

3 And the second issue let me raise while I'm standing up is that we requested from the
4 Prosecution in an email on Monday the 6th of March l'entraide judiciaire mentioned in
5 CAR-OTP-0093-0152. And we would like to find out when we can get this because
6 we need it as soon as possible to complete our evaluation and assessment of the
7 disclosure which we received on 4 March.

8 PRESIDING JUDGE SCHMITT: Thank you very much. So this addresses the Prosecution.
9 Mr Vanderpuye, can you give us information in so far?

10 MR VANDERPUYE: Thank you, Mr President. First, with respect to the transcript
11 concerning the interviews, I understand that they should be completed by the 14th of the
12 month.

13 I would also point out for Ms Lyons' benefit in particular, that at the opening of this
14 case, this Chamber specifically directed the Defence, to the extent that they needed to
15 make use of translation services or transcription services, to inquire with the Registry.
16 We indicated that we would facilitate that to the best of our ability, which is what
17 we're doing.

18 The second thing is I would note is that per the protocol that this Chamber put in
19 place, what the Prosecution is required to do is to turn over the audio or video
20 recordings of the interview, of the interviews with Defence witnesses. I think it's
21 under paragraph 47 or so of that protocol, which we have done. And so we're doing
22 our best to get it to the Defence, but I think the Defence clearly have enough
23 information available for them to proceed, given the prior edicts of the Chamber, and
24 also given the terms of the protocol, the explicit terms.

25 Now, with respect to the latter matter, I believe that the Defence had asked for

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1 specific information. I'll have to look into that and see what exactly it is, because I
2 don't recall exactly what the email said. But I'll look into that over the break, if that
3 would suit, and I'll report back to the Chamber and let you know where we are on it.
4 Thank you, Mr President.

5 PRESIDING JUDGE SCHMITT: That sounds reasonable in my opinion, so I think there is no
6 action to take by the Chamber at the moment.

7 Mr Taku.

8 MR TAKU: Yes. With the permission from my colleague, who is dealing with this issue, I
9 would just remind the Prosecutor that the witnesses who were investigated or interviewed
10 under a different regime, not stricto -- not stricto sensu the protocol; and therefore, we are
11 entitled under that regime under which they were investigated to have the transcripts.
12 Having these transcripts, your Honours, we have also other aspects of the preparation, not
13 stricto sensu regarding the application we made to withdraw some witnesses, but to help us
14 to prepare other aspects of the case. Thank you, your Honour.

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

16 Short, please, Mr Vanderpuye.

17 MR VANDERPUYE: Yes, exactly. I'll be very brief. Just with respect to the motion that
18 the Arido Defence filed concerning the withdrawal of certain witnesses, there are certain
19 factual representations in that filing which we feel are appropriate to address. We won't do
20 that obviously today. But I just wanted to let you know that it's our intention to respond to it,
21 not to oppose it, per se, but certainly to set the factual record straight.

22 Thank you, Mr President.

23 PRESIDING JUDGE SCHMITT: Thank you for this information and also for telling us that
24 you will not raise this today.

25 As a preliminary matter, the Chamber would like to hear now from the Bemba and

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1 from the -- yes, Mrs Taylor, from the Bemba and Kilolo Defence as to status of their
2 proposed 68(2)(b) witnesses, particularly when they will be in a position to request
3 formal submission of these witnesses' prior recorded testimony. Can you give us at
4 that moment in time additional information on that matter?

5 MS TAYLOR: Thank you, Mr President, your Honours. It is our immediate priority. It's
6 on our number one list of things to do that, I can assure you of that. So I hope to get it done
7 as soon as possible in the very near future, if that clarifies matters.

8 PRESIDING JUDGE SCHMITT: You know that the expression "in the very near future" is
9 prone to interpretation. You cannot be more specific, can't you?

10 MS TAYLOR: I can endeavour to get it done by the end of the week, but I would hope to
11 have perhaps a little bit of leeway to go over to Monday, if possible.

12 PRESIDING JUDGE SCHMITT: But that, of course, is more than we could have expected, I
13 would say. Yes.

14 MS TAYLOR: Thank you.

15 PRESIDING JUDGE SCHMITT: From the Defence of Mr Kilolo, Mr Powles, please.

16 MR POWLES: Thank you, Mr President, your Honours. I'm very helpfully assisted by my
17 learned colleague, Ms Grogan.

18 We're in the process of organising a certification for the respective witnesses and, of
19 course, checking their availability. And obviously we're trying to move matters
20 forward, I think we're in the same position as the Bemba Defence team, as soon as
21 possible, obviously bearing in mind the time frame with which this trial is apparently
22 proceeding now.

23 PRESIDING JUDGE SCHMITT: Would you be so audacious as Mrs Taylor to say that it can
24 be done in a couple of days, for example, or would you think that would be exaggerated at
25 that moment?

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1 MR POWLES: I'm seeing a head being shaken in the negative quite rigorously, so I mind to
2 say I don't think two days would be possible, but certainly as soon as we possibly can.

3 PRESIDING JUDGE SCHMITT: We'll leave it like this. Thank you very much for the
4 information from both the Defence teams. The Chamber will provide instructions on that
5 matter in due course.

6 The Chamber now turns to upcoming testimony of Witness D21-9, Mr Simo
7 Väätäinen. I hope I pronounced your name correctly. Please correct me when it
8 was not correct.

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10 THE WITNESS: It is -- Mr President, your Honours, it was close enough. I worked for over
11 years 20 years internationally and rarely it gets pronounced correctly. The correct
12 pronunciation would be Väätäinen.

13 PRESIDING JUDGE SCHMITT: Väätäinen. Okay. I think in the process we will learn to
14 spell that perhaps even better.

15 This witness is supposed to testify without any protective measures. So, in principle,
16 it is not necessary to go into private session for his testimony.

17 However, the Registry in an email sent to the Chamber yesterday evening requested
18 that any specific information on the way the VWU conducted its operation would not
19 be discussed in open session. It further requests that Mr Väätäinen's report be only
20 discussed in closed session in order to avoid its dissemination to a larger audience.

21 The Chamber agrees that due to the nature of the testimony, it could be, it could be
22 that some information touches upon the internal working process of the VWU, which
23 should not be made public because it would reveal how the VWU protects the
24 witnesses under its care.

25 I think that is understood by all of parties here too.

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1 Should the questioning party anticipate that its line of questioning would elicit such
2 information, private session should be requested. I address this to all of the parties
3 here in the room.

4 Nevertheless -- nevertheless, that does not mean that the entire testimony regarding
5 the report the witness produced for the Registry should be held in private session
6 because it relates to the VWU. Only information which is related to the way VWU
7 conducted its operations, especially in the field, for example, for example, not
8 exhaustive, the manner in which contact with a witness is established, how transport
9 is arranged, how safety measures are implemented and so forth should be given in
10 private session.

11 As usual, the Chamber leaves it to the judgment of the party who questions the
12 witness and but also to the other party when to go into private session. But maybe
13 in this special case the Chamber can also ask Mr Väättäinen to raise the issue should
14 he feel that his answer needs to be given in private sessions.

15 Thank you.

16 Mr Witness, now good morning to you and a warm welcome that you are going to
17 testify before the International Criminal Court, that you make yourself available.

18 The Chamber has been established, you have heard that, to try the case of the
19 Prosecutor against Mr Jean-Pierre Bemba Gombo and others. You are called to
20 testify to assist us in our search for the truth. Mr Witness, there is a card in front of
21 you with a solemn undertaking to tell the truth. I hope at least that this is the case.
22 I think it's arriving now.

23 Would you please be so kind to read out loud this card.

24 THE WITNESS: I solemnly declare that I will speak the truth, the whole truth and nothing
25 but the truth.

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1 PRESIDING JUDGE SCHMITT: Thank you, Mr Witness. Now a few practical matters you
2 should have in mind when giving your testimony. You probably know them already, but it
3 may be helpful for you to repeat them before your testimony.

4 Everything we say here in the courtroom is written down and interpreted in English,
5 into English and French. It is, therefore, important to speak clearly and to speak at a
6 moderate or rather slow pace.

7 We want to make sure that your words can be well understood by the interpreters
8 and, of course, also our words and then the rest.

9 Please speak into the microphone and only start speaking when the person asking
10 you a question has finished. To allow for the interpretation, everyone has to wait a
11 few seconds before starting to speak, so I recommend to you when the lawyer has
12 asked his or her question, please count in your head to three and only then give your
13 answer.

14 If you have any questions yourself, raise your hand so we know that you wish to say
15 something. We will then give you the opportunity to speak.

16 I assume that you have understood all that, Mr Witness?

17 THE WITNESS: Yes. Yes, Mr President. I would like to ask for a clarification on the
18 protective measures, however, unless counsel wants to address that on his behalf.

19 PRESIDING JUDGE SCHMITT: Mr Powles.

20 MR POWLES: I thank you very much, Mr Väättäinen. Yes, Mr President, your Honours. I
21 think I can assist by saying that we intend to divide our examination of Mr Väättäinen into
22 three sections: The first section dealing with his background and experience and expertise in
23 this particular area, the second section is dealing with some of the practices of the VWU, and
24 then the third section dealing with the report.

25 It's right to say that in discussions with Mr Väättäinen before his testimony, he

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1 expressed a preference and a need to deal with aspects relating to the report in private
2 session. So my application was going to be to deal with that third section in relation
3 to the report in private session.

4 The other matter relates to the email from the Registry to your Honours. We wrote
5 to the Registry towards the end of last week alerting them to the fact that Mr
6 Väättäinen was going to be giving evidence today and raising with them whether they
7 had any concerns with regards to what aspects may or may not be dealt with in
8 private session and any concerns they had in relation to Mr Väättäinen's testimony,
9 how best to deal with them.

10 We offered to raise them with your Honours on their behalf or for them to contact
11 your Honours directly, which they've obviously done.

12 And I spoke to a member of the Registry yesterday evening in relation to this, and
13 they expressed a preference for dealing with the operational matters in relation to the
14 VWU's functions as your Honours very clearly set out this morning.

15 There are aspects of that which I think can safely be dealt with in open session. I'll
16 be mindful of everything that your Honour has said this morning and the concerns of
17 the Registry and can go into private session for those sections that I feel are, perhaps,
18 particularly sensitive and relate to operational matters of the VWU. But I suspect
19 that a fair proportion of it may be able to be dealt with in open session.

20 PRESIDING JUDGE SCHMITT: Thank you very much. Does the Prosecution want to
21 comment on that?

22 MR VANDERPUYE: Mr President, we respect the ruling of the Court. From my
23 perspective, normally when an application for protective measures is made with respect to a
24 witness or the subject matter of a witness, it is done on notice. In this particular circumstance,
25 it appears that wasn't the case. We don't object to it, but I think as a matter of practice and

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1 matter of courtesy, it would have been helpful if the Kilolo Defence had raised that issue with
2 us so that we could evaluate whether or not we have any objections to the scope of the
3 protective measures, the nature of protective measures and so on. It didn't seem to me -- it
4 doesn't seem to me that this was an emergency or something that came up at the last minute,
5 given the notice that they provided with respect to this witness, with respect to this witness's
6 prospective testimony in this case. That's my only observation, Mr President.

7 PRESIDING JUDGE SCHMITT: Okay. Thank you.

8 Mr Witness.

9 THE WITNESS: Mr President, for my part, I would wish to have a clarification on this issue.
10 As we'll be discussing the report that I did in 2013, the report is restricted. It is not a public
11 document. It hasn't been presented publicly. I don't consider that the Defence counsel
12 conference was a public event.

13 The presentation in that conference was given in my view in the same premises as the
14 presentations to the restricted audience within the OTP and also was made available
15 to the Chambers. So from my point of view, I would prefer if any discussion in
16 relation to this document would be held in private or closed session, not for the sake
17 of my protection, but for the sake of the fact that this is an internal document.

18 PRESIDING JUDGE SCHMITT: We will have to consider that when it comes to that point.
19 I understood that Mr Powles has divided or intends to divide his interrogation into three
20 parts, and I further understood that the last part would be the report, and perhaps we will
21 then have or are in the position that we have a natural break, to put it this way, and then the
22 Chamber can again confer on that matter, yes?

23 MR POWLES: Yes. Thank you very much, Mr President.

24 PRESIDING JUDGE SCHMITT: Mr Powles.

25 MR POWLES: Just to respond briefly to the comments of my learned friend with regards to

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1 this application. To be absolutely clear, our reaching out to the Registry was simply to alert
2 them of the fact that a former staff member of theirs was about to give testimony today and to
3 invite them, if they wanted to, to raise any issues with the Trial Chamber to which we thought
4 was right and proper in all the circumstances.

5 It was beyond our control as to when they decided to raise that with the Trial
6 Chamber. We certainly alerted them at the end of last week.

7 PRESIDING JUDGE SCHMITT: So, Mr Powles, I think you can remain standing because we
8 are in the position now to start with the testimony of Mr Väätäinen. If you are the one who
9 is going to interrogate Mr Väätäinen --

10 MR POWLES: Yes, Mr President.

11 PRESIDING JUDGE SCHMITT: -- then you have the floor, please.

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

13 QUESTIONED BY MR POWLES:

14 Q. Good morning, Mr Väätäinen.

15 A. Good morning.

16 Q. Could you give the Court your full name, please.

17 A. My name is Simo Matti Severi Väätäinen.

18 Q. And, Mr Väätäinen, as you've heard, my examination of you this morning will be
19 divided into three sections: First, to go through your background and experience; second, to
20 go through the practices of the VWU; and thirdly, your report of 2013.

21 So beginning then with your background and experience in the field of victim and
22 witness protection and international criminal proceedings, could you please tell the
23 Court how many years' experience you have had in this field?

24 A. Well, I was first six years at the ICTY working as a liaison officer and running the
25 operations unit at the Victims and Witnesses Unit 1998 until 2004. Then 2004 I joined the

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1 ICC as operations officer for a few months. Very quickly after I joined the ICC, my chief
2 resigned and I was then appointed as officer in charge and eventually as the chief of the
3 Victims and Witnesses Unit.

4 I left, so this was 2004, and I left from the ICC to go to the STL 2009. And at the STL,
5 I was appointed as the chief of Victims and Witnesses Unit, and I stayed there for two
6 years until August or July 2011.

7 Since then, so almost five years now, I worked as an independent consultant for
8 various international organisations on issues relating to the victims and witnesses
9 protection in criminal proceedings.

10 Q. Thank you very much, Mr Väättäinen. Let's break that down. You started working
11 with the ICTY in the Victims and Witness Section in 1998, and you were there for some six
12 years. Could you please tell us what some of your responsibilities were during that period
13 of 1998 to 2004 with the ICTY?

14 A. Well, when I joined the unit, I think we were five or six persons, so it was very much
15 sort of an emerging -- it was in its infancy. And the unit started growing. And when I left
16 the unit I think we were maybe about 30 or 40 people.

17 I was appointed as a liaison officer because the unit needed to have somebody with
18 experience from former Yugoslavia to establish a network of, a network of contacts,
19 which is required to facilitate the movement of witnesses, organising passports, visas,
20 any other logistical arrangements.

21 And when the unit grew, we then split to three sub-units, support protection
22 operations, and I was running the operations unit, which is responsible for the
23 logistical operation, administration of movement of witnesses, finances, liaising with
24 external counterparts to facilitate the movement of witnesses to the Court. And the
25 last year or last two years I was also then acting as a deputy chief of the unit when the

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1 chief was away. So it was a kind of progression of my career.

2 Q. Yes, then in 2004 --

3 THE INTERPRETER: Microphone, please.

4 MR POWLES:

5 Q. In 2004, you joined the ICC's Victims and Witnesses Unit. Similarly could you describe
6 your responsibilities in the ICC's Victims and Witnesses Unit, in particular how that
7 compared to the ICTY's experiences and operations?

8 A. Well, I joined as I said earlier as operations officer with a view of setting up and
9 establishing a similar sub-unit for the Victims and Witnesses Unit as I ran at the ICTY. And
10 as I said, then I was appointed as a chief of the unit, and my responsibility was basically to
11 establish the unit and ensure that we would create a unit that would be able to perform
12 following the mandate of the unit and the needs of the Court in ensuring that the witnesses
13 will appear in court as scheduled, and looking after their protection and support matters were
14 relevant.

15 Q. And what differences --

16 A. Microphone.

17 Q. Thank you very much. What differences would you say there were in the way, in the
18 challenges that you experienced at the ICC as opposed to at the ICTY?

19 A. Well, first of all, at the ICC we had the benefit of the vast experience of the ICTY and
20 ICTR, whereby a lot of things were learned by doing and a lot of tough lessons were learned
21 as well. So we tried to apply those lessons and we wanted to kick the ball further in this field.
22 At the ICC we felt that it was our obligation to do that. So in a way we were standing on the
23 shoulders of the ad hoc tribunals and the experiences when it comes to victims and witnesses.
24 The big difference at the ICC was that, first of all, the role of the unit was far more
25 extensively regulated and described in the Statute and in the Rules of Procedure and

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1 Evidence and other regulatory framework than was the case at the ad hoc tribunals.
2 Also, on to the operational level or actually on a level that went through the whole of
3 the unit, unlike at the ad hoc tribunals where the unit was involved only at the trial
4 stage dealing with witnesses, at the ICC we were involved already from the
5 investigation stage, which in my view was the only right thing to do, a decision
6 should do, especially thinking of the protection of witnesses. If you wait with
7 certain measures until the start of trial, it's actually far too late. You would need to
8 address some of the protection concerns already at the earliest stage of the
9 proceedings.

10 Q. In 2004 and --

11 A. Microphone.

12 MR POWLES: Forgive me.

13 Q. From 2004 to 2009, you were the chief of the Victims and Witnesses Unit here at the ICC.
14 Again, could you describe some of your responsibilities in that particular role?

15 A. Well, it's basically establishing the unit. Once again, when I joined the ICC we were
16 four people. When I left, we were I think 44 or even more, having operations in four or five
17 different countries and with the headquarters. So it was basically managing that vast
18 expansion of the unit and then establishing structures and procedures and also negotiating
19 relocation agreements on behalf of the Court for the -- or for the Court.

20 Q. And then finally, the last two years at the STL, what were your responsibilities and
21 duties at that tribunal?

22 A. Pretty much the same as at the ICC, that I came in at the very early stage of that tribunal
23 and was involved in establishing the unit, and also there again taking some of the lessons that
24 we had from the ICC to the STL to push this field further.

25 Q. From 2011 until now, you've been a consultant in relation to matters relating to victims

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1 and witness protection in international criminal proceedings. Just in summary form, can you
2 describe some of the matters that you've been consulting on and the organisations you've
3 been consulting with and for?

4 A. It's a long list. But to summarise, I've conducted programme and country assessments,
5 made proposals for witness protection legislation, and contributed to drafting of international
6 standards on witness protection. For example, the last, one of the last assignments was that I
7 was involved in developing the legislative guide for the UNODC for the implementation of
8 the protocol, the protocol on transnational and organised crime.

9 Q. And obviously one of the functions you had in your capacity as a consultant was the
10 report that you wrote in 2013 for this institution?

11 A. Yes, that is correct.

12 Q. But we will come to that at the end of my examination.

13 Moving on then to the second area of my examination of you, and that is the
14 operations of the VWU here at the ICC, my first question is this: What role or
15 function, if any, did the VWU play with regards to the training and instruction of
16 Defence teams?

17 A. Well, under the Rules of Procedure and Evidence, the VWU is obliged to make available
18 training to the parties on, now I'm quoting from memory, on security and confidentiality.

19 Q. Mr Väättäinen, that aspect of it is perhaps best dealt with in private session.

20 A. I don't think so. It's a public document, so it can be freely discussed.

21 Q. Okay.

22 PRESIDING JUDGE SCHMITT: No, please, we go further on in public session now.

23 MR POWLES: Yes, yes, Mr President.

24 THE WITNESS:

25 A. Yes, so the obligation of the VWU is to provide training to the parties and the Court as

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1 articulated in the Rules of Procedure and Evidence, I think 16 -- sorry, 17. And it focuses on
2 confidentiality, security, trauma and something else I can't remember now.

3 MR POWLES: If we could perhaps just very briefly go into private session for this next
4 session just in case it does raise any issues.

5 PRESIDING JUDGE SCHMITT: Okay. Then like always we trust counsel, so we go into
6 private session.

7 * (Private session at 9.36 a.m.) Reclassified into open session

8 THE COURT OFFICER: (Interpretation) We are in closed session.

9 PRESIDING JUDGE SCHMITT: Thank you.

10 Please, Mr Powles.

11 MR POWLES: Thank you, Mr President.

12 Q. Yes, Mr Väätäinen, I just thought it would be safer rather than sorry to deal with this
13 particular issue in private session. And what I wanted to ask you about was what specific
14 training or best practice training was either given or made available to Defence teams with
15 regards to protecting the confidentiality of witnesses. And the reason I went into private
16 session is because, of course, that may involve an answer that delves into some of the
17 operational practices and advice given by the VWU to Defence teams in that regard.

18 A. Until -- of course, I can speak only about until the time when I was there. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. Can you give any specifics --

2 THE INTERPRETER: Microphone.

3 MR POWLES:

4 Q. Can you give any specifics in terms of principles that might have been conveyed to
5 Defence teams in relation to protecting the confidentiality of witnesses?

6 A. Well, I can't say specifics to the Defence team, because it would have been very similar
7 training provided that was made available to the Office of the Prosecutor and as to the
8 Defence, because if you have a witness whose involvement with a particular investigator
9 needs to be kept confidential, it doesn't matter whether that witness is for the OTP or for the
10 Defence.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Yes. I think we can go back into public session.

17 PRESIDING JUDGE SCHMITT: Public session, please.

18 (Open session at 9.39 a.m.)

19 MR POWLES:

20 Q. Did the VWU --

21 THE COURT OFFICER: (Interpretation) We are in public session.

22 MR POWLES: Yes, thank you.

23 Q. Mr Väättäinen, did the Victims and Witnesses Unit provide any training to counsel on
24 how to investigate and interact with witnesses with a view to conducting their own
25 investigations?

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1 A. If you mean investigative activities as such, no, because that wouldn't have been in the
2 mandate of the unit. The mandate of the unit extends only as directed to the protection and
3 support of victims and witnesses. It has nothing to do with actual investigations.

4 Q. What role, if any, did the Victims and Witnesses Unit play in either Prosecution or
5 Defence investigations with specific regard to the payment of witnesses' expenses, for
6 example, coming to a meeting with either the Prosecution or the Defence?

7 A. No role, unless a witness was in the Court's protection programme, in which case the
8 Victims and Witnesses Unit would have brought the individual to the agreed location to be
9 interviewed or facilitated a contact in some other manner.

10 Q. So for witnesses who, for witnesses who weren't in the Court's protection programme,
11 would it be right then that the Victims and Witnesses Unit played no role with regards to the
12 expenses of those investigations?

13 PRESIDING JUDGE SCHMITT: Mr Vanderpuye is rising.

14 MR VANDERPUYE: Yes, Mr President. If we could just establish for the record what time
15 period we're talking about, I think that would be helpful. I think we're talking about up until
16 2009, but it's not clear to me.

17 PRESIDING JUDGE SCHMITT: It has been mentioned before, but if it satisfies your request,
18 your objection or semi-objection to put it this way, then perhaps you can again clarify that.

19 MR POWLES:

20 Q. Yes, I can ask the question again, Mr Väättäinen. In relation to witnesses who weren't
21 under the Court's protection programme, what role, if any, did the Victims and Witnesses
22 Unit play with regard to covering the expenses of those witnesses for attending meetings with
23 either the Prosecution or the Defence? And could you specify the time period that you're
24 talking about.

25 A. Until, you know, for a fact, I know that until my departure June 2009, the VWU didn't

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1 play any role in paying any witness expenses for witnesses who came to testify -- sorry, to
2 meet with the investigators. And I would suspect that this is still the practice that would
3 have continued afterwards as well because this is just not the role of the unit to be involved in
4 that manner with the investigations.

5 Q. Was there to your knowledge any prohibition or was it forbidden for the calling party,
6 therefore, to cover the costs of a witness's expenses during the investigations phase?

7 A. Well, to the best of my knowledge, you know, there was no prohibition. From my
8 point of view and from the unit's point of view, obviously, if a party asks a witness to come to
9 a certain location to be interviewed, and as a consequence this person carries a cost, it would
10 be reasonable to reimburse those costs for that individual.

11 Q. Did the Victims and Witnesses Unit give any detailed instructions to either the
12 Prosecution or Defence teams as to what expenses were to be covered during that period?

13 A. The unit didn't give detailed instructions as we didn't have the power to instruct parties.
14 We could have advised the parties to apply the same standard rates that the unit applied
15 when compensating or covering costs of witnesses when they came to testify.

16 We did have some discussion at some stage I recall with the OTP stating that it would
17 be good for the Court if everybody would follow the same standard rate of payment,
18 because that way we could avoid a potential problem at a later stage when a witness
19 comes to testify and the person might say, "Why do you give me such and such an
20 amount because I got such and such an amount at the investigation stage?" And that
21 sometimes I recall was a bit of an issue that was discussed with witnesses at the ICTY.

22 Q. I'll come back, if I may, to some of the expenses that might arise during the course of
23 either a Prosecution or Defence investigation stage.

24 But I want to move on if I may to asking you about what expenses and at what point
25 the VWU would start covering expenses for witnesses as part of their testimony here

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1 at the ICC?

2 A. Well, the VWU is a service provider to the parties. But it's sort of the main obligation is
3 of course towards the witness. The witness is in their -- is the centre of any activity that the
4 unit has.

5 So parties get services from the witness -- from the VWU by submitting a request.

6 And in case of a person who comes to testify, the parties submit a request providing
7 the details of the witness to the VWU, and at some point the VWU, you know, it takes
8 over the case, contacts the witness, and then from that point of view, any expense,
9 reasonable expense would just, and these expenses are standardized, in relation to the
10 travel to the location of the testimony and then the accommodation, lodging and
11 some incidental expenses, these are covered by the VWU.

12 Q. Yes. To perhaps expand on that, it would be helpful to look at some of the Regulations
13 of the Registry in this regard. I don't know, Mr Väättäinen if you have a bundle of
14 documents?

15 A. I don't have the Regulations of Registry here.

16 Q. Can we have a bundle for Mr Väättäinen?

17 PRESIDING JUDGE SCHMITT: I think the Court has one.

18 MR POWLES:

19 Q. Could I ask you please, Mr Väättäinen, to turn to tab 52, which is the very final
20 document in the bundle.

21 A. Yes.

22 Q. Now, this is Chapter 3 of the Regulations of the Registry dealing with the
23 responsibilities of the Registrar relating to victims and witnesses, and in particular at section 1,
24 which deals with assistance to victims and witnesses.

25 Now, you referred to covering travelling expenses. If we look at Regulation 81 of the

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1 Regulations, we see there provision is made for the VWU to cover the cost of a
2 witness's travelling expenses in relation to their testimony?

3 A. Yes.

4 Q. And we see at subparagraph 3 of Regulation 81 reference being made to an economy
5 class return ticket by the shortest route, subject to prior authorisation by the Registry. And
6 what I wanted to ask you about was subsection B of subsection 3 and the reference to the
7 practice of the Court for staff members for all other means of transport.

8 What I wanted to ask you about that is, presumably witnesses are travelling
9 potentially from troubled areas, conflict zones. Would safety and the safety of a
10 witness be a consideration in terms of arranging travel arrangements for witnesses for
11 the purposes of their testimony?

12 A. Of course, obviously. But tab B is not really -- it doesn't really refer to that aspect. But
13 obviously safety is a primary consideration.

14 Q. Yes, of course. And safety of staff members travelling would be a consideration and as
15 it should be presumably for witnesses when they're travelling.

16 A. Absolutely.

17 Q. Would that mean sometimes then that the cheapest method of transportation would not
18 be the most appropriate?

19 A. Yes, that is correct.

20 Q. Moving on then to accommodation which you mentioned, we can see that at Regulation
21 82 of the Regulations, and subsection 1 refers to the Court providing appropriate full board
22 and accommodation in locations selected by the Registry for victims, witnesses, victims who
23 appear before the Court.

24 MR POWLES: I wonder, Mr President, if we could briefly go into private session for this
25 question just in case it does give rise to any operational issues.

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

2 *(Private session at 9.51 a.m.) Reclassified into open session

3 THE COURT OFFICER: (Interpretation) We are now in private session.

4 MR POWLES:

5 Q. Again in relation to accommodation, would the safety of a witness be an important
6 consideration in terms of determining the appropriate level of accommodation to be provided
7 to a particular witness?

8 A. Yes, of course. But if I may actually to add that I was involved in drafting this
9 regulation, so I have, I'd say, a detailed understanding of what is meant by which words.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Referring back to Regulation 81, subsection (3)(b), with reference to the practice of the
17 Court for staff members in relation to other means of transportation, would that principle also
18 apply to Regulation 82 in terms of determining an appropriate accommodation for a witness
19 in terms of the level of quality of accommodation for a particular witness? Would it be
20 comparable to those that would be provided to staff members in any given area?

21 A. No, it wouldn't. And the reference, Regulation 81(3)(b) actually comes from the UN
22 staff rules, if I remember correctly. And this relates to rail and if somebody would be moved
23 by boat, whereby the staff rules allows then the first class ticket for this standard, for this type
24 of transport.

25 MR POWLES: I want to ask -- I think we can go into open session.

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1 PRESIDING JUDGE SCHMITT: Open session, please.

2 (Open session at 9.54 a.m.)

3 MR POWLES:

4 Q. I wanted to ask you, if I may, about regulation --

5 PRESIDING JUDGE SCHMITT: Mr Powles, give the Court manager a little bit of time.

6 MR POWLES: Thank you.

7 THE COURT OFFICER: (Interpretation) We are now in open session.

8 MR POWLES: Thank you.

9 Q. Mr Väättäinen, I wanted to ask you, if I may, about Regulations 84 in relation to
10 incidental allowance; Regulation 85, attendance allowance; and Regulation 86, extraordinary
11 allowance for lost earnings.

12 What is the difference between incidental allowance and attendance allowance in
13 Regulations 84 and 85?

14 A. Well, the principle is that when a witness comes to testify in a location, then the Court
15 covers through the Victims and Witnesses Unit also the reasonable expenses such as travel,
16 accommodation, food, full board and so forth.

17 But, obviously, if as a witness you are required to stay in a location for two days or
18 two weeks, you have expenses that if you smoke, you might want to have cigarettes
19 or, you know, maybe some snacks and stuff like that. That's why the incidental
20 allowance was defined or designed as a kind of a pocket money for that kind of
21 expenses any human being would have in staying in a location.

22 The attendance allowance was designed to compensate for the time and loss of
23 earnings as a result when the person is away from their residence. So this is the
24 purpose of the attendance allowance.

25 Regulation 86 on the extraordinary allowance for lost earnings is that you might have

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1 situations whereby the witness suffers substantial economic loss as a result of his
2 decision to come and testify in a court. For example, if you are a farmer, and if you
3 are required to come to the Court at the particular harvest time, you might end up
4 losing your crops. And this is something that was developed at the ICTY, and there
5 were actual real cases where these allowances were truly needed and used.

6 Q. Now, in relation to the attendance allowance that's dealt with at Regulation 85,
7 subsection 2 refers to the daily minimum wage rate shall be determined by dividing the
8 annual salary of the staff of the Court at the general services step 1 level 1 in the country in
9 which the person is residing at the time he or she appears before the Court by the number of
10 days per year.

11 Could you please expand a little bit on what that means and how that works?

12 A. Well, first of all, witnesses when they come to testify, the idea was that they should
13 receive a fair compensation, but at the same time it shouldn't be something that kind of
14 induces witnesses to come forward and testify. That's why we decided to tie the attendance
15 allowance to a minimum wage rate in the country where the person comes from.

16 Now, in some of the countries where the Court operates it's basically impossible to
17 get reliable minimum wage rates, and that's why it was decided to use the rates
18 published by the UN because the UN has the rates for all the countries for their own
19 staff and using the minimum UN salary rate G1 step 1 as a basis for calculation what
20 would be the appropriate amount of attendance allowance for each country where
21 witnesses come from.

22 Q. I wanted to ask you if I may, Mr Väättäinen, how the practice at the ICC when you were
23 here compared to the practice at the ICTY when you were there, particularly in relation to the
24 provision of receipts in relation to the attendance allowance and if that was required?

25 A. Okay. At the ICTY, we didn't have the attendance allowance. I see that they have

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1 now introduced that in 2011. But the economical loss was based on compensation for lost
2 wages, whereby witnesses were required to produce receipts to prove that they lost certain
3 income as a result of coming to the Court to testify.

4 That led to the difficulties in the sense that it was difficult for witnesses to get receipts,
5 in some cases they might have been reluctant to get receipts from the employers to
6 say that I'm going to the Court to testify, because that wouldn't have been necessarily
7 a very popular thing to do there. But also that it was difficult to verify whether the
8 receipts were actually authentic or whether they were sort of a -- whether they
9 were -- whether they were not genuine receipts, if you see what I mean.

10 Q. So did the practice at the ICC change or was it different from that at the ICTY?

11 A. Yes, it was. And that's why we developed the concept of the attendance allowance.
12 Also because from the point of administration it was much more efficient and fairer to all the
13 witnesses, because then all the witnesses would have received the same level of compensation
14 and not only such witnesses who was capable enough of organising receipts of that kind.

15 Q. Finally in relation to the Regulations, I wanted to ask you about Regulation 90 on
16 dependent care. It may be self-evident, but did the VWU provide assistance with regards to
17 the dependents of witnesses testifying at the ICC?

18 A. I don't recall for a fact that we did. Certainly it is a possibility and something that is
19 absolutely necessary in situations where the witness is the breadwinner, for example, or has,
20 for example, children who depend on the witness, that kind of care has to be provided in
21 order to make it possible for that witness to come and testify in the court.

22 Q. Now, to be clear, these regulations apply vis-à-vis the attendance of witnesses when
23 they're giving evidence before the Court. Did these regulations apply during the
24 investigation phase when investigations are being conducted by the Defence or the
25 Prosecution?

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1 A. No. These to the best of my knowledge, these regulations didn't have that kind of a
2 power to control how the investigations are conducted and to oblige the parties to apply the
3 similar payments and similar rates.

4 Obviously, looking at this issue from a witness's point of view, I would say that there
5 is a strong case to make that the witnesses should receive, if not similar, but some -- at
6 least that they are not at loss as a result of agreeing to be interviewed by a party.

7 Q. And to be clear, to the best of your knowledge, who would be covering the costs of these
8 type of expenses during either Prosecution or Defence investigation?

9 A. The parties themselves.

10 Q. And when you say "the parties themselves," in terms of the Defence, would there be any
11 difference in terms of the obligations on the Defense whether that Defence team was a
12 legally-aided Defence team or a privately-funded Defence team?

13 A. In my view, not. And once again we at the VWU looked at this issue from the point of
14 view of the witness. If a witness agrees to cooperate with the Court, be it the investigation of
15 the OTP or the Defence or coming to testify, regardless with whom the person cooperates, the
16 person in my view should be entitled to the same thing, same things, and actually that's also
17 the spirit of the Statute and the Rules.

18 Q. After the handover of a witness to the Victims and Witnesses Unit for the purpose of
19 testifying before the Court when the VWU will be covering the sorts of expenses that we've
20 just looked at in these regulations in Section 1 of Chapter 3 of the Regulations of the Registry,
21 to your knowledge, was there any restriction or prohibition for the calling party to cover any
22 expenses not covered by the VWU in relation to that witness giving testimony?

23 A. I think strictly speaking there is no prohibition. But once a witness was handed over to
24 the VWU, then the person was in the care of the VWU, and any contact between the party and
25 that witness might have been regulated by the orders of a particular Chamber, or in any case

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1 the contact should have been facilitated by the VWU and the witness and the parties in
2 principle, once the witness was in the care of the witness, the party calling that witness
3 doesn't necessarily even know where the person is. In reality that wasn't always the case.
4 People have mobile phones and so forth. But in principle this would have been the case.

5 Q. Leaving that issue to one side, would there have been any prohibition on a calling party
6 covering any expenses, assuming contact was made before the handover period, was there
7 any prohibition on the calling party, whether the Prosecution or the Defence, covering various
8 expenses raised by a witness that the VWU had decided not to cover for any given reason?

9 A. No prohibition, but it would have appeared and it may be questionable in the sense that
10 once the witness is in the care of the VWU, then it is the responsibility of the VWU to look
11 after the needs of that particular witness.

12 Q. Did the VWU have any authority to place a prohibition on a calling party to pay for any
13 additional expenses during the course of that testimony?

14 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

15 MR VANDERPUYE: Yes, Mr President. It's the same issue. I'm not sure what period of
16 time that my colleague is referring to in respect of these kinds of questions. Did they have
17 the authority? The question is obviously when in relation to what? I think it would be
18 helpful if he clarifies that for the record.

19 PRESIDING JUDGE SCHMITT: Yes, of course, in one sense. But on the other hand, I think
20 I understood Mr Väättäinen that he was at the Court until 2009.

21 Perhaps, as he did the last time, he recognized the objection by the Prosecutor and
22 you incorporated it in your answer. So perhaps we can deal with the matter in this
23 way again, Mr Väättäinen. So please answer the question.

24 THE WITNESS: Could you please repeat the question?

25 MR POWLES:

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1 Q. Yes. Obviously within the time frame of when you're at the VWU, and then if you can
2 answer whether you are aware of the practice changing, did the VWU have any authority to
3 place any prohibition on a calling party to pay for any expenses not covered by the VWU in
4 relation to a witness's testimony, leaving aside issues in relation to the contact period,
5 assuming it occurred outside of that period?

6 A. No. The VWU didn't and under the Rules of Procedure and Evidence the Statute
7 doesn't have that kind of authority to place a prohibition on a party.

8 Q. Would the VWU necessarily even have known whether the OTP or a Defence team were
9 paying additional expenses on behalf of any particular witness?

10 A. During the time the person was under the care of the VWU, not necessarily, because let's
11 say that if the VWU organised a meeting between a party and a witness, we wouldn't have
12 necessarily been present, and most likely wouldn't have been present in that meeting. What
13 happens in that meeting, if we are not told what happens in the meeting, obviously we
14 wouldn't have known.

15 (Counsel confers)

16 PRESIDING JUDGE SCHMITT: Mr Powles, if you would need some minutes to confer with
17 your client and with Mr Djunga --

18 MR POWLES: No. I think that was all I needed, Mr President. Thank you very much.

19 Q. Just before coming on to the report that you wrote in 2013, Mr Väättäinen, I wanted to
20 ask you what role the VWU played with regards to providing witnesses with memory
21 refreshing material prior to their testimony here at the ICC during the period that you were
22 here and whether you know whether the practice changed or not after you left?

23 A. Well, in the first case, in the Lubanga case, the decision was not to allow for proofing of
24 witnesses. Either the parties would meet with the witness' prior testimony and go through
25 the testimony.

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1 But the memory refreshing exercise was done in the manner that the party provided
2 the material to the VWU that the Chamber had authorised the party to disclose to the
3 witness in order to prepare the witness for the testimony. Normally that would have
4 included a statement or any other material that -- the statement that the witness made
5 or any other material that might be presented to the witness in the court, subject to
6 the authorisation of the Chambers.

7 Q. Was the practice different at the ICTY when you were there?

8 A. Yes. At the ICTY and other ad hoc tribunals, the practice was that the proofing of
9 witnesses was allowed. So it was a memory refreshing exercise was done through having a
10 meeting between the party and the witness, usually at the premises of the Court, whereby the
11 witness could have gone through the statement and any other material that was presented.
12 And sometimes these proofing sessions lasted even for days depending on the nature of the
13 witness.

14 Q. And what was the rationale for those proofing sessions?

15 A. The rationale obviously would be to refresh the memory of the witness as to the
16 statement and the issue the person is to testify. And like myself now, I've used it, I found it
17 extremely useful.

18 And particularly at the ICTY, there was also a problem whereby a witness who was
19 required to come to testify in a court might have given a statement five or six or seven
20 years prior and obviously needed to have some framework to refresh the memories to
21 be able to testify to the best possible extent in the court.

22 Q. I wanted to come on then if I may to your report and --

23 PRESIDING JUDGE SCHMITT: But I think we have this, so to speak, pending issue on also
24 what the witness has said that he wants to testify in so far in private session. So I think we
25 would need some time as a Chamber to deliberate on that, not long, not for long, so please

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1 stay in the room, and we'll be back in a couple of minutes I think.

2 THE COURT USHER: All rise.

3 (Recess taken at 10.14 a.m.)

4 (Upon resuming in open session at 10.21 a.m.)

5 THE COURT USHER: All rise.

6 PRESIDING JUDGE SCHMITT: Mindful of what has been said at the beginning of this
7 hearing and especially what the witness said and considering what the Defence of Mr Kilolo
8 said about their third portion of questioning, we are going now into private session.

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

10 *(Private session at 10.22 a.m.) Reclassified into open session

11 THE COURT OFFICER: (Interpretation) Your Honour, we are in private session.

12 MR POWLES:

13 Q. Mr Väättäinen, I wanted to now deal with you with that third portion of your evidence
14 in relation to your report that you wrote in 2013. Could you perhaps tell us briefly how you
15 came to be instructed to prepare and write your report in 2013?

16 A. (Redacted)

17 (Redacted)

18 (Redacted). And he

19 then at some point early summer asked me if I could do that kind of assessment or evaluation
20 of the unit for him.

21 (Redacted), so we had

22 that kind of a working, very, very good working relationship at that time.

23 Q. Now, you mentioned that it was an (Redacted)

24 (Redacted). Were you aware of any other reports or public concerns being

25 voiced in relation to the operations of the VWU in 2013 by other organisations?

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1 A. Well, I received the IBA report on the unit mid-July 2013. There were an earlier
2 Human Rights Watch report, I can't remember which year that was, "Courting History" was
3 the title of it, and which had elements that touched upon the Victims and Witnesses Unit as
4 well. And then of course there was also the external investigation that took place in 2013 as
5 well to a particular incident at the VWU.

6 Q. You mentioned the IBA report. I wonder if you could turn to tab 46 of your bundle
7 and of your Honours' bundle, just to clarify whether this is the report of the IBA that you're
8 referring to?

9 A. Yes, this appears to be that report.

10 Q. So this is the witnesses -- to give the report the full title by the IBA, "IBA ICC
11 Perspectives: Witnesses before the International Criminal Court. An International Bar
12 Association, International Criminal Court Programme Report on the ICC's Efforts and
13 Challenges to Protect, Support and Ensure the Rights of Witnesses," dated July 2013. And
14 just to give the CAR number, CAR-D20-0005-134.

15 Is this the report you're referring to?

16 A. This is the report I'm referring to.

17 Q. And when did you see this report for the first time?

18 A. Mid-July 2013.

19 Q. There are specific criticisms mentioned in the report. I wonder if we could perhaps
20 turn to page 28 of the report, which refers to the operational structure of the VWU needing to
21 be reinforced. And on the right-hand column of that document there is a reference to the
22 VWU having its fair share of challenges. "Internal issues saw the VWU losing qualified staff
23 with experience in witness-related matters. It also appeared to lack clear leadership at the
24 management level. To further exacerbate the internal challenges, the operational budget has
25 also been subjected to the zero growth policy that States Parties have imposed on the ICC."

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1 The IBA go on, "During consultations, senior Registry officials have acknowledged
2 that the VWU is in need of a major overhaul to improve its function, a process which
3 will commence in 2013."

4 Now, the first question is, would you concur with that assessment of the IBA with
5 regards to the VWU?

6 A. Yes, with some reservation on the first sentence, stating "Internal issues saw the VWU
7 losing qualified staff with experience in witness-related matters."

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Apart from that caveat though, you would agree with that assessment in relation to
15 leadership and budget of the VWU?

16 A. Yes. But I wouldn't say that the budget or the size of the budget was the biggest issue
17 there. It's more an issue of leadership and the management of the unit.

18 Q. There is a reference there to a process commencing in 2013. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. Now, obviously these types of concerns and the concerns that you've mentioned, and
24 there not being -- there being an open secret (Redacted). Could you

25 perhaps in a few words tell us a little bit about your methodology (Redacted) and

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1 how you went about gathering the information that you needed to conduct and write your
2 report?

3 A. My approach was that it was important to talk to everybody within the unit and hear
4 what the practitioners had to say, because they would in my view have had the better or the
5 best understanding of the situation and also potentially they would have had the best
6 solutions for the problems, how to address, address the problems. And at the same time,
7 because the VWU is a service provider, it was crucially important to speak with the
8 stakeholders on both sides to get their views and evaluation of the -- or the take on the
9 situation, where the Victims and Witnesses Unit was, what were the major issues and how to
10 address those issues.

11 Q. Just to be absolutely clear, Mr Väätäinen, when you say "stakeholders," who do you
12 mean by that?

13 A. I mean by Office of the Prosecutor, on that side the investigations and the prosecution
14 division; counsel, including legal representatives; and the Chambers.

15 Q. And obviously by "counsel" you mean Defence counsel?

16 A. Absolutely.

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. I'm going to ask you now to summarise in very general terms the conclusions of your
9 report. And then after that I'm going to take you, if I may, to some specifics from both your
10 report and the seminar presentation you gave to counsel in the latter part of 2013.

11 But before doing that, could you summarise in very general terms the conclusions of
12 your report?

13 A. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. What I want to do now then is perhaps --

9 A. Microphone.

10 Q. What I want to do now then, Mr Väättäinen, is to take you to some of the specifics from
11 your report and from your seminar. And your report is at tab 1 of the bundle.

12 And just while you're looking that up, I can give the full title of the report. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted), the CAR number is CAR-D21-0015-0001.

16 If you could please, Mr Väättäinen, turn to page 4 of your report and the executive
17 summary. Yes?

18 A. May I ask a question? The Victims and Witnesses Unit provided me with the same
19 report with the same index number. May I use this, because I have made some notes?

20 PRESIDING JUDGE SCHMITT: You may use it.

21 THE WITNESS: Thank you.

22 MR POWLES:

23 Q. If you turn to page 4, please, I think the third paragraph down, the last sentence there
24 refers to (Redacted)

25 (Redacted)

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1 Similarly, if we turn to tab 2, which is the seminar that you gave, which is
2 CAR-D21-0015-0051, and if we turn to page 32 of that document, at lines 3 and 4 of
3 that document, you say, (Redacted)

4 (Redacted)

5 (Redacted)

6 Mr Väättäinen, could you please expand a little on what you mean in those two
7 sections that I've read to you from both your report and your seminar?

8 A. I just reflect what the stakeholders told me in the interviews, that this was the opinion of
9 the state of the unit.

10 Q. Keeping that the --

11 A. Microphone.

12 Q. While we're in tab 2, moving on then to page 34 of your seminar, you say this at line 16
13 to 18, (Redacted)

14 (Redacted)

15 (Redacted)

16 And then similarly, if we refer back to your report at paragraph 7.16, and I can give
17 you a page number for that.

18 Sorry, 716, not 16, and it's at page 47.

19 In addition to your comments in the seminar, in your report you say this, (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 The same question again, Mr Väättäinen, could you perhaps expand and comment on
2 those two statements from your seminar and your report?

3 A. On the transcript of the seminar, (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted).

7 Then turning to my report at page 47, (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 And the other issues, (Redacted)

12 (Redacted).

13 Q. The next section of your report that I wish to take you to is at page 37, paragraph 6.4,

14 and it's the second paragraph from the bottom which states, (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 The first question is, when you refer to "counsel" there, are you referring to Defence

20 counsel?

21 A. Yes, I am.

22 Q. The second question, the OTP Registry protocol, what is that that you are referring to,

23 please?

24 A. This is the OTP Registry protocol from I think 2011, if I'm not -- I think it's probably

25 referred to in the report. If you give me a moment.

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1 Yes, this is the Prosecution Registry joint protocol on the mandate, standards and
2 procedure for protection, 21 March 2011.

3 A. The mic.

4 MR POWLES: Forgive me, my apologies.

5 Q. I think that's at tab 45 of the bundle CAR-D20-0005-0310.

6 I don't propose to take you to it, but can you expand on the concerns that are raised in
7 your report with regards to the operation of such a protocol to the OTP and an
8 absence of one with regards to the Defence?

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted). But I'm not aware if that has taken place or not.

19 Q. Just while we're on the subject --

20 A. Microphone.

21 Q. Just while we're on the subject matter of the protocol, I wonder if we could refer back to
22 the IBA's report at tab 46 of the bundle. And at page 29, there is a section which deals with
23 "operational protocols are a positive step forward, but must be extended to the Defence."
24 That's the heading of the section at page 29.

25 And there is a reference in the second paragraph to a senior Registry official

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1 confirming that the protocol, i.e., the protocol between the OTP and the Registry has
2 improved the relationship between the OTP and the VWU.

3 And on the right-hand column, the IBA recommending that a similar protocol be
4 established between the Registry, VWU and the Defence.

5 As far as you're aware, was any such protocol ever established between the Registry,
6 VWU and the Defence?

7 A. I'm not aware of that, that it would have been established.

8 Q. One final section of your report --

9 A. Microphone.

10 MR POWLES: Forgive me.

11 Q. One final section of your report is at paragraph 6.1 at page 35 of your report.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Again, would that be something you'd be able to expand upon please, Mr Väättäinen?

16 A. Well, this is what both from -- the people that interviewed both from the OTP and the
17 Defence were making (Redacted). So this is not attributed to either Defence or
18 the Prosecution. (Redacted).

19 Q. Finally, Mr Väättäinen, obviously the document at tab 1 is a summary of your report, just
20 for the record, could you please say what the longer version of your report entails just so we
21 have that on the record?

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. Yes. Thank you very much, Mr Väättäinen. Those are all the questions I have for you
3 at this stage.

4 Thank you very much, Mr President, your Honours.

5 PRESIDING JUDGE SCHMITT: Yes, thank you very much, Mr Powles. Then it would be
6 for the other defence teams to put questions to Mr Väättäinen, if they wish to do so. We will
7 have a break at 11 o'clock, so it depends a little bit on, first, the question if the other defence
8 teams want to question the witness and, second, for how long.

9 Mr Kilenda.

10 MR KILENDA: (Interpretation) Thank you for allowing me to address the Court, your
11 Honour. Now, reading the document in question leads me to a single question for the
12 witness. I can see that my learned friend Mr Powles has already asked the question at page
13 42 of the transcript, and since our protocol prohibits repetitive questioning, I would merely
14 inform the Court that I have no further questions.

15 PRESIDING JUDGE SCHMITT: Thank you very much, especially also for this elaboration
16 on our protocol, yes.

17 Mrs Lyons, please.

18 MS LYONS: Yes, thank you, your Honour. We have a few questions. I can't guarantee 10
19 minutes, unless I speak fast, maybe it will be 15. We just have a few. I don't want to rush,
20 and I tend to make it difficult --

21 PRESIDING JUDGE SCHMITT: I think out of courtesy I think it's perhaps also better for you
22 if we do not start now and interrupt you for 5 or 10 minutes. So we will have then the coffee
23 break to put it this way until 11.30.

24 THE COURT USHER: All rise.

25 (Recess taken at 10.51 a.m.)

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1 (Upon resuming in open session at 11.31 a.m.)

2 THE COURT USHER: All rise.

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

4 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, do you have an update on the request for
5 judicial assistance that the Defence of Mr Arido mentioned this morning?

6 MR VANDERPUYE: Yes, Mr President, I do. Thank you for reminding me. We have that
7 in the disclosure package for today. So we expect it would be disclosed I would think this
8 afternoon, and that's the update.

9 PRESIDING JUDGE SCHMITT: Thank you very much.

10 Then I would like to address shortly a scheduling matter with the Bemba Defence,
11 Mrs Taylor. Only in the event that we would finish the expert Mr Lagodny
12 relatively early on Friday would Mr Harrison, if need be, if need be, if we do not
13 finish him tomorrow, would Mr Harrison be available for one or two sessions or
14 probably for one session on Friday just to inquire that?

15 MS TAYLOR: Thank you, Mr President. I understand from the Victims and Witnesses Unit
16 that they have anticipated the possibility and that they have prepared tickets accordingly.
17 Thank you.

18 PRESIDING JUDGE SCHMITT: Okay. Thank you very much for this information. Then
19 we have as announced an oral decision on the deadline for applications related to evidence, a
20 short decision.

21 The Chamber notes the earlier submissions on Rule 68(2)(b) witnesses as well as the
22 number of remaining Defence witnesses following the withdrawing of witnesses.
23 In order to ensure that the Defence evidence presentation finishes in a timely fashion
24 after the last witness, the Chamber will set a deadline for filing of any applications
25 related to adding or subtracting items of evidence from the record.

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1 In particular this deadline applies to applications, first, to introduce prior recorded
2 testimony pursuant to Rule 68(2)(b) of the Rules; and second, to formally submit any
3 items through the so-called Bar Table; and third, to exclude any items of evidence
4 pursuant to Article 69(7) of the Statute.

5 This deadline is set for 8 April 2016.

6 By this same deadline, the Prosecution must also indicate whether it seeks leave to
7 present any further evidence following the Defence evidence presentation. Any
8 such application must include the specific additional evidence to be presented as well
9 as a justification for why it was not submitted during the Prosecution's presentation
10 of evidence.

11 And this concludes the oral instruction, and we continue now with the questioning of
12 the witness. And Mrs Lyons has the floor.

13 MR POWLES: Mr President --

14 PRESIDING JUDGE SCHMITT: Obviously not at the moment, but Mr Powles is rising.
15 Please, Mr Powles.

16 MR POWLES: Thank you very much, Mr President. Mr President, with your leave and
17 with your Honour's leave, I've canvassed this with my learned friend Ms Lyons and my
18 learned friend Mr Vanderpuye on behalf of the Prosecution. If I may ask two further
19 questions of the witness about the report before Ms Lyons continues with her examination?

20 PRESIDING JUDGE SCHMITT: Of course you may. We are now in open session. Do you
21 think that we go into private session?

22 MR POWLES: They're two questions relating to the report.

23 PRESIDING JUDGE SCHMITT: Okay. Then we go into private session.

24 MR POWLES: I'm very grateful. Thank you very much.

25 *(Private session at 11.35 a.m.) Reclassified into open session

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1 THE COURT OFFICER: (Interpretation) We are in private session.

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

3 Q. Mr Väättäinen, just two more short questions about your report, if I may. In the
4 recommendation section, (Redacted)

5 (Redacted)

6 (Redacted)

7 My question to you would be, and maybe it's self-evident, why was that? (Redacted)

8 (Redacted)

9 A. Yes, at the time that is correct. (Redacted)

10 (Redacted)

11 Q. Thank you very much for that.

12 My second question relates to (Redacted).

13 And in the second paragraph, I understand this relates to (Redacted)

14 (Redacted)

15 (Redacted)

16 Would you be able to please expand on that in relation (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted). And particularly I think it's relevant because if

22 one of the stakeholders states that, you know, awareness need to be raised, I think it's
23 important to hear that and make a subsequent recommendation.

24 MR POWLES: I'm grateful for that.

25 And I thank you very much, Mr President, your Honours, for the indulgence.

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1 PRESIDING JUDGE SCHMITT: So then I give Mrs Lyons the floor. You are aware that we
2 are still in closed session. I leave it up to you if we can go into private session or if we should
3 stay in closed session.

4 MS LYONS: Your Honours, we need to be in private session. But the distinction between
5 private and closed -- in other words, I want to discuss issues which are confidential dealing
6 with emails that name specific persons. And we understand we don't want this in public
7 session. So I don't, I don't understand private versus closed, but confidential.

8 PRESIDING JUDGE SCHMITT: It's sometimes used anonymously, but I think we stay in
9 private session. And because of that, you have the floor and you can ask your questions.

10 MS LYONS: Thank you very much, your Honour.

11 QUESTIONED BY MS LYONS:

12 Q. Good morning, Mr Väätäinen.

13 A. Good morning.

14 Q. My name is Beth Lyons. I'm co-counsel with lead counsel, Chief Taku, for Mr Arido,
15 who as you're aware is one of the accused in this case.

16 I want to ask you some questions about a number of documents, and I will identify
17 them. They are either in a bundle we just provided to the Court. There are two
18 documents in the Arido documents, and the others are in the binder from the Kilolo
19 team. And I will read out the numbers, the CAR-OTP numbers, and leave it up to
20 you if you want them displayed or whether you have hard copies, whatever you
21 prefer to look at.

22 The first document I want to discuss and ask you about, Mr Väätäinen, is document
23 CAR-OTP-0075-0587 and 0588. This can be found in the packet of Arido documents
24 at tab 2. We just distributed these during the break. They're individual copies.
25 And the title of the document, so we're all on the same page, is (Redacted)

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1 The top is basically an email from Mr Arido responding to a request which is below
2 from Maître Kilolo that he address a letter, an official letter making precise why it is
3 that he cannot come to the Hague as a witness in the Bemba case.

4 I would like to call your attention to the top email, Mr Arido to Mr Kilolo, to the third,
5 fourth paragraphs. It's in French. I will read it in French so that it can be
6 interpreted for those of us who are not bilingual, Okay? And excuse my
7 pronunciation.

8 (Interpretation) (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Speaks English) Now I want to ask you a few questions about this if you're ready.

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. Okay. Let me ask you based on your response, given your positions within the unit and

14 your expertise, what additional information would you need in order to pass judgment?

15 A. Well, typically what should happen is that I guess counsel in this case should have taken

16 the issue up with the Victims and Witnesses Unit and passed these concerns to the unit. And

17 the counsel should have provided specific information on -- as to the nature of the threats,

18 why the witness felt that he was threatened or was at risk so that the unit could do sort of a

19 preliminary evaluation; and if the case or the facts presented merited, then they would have

20 taken a closer evaluation of the case.

21 Q. I would like to call your attention now to tab 6 in the Kilolo list. Now, tab 6 is

22 entitled -- and it's CAR-D21-0002-0059. It is entitled (Interpretation) (Redacted)

23 (Redacted) It is forwarded to Maître Kilolo, but it is a letter

24 fundamentally from Mr Arido to the Judge at the ICC. And the letter is dated 24 July. And

25 I call your attention to page 2 of the letter of Mr Arido to the ICC Judge. And again reading

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1 part of this: (Interpretation) (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Speaks English) And I'm not going to read out the name here, but he was on our
6 original witness list.
7 (Interpretation) (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)-- (Speaks English) I have selected
16 portions of this.
17 (Interpretation) (Redacted)
18 (Speaks English) Now, if you know, was there any response from the Judge at the
19 ICC to whom this was addressed?
20 A. Well, I would have no way of knowing this. And I wouldn't have had any role. I
21 wasn't employed at the ICC at that time, and I even shouldn't have known.
22 Q. Okay. Now, I would like to refer to tab 8 of the Kilolo documents, entitled
23 (Interpretation) (Redacted)
24 (Speaks English) This document in front of you is CAR-D21-002-0064. It's dated 26
25 July 2012. (Redacted)

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1 (Redacted)

2 (Redacted). And the object of this on page 2 is (Redacted)

3 (Redacted)

4 (Redacted)

5 THE INTERPRETER: And the interpreter was not able to seize that quotation from the letter.

6 MS LYONS:

7 Q. Now --

8 A. Excuse me. The interpreter says she was not able to hear what was read.

9 MS LYONS: Okay. Thank you very much. I'm sorry. Apologies to the interpreter.

10 This --

11 PRESIDING JUDGE SCHMITT: I think the reason is that we don't have the full lines until
12 the end of the right side.

13 MS LYONS: Yeah.

14 PRESIDING JUDGE SCHMITT: This would be the reason.

15 MS LYONS: Thank you, your Honour.

16 PRESIDING JUDGE SCHMITT: So you would have, perhaps, to guess the last word a little
17 bit. This is the problem.

18 MS LYONS: Thank you. And this is the state in which we have -- we received the
19 document, so it's okay. All right.

20 PRESIDING JUDGE SCHMITT: But I think you can continue with it and we try to cope with
21 the problem of the translation.

22 MS LYONS: Okay. That's fine. Okay.

23 Q. Now, in this letter, Mr Arido, in addressing VWU, explains that he and another person
24 informed HCR and the division of surveillance du territoire DST du Cameroon of the security
25 breach and that they perceived this -- experienced this as an attempted kidnapping of the

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1 refugees. This was the problem. Again, can you tell us, based on this information in this
2 email, whether it can provide for you a sufficient basis to answer the question of whether such
3 a situation merits immediate action?

4 A. (Redacted).

5 Q. Pardon. Sorry. (Redacted).

6 If such a letter has been addressed to the victims and witnesses of unit, then, of course,
7 the unit should have looked at what information is contained in the letter and what's
8 been requested. And looking to the issue probably first contacting the counsel
9 whose witness Mr Arido is and then start following up.

10 For me to pass any judgment on the content, I would need to, you know, examine this
11 much -- much more closely than just reviewing it like now.

12 Q. Thank you. Now I would like to -- to ask you to turn in the Kilolo list to tab 7. And in
13 this email, the last page, it's CAR-D21-002-0063, Mr Arido, in an email sent on 30 July,
14 explains -- (Interpretation) He says that upon the presentation of services presented by the
15 VWU to the ICC is available only until August 6, 2012. (Speaks English) In other words,
16 that the person to whom the complaint was addressed is not going to be available until the
17 6th of August 2012. Let me ask you what procedures are in place, given the urgency
18 perceived by the witness of this situation, to deal with the situation on the ground when he
19 writes to VWU and is told the person responsible is not available. What procedures are in
20 place to deal with this and respond?

21 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

22 MR VANDERPUYE: Thank you, Mr President. I think the witness previously answered
23 that he was at the ICC until 2009 and the question, as framed by my colleague, refers to the
24 procedures then present in 2012. I'm not sure that she's established a basis for the witness to
25 be able to answer the question as put. If she wants to frame it more generally, I suppose

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1 that's okay. But with respect to the specific communication and the specific measures that
2 were available at the time, I don't think it -- I don't think it's an appropriate question.

3 PRESIDING JUDGE SCHMITT: That is, of course -- that is, of course, understood that the
4 witness cannot answer specifically to this email and to this time gap, so to speak. But what
5 he could do -- and perhaps Mrs Lyons you could phrase it in that way -- what he could do is,
6 from his point of view when he was at the VWU, at the ICC, in the abstract when such an
7 event occurred, what would have been taken place or what would be the -- or have been the
8 procedure at the VWU.

9 MS LYONS: Thank you very much, your Honour.

10 Q. And I would ask, with the assistance of your Honour's phrasing, if this had occurred,
11 this situation had occurred when you were in a position of authority at the VWU, what would
12 have been your response? How would you have dealt with it?

13 A. Well, first of all, let me say this: For some strange reason this -- the response comes
14 from the ICC visits. So obviously the request has gone to the totally wrong place. But if
15 there's a formal communication to the unit, as was the letter that was addressed to (Redacted)
16 (Redacted), if there's a formal communication to the unit, the unit is responsible then to
17 receive it, look at that, and then act accordingly and in line with the mandate of the unit.
18 As to the -- if somebody is absent from the office, as (Redacted) seems to have
19 been, obviously somebody else will have to cover for that position. So in case an
20 urgent issue comes in, it is not possible that the VWU would say it -- well, you know,
21 we have somebody on leave for next month and we can't do anything about it.
22 That's -- of course it's not appropriate.

23 Q. If the situation exists that no response is given, as is the case described in these emails,
24 no response from the VWU, what, in your experience, is the next course of action?

25 A. Well, if -- if -- well, I have to qualify it a little bit and query the status of Mr Arido at that

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1 stage. So if he's a witness which has a linkage or is a witness for a particular defence team,
2 then the unit would have communications directly with the counsel on this case.

3 So let's say that the counsel has referred Mr Arido to VWU for threat assessment and
4 then sometime later Mr Arido directly contacts the unit and says "What is going on,"
5 the unit wouldn't entertain exchange of information with the witness directly, but
6 they would go through the counsel. So now, if -- then as is the case -- it appears to
7 be the case here that the witness doesn't know what is happening. What is his
8 recourse? Would be to go to his counsel and follow, you know, or ask for additional
9 information from the council.

10 Q. Let me ask you this, though: Once the VWU has been put on notice, as well as the trial
11 Chamber in a letter addressed to the Judge, is it not fair to say there is a responsibility to
12 respond?

13 A. Not -- I would say that not directly to the -- to the witness because all the
14 communication between the unit and the witness will go through the counsel or through the
15 party that is calling the witness unless the person is in a witness protection programme or
16 unless there's a -- a process has already been started whereby the unit provides support
17 services to the witness, such as medical assistance or counselling or so forth, then the contacts
18 will be directly between the unit and the witness.

19 Q. Okay. I can appreciate the answer, you responded in terms of procedure, but in a crisis
20 situation are there not procedures or responses in place so that the VWU can immediately at
21 least investigate the charges -- can investigate the situations in the field? Because you are
22 describing a process which sometimes may take longer while the security threat is pending.

23 A. Not really directly. If the information comes directly from the witness, because now,
24 once again, I go back to the point that what is the status of Mr Arido. Has the counsel
25 referred this case to the VWU, or has he or she not referred the case?

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1 If the referral has been done, say that -- stating that there's a security issue with this
2 particular individual, even in that case whereby that individual would have a security
3 concern, the unit would still be dealing with the -- with the counsel on that.

4 Q. Thank you. I have one last question, sir. This is at -- please turn to tab 1 of the Arido
5 documents. It is a letter from UNCHR in Geneva dated 22 September 2015, in response to a
6 letter from Chief Taku, lead counsel for Mr Arido, dated 16 July 2015. And I call -- it's
7 CAR-D24-002-0942. And I call your answers to three paragraphs on page 2. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted). However, they were concerned about being

16 approached by a policeman whom they knew well.

17 According to the information in UNHCR's records, Mr Arido and the other person
18 then contacted the DST and arranged for another meeting with a policeman who was
19 arrested by the DST when he arrived at the meeting.

20 UNCHR was informed that the policeman was found to be in possession of four
21 documents, a document stating he was an expert consultant in sociology; Central

22 African Republican passport, in which he presented as a civilian administrator,

23 (Redacted)

24 (Redacted)

25 (Redacted), stating

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 My question in regard to this document, do you know or have you come across in
5 your work, in your preparation of your summary report, in your experience as -- in
6 terms of your expertise as a consultant, (Redacted)

7 (Redacted)

8 A. No, I have not.

9 MS LYONS: Thank you.

10 PRESIDING JUDGE SCHMITT: Thank you very much, Mrs Lyons.

11 We have not heard from the Bemba Defence and from the Defence of Mr Mangenda,
12 if they want to question the witness.

13 MR GOSNELL: Perhaps, Mr President, it would be, for the purposes of the record, better to
14 go into public session.

15 PRESIDING JUDGE SCHMITT: Yes. We go into public session.

16 (Open session at 12.07 p.m.)

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

18 MR GOSNELL: No questions, Mr President. Thank you.

19 PRESIDING JUDGE SCHMITT: This facilitates, of course, the flow of events. Also, because
20 we are now in public session, we would not have to go through this process again. Mrs
21 Taylor, please.

22 MS TAYLOR: The Defence for Mr Gbagbo also has no questions. Thank you very much.

23 PRESIDING JUDGE SCHMITT: Okay. Thank you very much. Then we give the
24 Prosecution the floor. Of course, going into public session could be of no avail for the
25 moment if you now tell us we should go into closed session, but you have the floor.

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1 MR VANDERPUYE: Thank you very much, Mr President, and good afternoon to you.

2 QUESTIONED BY MR VANDERPUYE:

3 Q. Good afternoon to you, Mr Witness.

4 I don't think I need to go into private session, but I just want to ask one short question
5 on the document we were last shown, and I believe it was referenced as a document
6 from the UNHCR that was given to the Arido Defense. Have you ever seen that
7 document before?

8 A. No, I have not.

9 Q. Do you have any reason to come into contact with that document or the issues that are
10 discussed in it before?

11 A. I would say absolutely not unless I was assigned by UNHCR to look into an issue of this
12 kind or by the Court.

13 Q. Were you?

14 A. No, I wasn't.

15 Q. All right. Thank you very much, sir.

16 I'm hoping to be shorter rather than longer in this cross-examination. I can't give
17 any guarantees, but I'll try.

18 As you know, my name is Kweku Vanderpuye. I will put some questions to you
19 regarding your evidence as a Defence expert in this case.

20 Just to remind you very quickly, I'll ask you to try to speak a little slower than you
21 might normally do. I have this problem myself, and I race along quite often, so I'll
22 try to do the same.

23 And if there's any question that I ask you that's not clear to you, please let me know,
24 and I'll try to rephrase it in a manner that we can better understand one another.

25 Just before I get started, let me just ask briefly this: You talked about a report that

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1 you authored in 2013, which was the product, in part, of certain interviews that you
2 conducted, confidential interviews you conducted with stakeholders, let's say, in the
3 mission of the VWU. I see you nodding your head.

4 A. That is correct.

5 Q. Okay. And some of those stakeholders comprised, well, I guess the Office of the
6 Prosecutor, members of the Office of the Prosecutor, right?

7 A. Yes. I interviewed members of -- actually, management level members from the
8 investigations division.

9 Q. Okay.

10 A. -- and the Prosecution's division --

11 Q. And also members of the Defence at the ICC?

12 A. Yes.

13 Q. Okay.

14 PRESIDING JUDGE SCHMITT: Mr Powles?

15 MR POWLES: I hesitate to rise, your Honour, it's just that we are dealing with matters in
16 relation to the report, and I note that we are in public session.

17 PRESIDING JUDGE SCHMITT: But I think these are preliminary matters. We can stay
18 public session for the moment; and when you go into details, Mr Vanderpuye, we would
19 go -- you request that we go into private session.

20 MR VANDERPUYE: Yes. Thank you, Mr President. It's just a very preliminary question.

21 Q. What I wanted to ask you is whether or not any of the individuals from the Defence that
22 you -- were interviewed in relation to your report are present in the courtroom now, to your
23 recollection.

24 A. Well, strictly speaking, I shouldn't be answering that question because I've given
25 assurances of confidentiality to all the individuals who were interviewed by me in -- for the

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1 report.

2 PRESIDING JUDGE SCHMITT: Then, actually, I think we should respect that, so you
3 can -- yeah.

4 MR VANDERPUYE: Okay. Thank you for that.

5 Q. Now, you've been qualified as an expert in this case to talk about matters related to the
6 VWU; its mission, mandate, organisation and structure. Does that sound about right?

7 A. That's right.

8 Q. Okay. And it would be your first time testifying as an expert in any criminal case?

9 A. That is correct.

10 Q. Any case?

11 A. Any case, that is correct.

12 Q. And it would be your first time testifying period, whether as an expert or not; is that
13 right?

14 A. Yes, that is correct. I've never testified -- I've appeared a number of times in court at
15 the ICC but never testified.

16 Q. Okay. Can you tell us when it was that you were first approached by the Kilolo
17 Defence? I believe they are the Defence team that put you on their witness list.

18 A. I would say, but I can't guarantee this, but I would say early January. Would that
19 be -- they might have better records. I would need to check my records. I would say early
20 January.

21 Q. January 2016?

22 A. 2016. It could be December as well, but then -- last year, but I can't be for sure.

23 Q. And were you approached by Mr Kilolo's lawyers, Mr Djunga or Mr Powles?

24 A. Mr Powles.

25 Q. Were you approached by any other Defence team related to this case; that is, the

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1 Defence for Mr Bemba or Mr Babala or Mr Arido or Mr Mangenda?

2 A. Mr President, do I have to answer this question? I'm just mindful that -- is this
3 something that might be confidential on the part of any of the Defence teams?

4 PRESIDING JUDGE SCHMITT: No, I don't think so.

5 THE WITNESS: Okay. Yes. I was first approached by Mrs Taylor, and that's probably
6 December last year, 2015.

7 MR VANDERPUYE:

8 Q. You said first approached by Mrs Taylor. Were you approached by any other Defence
9 teams other than the Kilolo Defence and the Bemba Defence; Mr Powles or Ms Taylor
10 respectively?

11 A. Then -- so I was first approached by Mrs Taylor. And if I recall correctly, then there
12 was a phone call organised somewhat later; whereby, I think Mr Powles was present and
13 probably -- and there was some other people in the room. I didn't -- you know, so I didn't
14 take notes on who were present, but certainly there was two individuals and there's a
15 possibility that Mr Gosnell would have been there, but I'm not sure if he was.

16 Q. I didn't quite understand or catch the last name. Did you say Mr Gosnell?

17 A. Gosnell, that's right.

18 Q. Mr Gosnell. Okay. And during that conversation, did the subject matter of your
19 prospective testimony in this case come up?

20 A. Well, I was first informed that Mrs Taylor was interested in the practices of witness
21 payments in different tribunals. And I said that, yes, of course, and I can provide that
22 information. I'll speak to any person who is a participant in the proceedings on any public
23 matter that I can talk to, so I did. And when learning a little bit more about this, I proposed
24 that rather than relying on my recollection, they should commission a report, a comparative
25 report, the different practices, the different international tribunals and courts and also from

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1 the point of view that the practices have evolved during the course of these years.

2 Q. And I take it you were actually, at the end of the day, retained by the Kilolo Defence; is
3 that fair to say?

4 A. Yes, that's fair to say.

5 Q. And in the course of your discussions with either Ms Taylor or Mr Powles, were you
6 ever asked to produce a report attendant to the circumstances of this particular case?

7 A. No, I was not.

8 Q. And were you asked to produce a report of any other kind in relation to this case or
9 your testimony in this case?

10 A. No, I was not.

11 Q. With respect to the testimony that you -- well, with respect to your prospective
12 testimony, were you given any instructions or directions by either Mr Powles or Ms Taylor?

13 A. No, I was not and not in my privileged position. I wouldn't have accepted any
14 instructions.

15 Q. But I guess they discussed with you the general parameters of what it is they wanted
16 you to discuss?

17 A. Yes. I received some questions, if I recall correctly, in advance of a telephone
18 conversation so that I could sort of direct my attention and, you know, assess the recollection
19 of my memory.

20 Q. Yeah. That makes -- that makes sense. Do you have a copy of that, by any chance?

21 A. Probably in my email I do.

22 Q. Okay. Would you oppose providing it to us at a later point, if we were to ask for it?

23 A. I wouldn't, but I don't know what the position of the Defence.

24 Q. Okay. Well, I suppose we can discuss it with them at a later point, in any event.

25 A. Sure. Sure.

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1 Q. And did you receive any other instructions or directions in relation to the subject matter
2 of your testimony, other than that particular email or phone call?

3 A. Well, here I would now request guidance from you, Mr President, because as you're
4 aware, some of the issues in relation to my testimony were subject to ex parte submissions;
5 and whether I can expand on those, it would be my question to you, sir.

6 MR VANDERPUYE: Mr President, I'm happy to move into private session, if that would
7 facilitate --

8 PRESIDING JUDGE SCHMITT: I think we should move into private session now.

9 MR VANDERPUYE: -- matters.

10 *(Private session at 12.18 p.m.) Reclassified into open session

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

12 PRESIDING JUDGE SCHMITT: Yes, yes. Okay. I think you can answer the question
13 now.

14 THE WITNESS: Okay. May I give a lengthy answer?

15 MR VANDERPUYE:

16 Q. If it answers the question, please.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 And then when I was contacted by the Defence, my view is that the Defence is an
24 equally important part in the proceedings in search of the truth, and I felt obliged to
25 speak to them on any matter that I could be able to speak without compromising any

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1 confidentiality issues.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Thank you very much, Mr Väättäin. That's very helpful.

10 MR VANDERPUYE: I think we can go into open session, Mr President, unless you have
11 some questions, perhaps, for the witness now.

12 PRESIDING JUDGE SCHMITT: I would have a question, yes, indeed. I would have one
13 question. I'm referring to your summary report because we are now in private session, so
14 we can make use of this situation

15 You told us about some portions of this report. (Redacted)

16 (Redacted). And since this

17 has been addressed by the Defence during their interrogation, especially in the investigation
18 stage, and of course it is important at the trial stage for us too, I would like you to expand a
19 little bit on this portion of your summary report and the results.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE SCHMITT: And what about this -- this last (Redacted)

13 (Redacted)

14 THE WITNESS: Yes. Despite very serious and justified criticism on the performance of the
15 unit, the unit was able to fulfil its core function, ensuring that the witnesses appeared in Court
16 as scheduled. And there we have actually hard data on -- based on this Berkeley Human
17 Rights Centre research done on the experience of testifying witnesses whose experience was
18 actually very positive on the services of the unit. So actually, the witnesses had a much
19 better perception of the services by experience of the services of the unit than actually the
20 parties, to the extent, then, that when asked the question that some interlocutors said
21 that -- well, you know, this research, how reliable that is, and I would say Berkeley University
22 is a pretty respectable institution. I would tend to rely on their research on this issue.

23 PRESIDING JUDGE SCHMITT: Thank you very much.

24 If you want to continue, Mr Vanderpuye, in open session --

25 MR VANDERPUYE: Yes, please.

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1 PRESIDING JUDGE SCHMITT: -- as indicated, then we go to open session.

2 (Open session at 12.25 p.m.)

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

4 MR VANDERPUYE:

5 Q. Okay. Other than what you've just described and what you described a little bit earlier
6 before we went into private session, have you had any discussions, conversations concerning
7 the subject matter of your testimony, in particular in regard to your prospective testimony in
8 this case?

9 A. No, other than the interviews that I have had.

10 Q. Okay. A moment ago you talked about the core function of the VWU, and I wanted to
11 ask you some questions about that. One of the fundamental principles that underpin the role
12 of the VWU, its essential function in the Court, is to ensure that witnesses appear, as you say,
13 as scheduled before a Court. That's true, right?

14 A. Absolutely.

15 Q. And one of the functions of the VWU is to ensure that those witnesses appear before the
16 Court in good enough shape to provide the Chamber with truthful information, right?

17 A. Absolutely.

18 Q. And what flows from that is VWU's responsibility to ensure the safety of witnesses, yes?

19 A. Yes.

20 Q. To ensure that the witnesses can testify without psychological pressure, for example?

21 A. That's correct.

22 Q. To ensure the witnesses can testify freely and without improper or unlawful
23 interference or influence, right?

24 A. Well, there the unit has the responsibility when they are in the care of the unit.

25 Obviously when they are outside, we can't -- I'm sorry, I still speak as "we," even though I'm

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1 not here, but -- yeah. So it's -- that responsibility extends to the time period when the
2 witness is in the care of the witness. Now, of course, it's -- even in that time period, it is
3 possible that the witnesses get influenced because the unit is not able to control all the
4 communication between the witness and the outside world.

5 Q. Thank you very much. And I appreciate your drawing my attention to that important
6 distinction.

7 When the witness is in the custody or care of the VWU, one of the essential functions
8 of the VWU is to prevent that witness, as it were, within its abilities, from being
9 unduly or improperly influenced, right?

10 A. Yes, that's right. For example, if a party would try to contact the witness and the unit
11 would become aware of that, then it would be the unit's responsibility to react and bring that
12 matter to the attention of appropriate, well, party and probably even the Chamber.

13 Q. The reason why the unit would do that, react, bring it potentially to the attention of the
14 parties and to the Chamber, is because there is a connection between the unit's core function
15 and the integrity of the evidence that comes before the Chamber through the witnesses, right?

16 A. Absolutely.

17 Q. And the VWU uses various mechanisms to manage these kinds of questions in
18 implementing its mandate, and that's in accordance with the regulations of the Registry,
19 right?

20 A. Yes, and the Rules of Procedure and Evidence.

21 Q. And the Rules of Procedure and Evidence. That's something that's common to all
22 VWU units that you've worked with or in, right?

23 A. Basically, all the VWUs in international courts and tribunals function in a very similar
24 manner. There's some differences, as I explained before, between ICTY and ICC, but
25 generally, yes.

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1 Q. The ICTY, in particular -- and I'm glad you've sort of anticipated my next question, but
2 in a booklet that's provided by the Victim and Witnesses Unit of the ICTY that's behind binder
3 tab 51 for the Chamber's benefit in the Kilolo list of evidence -- and I'm just going to put some
4 propositions to you. I don't know that you have to look them up, but if you need to, you can.

5 A. Can you tell me the tab?

6 Q. Tab 51, I think I said. In that booklet, for the record, that's -- as I mentioned, it's behind
7 tab 51, it says, "The witness's testimony is crucial for the proper functioning of the tribunal in
8 giving a fair and equitable judgment to those responsible for serious violations of
9 international humanitarian law." Do you subscribe to that particular point of view?

10 A. Hundred percent.

11 Q. Okay. It also says -- and that's something that is -- before I move on, that's also
12 something that's applied in this institution; isn't it?

13 A. Absolutely, yes.

14 Q. You would agree, as pointed out in that same booklet, I take it, that such testimony will
15 enable -- will enable the judges to render a fair judgment. It will help the international
16 community to learn the truth about the crimes under consideration. Do you agree with that
17 position?

18 A. Hundred percent.

19 Q. For the Chamber's benefit I should say that's at page 5 of the booklet. Sorry about that.
20 The more recent one was also at page 5 of the same booklet. That's also something that's
21 recognized here at the ICC, right?

22 A. Of course.

23 Q. And you would agree, as referenced in the same booklet, that witnesses are required to
24 tell the truth when they come to testify?

25 A. Of course.

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1 Q. And that, for the Chamber's benefit, is behind page 7 of that same booklet. In this
2 particular institution, the ICC, the VWU explicitly notifies witnesses of their obligation to tell
3 the truth --

4 A. Yes.

5 Q. -- in their interactions with them, right?

6 A. That is correct. Well, it's part of the Court familiarisation protocol.

7 Q. I'm told that I've been accelerating, so I'll slow down.

8 The VWU also explicitly notifies witnesses of this obligation, as you mentioned,
9 during this familiarisation process?

10 A. That is correct.

11 Q. As you mentioned earlier, the VWU is an independent neutral body of the Registry?

12 A. That is correct.

13 Q. It's a service provider for the Court --

14 A. That is correct.

15 Q. -- for the stakeholders, such as the Defence and the Prosecution?

16 A. Yes, to the parties and to the Legal Representatives of Victims as well.

17 Q. Yes. Thank you. And in facilitating the appearance of witnesses before the Court, the
18 VWU does that irrespective of whether the witness is called by the Chamber, the
19 Defence -- I'm not sure if legal representatives can do that, but if they could, them too --

20 A. They can.

21 Q. -- and certainly the Chamber?

22 A. Oh, absolutely. And it's -- from our point of view, it's crucial that when a witness
23 comes here, it doesn't matter whose witness the person is. The Unit only looks after the
24 personal needs of a particular witness.

25 Q. And in this respect, the VWU works together with its stakeholders on a regular basis,

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1 right?

2 A. Absolutely, and it has to. It won't be able to function unless it works in a close
3 cooperation with the parties and -- with the parties.

4 Q. And as you've referenced, I won't go specifically into it, but in the report that you
5 prepared, the actions of the VWU have an impact on its stakeholders, right?

6 A. Yes.

7 Q. And it is true, right, that the stakeholders' actions also have an impact on the VWU?

8 A. Very much so.

9 Q. The actions of the stakeholders can have an effect on the VWU's ability to actually carry
10 out its mandate to bring witnesses before a court in the best possible position to render
11 truthful testimony?

12 A. Absolutely. And if I may expand, if a witness's protection assistance concerns are not
13 taken appropriately into account at the stage of the investigation, that can have a really huge
14 impact on the victim and witnesses unit and its ability to react and look after witnesses. So
15 the parties also will have to carry their responsibility in that regard as well.

16 Q. There's a regulatory framework established in this institution -- well, in any criminal
17 court -- with respect to the manner in which VWU carries out its work; fair to say?

18 A. Yes. It's more established at the ICC than, for example, at the ICTY. Well, at least at
19 that time when I was there.

20 Q. And in terms of the unit's interaction with victims and witnesses, these regulations,
21 rules, procedures and practices all bear in mind the ultimate goal of ensuring that the
22 Chamber is provided with the best possible evidence in order to adjudicate the serious crimes
23 before it?

24 A. Absolutely. That is the reason for the unit's existence.

25 Q. Those rules minimize the exposure of witnesses to elements that are deleterious, they

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1 weaken the ultimate integrity of the evidence before the Court, such as security concerns,
2 psychological procedures, and potentially improper or unlawful influence, yes?

3 A. Yes.

4 Q. As you mentioned before, that's not something that the VWU can do alone but is also
5 dependent upon its stakeholders in order to meet those obligations, right?

6 A. Of course.

7 Q. You can't keep someone safe if the stakeholders are revealing confidential information
8 about who they are, where they are, what their work is, where their families are, right?

9 A. Yes, absolutely. And it's also the responsibility of the witnesses themselves. And --
10 But at the same time, I think it needs to be noted that there is no such thing as a
11 maximum security. The Court is not able to provide maximum security for
12 witnesses who interact with the Court and take part in the criminal proceedings.
13 There's always a level of risk to witnesses.

14 Q. And it's also true that you can't keep a witness from enduring psychological pressure if
15 the stakeholders ignore the protocols and practices in place designed to safeguard against that,
16 right?

17 A. You're absolutely correct, because the victims and witnesses unit can't do this work
18 alone. That's the responsibility for the whole Court, all the parties and participants to do
19 their part in this work.

20 Q. And as you pointed out not too long ago, when a witness is within the custody or
21 control of the VWU, the VWU, to some extent, is dependent upon the good faith of the
22 stakeholders to avoid the witness being improperly influenced, interfered with, right?

23 A. Absolutely; for the professional conduct of the stakeholders.

24 Q. If the VWU is undermined, then it can't function, right?

25 A. Well, it can still function, but the cost for remedying the situation will become

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1 exponential.

2 Q. And if the VWU's function is impeded by the conduct of stakeholders, for example, that
3 has a collateral effect on the Court itself, right?

4 A. Yes, that's correct.

5 Q. What might that be?

6 A. Well, failure of the cases, reputational damage. It could have also impact on the
7 personal safety and security of witnesses and their well-being, issues of that kind.

8 Q. And it would also have an effect on the reliability of the evidence as produced before a
9 Chamber, for example?

10 A. Of course. Compromising the case potentially.

11 Q. And the integrity --

12 A. Yes.

13 Q. -- of the proceedings?

14 A. Yes.

15 Q. I want to ask you a few questions about this particular -- well, not this particular case,
16 but the case which gives rise to this case; that is, the Bemba main case?

17 A. Okay.

18 Q. First, do you know anything about the case?

19 A. I do something, but it's -- I think I was still here when it started, the investigation started,
20 so it's quite awhile ago. I would need to dig deep. I know something about the case.

21 Q. Okay. Fair enough. Let me put this general proposition to you then.

22 PRESIDING JUDGE SCHMITT: Mr Powles, please.

23 MR POWLES: Yes, Mr President. Of course I don't know the line of questioning that my
24 learned friend is about to embark upon, but of course it's right that Mr Väättäinen's purpose, in
25 terms of giving testimony here today, is relatively limited.

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1 And as my learned friend adduced from the witness, he hasn't been able to produce a
2 report relating to this specific case; and following on from that, comment upon the
3 practices and procedures in the Bemba main case. So I would just ask my learned
4 friend to proceed very carefully in terms of the type and manner of questions that are
5 put to the witness in this regard because, of course, it is an area where the witness
6 hasn't looked at the entirety of the case to be able to put any particular questions in
7 context, so they may be of very limited value.

8 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

9 MR TAKU: May it please the Court, your Honour.

10 PRESIDING JUDGE SCHMITT: First Mr Taku and then Mr Vanderpuye.

11 MR TAKU: Your Honours, we all know in criminal proceedings when we want to ask
12 questions to elicit the opinion of the witness, we have to be very very specific enough for the
13 witness to know whether the circumstance warrants his ability to give an opinion on the
14 particular issue. But asking general questions about general principles about how the
15 particular rules and regulations are applicable in criminal trials I think is not very helpful, in
16 this particular case, and the Prosecution tried to be specific enough. And if the witness
17 knows the issues, is sufficiently knowledgeable about the issues, he can give an opinion that
18 might be helpful.

19 PRESIDING JUDGE SCHMITT: Mr Vanderpuye?

20 MR VANDERPUYE: While I appreciate the pre-objection, it might be more helpful or more
21 useful to wait to hear the question before rising to try to interdict it.

22 PRESIDING JUDGE SCHMITT: I think what Mr Powles did was not really an objection at
23 that point in time. It was sort of alerting you as the person now in charge of questioning to
24 be careful, you see what I mean? So I think at that point in time I don't see any use and need
25 for a ruling. So please continue, Mr Vanderpuye. And you are, as Mr Powles wants,

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1 mindful of his pre-objection, as you have worded it.

2 MR VANDERPUYE: Thank you, Mr President. We'll cross that bridge when we get there,
3 if we get there.

4 Q. The general question I was going to ask you, sir, was, it is right that the VWU, as a unit,
5 participates in and drives, if not promotes, certain protocols within the framework of the
6 Court?

7 A. Yes, such as when developing the regulatory framework of course, you know, the unit
8 was advancing its mandate and giving expert advice on how the Court should deal with, for
9 example, expert witnesses.

10 Q. And it is frequently -- or, rather, let me put it this way: It's not infrequent that the
11 VWU is directly engaged by a Court for that very purpose?

12 A. Yes, that is correct.

13 Q. And that occurs -- let me slow down. That occurs in any given case or interaction with
14 the Court, right?

15 A. Well, it took place in every case I was involved until 2009, so I suspect it probably
16 continues.

17 Q. Would that have included, by the way, the Bemba main case?

18 A. I would suspect certainly so, but I can't recollect specifically.

19 Q. Are you familiar with a document called "The Unified Protocol on the Practices Used to
20 Prepare and Familiarize Witnesses For Giving Testimony at Trial"?

21 A. In which case is that? If it's the Lubanga case then, you know, I would, but I'd like to
22 see the document first.

23 Q. Okay. If you look at tab 12, Prosecution's binder.

24 A. Okay.

25 MR MILANINIA: He doesn't have a copy.

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1 MR VANDERPUYE: He doesn't have a copy? Okay. We can pull it up, I think, in eCourt.
2 It is a filing number ICC-01/05 -- for the Chamber's benefit, by the way, it's behind tab 12, I
3 think I said that -- 01/05-01/08-972-ANX.

4 Q. All right. And if we can just go to the next page.

5 A. I don't see the document here.

6 Q. Okay. Let's see if we can get that up on his screen. Just a moment, please,
7 Mr Väättäinen.

8 Mr Väättäinen, are you able to see the --

9 A. Yes, I am.

10 Q. Okay. Do you recognize that document? Have you seen it before?

11 A. It's dated 2010, so I believe I haven't seen it --

12 Q. Okay.

13 A. -- before.

14 Q. I want to ask you about some of the provisions in it --

15 A. Sure.

16 Q. -- if I may. The first is at paragraph 1, which effectively says that the VWU will
17 facilitate the testimony of witnesses in the best possible circumstances. Does that sound like
18 something that the VWU normally does, in your experience?

19 A. Yeah, and it sounds like my language. It's probably been copied from some previous
20 presentation.

21 Q. Most likely. Let me ask you about paragraph 4. In that paragraph it says to
22 ensure -- "One of the objectives of this document is to ensure consistency in the practice of
23 familiarisation to all victims and witnesses appearing before the Court." Does that sound
24 about right, in your estimation?

25 A. Yeah, absolutely. And then what follows as well looks like my language because this

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1 was the line that we argued all the time, that all the Chambers should have identical practices
2 when it comes to dealing with victims or witnesses.

3 Q. At paragraph 3 of this document -- no, I'm sorry, paragraph 2, it states that "This
4 protocol reflects the jurisprudence on familiarisation and its related procedures and also takes
5 into account the practices and experiences concerning witnesses appearing before the Court."
6 Now, obviously if you haven't seen it, you might not know that, but let me ask you
7 something else about it. If you go to paragraph 5, and that's at page 2 of this
8 document, you will see a section that is entitled "Preparation Phase." And in
9 particular, in the first sentence -- actually, it is only one sentence -- it refers to the
10 witness being handed over to the care of the VWU prior to the scheduled travel of the
11 witness to the location of the testimony.

12 So what I wanted to ask you about this particular part of this document is does this
13 correspond to your understanding or what you've testified to about the handing over
14 of a witness from a party, for example, to the VWU?

15 A. Yes, it does, with the exception that, you know, people who are -- the witnesses who are
16 in the care of the unit in the protection programme, then the preparation is a little bit different,
17 but this is for the witnesses who are not in the protection programme.

18 Q. Now, with respect to witnesses who are in the protective programme is there any
19 limitation that is -- to your recollection or to your understanding that is normally applied to a
20 party's contact with that witness once they're accepted into the protection programme?

21 A. Yes. All the contacts, be it on the part of the witness, has to be coordinated through the
22 Victims and Witnesses Unit. In actual fact, the parties shouldn't even know where witnesses
23 have been relocated or rescheduled, this being the kind of logic behind it.

24 Q. In paragraph 6, it effectively states that once the witness is handed over, "The VWU will,
25 henceforth, be responsible for the necessary arrangements to facilitate the witness's travel for

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1 the purposes of giving testimony." Does that sound about right, in your estimation?

2 A. Yes, that is correct.

3 Q. And at paragraph 7 it states that "During the period of the handover, the witness is in
4 the care of the VWU, in terms of the witness's safety, welfare, logistics and allowances, as
5 specified in the regulations of the Registry. This entails covering costs relating to the
6 witness's travel, full board, accommodation, incidental and attendance allowances. In some
7 extraordinary cases, the Registry may provide for an allowance for the loss of earnings -- for
8 lost earnings," right?

9 A. This is correct. The medical insurance has been omitted from this, so that's covered as
10 well.

11 Q. Once a witness is handed over to the VWU, effectively what these provisions state is
12 that the VWU is responsible for their care and for all of the allowances they receive in relation
13 to bringing them before the Court to testify.

14 A. That is correct.

15 Q. Is there room in there for other expenses that a party would have to cover that's not
16 governed by the regulations?

17 A. In my mind, no.

18 Q. Thank you. Just bear with me one moment.

19 Once the familiarisation process begins with respect to a witness -- first of all, can
20 you -- I've jumped ahead.

21 Can you explain the difference between the handover circumstances and the
22 familiarisation, if there's any difference, in your mind?

23 A. Yeah, absolutely. The handover phase is basically used by the VWU to prepare the
24 witness for the travel to The Hague. And then the familiarisation phase takes place at the
25 location where the witness testifies, either here in The Hague at the Court or at the location of

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1 a video link testimony; or should the Court sit in situ, then in situ.

2 Q. Okay. Well, what I'd like to do, then, is I'd like to take you over to page 7 of this
3 document, this unified protocol, and we're going to go to paragraph 27. Do you have that in
4 front of the screen --

5 A. Yes.

6 Q. -- on the screen in front of you, sir?

7 A. Yes, I do.

8 Q. Okay. And at paragraph 27 it discusses under topic number two "Familiarisation," and
9 in particular, it states that "Considering that once the process of witness familiarisation has
10 commenced any further, meaning between the entity calling the witness and witnesses
11 outside of Court is prohibited, it is essential that the commencement of the familiarisation
12 process be clearly delineated."

13 On the next page, page 8, please, in eCourt, paragraph 28 it says, "The starting point
14 of the familiarisation is when the witness arrives in the Netherlands or at the location
15 of testimony where different from the seat of the Court prior to giving evidence."

16 Does that comport with your understanding?

17 A. Yes, it does. This is probably cut and paste from the Lubanga protocol that was
18 developed in 2008, I think.

19 Q. It may very well be, as you noted earlier that the protocol was intended to take into
20 account the jurisprudence on familiarisations up until the -- up until that point.

21 All right. So following or, rather, at the familiarisation phase it would be your
22 understanding and clear enough that a party is not to have contact with a witness
23 unless it's obviously by authorization of the Court or through VWU for whatever
24 reason?

25 A. Absolutely. This is -- this is based on the order of the Chamber.

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1 Q. Okay. Now, do you know whether this particular unified protocol was adopted in the
2 Bemba main case?

3 A. I don't know that.

4 Q. All right. I'm going to show you something in just a minute. But before I get there,
5 the purpose of such a protocol would be, it seems -- and you can say yes or no that it's to
6 guard against improper interference with a witness, which is why contacts are restricted.

7 A. Counsel, the purpose of the protocol is to give clarity to all actors within the criminal
8 proceeding as to the conduct and contacts with the victims and witnesses in the course of the
9 proceedings and one element of which is, of course, guarding against the improper contact.

10 Q. And do you know -- in your experience, does the VWU actually or actively take
11 measures in order to limit contact between a party and a witness that they may be calling once
12 the person is within the care and custody of VWU, either at the handover stage or at the
13 familiarisation phase?

14 A. Not actively in the sense that we would be or the unit would be monitoring the
15 moments, but generally the parties wouldn't know where the witnesses are residing. But at
16 the same time, if the unit became aware of a contact that is prohibited, then it's under the
17 obligation to then alert probably the Chamber and maybe even the party.

18 Q. If you look down here at paragraph 31, the same document I was referring to earlier,
19 and this is in the context of familiarisation, it states that "The VWU will not facilitate any
20 further contact between the witness and the entity calling the witness until the witness has
21 finished their testimony." Does that sound about right to you?

22 A. Absolutely.

23 Q. That was the established practice at the time that you left the Court?

24 A. Yes, and it's -- it's -- well, I dare say that's the practice in all the Courts.

25 Q. Indeed. Now, what I wanted to show you was at tab 13.

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1 A. Oh, the binder I have?

2 Q. All right. So we'll have to display it then. It's another court filing,

3 ICC-01/05-01/08-1016. All right. I think the title of this document is pretty self-explanatory.

4 It says, "Decision on the Unified Protocol on the Practices Used to Prepare and Familiarize

5 Witnesses For Giving Testimony at Trial." You can see that this was -- this is dated 18

6 November 2010, and it was issued in the case against Jean-Pierre Bemba Gombo.

7 A. Um-hmm.

8 Q. All right. What I'd like to do is to take you to paragraph 7 of this document. And you

9 will see there under "Analysis and Conclusions" in respect of the Chamber's decision, it refers

10 to unified protocol. And at paragraph 7 it says, "The Chamber notes that the parties and

11 participants generally agree with the terms of the unified protocol."

12 And if you go a little bit -- third line down from the -- or third line up from the bottom

13 of that paragraph it says, "The Chamber considers that the unified protocol should be

14 adopted for the purposes of the trial before Trial Chamber III with appropriate

15 amendments as they are addressed below."

16 Now, in the context of the Chamber adopting such a protocol, in your estimation

17 would the VWU be obliged to abide by those amendments and implement the

18 protocol as amended?

19 A. Absolutely. The VWU has no other choice.

20 Q. Take you to paragraph 9, which is on page 6 of this document. And I won't bog you

21 down with all of it, but if you go to the last sentence of that paragraph, it says, "Therefore, the

22 Chamber finds that the unified protocol shall apply equally to Prosecution and Defence

23 witnesses as well as victims appearing before the Court to testify and any other witnesses

24 called to give testimony before the Chamber." In those circumstances as you've mentioned,

25 the VWU would be obliged to discharge the decision by the Chamber, yes?

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1 A. Of course.

2 Q. In the case where the contact between the parties and the witnesses are limited, it would
3 be incumbent on the VWU to discharge the direction of the Chamber to try to enforce that to
4 the extent that it's possible, right?

5 A. That's right. But, you know, I would assume that the -- this protocol also has given -- I
6 haven't seen it. I would assume it has given instructions as to what the VWU should do and
7 how to react in case something that was not -- that's in violation of the protocol took place.

8 Q. Now, a limitation between a contact -- between a party's contact with their witnesses in
9 the context of the person being brought before the Court to give evidence would mitigate
10 against the potential for improper influence, right?

11 A. Can you repeat that?

12 Q. Sure. Thank you very much for that, by the way. A party's contact with their
13 witnesses, in the context of the protocol you've just seen, right, by limiting it, that mitigates
14 the potential for improper influence, improper -- improper interference with the witness,
15 right?

16 A. That -- well, that would assume that a party would want to have improper influence on
17 a witness.

18 Q. Right. So --

19 A. And if that is the case, then yes.

20 Q. All right. So it's designed to protect against that?

21 A. Um-hmm.

22 Q. If a party would be -- or a stakeholder would be so intentioned?

23 A. Exactly.

24 Q. It would limit that stakeholder's ability to prepare the testimony of a witness, for
25 example?

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1 A. That's almost like a philosophical question because it depends on how the Court wants
2 to approach the witness familiarisation and the memory refreshing exercise.

3 Q. Okay.

4 A. Some courts see proofing a witness as the proper way of doing it, but it's not the case at
5 the ICC and all the chambers.

6 Q. Thank you very much for that. And if we can go just very quickly to paragraph 34
7 behind tab 13, that's at page 14, yeah, we've got it. And I don't want to bore you with the
8 details of this one as well, but if you look down to the last sentence of that paragraph, it says,
9 "In view of the present unified protocol, the Chamber, by majority, sees no compelling
10 reasons to depart from the uncontroversial jurisprudence of the Court and maintains the view
11 that no proofing or preparation of witnesses for trial by the parties shall be allowed." Okay.
12 Now, maybe that helps reframe my question --

13 A. Okay.

14 Q. -- better for you. But my question, essentially, was in limiting the contacts between the
15 parties, particularly when -- between the parties and the witnesses, particularly when the
16 witnesses are in the custody and control of the VWU, that is a measure that, whether by
17 design or result, limits a party's ability to prepare their witnesses, right?

18 A. That is -- that is correct. The Chamber didn't want to have that kind of an influence by
19 the parties on witnesses.

20 Q. Or to coach their evidence, right?

21 A. Or to coach -- you know, that's obvious -- I think that's the obvious reason, having any
22 undue influence on the evidence and ensuring, I think, in the words of Judge Fulford, the
23 spontaneity of evidence.

24 Q. And if that were to occur, that would fundamentally undermine one of the core roles of
25 the --

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1 PRESIDING JUDGE SCHMITT: Yes, Mr Powles?

2 MR POWLES: Yes, Mr President. I think we are straying into the realm of speculation on
3 the part of the witness in terms of the last question advising the witness to comment upon
4 what may have been in the minds of the Judges in the Bemba Trial Chamber.

5 PRESIDING JUDGE SCHMITT: This has merit. Yeah, I can -- this has merit, so please be
6 more specific. And I assume you can give us a time frame for your examination?

7 MR VANDERPUYE: Yes, Mr President. Well, I'm not sure what time is it. The lunch
8 break is at 1.30, right?

9 PRESIDING JUDGE SCHMITT: 1.30, yes.

10 MR VANDERPUYE: I don't think I'll finish by 1.30, but I'll be close. So I would say maybe
11 another 45 minutes, I think.

12 PRESIDING JUDGE SCHMITT: And, of course, the Defence would afterwards have also the
13 possibility to answer further questions, if they want to.

14 MR POWLES: Yes, Mr President. I can estimate at the moment we'll be about 15 to 20
15 minutes, but of course it depends upon the ground covered by my learned friend in the next
16 45 minutes. Thank you.

17 PRESIDING JUDGE SCHMITT: So please continue, Mr Vanderpuye.

18 MR VANDERPUYE: Thank you, Mr President. I think I was about halfway through my
19 last question when we stopped.

20 Q. Just bear with me for one moment, Mr Väättäinen.

21 What I was saying is that in the circumstances of the prohibition of contact between a
22 party and their witnesses while their witnesses are within the custody and control of
23 the VWU, in those circumstances it would fundamentally undermine the role of the
24 VWU were the party to have contact with those witnesses, as prohibited by a
25 Chamber, right?

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1 A. I don't think it would necessarily undermine the role of the VWU, but it could
2 undermine the proceedings.

3 Q. And that's one of the reasons why, as you saw in the protocol, that the VWU is called
4 upon to mediate contact between the parties and their witness, right?

5 A. Um-hmm. That is correct.

6 Q. Now, in this protocol that I showed you, as was amended pursuant to the decision of
7 the Chamber, Trial Chamber III in the Bemba case, there were certain adjustments that were
8 made. One, in particular, was for the witnesses to be informed of the offence defined in
9 Article 70 by the VWU. That's at paragraph 26 of decision 1016, tab 13. I think we can just
10 page up and we'll find it.

11 A. The paragraph 26?

12 Q. Yes, sir. Paragraph 26. Are you able to see it?

13 A. Yes, I am.

14 Q. What it says is the Chamber considers that, on the one hand, the unified protocol should
15 not purport to impose obligations on the Presiding Judge. On the other hand, the Chamber
16 acknowledges that it can be very stressful for a witness to be warned personally by the
17 Presiding Judge at the beginning of their testimony about the consequences of false testimony;
18 therefore, paragraph 101 of the unified protocol shall be amended, replacing the last sentence
19 that states, "The Judge informs the witness that it is an offence under the statute to give false
20 testimony" with, quote, "Before the testimony, in accordance with rule 66(3) of the Rules of
21 Procedure and Evidence, the VWU shall inform the witness of the offence defined in article 70,
22 paragraph 1(a) of the statute."

23 Is that consistent with your understanding of what the VWU's role should be when
24 ordered by a Chamber to discharge a particular function?

25 A. Of course. If the Chamber orders them, of course. Absolutely it's consistent with the

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1 VWU's functions.

2 Q. In the following paragraph, paragraph 27 at the very bottom you will see that it also
3 says -- it also indicates another amendment in respect to paragraph 102 of the unified protocol
4 that I just showed you, which says, effectively, the new language should be that "The VWU
5 shall inform the witness that he or she will remain under oath." And in your understanding
6 is that an appropriate function for the VWU to carry out?

7 A. Well, the VWU doesn't have any -- any say in that if it's -- if it's ordered by the Chamber
8 because their opinions can vary, you know, on that.

9 Q. In your experience, working in different VWU units in different courts, has it
10 been -- have there been occasions where a Chamber has ordered the VWU to carry out a
11 particular function related to the care and management of witnesses where the VWU has
12 essentially refused to carry it out or --

13 A. No, no, no, no. They have -- of course, the VWU has to respect the authority of the
14 Chamber.

15 Q. All right. I want to ask you about some other things. You mentioned early on in your
16 direct evidence, and I don't have the particular cite, but you -- it was a question that was put
17 to you by Mr Powles about expenses, and it was -- I think you were talking about the amount
18 of expenses, the amount of money, and you said one had to be careful about inducements. I
19 think the word you used specifically was "inducement." My colleague is telling me it's at
20 page 30 of the transcript, lines 3 through 6. In any event, that's essentially the gist of it. Do
21 you remember that?

22 A. Yes, I do.

23 Q. And it's true that the regulations to which VWU responds or enforces are there, in part,
24 to make sure that there is not an improper or undue influence on witnesses, in terms of the
25 allowances that they're given, benefits that they receive that are financial and so on and so

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1 forth, right?

2 A. Well, those regulations relate to the payments provided by the VWU. And the reason
3 they're regulated is for the sake of transparency and clarity to all that these are accepted and
4 acceptable rates, also with the view of not -- not appearing as inducing witnesses.

5 And as I said previously, from our point of view, it would have been very good
6 practice if all the parties would apply the same principles when it comes to
7 compensating witness expenses with the exception, potentially, of the attendance
8 allowance and lost wages.

9 Q. And that would be especially the case when the witness is already within the custody
10 and control of the VWU, I would imagine?

11 A. Well, the question of inducement doesn't really come alive at that point because the
12 witness has already made a decision to come and testify. So it's really -- I don't think that's
13 the point.

14 Q. Now, a party's interaction with a witness, in terms of expenses that might arise,
15 extraordinary expenses -- I can't remember the term that was used on the direct examination,
16 but it was something like that -- extraordinary expenses that might arise, that may be
17 potentially paid out by a party while the witness is in the custody and control of the VWU, in
18 those circumstances would it be the case that such a payment would be made without VWU's
19 knowledge or, rather, should the VWU normally be notified of any such payments?

20 A. Well, the payment -- such payment could take place without the knowledge of the VWU.
21 And if it's -- to me personally, it would appear improper if a witness is in the care of the VWU.
22 What is the reason -- what would be the justifiable reason to provide extra funds for that
23 individual while in the care of the VWU by a party? I find it very difficult to find a justifiable
24 reason for that.

25 Q. All right. Well, we'll go over a couple of those when we get back from the lunch break,

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1 if I can.

2 Payments that are made that fall under the auspices of the VWU when a witness is in
3 the custody and control of the VWU would include things like expenses for family
4 members?

5 A. No.

6 Q. Okay.

7 A. Unless there was a case -- well, dependent care or childcare, whereby, let's say a single
8 parent was required to come to the Court, a number of children was left behind and
9 somebody would need to be paid, actually, to look after those children, then funds could be
10 provided, but not just generally funds dispensed to family members, of course not.

11 Q. Well, what about a situation where the witness is in one location, their child is in
12 another location with an adult and the person has been living in country -- well, the witness
13 has been living in country X, the child has been living in country Y, they're being taken care of
14 by another person, and the witness has to testify from country X, in those circumstances
15 would it be appropriate to provide the witness with dependent childcare without any further
16 information?

17 A. No because -- well, I should say this: Each case should be looked at on its merits and
18 evaluated whether it is justifiable to use the Court's funds to provide that kind of a care.

19 Q. And that would depend on the relationship between the witness testifying and the
20 necessity for the childcare, right?

21 A. Basically the idea behind childcare is this, that if the fact that nobody is looking after a
22 dependent, it could be -- it -- you know, it doesn't need to be a child. It's the fact that -- when
23 the witness leaves and nobody is looking after the dependent, if that fact would prevent the
24 witness coming to testify, then obviously there's a case that the Court should ensure that
25 witness is able to come to testify through provision of dependent care.

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1 Q. So there should be a link between the witness's ability to testify in the case and the need
2 for dependent care?

3 A. Yeah, that's right. Without -- if -- the consequence is that without providing dependent
4 care the consequence is the witness doesn't appear in the Court, then obviously, you know,
5 this obstacle would need to be removed.

6 Q. It would also obviously require establishing that the dependent is a dependent?

7 A. Yes.

8 Q. And how would you define what a dependent is?

9 A. That's a difficult matter. Well, what we used -- kind of the definition that we used was
10 that if a person is economically dependent on the witness who comes, then for the purpose of
11 dependent care, that person could fall within the Court's assistance. So there needs to be a
12 dependence, you know, that without the presence of the witness, the person wouldn't be able
13 to, for example, sustain him or herself.

14 Q. All right. I'd like you to look at tab 48 of the binder that was provided by the Kilolo
15 Defence. It's CAR-D20-0006-1200. When we get there, we'll have to go to ERN page ending
16 1210. For your purposes, Mr Väättäinen, it should come up on the screen. But if you need to
17 look at it in the binder, that's where it will be, and it will be page 11 of that document for you.

18 A. Um-hmm.

19 Q. And I'll refer you to article 14. For the record, the document that I'm referring to is a
20 directive on allowances for witnesses and expert witnesses issued by the ICTY. It is dated 10
21 March 2011.

22 PRESIDING JUDGE SCHMITT: Mr Powles.

23 MR POWLES: Mr President, I was, of course, going to flag up the question of relevance of
24 this question, especially given --

25 PRESIDING JUDGE SCHMITT: We are here, of course, there is -- Mr Vanderpuye, it's, of

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1 course, clear we are here not at the ICTY but at the ICC, so please make relatively quickly
2 clear where the connection to our framework or to our practice -- I say "our" -- in this court is.

3 MR VANDERPUYE: Thank you very much, Mr President. That's exactly what my
4 question is -- exactly what my question will be to the expert.

5 Q. So why don't we take a look at, with your leave, Mr President, Article 14 of this
6 document, as I indicated ERN ending 1210. Can you see that, sir?

7 A. Yes, I can.

8 Q. And I want to take you to paragraph B, which talks about -- and it says, well, "The
9 Registrar shall examine all requests for all reimbursement of childcare expenses made in
10 accordance with paragraph A," and paragraph A refers to expenses concerning dependents.
11 And it says, "In determining whether to grant reimbursement that the Registrar shall examine
12 any supplementary information provided by the witness, the Victims and Witnesses Section
13 or the parties, and then it lists three things: One, the existence of a direct link between the
14 witness's giving of testimony before the Chambers and the availability of childcare; two, the
15 availability of alternative childcare arrangements; and three, the reasonableness and
16 appropriateness of the expenses claimed. You're familiar with this particular provision?

17 A. Yes, I am.

18 Q. Okay. Is this the same kind of calculus that is applied at the ICC with respect to the
19 disposition of such claims?

20 A. Yes, it would be. Probably not formulated in that manner, but it would be.

21 Q. So when you say "not formulated in that manner," you mean that the same
22 considerations are taken into account but not necessarily formalized in this way?

23 A. Exactly. And I don't recall if in the regulations of the Registry -- I think we put
24 everything under the dependent care, so there's no specific childcare regulation, if I recall that
25 correctly.

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1 Q. One of the reasons that an analysis has to be made on a case-by-case basis is to ensure,
2 first of all, fair treatment among people that are making these kinds of claims, right?

3 A. Well, there's fair treatment but probably bigger considerations, of course the witness's
4 well-being, but also there's a question of appropriate use of funds.

5 Q. Appropriate use of funds. Okay. And the appropriate use of funds is also why other
6 allowances, expenses and benefits are called upon to be appropriately and thoroughly
7 documented as a general principle, right?

8 A. Absolutely.

9 Q. And that would be by all of the stakeholders that are associated with the VWU as well
10 as the VWU itself, right?

11 A. Absolutely. And I would wish that this is unified applied across all the participants.

12 Q. You say you would wish that, but you know different?

13 A. Well, I can't say that I know different, but, you know, there's a -- as I referred to earlier,
14 we, from the unit's point of view, would have wanted to see everybody applying the same
15 principles when it comes to the witness payments, be it the OTP or the Defence, in all of the
16 tribunals because it also provides clarity to the witness. In other places we've had the
17 experience where witnesses have appeared and said, "Well, listen, we were promised such
18 and such things, where are they?"

19 MR VANDERPUYE: Okay. I'm just about to go to a different section now, Mr President. I
20 think now might be a good time to take the break, since we are only five minutes away.

21 PRESIDING JUDGE SCHMITT: So I take this advice, and we will have our break until 3
22 o'clock.

23 THE COURT USHER: All rise.

24 (Recess taken at 1.26 p.m.)

25 (Upon resuming in open session at 3.01 p.m.)

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1 THE COURT USHER: All rise.

2 PRESIDING JUDGE SCHMITT: Good afternoon, please be seated.

3 Mr Vanderpuye still has the floor, and I think we are in open session.

4 MR VANDERPUYE: Thank you, Mr President. Good afternoon again. May I proceed?

5 PRESIDING JUDGE SCHMITT: Yes.

6 MR VANDERPUYE: Thank you.

7 Q. Good afternoon to you, Witness.

8 A. Good afternoon.

9 Q. When we left off last, I was taking you to a different area. And what I wanted to ask
10 you about in your capacity as an expert in this case is some of your opinions regarding certain
11 of the evidence that this Chamber has actually heard in this case, not about the evidence, but
12 in particular about its impact on the function and role of the VWU in the areas in which you
13 were qualified as an expert in this case.

14 The Chamber in this case has heard evidence from a number of witnesses and also
15 received evidence in the form of exhibits concerning certain sums of money that was
16 paid to witnesses prior to their testimony which were not accounted for. In
17 particular the Chamber has heard evidence that the accused in this case paid one
18 witness a certain amount of money, some 760 euros, which the witness said was a gift
19 from Jean-Pierre Bemba.

20 PRESIDING JUDGE SCHMITT: Mr Powles.

21 MR POWLES: Yes, Mr President, your Honours. I think we really are straying into the
22 final issues in this case now that my learned friend is seeking to put the witness to comment
23 upon. And it really isn't appropriate for an expert witness or any witness for that matter to
24 be asked to comment about the issues. The final issues in the case will also be a matter for
25 the Trial Chamber to determine.

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1 PRESIDING JUDGE SCHMITT: There is merit in it. So you would have to formulate it
2 more in the abstract.

3 MR VANDERPUYE: I think I --

4 PRESIDING JUDGE SCHMITT: We are not, we are not discussing the evidence in this case
5 with this witness or with this expert witness.

6 MR VANDERPUYE: Well, what I am doing, Mr President, and I thought I prefaced it
7 appropriately for my colleague to understand the direction of this was I said that I was going
8 to ask the witness about, not the circumstances, but about his opinions in the context of his
9 role as a VWU expert in light of, in light of the facts that are presented before this Chamber.
10 I think it's appropriate for the Chamber to know what is the effect of the alleged conduct of
11 the accused on the Court itself, on the functions, on the organs of Court itself.

12 This is what I am asking the witness to comment on, not on the substance of the facts
13 themselves. But he needs to know what they are in order to be able to say it affects
14 VWU this way; it affects the function of VWU that way.

15 PRESIDING JUDGE SCHMITT: Mr Powles.

16 MR POWLES: Yes, Mr President. Of course --

17 THE INTERPRETER: Microphone, please.

18 MR POWLES: Of course, these questions are being asked in the abstract. And there is a
19 whole morass of evidence that the Trial Chambers have the benefit of hearing, and not just
20 these individual specific issues that my learned friend is being put -- putting to the witness in
21 isolation.

22 As my learned friend prefaced at the very early stages of his cross-examination and
23 established with this witness, he hasn't been asked to produce a report on this specific
24 case. Were that the case, we could have furnished this witness with a vast amount of
25 material from this case which could have put these particular types of questions

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1 within context. And of course this Trial Chamber, your Honours, have the benefit of
2 seeing all of this within context. And it's inappropriate to seek to elicit an answer
3 from this witness that is very much looking at these issues in the abstract and not
4 seeing them within the context of the case as a whole.

5 MR VANDERPUYE: Mr President, I think my colleague's arguments, I know where he's
6 coming from, but he's just wrong. The jurisprudence in these international tribunals in this
7 Court in particular allows, for example, among other things hypothetical questions to be put
8 to witnesses, expert witnesses in particular.

9 I could ask him off the top of my head a particular hypothetical falling within the
10 realm of his expertise. Mr Powles chose to call him as an expert in this case, not me.
11 What I'm asking, what I'm eliciting from this witness is within the scope of his
12 expertise. If it's outside the scope of his expertise, he's an expert enough to be able to
13 tell the Chamber that.

14 And it seems to me that Mr Powles' objection in advance of the question yet again is
15 designed to have an impact on the subsequent answer to the question that's given by
16 the witness, which I don't think is appropriate, especially given the fact that he's
17 wrong on the law.

18 PRESIDING JUDGE SCHMITT: For the last time, Mr Powles.

19 MR POWLES: Well, I would just caution the Chamber against relying upon a blanket
20 reference to jurisprudence by the Prosecution in this case. We've had it a number of times
21 already, a reference to the jurisprudence without any specific citations. And sometimes even
22 when cases are cited specifically, they haven't been accurate and don't accurately reflect the
23 jurisprudence as being cited. So I would simply caution against that, unless my learned
24 friend is going to refer to some specific authority and direction.

25 MR VANDERPUYE: Prosecutor versus Ntaganda ICC-01/04-02/06-1159, Decision on

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1 Defence Preliminary Challenges to Prosecution Expert Witnesses, 9 February 2016, paragraph
2 9, "Expert witnesses are ordinarily afforded wide latitude to offer opinions within their
3 expertise and their views need not be based upon firsthand knowledge or experience."
4 Prosecutor versus Semanza, case number ICTR-97-20-A, Judgment, 20 May 2005,
5 paragraph 303, "Expert witnesses" --

6 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, I don't, really, I don't like to interrupt
7 people, but we understand that you have references, but you also understand that we cannot
8 start an investigation now into this legal matter.

9 I give, Mrs Taylor, do you want to have the floor? I have the impression.

10 MS TAYLOR: Yes, just briefly. Thank you very much, Mr President. And I believe in our
11 submission concerning an earlier witness called by the Prosecution, we may have cited
12 authorities concerning the fact that experts when they are dealing with factual matters should
13 only really address uncontested or established factual issues and that there may be a danger
14 in putting issues to a witness that might not be clear. Thank you.

15 MR VANDERPUYE: Mr President, that again fundamentally misstates the position of the
16 Prosecution. What I am putting to the witness is his -- eliciting his expert opinion on the
17 effects of the alleged conduct in this case on the VWU and on the Court, because that's part of
18 his mandate as an expert, former head of the VWU, not on the facts.

19 I'm not asking him "Is this true? Might this be true?" or anything like that. That's
20 what Ms Taylor is referring to, and that is fundamentally at odds with what our
21 position is and the jurisprudence broadly spoken of this Court and other courts.

22 MR TAKU: May it please, your Honour --

23 PRESIDING JUDGE SCHMITT: Yes, Mr Taku.

24 MR TAKU: Your Honours, thank you very much for giving me this opportunity. I'm afraid
25 that if the Prosecution is allowed to go along this line, we may be conflating the role of the

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1 Trial Chamber that had the main case, the issues that arose within that Trial Chamber and the
2 evidence that is given in this case.

3 The Prosecutor, if allowed to go along that line, it would draw us into wider issues
4 which are not, which are not supported by the case retained against the accused
5 persons here.

6 In fact, reciting through this witness an opinion on evidence that has been adduced
7 before professional judges, that will not look at the evidence in isolation, but will look
8 at the evidence with a wider consideration of so many other issues before making a
9 determination; and, therefore, your Honours, I invite your Honours to uphold the
10 objections by my learned colleague.

11 (Trial Chamber confers)

12 PRESIDING JUDGE SCHMITT: So I recall that this witness was called, and I cite, "to
13 provide information on the functioning of the VWU, in particular on the handling of
14 witnesses, the familiarisation phase and the handover." Therefore, questions in that respect
15 are allowed.

16 What the Chamber would not allow is as I have indicated before, if we are entering
17 the realm of the evidence, the consideration from the witness, a consideration of
18 evidence is asked, so I would allow questions in this vein.

19 If, Mr Vanderpuye, you really try to extract an abstract, to put it this way, out of, and
20 we will decide like always on a case-by-case basis. And the Defence is alerted, of
21 course, on the issue. So please move on and please make sure that the witness is not
22 in a position to comment on evidence.

23 MR VANDERPUYE: Thank you, Mr President. I'll try to do that. As I said at the
24 beginning, I'm not asking for him to comment on the evidence. I'm asking only for him to
25 comment on the circumstances and the effect that circumstance has or may have on the VWU

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1 and on its mandate.

2 Q. So circumstance number one, this Chamber has heard evidence in this case that
3 witnesses were paid certain sums of money throughout or during the course of giving
4 testimony in some cases and certainly before giving their testimony which is unaccounted for.
5 In particular, the evidence the Chamber has heard relates to several separate witnesses. In
6 one case, as I mentioned, the witness was paid immediately prior to his testimony, and he was
7 told that the money was a gift from one of the accused.

8 In another case, the money was handed over to the witness shortly before the witness
9 was turned over to the VWU.

10 In another case --

11 PRESIDING JUDGE SCHMITT: Mr Djunga.

12 MR DJUNGA: (Interpretation) Thank you, your Honour. I truly fear that the decision
13 that you just provided is not being respected because the OTP is discussing specific matters,
14 and I think this is really quite a difficult matter. We are straying from the general area of
15 questioning. I think it's quite difficult for the witness and really to put the same question
16 again and bringing in evidence that was brought before.

17 PRESIDING JUDGE SCHMITT: So why not, why make it so complicated? Why not, for
18 example, it's only a suggestion, to put it this way, why not ask the witness expert if something
19 had occurred, that a certain payment has been made, without commenting on what has been
20 the evidence in this room or in the older, in the old courtroom, if something like that occurred,
21 would that have been -- would that affect the functioning of the VWU, for example? Would
22 that affect everything what you have tried to elicit before the break? So we would not have
23 these constant discussions I think further on.

24 MR VANDERPUYE: I think, Mr President, first of all, you're right. But with all due respect,
25 I think the issue is not that complicated, and I think that the Defence are deliberately trying to

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1 make it complicated to avoid my discussion of this question with the witness. I haven't yet
2 asked him a single question. And it seems to me for them to constantly interrupt the preface
3 for that question is inappropriate.
4 It's not on -- the law is not on their side on this issue, because I could ask him
5 hypothetical questions which mirror and track exactly the evidence before this
6 Chamber. So it is an illusory objection, which isn't complicated, which the witness
7 can clearly follow. He's an intelligent man. He's an expert. He served as the head
8 of the VWU. He knows how to follow this. And the question is appropriately
9 prefaced. It hasn't been asked. And it seems to me, with all due respect to my
10 colleagues -- first of all, one of them should decide which one is going to do the
11 objecting in relation to this witness as opposed to having them pop up alternatively to
12 add to one another's arguments.
13 But I would add that there is absolutely nothing that Mr Djunga has said that
14 Mr Powles hasn't said, which the Chamber has already addressed.
15 PRESIDING JUDGE SCHMITT: I think we should not enter in a discussion between counsel
16 about their behaviour. I think this is nothing that leads us to -- that should guide us, and we
17 have not done that in the past, and also reproaches I personally do not like very much in that
18 respect.
19 I see that this is a sensitive issue, and you are now continuing with your examination,
20 and you bear in mind what I have said about the line of questioning and how these
21 questions should be phrased. And as I said, we as a Chamber are sensitive when it
22 comes to sort of, when the questioning enters into the area which is the area of the
23 judges.
24 MR VANDERPUYE: I'm fine with that, Mr President. As I said, I'm not going to elicit
25 evidence from this witness commenting on the veracity of the evidence before the Chamber.

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1 PRESIDING JUDGE SCHMITT: So then please --

2 MR VANDERPUYE: This Chamber has an obligation to determine what is the effect of the
3 alleged conduct of the accused on proceedings before this Court, on organs of this Court, on
4 units of this Court, because that's all relevant to the sentence, if a sentence is imposed in this
5 case, it's all relevant to the gravity of the conduct that's before the Chamber.

6 You have an expert in front of you now who can comment exactly on that issue,
7 which is the gravamen of the questions I intend to put to him, which the Defence saw
8 fit to interrupt without a legal basis to do so.

9 PRESIDING JUDGE SCHMITT: But this now closes the intermediary discussion I think on
10 this matter. Please ask your questions and be mindful of what has been said especially by
11 the Chamber.

12 MR VANDERPUYE:

13 Q. Mr Väättäinen, you were called here by Mr Powles by the Kilolo Defence as an expert on
14 VWU related matters, right?

15 A. That is correct.

16 Q. And you are an expert on the functioning of the unit in general?

17 A. Yes, I am.

18 Q. On its mandate?

19 A. Yes, I am.

20 Q. On its role within the Court system that we are in now?

21 A. Yes, I am.

22 Q. And you are mindful and you've commented on previously on the various roles or
23 impact that stakeholders can have on the function of the VWU, right?

24 A. Yes, I have done that.

25 Q. And that includes the Defence, right?

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1 A. Yes.

2 Q. Okay. And it includes the conduct of the Defence in any given case and their
3 interactions with witnesses that are within the custody of the VWU and control of VWU,
4 right?

5 A. Uh-huh.

6 Q. That means yes?

7 A. Yes, I'm sorry.

8 Q. Okay. And there is certain conduct the Defence engage in or can engage in that could
9 be disruptive to the mandate, purpose, role and function of the VWU in this very system,
10 right?

11 A. It applies to both parties.

12 Q. Right. Let's talk about the Defence.

13 A. Sure.

14 Q. So in the conduct -- in the context of the Defence, there are certain functions that can be
15 interfered with of the VWU by the conduct of the Defence in any given case, right?

16 A. Can -- can you repeat that so that I understand it correctly?

17 Q. Let me ask it in a hypothetical way.

18 A. Yes.

19 Q. If the Defence were to pay witnesses money undocumented as gifts, as money to help
20 them out, as favours or even as corruption explicitly, is that conduct helpful or harmful to the
21 mission of the VWU in its role as an independent service provider organ of the Registry in this
22 system in the ICC? Is that harmful or helpful conduct?

23 A. Well, it's -- well, regardless whether a witness has been paid such a thing, it should have
24 no impact on how the unit deals and performs with that witness. So the impact of that kind
25 of conduct is not really on the unit, because regardless of that, the unit is obliged to provide

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1 exactly the equal service to any witness walking into this court. So I think its impact is on
2 another place than at the performance or at the VWU.

3 Q. What is the VWU's obligation should it come into information of the nature I've just
4 described to you in advance of the witness's testimony?

5 A. We should bring that to the attention of the Chamber, I believe.

6 Q. Why?

7 A. Because it contravenes with the good administration of justice.

8 Q. Why?

9 A. Well, as conduct that is not permitted.

10 Q. Let me ask you not about payments but about other conduct which the Chamber has
11 also heard evidence of. In the circumstances you talked about the handover, and that's a
12 fixed period in time, right?

13 A. Yes.

14 Q. And that's when a witness is brought into the custody or control of the VWU in relation
15 to their evidence, testimony?

16 A. Exactly.

17 Q. And in those circumstances, would it be helpful or harmful to the mission of the VWU
18 for the Defence as a stakeholder to be in contact with witnesses during the course of their
19 testimony without authorisation from a Chamber?

20 A. Once again, even if there is that kind of a conduct, then the unit would provide the
21 services unchanged. It might, of course, have an impact on the witness, how the witness
22 interacts with the unit so that there can be that kind of an impact.

23 But as to the functioning of the unit itself, no, I wouldn't say that there is necessarily
24 any impact, other than that might come through a changed attitude of the witness
25 towards the unit.

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1 Q. And what about ensuring the integrity of the evidence or the witness when you bring
2 them to court, does that make it easier for you to do that or harder?

3 A. The VWU doesn't really deal with the integrity of the evidence, other than in the case
4 where the familiarisation material is produced to the Unit and then the Unit has to keep it safe
5 so that nobody is able to interfere and that the correct documents are handed over to the
6 witness and that the records are kept of the custody of that documentation.

7 Q. Well, in the course of the familiarisation, would you allow a party to directly hand the
8 witness a given statement if it was the VWU's function to do it?

9 A. No, absolutely not.

10 Q. Is there a danger, for some reason, that the party might harm the witness in handing
11 them a piece of paper?

12 A. No. Well, danger to a witness? Unless a party would want to submit a threat to a
13 witness.

14 Q. Their own witness.

15 A. No, not -- not to harm the witness. I don't see that.

16 Q. So is there a need to protect a witness from a party, from handing them their own
17 statement, for example, or is there another reason why a party cannot approach a witness and
18 hand them their own statement once the witness is within the custody of the VWU?

19 A. The reason for that is very simple. It's based on the order of the Chamber. And the
20 Chamber wants that witnesses are prepared for the testimony in a certain manner. That
21 includes how and what material they'll be handed -- handed to while they are in the care of
22 the VWU and while they're in the process of familiarisation.

23 Q. So in that scenario, if a party were, unknown to the VWU perhaps, to go and sneak in a
24 statement to a witness, would that be helpful or harmful to the VWU being able to discharge
25 the order of the Chamber?

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1 A. Well, it would be a violation of the order of the Chamber.

2 PRESIDING JUDGE SCHMITT: Mr Powles?

3 MR POWLES: Yes. Mr President, your Honours, I think we are again straying into
4 hypotheticals. And all I would seek to do at this stage -- I don't know how many more
5 questions along this sort of line my learned friend has, but, of course, all I would respectfully
6 seek to do is remind the Chamber of the order of 25 February 2016 with regards to this
7 witness where the Chamber observed that D21-9's background and the fact that he is -- the
8 witness has extended experience in the functioning of the VWU does not automatically
9 qualify his testimony as expert testimony if it is based on his personal observations during the
10 production of his report.

11 And all I'd simply do, again, is cite my learned friend's observations at the beginning
12 of his cross-examination that this witness hasn't been given all the material in relation
13 to this case and ask to do an expert report in relation to all issues arising from this
14 case.

15 PRESIDING JUDGE SCHMITT: That is in so far sustained, as we expect that this line of
16 questioning comes quickly to an end now, Mr Vanderpuye.

17 MR VANDERPUYE: On 7 March 2016, the Kilolo Defence sent the parties an email, which
18 says "The Kilolo Defence would like to inform that Witness D21-0009 has been formally
19 notified that he was added to the list of experts of the Court last Friday.

20 PRESIDING JUDGE SCHMITT: Yes.

21 MR VANDERPUYE: Mr Powles introduced this witness as an expert in this case. That's
22 not something I'm -- that's not something I'm taking issue with. That's something that the
23 record clearly establishes. For him to get up and say he's not an expert for the purposes of
24 the questions that the Prosecution wants to ask because they're hypothetical is unfortunate
25 because he knows very well that the jurisprudence allows precisely for hypotheticals to be put

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1 to expert witnesses. That's the case I just cited, paragraph 9 of the Ntaganda decision.

2 PRESIDING JUDGE SCHMITT: Nevertheless, Mr Vanderpuye, the Chamber would really
3 appreciate if this line of questioning would come to an end quickly, nevertheless. So this
4 was the ruling and the stance as it is, and it would be --

5 MR VANDERPUYE: I'm trying, Mr President.

6 PRESIDING JUDGE SCHMITT: -- very much appreciated if you obliged to it. Thank you
7 very much.

8 MR VANDERPUYE: I'm trying, but I'm being interrupted, as you can see.

9 Q. Would that be helpful or harmful to the VWU to be able to carry out its mandate if the
10 stakeholders are carrying on activities unknown to the VWU in violation of an order for the
11 VWU to discharge a certain function?

12 A. Well, it's obviously harmful for the whole Court, not necessarily on the VWU. And I
13 just repeat that even if a statement or additional materials are handed over to a witness, that
14 wouldn't change anything how the unit deals with the witness. But obviously if the protocol
15 is violated, the Unit would be obliged to report that.

16 Q. If the Unit knows about it?

17 A. Exactly.

18 Q. And would that be the same thing with respect to contact had by a stakeholder inviting
19 the witness or encouraging the witness to lie, for example? If the VWU had information
20 about that type of contact, what would the obligation be on the unit?

21 A. If the witness told the unit that he was asked to lie, then we would seek legal advice as
22 to what is the way, the best way to bring the matter to the attention of the Chamber, whether
23 we would ask -- I'm just now thinking aloud. Let me pause for a moment.

24 No, I believe that if a witness came to the unit and said that he was asked to lie, we
25 would record it, and we would report that to the relevant Chamber.

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1 Q. Why?

2 A. In the interest of good administration of justice.

3 Q. All right. Thank you very much, Mr Väätäinen. I appreciate you putting up with this
4 and your attention.

5 MR VANDERPUYE: Mr President, I appreciate your indulgence. That concludes my
6 cross-examination.

7 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Vanderpuye. The Defence has,
8 of course, the right to re-examine.

9 Mr Powles, you have the floor. You have indicated you want to question the
10 witness.

11 MR POWLES: Yes. Thank you very much, Mr President, your Honours.

12 QUESTIONED BY MR POWLES:

13 Q. Mr Väätäinen, only I think maybe 25 minutes roughly, and I'll try and keep it shorter, if
14 I can, worth of questions. Thank you very much for your patience so far.

15 A. Not a problem.

16 Q. Mr Väätäinen, you referred during the course of cross-examination to the Berkeley
17 study with regards to witnesses testifying here and their attitude towards testifying here at
18 the ICC. And I think you said, by and large, the impression was positive.

19 A. Uh-huh.

20 Q. Do you know whether the witnesses, questioned and interviewed by the Berkeley unit
21 for the purpose of preparing that study and that report, do you know whether they were
22 mainly interviewing witnesses who were appearing here at the ICC at its seat in The Hague,
23 or did it also include witnesses who were testifying via video link?

24 A. Well, the witnesses were not interviewed by Berkeley staff. Berkeley -- well, the
25 Human Rights Centre of Berkeley and Tulane Universities, they developed a questionnaire

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1 and a protocol that was then administered by the VWU staff. So the questionnaire was filled
2 or went through together with the support assistance before the witness testified, after, and a
3 few months after they returned back home.

4 And it should have been administered to all witnesses regardless whether they testify
5 here or at the location of video links.

6 I don't know if that was applied a hundred percent, but I'm sure that would be
7 evident from the report.

8 Q. And I suppose one could look at the cases that are ongoing at that time and see whether
9 the majority of witnesses -- in fact, the vast majority of witnesses in those cases at that time
10 were testifying here at the seat of The Hague as opposed to testifying by video link?

11 A. Yes, that's correct.

12 Q. You referred during the course of your cross-examination to the unified protocol on the
13 practices used to prepare and familiarise witnesses with giving evidence for trial. I think it's
14 at tab 13 of the Prosecution's bundle. The reference is ICC-01/05-01/08-972-Anx 2510-2010. I
15 don't know if that's in front of you.

16 A. It's not yet in front of me.

17 Q. All right. Well, I can refer -- I can read out the relevant section, and it's at page 21.

18 A. It would be helpful if I could see that as well.

19 Q. Yes.

20 A. Yes, I see it now.

21 Q. If we could go to page 21 of that report at paragraph 89. Yes, it's a very short sentence
22 at paragraph 89. "The VWU provides the witness with the statement as provided by the
23 entity calling the witness to enable the witness to refresh his or her memory."

24 Now, to be clear, the VWU doesn't discuss issues arising from that.

25 I see my learned friend standing.

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1 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

2 MR VANDERPUYE: I'm standing because it's an obviously leading question.

3 Now, I understand he's an expert, but to the extent that he's still on direct, albeit
4 redirect, he shouldn't be allowed to lead the witness, Mr President.

5 PRESIDING JUDGE SCHMITT: That is overruled. We have a very intelligent witness here
6 who can -- who is not prone to suggestive questions, I would put it this way. So please
7 continue.

8 MR POWLES: I can put it another way.

9 Q. Would the VWU discuss issues over and above providing the documents to the witness?
10 For example, would they comment on issues in the case, put the theory of the case to the
11 witness or put contradictory evidence from the case to the witness for comment?

12 A. Absolutely not. That would be -- if somebody did that, then the person would be in
13 violation of the VWU's expected standard of conduct.

14 Q. As far as you are aware -- prior to handover to the VWU, as far as you are aware, is
15 there any prohibition on the calling party during the course of its investigation putting such
16 matters to a witness for comment?

17 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

18 MR VANDERPUYE: Mr President, that does not arise from the cross-examination? That's
19 a matter that was broached by my learned colleague on his direct examination, and it's
20 inappropriate for redirect examination.

21 PRESIDING JUDGE SCHMITT: Overruled.

22 Please answer the question.

23 THE WITNESS: Could you please repeat the question?

24 MR POWLES:

25 Q. Yes. As far as you are aware, prior to handover is there any prohibition on the calling

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1 party during the course of an investigation putting such matters such as the theory of the case
2 or a contradictory piece of evidence from the case for comment to the witness?

3 A. To the best of my knowledge, no.

4 Q. You were asked about the practice of proofing, particularly at other tribunals. Could
5 you please provide details of the purpose of such proofing?

6 A. Well, the proofing would be to refresh the memory of the witness, to go through the
7 statement and maybe discuss issues that come out of the evidence. But I have to say I'm not
8 an expert on what takes place in those proofing sessions, so I'm sort of an outside observer in
9 that regard.

10 Q. Would you agree that the purpose of such proofing will be to re-engage the witness
11 with the facts underlying their testimony, aiding the process of human recollection to better
12 enable the witness to tell their story accurately on the stand, to assist in ensuring the witness's
13 testimony is structured?

14 PRESIDING JUDGE SCHMITT: Mr Vanderpuye is again standing, so we have --

15 MR POWLES: I'm sorry.

16 PRESIDING JUDGE SCHMITT: I assume you have an objection, Mr Vanderpuye.

17 MR VANDERPUYE: You assume correctly. And redirect is not an opportunity to conduct
18 a direct again is the nature of the objection, and he went over this already.

19 PRESIDING JUDGE SCHMITT: Yes. I think you should move on. This was, indeed, the
20 issue on direct, and I recall it correctly, yes. So please move on, Mr Powles.

21 MR POWLES: I don't mean to test Mr President's patience and your Honours patience, but
22 to some extent it does arise out of my learned friend's questioning with regards to proofing,
23 but I take your Honour's ruling.

24 PRESIDING JUDGE SCHMITT: But this was -- I think you would agree with me that this
25 question was --

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1 MR POWLES: Absolutely.

2 PRESIDING JUDGE SCHMITT: -- really very extensive, very large, and it put everything in
3 what you wanted to hear from the witness. I think you would agree with me on that one.

4 MR POWLES: I would agree.

5 PRESIDING JUDGE SCHMITT: Okay.

6 MR POWLES: I can confess it came from a Prosecution's application for leave to appeal.

7 But we'll perhaps leave that for another day.

8 PRESIDING JUDGE SCHMITT: Please continue, Mr Powles.

9 MR POWLES: Yes, of course.

10 Q. Mr Väättäinen, who is the focal point for a witness before and after their testimony?

11 A. Do you mean testimony or handover?

12 Q. Handover.

13 A. Well, it is a person from the investigations or the trial team assigned by the trial team or
14 investigations.

15 Q. Is there any, as far as you're aware, is there any restriction on that party giving the
16 witness a phone to be in contact with them either before or after their testimony?

17 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

18 MR VANDERPUYE: A, it's leading. B, it never arose during the course of the
19 cross-examination. There is no mention of any telephone or anything like that.

20 PRESIDING JUDGE SCHMITT: But it is in the interest of establishing the truth and
21 determining the truth. And perhaps it's time to share some thoughts on that, the Presiding
22 Judge with the parties. Of course in the common law system it seems to be that on redirect
23 only issues should be questioned that arose out of the cross-examination. But since we have
24 in Rule 140(2) the right of the Defence with no restrictions to question the witness last, there is
25 some deference there, some discretion in that. So when it is in the interests of justice, we can

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1 deviate from that.

2 And it's for the Chamber to decide on that, and the Chamber, and Presiding Judge on
3 behalf of the Chamber decides this matter in a way that the question is allowed.

4 MR VANDERPUYE: Thank you, Mr President. I respect that. I would note that the issue
5 of phones was brought up on direct just so that you're aware of that.

6 PRESIDING JUDGE SCHMITT: Yes. But again, the other objection was that this is leading.
7 Of course, it is sort of leading, but as I said, we don't have a witness which I would estimate
8 can be unduly influenced by the wording of this question.

9 And the witness, if he recalls the question, then he can answer it.

10 THE WITNESS: Could you please repeat the question?

11 MR POWLES:

12 Q. Absolutely, Mr Väättäin. Luckily I have them written down so I can just about
13 re-read it rather than recollect it. Is there any restriction on the calling party giving a witness
14 a phone to be in contact with that witness either before or after their testimony?

15 A. To the best of my knowledge, no.

16 Q. Now, you were asked this afternoon by my learned friend what the VWU would do if it
17 was aware that one party, for example, was not adhering to a protocol and whether the VWU
18 would bring it to the attention of the Trial Chamber as soon as possible. Do you remember
19 that?

20 A. Mm-hmm, yes, I do.

21 Q. If one party were aware of issues regarding a protocol, an adherence by the other party,
22 generally speaking, do you think it would be important for that party to raise that issue as
23 soon as possible with the Judges and the Trial Chamber to ensure the integrity of the
24 proceedings?

25 A. Objectively speaking, yes. That would be of course the case. But, of course, the

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1 parties might have different interests in that regard not to report certain things.

2 Q. You were asked a question about fixing the level of an allowance paid to witnesses to
3 ensure that it wouldn't serve as an inducement to testify. Would you agree that it's an
4 important principle to compensate witnesses so that they're not out of pocket for the purposes
5 of coming to testify and/or meeting with a party for the purposes of giving a statement during
6 the course of an investigation?

7 A. Absolutely. In my mind, the witnesses should not be losing out as a consequence of
8 their decision to cooperate with an investigation by any party or by the Court, and reasonable
9 expenses obviously should be covered.

10 Q. And reasonable expenses, of course, would include matters such as loss of earnings,
11 travel expense, accommodation, food, the cost of visas, et cetera; that wouldn't constitute an
12 inducement?

13 A. Loss of earnings --

14 PRESIDING JUDGE SCHMITT: Now, Mr Vanderpuye, please.

15 MR VANDERPUYE: Okay. That does call for an ultimate conclusion and a legal one at
16 that.

17 PRESIDING JUDGE SCHMITT: That's true. That is sustained. Yes.

18 MR POWLES:

19 Q. Mr Väättäinen, it's fair to say that the VWU in your experience doesn't know about the
20 payments and the level of payments by parties, be it the Defence or the Office of the
21 Prosecutor, to witnesses that they're calling to testify?

22 A. No, it doesn't, unless the parties, you know, agree to share what they paid to the
23 witnesses.

24 Q. Are you aware of any issues regarding the level of payments made by the Prosecution to
25 Prosecution witnesses during the course of their investigations leading up to their testimony

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1 at the ICC?

2 A. No, I don't have any factual information on that.

3 Q. You were asked a series of questions by my learned friend regarding whether it would
4 be helpful or harmful for the mission of the VWU to make certain payments. So what I
5 wanted to put to you was perhaps the other side of the coin and whether it would be
6 acceptable, helpful or harmful to the mission of the VWU for a party to pay for a witness to
7 start a business, for example?

8 PRESIDING JUDGE SCHMITT: Again, Mr Vanderpuye, it's going to be a long afternoon, I
9 assume, but of course you have the floor.

10 MR VANDERPUYE: Thank you very much, Mr President. If my learned friend has a
11 good-faith basis to put the question, then I don't have an objection. If he doesn't, I would
12 suggest that he come forward with it, because I suspect his information is wrong.

13 PRESIDING JUDGE SCHMITT: So you would -- Mr Djunga first.

14 MR DJUNGA: (Interpretation) Thank you, Mr President. One thing first, we heard the
15 Prosecution accusing us of wanting to deliberately interrupt proceedings. I'd like to draw
16 the attention of the Prosecution that we should be able to respect one another with a great
17 deal of courtesy. There is no bad faith in the questions being put forth. It's a general
18 question. And during redirect I think we can allow for the discussion to continue and to go
19 to an end. And this practice of interrupting in bad faith is something that we find very
20 difficult as well.

21 PRESIDING JUDGE SCHMITT: So I think it is not helpful that the parties accuse, to put it
22 this way, each other of acting in bad faith. I would not subscribe to that point of view, also
23 not in that matter.

24 It is true that the Prosecution put propositions to the witness, and this is similar what
25 Mr Powles is now doing. If there is no foundation, then -- if there is no foundation,

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1 then the three professional judges will be able to put this into perspective. So the
2 question is allowed. And we know that it is a hypothetical question at the moment.
3 We all know that.

4 MR POWLES: Absolutely, and it's put on that basis very much.

5 PRESIDING JUDGE SCHMITT: Absolutely.

6 MR POWLES: Very much it is put on that basis.

7 PRESIDING JUDGE SCHMITT: Now we continue. And I have a slight hope that we can
8 conclude this afternoon session without -- not further interruptions at all, but without
9 interrupting each other every two minutes or three minutes. So please, I think you should
10 repeat the question and the witness can answer.

11 MR POWLES: I'm very grateful, Mr President.

12 Q. Mr Väättäinen, as a hypothetical, would it be helpful or harmful to the mission of the
13 VWU for a party to give a witness money to start a business?

14 A. Well, it depends on many factors. What is the relationship of the witness with the unit?
15 Is it expected that this witness, for example, would -- could potentially be a participant in the
16 witness protection programme?

17 Let me make some assumptions. Let's assume that you have a witness who would
18 qualify for the protection programme, but as a result of getting funding from
19 somewhere would be able to relocate himself or herself to another location to set up a
20 business. Me, as the chief of the VWU, I would think that this is great, it would be
21 one problem less for the unit to handle.

22 However, there is an Appeals Chamber ruling on preventive relocations that would
23 prevent something like that taking place expressly by the OTP. I am not certain
24 whether it covers also the Defence.

25 But let's say that if the funding came from a source that was not related to Defence or

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1 the parties in the proceedings, then I would -- it would be a positive thing for the unit.

2 Q. Putting another hypothetical then, paying for the schooling of a witness's child for some
3 three years, if that had been promised to a witness by a party?

4 A. Well, one, one second. It depends on the relation of that witness and the family with
5 the VWU. If there is no relation such as that the person would be coming to the protection
6 programme or would be subject to some support measures, then there would be no, no
7 impact to the functioning of the unit or to the unit itself. Would --

8 Q. I'm sorry.

9 A. Please go on.

10 Q. No. I mean for witnesses outside of the protection programme then, if a party had
11 made such promise?

12 A. That wouldn't have in my mind, strictly speaking, that wouldn't have anything to do
13 with the VWU if a party or an external funder would agree to fund, for example, schooling,
14 that wouldn't have anything to do with the unit. Other -- the Chamber might have different
15 considerations, because I'm talking only purely and strictly from the point of view of the
16 Victims and Witnesses unit.

17 Q. Yes. One more then. Buying a truck or a lorry for the purposes of commercial
18 activities?

19 A. Once again I go back to the relation what the witness has with the VWU. If it was a
20 person who could qualify for the protection programme, and buying a lorry for this person to
21 move to a different location and get to a safe location and be self-sustained would be one
22 problem less for the Victims and Witnesses Unit.

23 Now, the VWU would never provide funding for that kind of a purpose for witnesses
24 just to assist them to be self-sustained in the location where they already are living.

25 There might be some scope for witnesses who would be relocated to a different

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1 location whereby then they need assistance to get self-sustained as quickly as
2 possible.

3 Q. And again, what about furnishing a house, providing furniture for a house?

4 A. That doesn't have any impact on the Victims and Witnesses Unit.

5 Q. The repairs to a house, putting a fence around a house?

6 A. It wouldn't have any impact on the Victims and Witnesses Unit. Putting a fence
7 around a house is a little bit different matter. If the witness had some concerns, and if the
8 VWU in the VWU's assessment that was something that was necessary, then of course that
9 kind of funding should come from the Victims and Witnesses Unit.
10 If an external funder, as an NGO or a State would do something like that, obviously
11 the VWU wouldn't have any objections to that, because it increases at least the sense
12 of security of the witness in his residence.

13 Q. And would it be permitted for a calling party to make such payments and incur such
14 costs on behalf of a witness or make such promises to a witness?

15 A. To the best of my knowledge, there is nothing specifically prohibiting that taking place
16 with the exception of the limitations imposed on the OTP. Whether the Defence has similar
17 limitations imposed, I'm not aware if one of the Chambers would have issued that kind of
18 limitation.

19 Q. Before the break, you were asked a lot of questions, Mr Väättäinen, about witness
20 childcare issues, and you were taken to Article 14 of the ICTY direct for allowance for
21 witnesses and expert witnesses. I wonder if we could have that up. It's in the Defence
22 bundle at tab 48, so you can refer to that.

23 A. Article?

24 Q. 14 relating to childcare.

25 A. Yes, I have it here now.

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1 Q. Which my learned friend took you through in some detail. I wonder if you might just
2 have a look at Article 15 relating to accompanying dependents and support persons of a
3 witness, because if one looks at subparagraph B of Article 15, it states, "Dependents and
4 support persons who are authorised by the Registrar to accompany witnesses to and from the
5 location where they testify are entitled to provision of extraordinary losses, travel,
6 accommodation, meals, incidental allowance, daily subsistence allowance, and childcare
7 under," and it lists all the various articles respectively.

8 And in your experience, what one can see quite clearly from Article 15, there is no
9 need to link covering the expenses of a dependent of a witness who is travelling to
10 testify with their testimony in the same way that there is under Article 14, is there?

11 A. Yes, but if this is really the case in the text, then it's poorly formulated, because the unit
12 would be providing expenses also for dependents as for persons only for the purpose of
13 facilitating the testimony of the witness.

14 Q. Yes, of course, I understand that. If you were given a hypothetical of a witness giving
15 evidence in country Y where the dependent or a minor child in country X therefore separated,
16 if the witness testifying in country X had concerns for their minor dependent because of any
17 issues arising in the country where they were, would it not be unreasonable for the party to
18 ask for that minor to be able to join them on behalf of the witness?

19 PRESIDING JUDGE SCHMITT: Before the witness answers, Mr Vanderpuye.

20 MR VANDERPUYE: My colleague raised an objection with the Chamber on the basis that
21 it -- that the question I was putting was discussed in evidence before the Chamber. He's now
22 doing exactly the same thing, adding a few facts, too, to make it clearer. So on the basis that
23 his objection was sustained, I'm making mine.

24 PRESIDING JUDGE SCHMITT: And since we have equality of arms, of course, there is some
25 merit in it what you are saying. And perhaps you word it in the abstract and I think -- I

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1 assume that you are at the verge of concluding your --

2 MR POWLES: Absolutely, Mr President. Thank you very much. I think this is the last
3 two or three questions.

4 Q. Mr Väättäinen, in the abstract, hypothetically, if a witness was testifying in country X
5 and had concerns about their dependent minor in country Y, can you see there being any
6 problem or issue with the calling party asking the VWU for funding to ask for that dependent
7 to join the witness in the country where they are testifying?

8 A. Certainly there is no issue in asking for assistance, but the unit would make a decision
9 on what to do based on their own evaluation of the situation, whether it merited, for example,
10 bringing the child over to the country X.

11 Q. Absolutely. And of course, in some circumstances the VWU would say yes and in
12 some circumstances no?

13 A. Exactly, depending on the merits of the case.

14 Q. And you, having worked in an administration for over 23 years, would you agree that
15 saying no is often a very easy starting point for an administration?

16 A. Yes, I do.

17 Q. And in circumstances where the VWU were to say no, leaving aside any issue of
18 handover and contact with the witness during handover, in principle, is there any prohibition
19 on the calling party funding such issues and matters?

20 A. Could you please repeat that?

21 Q. Yes. Leaving aside any issues of -- assuming the VWU says no to such a request,
22 leaving aside contact of the calling party with the witness during the course -- after handover,
23 assuming it was outside of that period, is in principle there any prohibition on the calling
24 party funding such a request themselves?

25 A. To the best of my knowledge, there is no prohibition.

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1 Q. Yes. Thank you very much, Mr Väätäinen, for your patience and kindly answering all
2 of our questions.

3 And thank you very much, Mr President, your Honours, for your indulgence this
4 afternoon.

5 PRESIDING JUDGE SCHMITT: Thank you, Mr Powles.

6 Any other Defence team's questions? I don't see that.

7 So then Mr Witness, Mr Väätäinen, this concludes your testimony. As you could
8 observe this afternoon, such a testimony and such an examination can turn an
9 animated course, to put it this way. Thank you for answering the questions, and the
10 Chamber wishes you a safe return to your home.

11 (The witness is excused)

12 PRESIDING JUDGE SCHMITT: And we will reconvene tomorrow at 9 o'clock, I remind you.
13 9 o'clock. Please don't forget it.

14 THE COURT USHER: All rise.

15 (The hearing ends in open session at 3.58 p.m.)

16 RECLASSIFICATION REPORT

17 Pursuant to Trial Chamber VII's instructions, ICC-01/05-01/13-1209, dated
18 2 September 2015, this lesser redacted public version of the transcript is filed in the
19 record of the case.