

Trial Hearing  
Witness: CAR-OTP-P-0267

(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  
6 ICC-01/05-01/13  
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and  
8 Judge Raul Pangalangan  
9 Trial Hearing  
10 Tuesday, 3 November 2015  
11 (The hearing starts in open session at 9.32 a.m.)  
12 THE COURT USHER: All rise.  
13 The International Criminal Court is now in session.  
14 PRESIDING JUDGE SCHMITT: Good morning, everyone.  
15 Good morning, Mr Smetana.  
16 WITNESS: CAR-OTP-P-0267 (On former oath)  
17 THE WITNESS: Good morning.  
18 PRESIDING JUDGE SCHMITT: Court officer, could you please call the case.  
19 THE COURT OFFICER: Good morning. Yes, Mr President. The Situation in the  
20 Central African Republic in the case of The Prosecutor versus Jean-Pierre Bemba  
21 Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala  
22 Wandu and Narcisse Arido, in the case reference ICC-01/05-01/13.  
23 And for the record, we are in open session.  
24 PRESIDING JUDGE SCHMITT: Thank you very much.  
25 Now for the appearances, please, we start with the Prosecution.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 MR VANDERPUYE: Good morning, Mr President. We are in the same  
2 configuration as yesterday.

3 PRESIDING JUDGE SCHMITT: Now for the Defence, please. Mr Gosnell.

4 MR GOSNELL: Thank you, Mr President. Good morning. Appearances for  
5 Mr Mangenda are the same as yesterday.

6 PRESIDING JUDGE SCHMITT: Mr Powles.

7 MR POWLES: Good morning, Mr President, your Honours.

8 I again appear on behalf of Mr Kilolo, assisted this morning by Ms Lueka Grogga and  
9 Ms Petra Untersulzner.

10 PRESIDING JUDGE SCHMITT: Mr Taku.

11 MR TAKU: May it please your Honours, Mr Arido's Defence team remains  
12 unchanged.

13 PRESIDING JUDGE SCHMITT: Mr Kilenda, I see additional faces, to put it this way.  
14 Please, Mr Kilenda.

15 MR KILENDA: (Interpretation) Good morning, Mr President. Good morning,  
16 your Honours.

17 Indeed, our team is a little larger this morning. There is Mr Bokolombe, who has  
18 joined us; and Mademoiselle Adriana-Marie Manolescu has returned because she was  
19 not in our midst yesterday; and counsel has remained the same.

20 PRESIDING JUDGE SCHMITT: And we welcome especially Mr Bokolombe, of  
21 course, who is new in the courtroom.  
22 Mrs Taylor.

23 MS TAYLOR: Good morning, Mr President, your Honours.

24 The Defence for Mr Bemba is the same as yesterday. Thank you.

25 PRESIDING JUDGE SCHMITT: Thank you very much.

1 A short procedural issue before we continue with the testimony examination of Mr  
2 Smetana. The Prosecution has indicated that it would be possible to have Witness  
3 242 on Thursday, I understand it?

4 MR VANDERPUYE: Yes, Mr President. We are working -- I will say that it's a bit  
5 tentative yet. I can't tell you that it's conclusive, but we are working on that, and we  
6 understand that it is a possibility.

7 PRESIDING JUDGE SCHMITT: We will of course not know the course of today, of  
8 tomorrow and of Thursday. We have Witness 214, and there are procedural issues  
9 to solve, so we don't know if at all it would be possible to hear 242 on Thursday.  
10 This is sort of a prospect and a possibility, but we don't know it yet.

11 But to have this option, to put it this way, it would be necessary, if I understand the  
12 Prosecution, from according to our familiarisation process, that we shorten the  
13 deadline for any objections against giving the prior statements to this witness from  
14 three days to two days.

15 And I wanted to inquire of the Defence if there is -- if you would waive your right to  
16 have three days. And it's very -- I don't want to influence you and to push you, but  
17 it seems to me a very, very short, short witness, and also the statements we are talking  
18 about are very short. But I don't want to influence you. Any comments by the  
19 Defence in that respect?

20 MR POWLES: I'm sorry, Mr President, would you like an answer right now or is it  
21 something we'd be able to get back to you about after the break?

22 PRESIDING JUDGE SCHMITT: We can go back to that. But I think since this  
23 would effectively, if we have to reduce it from three to two days, this would really  
24 effectively reduce it to today. So we would like to hear from you perhaps after the  
25 coffee break, is that possible?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 MR POWLES: Yes, certainly.

2 PRESIDING JUDGE SCHMITT: As I said, no pushing in that respect. It's just I'm  
3 just inquiring, not more at the moment.

4 MR POWLES: Thank you, Mr President.

5 MS TAYLOR: Thank you, Mr President. The Defence for Mr Bemba has no  
6 objection. But we do want to foreshadow an issue concerning P-214 which might  
7 impact upon the scheduling of the next witness, and that is we got a significant  
8 amount of disclosure concerning P-214, and that as a result and due to the need to  
9 obtain instructions, it might be necessary to request that the cross-examination for  
10 that witness starts tomorrow rather than today in case that's at all relevant to this  
11 specific issue as well. Thank you.

12 PRESIDING JUDGE SCHMITT: Thank you very much. We will see.

13 I think now we can continue with the examination of Mr Smetana. And it's the turn of  
14 the Defence, and I see Mr Powles rising.

15 MR POWLES: Thank you very much, Mr President. I think I'm going first, and I  
16 think the order will be if I'm not mistaken myself and then Mr Taku on behalf of Mr  
17 Arido, and then Ms Taylor on behalf of Mr Bemba, and then Mr Gosnell on behalf of  
18 Mr Mangenda, and then if there are any questions on behalf of Mr Babala at the end.  
19 I think that's the order.

20 QUESTIONED BY MR POWLES:

21 Q. Good morning, Mr Smetana.

22 A. Good morning.

23 Q. My name is Steven Powles and I'm going to ask you some questions, if I may,  
24 on behalf of my client, Mr Kilolo.

25 A. Yes.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 Q. It's right, isn't it, that I think you said yesterday you keep records of transfers for  
2 at least five years, sometimes longer?

3 A. That's correct.

4 Q. Are there limitations, and presumably there are, on who you are prepared to  
5 provide and share that information with? I mean, presumably you don't just give  
6 them to anyone.

7 A. Of course, information is limited to each country's jurisdiction. So whenever,  
8 for example, in Austria we receive a court order or an order from the Prosecutor, we  
9 can release this information.

10 Q. So just to understand then, you're regulated by Austrian law?

11 A. That's correct, yes.

12 Q. Are you also regulated by the countries where the transactions took place, either  
13 the sending State or the receiving State or both?

14 A. This is actually both. As I said, it's up to each country's jurisdiction where,  
15 when we can release information.

16 Q. So if you had, if you had a transaction, say, coming from another European  
17 country other than Austria, say Belgium to say, say, Cameroon, before you could  
18 release information, would you need to consider the legal implications in relation to  
19 Austria, Belgium and Cameroon or is it just in relation to Austria?

20 A. It's not only related to Austria. As soon as we get the law enforcement  
21 assistance request from other countries, our Prosecutor can decide to release this  
22 information.

23 Q. I see. And you said "Prosecutor." Is it something that's dependent on what  
24 the Prosecutor decides, or is there need for intervention by an Austrian judge?

25 A. Usually it's what I believe, it's the Prosecutor's decision, and I'm sure he spoke

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 to the judge. I'm not the Prosecutor, and I'm not the judge; but we have to follow the  
2 instructions that we receive from Austrian court orders or letters from the Prosecutor.

3 Q. So you respond to both letters from judicial letters and from the Prosecutor as  
4 well?

5 A. Exactly.

6 Q. So you wouldn't necessarily need to see something from a judge or would you?

7 A. Not necessarily. If the order comes from the Court and it's signed by the  
8 Prosecutor, then we can release this information.

9 Q. I see. Thank you very much for that.

10 In relation to the material that you released for these proceedings, what kind of  
11 investigation did you understand or did Western Union understand that the material  
12 was being released for?

13 When I say that, did you understand that the material was being released for an  
14 investigation by the ICC in relation to the core crimes, and by those I mean genocide,  
15 crimes against humanity, war crimes, or were you told and did you appreciate that  
16 the material was being used for an Article 70 investigation? And do you appreciate  
17 the difference?

18 A. I was fully aware as the Austrian Prosecutor has also added partly a letter from  
19 the International Criminal Court to explain to us what about the case.

20 Q. So what did you understand the material was being -- you, what you were  
21 being asked to provide the information for?

22 A. I could read in one of those letters that it's all about African war crimes, crimes  
23 against humanity and different things so --

24 Q. And we can get the dates of those requests from the correspondence that you  
25 provided to us on this?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 A. Yes.

2 Q. Thank you.

3 Now, my next question is: Was it apparent to you that -- you were given a list of  
4 names of people, targets to look to see whether there had been transactions either to  
5 or from; that's correct, isn't it?

6 A. That's correct.

7 Q. Now, was it apparent to you that some of the people who were listed in those  
8 list of names, was it apparent to you that they were Defence witnesses in proceedings  
9 before the International Criminal Court?

10 A. I just worked on the list I got. I don't know which people were involved in  
11 what procedures. Of course, on the names that the Austrian Prosecutor provided me,  
12 I knew a few names, and the other names I had just run in the system to check if  
13 transactions are available.

14 Q. I'm looking, it's not dated, it's one of the documents I think that was provided  
15 yesterday, where there is a reference to Defence witnesses. The reference in German,  
16 I won't even dream of trying to read that, but the reference is to suspicious payments  
17 to Defence witnesses.

18 So, again, was it appreciated that some of the people on that list were Defence  
19 witnesses?

20 A. To be honest, I didn't think about this.

21 Q. I understand.

22 A. Sorry.

23 Q. I understand.

24 THE INTERPRETER: Message from the English booth: Could counsel please be  
25 requested to move his microphone closer, please? Thank you.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 MR POWLES:

2 Q. The next question, and it may be the same answer to the one you just gave, was  
3 it apparent to you that some of the people on the list were counsel, Defence counsel  
4 appearing in proceedings before the International Criminal Court?

5 A. The only thing we do, I mean, I read all these documents and I provide the  
6 Prosecutor or the judges with the output of this investigation.

7 Q. I see. So does it follow from that that you didn't consider, nor would you,  
8 whether anyone on that list was subject to any immunities, either privilege  
9 immunities or diplomatic immunities or any --

10 A. Not at all.

11 Q. All right. Moving on then, unlike a bank transfer, I mean, sometimes when  
12 you do a transfer, an electronic transfer or you go into a bank and make a transfer,  
13 sometimes you're given an opportunity to give a reference and say what the money is  
14 for. For example, when you are paying your rent, you can say "This is the rent for  
15 October," or sometimes when I receive a birthday present from my grandmother,  
16 she'll say, "Birthday present to grandson" or whatever, and that comes up on your  
17 statement.

18 In a Western Union transfer, is there scope in the transaction to say what the money is  
19 being used for?

20 A. This is also up to different jurisdictions, but usually you don't need to say what  
21 the money is for, except it's a very high amount.

22 Q. Right, sir.

23 A. Then we would like to know more about it and record this.

24 Q. Certainly in the Excel schedules that you've provided, there is no column listing  
25 what the money is being used for, no reference to what the money is being used for?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 A. Not at all.

2 Q. No. This is more for the Judges' benefit, but I think a bundle should have been  
3 handed out this morning. If I may just refer you to an email at tab 1, which is an  
4 email from CSS to the Defence team, dated 15 July 2015. The CAR number is  
5 CAR-D21-0003-0162.

6 In short, it's an email from CSS in July of 2013. I won't read it all out. Your  
7 Honours can read it. It's to -- it's addressed from CSS, (Redacted), copied to  
8 Mr Mangenda and to Mr Kilolo. The essential parts that we would submit are the  
9 second and fourth paragraph, essentially indicating that CSS doesn't have money at  
10 its disposal to cover the cost of a mission; and the fourth paragraph, as per previous  
11 messages, CSS is essentially asking the Defence to cover the cost of or the expenses of  
12 its own mission.

13 Bearing that in mind, I'll move on to the next question, if I may, Mr Smetana, and  
14 that's in relation to various transactions. And if I could have up please at  
15 CAR-OTP-0070-0007 and then tab 32 of that document, please. In your Honours'  
16 bundle that should be at tab 5 of the Prosecution's bundle. I haven't seen it on the  
17 screen yet. Thank you very much.

18 So it's tab 32, thank you, and then if we could go to row 85.

19 PRESIDING JUDGE SCHMITT: Mr Powles, I think we have still a little bit of  
20 problem that interpreters have difficulties to hear you. I don't know if your  
21 microphone can be extended or you have to speak a little bit louder.

22 MR POWLES: I'll speak louder. I rarely have that problem, but I'll make sure I  
23 speak loud enough this morning.

24 Q. Yes, so it's tab 32, to begin with row 85. And this is a transaction it seems on 1  
25 February 2002, \$685 from someone called Nginamau to Mr Kilolo, if we go across all

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 the columns. I think in tab 32 all the transactions will either be to or from Aimé  
2 Kilolo Musamba. And row 85 is 1 February, a payment of \$685 from Mr Nginamau  
3 to Mr Kilolo?

4 A. I believe the date might be the other way around, like in American-wise.

5 Q. Oh, I see, so, what, it would be the 12th of --

6 A. January.

7 Q. 2nd of January rather than the 1st of February. But nonetheless, it's the  
8 beginning of 2012.

9 A. I just have to correct myself. I can see the other dates. It's the other way  
10 around. I don't know how it was set up.

11 Q. Just so there is no mystery here, what I want to do is take you through one, two,  
12 three, four, five transactions of payments being made to Mr Kilolo during the first few  
13 months of 2002.

14 And then if I may take your Honours to some of the expenses that were being  
15 incurred by the Defence of Mr Bemba at that time just so your Honour gets a flavour.  
16 Obviously there are many, many transactions that Mr Smetana has taken, provided  
17 details of, and it's really just to put it in a framework so that your Honours can see  
18 money coming in and then to give you a flavour of where the money was going and  
19 how the money was being paid in.

20 So that's the first transaction. The second one, row 119, a slightly larger one, we go  
21 down to row 119, it should be a payment on 13 March 2012, \$3,570, again, for Mr  
22 Nginamau to Mr Kilolo; is that fair to say?

23 A. Row 119 I can see now.

24 Q. It should be on the screen actually. I think it's highlighted.

25 A. Yeah, I can see it.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 Q. So do you accept that?

2 A. 3570.

3 PRESIDING JUDGE SCHMITT: Mr Powles, perhaps an advice so we don't have to  
4 redact anything, if it comes to names, perhaps just speak in the abstract.

5 MR POWLES: Yes, of course, yes. My mistake, yeah. Certainly the next batch of  
6 names I'm going to go through certainly are more sensitive, which we put them onto  
7 a document. Also it may speed up this process of going through the actual  
8 transactions.

9 Q. It may be easier, Mr Smetana, if you could look on the screen. I think it's  
10 highlighted, that particular transaction is highlighted on the screen, transfer. It's row  
11 119, we see the amount there 3570, and then Robert, I won't say the name, it begins  
12 with an R, second name begins with an N.

13 Move across row F, of course, you'll see the date, 13 March 2012. And if you go  
14 further along, you'll see it's a payment to Mr Kilolo Musamba.

15 A. I can see in the row, but could somebody scroll to the right?

16 Q. Yes, of course, of course.

17 PRESIDING JUDGE SCHMITT: Again, Mr Powles, I get signs from the booth that  
18 you are still not very good to hear.

19 THE INTERPRETER: Message from the English booth: Your Honour, the sound  
20 quality this morning is not wonderful. We're suffering from that, I must say. There  
21 is a lot of background noise and the speaker is very distant. I do not believe it's the  
22 fault of his microphone. We've asked the courtroom officer.

23 PRESIDING JUDGE SCHMITT: Mr Powles, it's obviously not your fault. There is a  
24 little bit of a problem today. So perhaps you try to speak as loud as possible --

25 MR POWLES: Yes.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: -- so that the interpreters can hear you. It's

2 obviously, we have been informed, it's not your fault. So we try to --

3 MR POWLES: I've switched to another microphone to see if that changes.

4 PRESIDING JUDGE SCHMITT: Yes, we hope that this will work.

5 MR POWLES: Is that better? No? I'm told it's not better. I'll try and speak  
6 louder.

7 Q. Is that fair to say, can you now see that transaction, Mr Smetana, row 119?

8 A. Yes.

9 Q. And then if we go to row 126, go back across so we can see row A, 126 should  
10 be 9 February, Mr Fidèle Babala, the sum of \$4,520. Again if you scroll to the right  
11 you'll see it's to Mr Kilolo Musamba; it's fair to say?

12 A. Okay.

13 Q. If we go down three to row 129, and then go back over to row A, please, a  
14 slightly larger sum again from -- I won't say the name -- a sum of \$5,000 on 1  
15 February 2012, again, if we scroll to the right, a payment to Mr Kilolo Musamba; is  
16 that fair to say?

17 A. Okay.

18 Q. And then the row immediately below that, another payment of \$5,000. If we  
19 go to row 130, this time from Mr Babala on 3 February 2012 from Mr Babala and if  
20 we go to the right again to Mr Kilolo.

21 A. Okay.

22 Q. And those are five payments in February, March 2012. I may have maths  
23 wrong, but by my reckoning that amounts to approximately \$18,775 for those five  
24 transfers to Mr Kilolo from those two individuals.

25 Then if I may, again, this is more for your Honours than for the witness, but to look at

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 payments being made at around that time on behalf of the Defence for Mr Bemba, just  
2 so your Honours can get an idea of where that money is coming from and then  
3 around the same sort of time where it might be going, if we go first I think to tab 7, an  
4 email from Dr Mettraux referring to legal fees for a Mr Sluiter of some €4,000 for  
5 research and advice. Payment had been made in January 2012.

6 Tab 7, yes, and then the CAR number for that is CAR-D21-0004-0424 at page 0425 for  
7 the record, 0424 and 0425. Another payment or outgoing, tab 4 on the 27th of March,  
8 CAR-D21-0001-0106, 27 March, hotel expenses in CFA. So I won't try and do the  
9 math in terms of the conversion.

10 And then finally tab 3, just for an example, 5 April -- tab 2, my mistake, tab 2, should  
11 be 5 April, yes, Beverly Lodge, a payment of US dollars 11,409.

12 Again, just in terms of the totals, it's not exact, and it does not say that that money  
13 was precisely for these things, but again it's just to show where the money was from  
14 and where it was going.

15 Moving on, your Honours should have and this should speed things up in terms of  
16 having -- instead of having to go through all the various tabs and references in the  
17 records provided by Mr Smetana, what we have done, someone very helpfully on our  
18 team has prepared a summary. It's CAR-D21-0012-0001. And it's a schedule really  
19 of all one would think what the Prosecution would say are the relevant payments to  
20 witnesses in this case, and for that reason I won't read out any of the names. But  
21 your Honours will see it on this document. It should be at the front of the document  
22 that we provided this morning.

23 And just to speed things up, and really it should help everyone identify what the  
24 Prosecution, one would have thought would say are the more relevant transactions in  
25 the mass of material that's been provided through Mr Smetana, but you'll see there,

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 your Honours, four transactions on the first page and then one, two, three, four, five,  
2 six transactions on the second page. They relate to payments to seven witnesses or  
3 people related to them by either Mr Kilolo or people said to be associated with the  
4 Defence. And we'll see the first transaction, 14 June 2012, Mr Kilolo, I won't read the  
5 name, for \$106.14.

6 PRESIDING JUDGE SCHMITT: Mrs Struyven.

7 MS STRUYVEN: Excuse me, Mr President. We're just wondering if there is going  
8 to be a question to the witness or whether counsel is just listing the evidence he wants  
9 to provide in his case?

10 PRESIDING JUDGE SCHMITT: That is true, but nevertheless it's not uninteresting  
11 what Mr Powles presents to us.

12 MR POWLES: It's no criticism of the Prosecution team, but one would have thought  
13 that they --

14 PRESIDING JUDGE SCHMITT: No, no, I do not object, but of course you are soon  
15 going to question the witness again. But as I say, I did not intervene. The objection  
16 was relatively clear that that would come, but I did not intervene because I wanted to  
17 take note of it, and I think the Bench also wants to take note of it.

18 MR POWLES: Your Honour, it may not actually lead to a specific question, but it's  
19 actually more to assist your Honours in terms of the mass of material that's been  
20 prepared through this witness, it's really to take your Honours through those  
21 transactions which are the relevant ones. I can't put them as questions to the witness  
22 in terms of going to the CAR, to the tab, to the actual line number and asking Mr  
23 Smetana to confirm.

24 PRESIDING JUDGE SCHMITT: But I think now you can, you have demonstrated  
25 what you wanted to do, and I think you can now move on with the questioning of the

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 witness.

2 MR POWLES: Yes. Well, it will take a lot more time to take Mr Smetana through  
3 each of these transactions, some eight of them. If they're incorrect, no doubt the  
4 Prosecution can draw your Honours' attention to it in due course. But it's really just  
5 to put Mr Smetana's evidence and the Western Union evidence in context in terms of  
6 these are, one would have thought, the key transactions that the Prosecution would  
7 seek to draw your Honours' attention to and that they are alleged payments from the  
8 Defence to witnesses in the main case or people said to be related to them.  
9 Again, I won't take Mr Smetana through each and every single transaction. It may  
10 take slightly longer than anyone would want, but it is just to highlight what those key  
11 transactions are and what one would have thought Mr Smetana's evidence relates to.  
12 So you have each of the seven key witnesses or those related to them. Your Honours  
13 can see the amounts there and the total amount that we're talking about of relevant  
14 transactions in terms of payments to relevant witnesses. And the total is on the  
15 second page, \$4,194 is the total amount of relevant transactions to witnesses in this  
16 case.

17 Again, I don't seek to put Mr Smetana through the task of going through and  
18 confirming each and every single one of these transactions, but they are there in the  
19 Prosecution schedule, and, again, if they're incorrect, Prosecution can take you to  
20 them in due course.

21 All we would seek to do, Mr President, your Honours, is highlight that sum of \$4,194,  
22 and hopefully this is a useful document for your Honours in terms of highlighting,  
23 you'll be able to find the relevant transactions in the mass of material that has been  
24 prepared and just simply highlight that is a relatively small sum when one considers  
25 the sums that the Prosecution has been paying to some of their witnesses both in this

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 case and in the main case.

2 Thank you. Those are our questions.

3 PRESIDING JUDGE SCHMITT: Who will be the next?

4 Thank you very much, Mr Powles.

5 Mr Taku.

6 QUESTIONED BY MR TAKU:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. I'm counsel for Mr Arido, and I will put a few questions to you, sir, just to  
10 clarify a few, a few matters that have arisen in the course of this case.

11 Court officer, have you put -- please can you put the documents, the few documents  
12 that Arido supplied I hope last night or this morning to the witness, in particular the  
13 entire document CAR-D24-002-1349. That's confidential. And the entire day after  
14 the free translation that we made -- the Court, the Trial Chamber will order an  
15 authentic translation thereafter, but given the time constraints for the purposes of  
16 cross-examination, we did a free translation into English.

17 But since he speaks and understands German, may you put the document in German  
18 before him, CAR-D24-002-1349-Conf.

19 Witness, do you have the document? Can you see the document? Witness, can you  
20 identify that document?

21 A. Yes.

22 Q. Is that the Court order you testified about that you said or the basis of which  
23 you conducted, you provided the Western Union material relating to Mr Arido to the  
24 Prosecutor of the ICC?

25 A. Yes.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 Q. Now, from the free translation I have -- if I am wrong, please correct me -- you  
2 see there order for the information regarding bank accounts and bank transactions  
3 concerning the matter of the International Criminal Court against Narcisse Arido  
4 because of genocide. Is that what is contained in that original in German, the crime  
5 alleged against Arido for which you provided this information, genocide?

6 A. Yes, it just says the name, Narcisse Arido, but that this, this letter I cannot see a  
7 reason why. It just said genocide or something else.

8 Q. Now, what is the crime specified there on the basis of which the material was  
9 sought, sir?

10 A. I would like to have -- to see the full, the full picture, because it doesn't say  
11 anything about crime on this, on this page I have here.

12 Q. Take your time, sir, and look please. We have right there on the first page, sir,  
13 the first page which is highlighted, do you see "strafsache," something like that, the  
14 first page?

15 PRESIDING JUDGE SCHMITT: Well, would it be a problem for you, Mr Taku, if I  
16 come to your assistance a little bit?

17 MR TAKU: I would be most obliged, your Honour.

18 PRESIDING JUDGE SCHMITT: Herr Smetana.

19 THE WITNESS: Yes.

20 PRESIDING JUDGE SCHMITT: It's the first one underlined, "Wegan Völkermord,"  
21 do you see what is blackened, schwärzen die Licht?

22 THE WITNESS: Yeah, yeah. I couldn't read that before because it was too small.

23 PRESIDING JUDGE SCHMITT: Yes.

24 THE WITNESS: Okay.

25 PRESIDING JUDGE SCHMITT: Mr Taku.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 MR TAKU:

2 Q. And do you see genocide there as the crime alleged against Mr Arido, the  
3 reason provided for which the material was sought, sir?

4 A. Yes, I can see now.

5 Q. Thank you, sir.

6 Now, let's move quickly. Court officer, can you also provide CAR-OTP-0070-005, I  
7 think that is sheet number 2, entitled "Narcisse Arido." I don't know whether that's  
8 tab 1.

9 Now, Witness, from number 3 to 6, do you see the name there (Redacted)

10 A. Yes.

11 Q. And can you tell us the dates that these transactions were sent, sir?

12 A. The first one is on 9 February 2006, second is 28 April 2006, and we have 17  
13 May 2006 and 8 June 2006.

14 Q. Can you look at the other transactions up to 69, 69, quickly tell your Honours  
15 the dates that the transactions were executed, sir? In any case, let me put it  
16 differently, do you see any transaction that was executed before the 21st or before  
17 February 2012, sir?

18 A. Okay. This one is 22 February 2011.

19 Q. Now let's move to the next question, sir. That's CAR-OTP-0070-0005. That's  
20 sheet 2, tab 1. Yes, okay. It is right there in front of you, sir. Yesterday you said  
21 that the addresses under column A1 are the locations where the money was paid out;  
22 is that correct, sir?

23 A. Can you please repeat? I cannot hear you fully.

24 Q. Yesterday you testified, sir, that the addresses under column A1 -- AI, I'm sorry,  
25 AI, I'm sorry, are the locations where the money was paid out.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 A. AI, yes.

2 Q. And that B represents, that B represents in column J, can you remind the  
3 Chamber what the letter B represents in column J?

4 A. You mean BPYDE?

5 Q. B. Column J, please move to column J.

6 A. J, yes. This is usually a type of ID presented by the sender.

7 Q. Now --

8 A. And this, this could be either passport or a driving license or national ID. I  
9 think B is a national ID card.

10 MR TAKU: Now, could the court officer please scroll to the right, to the column to  
11 the right, BF and BG.

12 Q. Can you see that, sir?

13 A. Which column?

14 Q. BF and BG.

15 A. Yes, BG, yes.

16 Q. Can you please tell the Chamber what these categories refer to, sir?

17 A. The BF is usually the pay agent address. That means the address of the agent  
18 location where the money has been paid out.

19 Q. Now --

20 A. BG is the pay agent city where the money has been paid out.

21 Q. Now, could we --

22 A. This will be entered by our agent where the money gets paid out.

23 Q. Thank you, sir. Could we please have a look at line 75, column AI and AJ.

24 Do you have that before you, sir? Do you see it?

25 A. AI, AJ, yes. AI is the payee's address, the receiver's address, which will be

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 provided by the receiver. And AJ is the payee's city provided by the receiver.

2 Q. Now, Witness, do you see Deido, Yaoundé there under AI, a location there,  
3 Deido, Yaoundé?

4 A. Yes. Sometimes our agents, it's up to our agent location, the operator of the  
5 agent location is entering into the system himself, so of course there can be any  
6 mistakes by the agent location, if you mean this same code standing there?

7 Q. Now, on the same day you see BF and BG, we read "Avenue Kennedy," we see  
8 "Avenue Kennedy, Yaoundé"?

9 A. Which row?

10 Q. 75, sir.

11 A. 75. So B, BE is the pay agent name, the name of the location where the money  
12 has been paid out.

13 Q. Now, sir, now, sir --

14 A. What's the question?

15 Q. The question, sir, is that Avenue Kennedy and Deido, Yaoundé are not the same.  
16 Maybe to be fair to you, sir, Deido is in Douala, we received evidence in this case,  
17 some 250 kilometres from Yaoundé. So Deido, Yaoundé as a location and also  
18 Avenue Kennedy, Yaoundé. Can you explain why, why those entries were made in  
19 respect of the same transaction?

20 In any case, I'm sorry, before you answer, I'm sorry, let me now stop you, in any case,  
21 let me volunteer this, there is no such location as Deido, Yaoundé. There is Deido,  
22 Douala, not Deido, Yaoundé.

23 A. I'm not so familiar with these regions. But usually in this rubric, in B, for  
24 example, should be, should be the pay agent name and whatever in BF and BG is the  
25 pay agent city. So I'm not sure what our operators from our independent contractors

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 have entered here. Of course, there might be human mistakes or something. But if  
2 you give me all these transactions in question, I can run them once more and then see  
3 how we can handle that and see if I get more further information out of it.

4 Q. Now, let me ask this other question, sir. Let me move to something else. Is it  
5 possible from your investigations, your investigative database, to generate the same  
6 name for the sender and receiver? So if so, under what circumstances?

7 A. Yeah, there is, there is a possibility because we offer also a service, for example,  
8 if somebody goes to another country on vacation, he can -- there is a certain allowance  
9 to send money to himself from the country he's leaving to the country he would like  
10 to pick up the money later.

11 Q. Now --

12 A. So this is possible.

13 Q. Now, look at line 69, please. I take the witness to line 69, column C and then Y.

14 A. Can you get it to the end of the line again, to the right end? Okay. That's paid  
15 on 23 February. And can you get back to the beginning? That's 22nd, so he picked  
16 it up a day later.

17 Q. And that will refer to the sender, Narcise, which yesterday you testified was S,  
18 one S, one S to a Narcisse where you testified with which is two S, is that correct, sir?

19 A. Yes.

20 Q. The location from which it was sent was Bangui, Republic Central African to  
21 Yaoundé, Cameroon; is that correct, sir?

22 A. Yes.

23 Q. Now, if these entries are correct, it would mean that the Arido with one S sent  
24 the money by Western Union to Arido with two S, that's from Central African  
25 Republic to Cameroon, that's on 22 February 2011, and the Arido with two S received

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 the money in Yaoundé the next day in a time frame of -- well, I can't calculate time  
2 frame -- but between two separate nations, like Arido one S. Could that not also, sir,  
3 could that also not mean that Arido one S could also as well have been somebody  
4 else?

5 A. There might be the possibility. We have to double check the ID card number.  
6 So that was in 69. The ID card used for picking up, if there is any, or even the same  
7 telephone number, we have to double check that.

8 Q. Now, with the answer you gave suggesting errors here and there now -- yes,  
9 sir?

10 A. It's a little bit difficult with these kind of papers, because if I can scroll it on my  
11 own laptop, it would be easier. So I have to always get back and forward.

12 So what's the ID number of this sending person? It's 69. What tab was that?

13 I understand this is 0070, the CAR-OTP, which is 005 --

14 Q. Not to --

15 A. I just can't find it on this.

16 PRESIDING JUDGE SCHMITT: Well, which tab of the binder it would be, Mr Taku?

17 THE WITNESS: Is it 3?

18 MR TAKU: I pointed to tab 1, line 69. That's the information.

19 PRESIDING JUDGE SCHMITT: Please, Mr Smetana, try tab 1, line 69, and then  
20 perhaps --

21 MR TAKU: It's on the screen, your Honour.

22 THE WITNESS: Yes, but I would like to see the top of the screen as well.

23 PRESIDING JUDGE SCHMITT: Apparently it's because you only see parts on the  
24 screen, it would be perhaps better for the witness to have the tab and the line so he  
25 can have the full picture, to put it this way.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 THE WITNESS: So how do I get to the 69 here? It's only 47, 47. I don't have 69.

2 47 -- I think there is a page missing.

3 MR TAKU: It's not in the binder, your Honour. It seems it's not in the binder.

4 Sorry about that.

5 THE WITNESS: It's not in. That's why I was looking all the time.

6 MR TAKU:

7 Q. It's on the screen now.

8 PRESIDING JUDGE SCHMITT: Then I suggest the following, we take our time.

9 We are, on the monitor, we are at line 69. And then please scroll it and take your  
10 time to the right so that the witness can follow what the information contains here.  
11 Just move it slowly to the right so that the witness can follow.

12 THE WITNESS: And to the top, please. Okay. Can we get back down to 69 on  
13 that one? Then to the right, please, further to the right. And now up, up again,  
14 please, to the top, and then down to the transaction, further to the right, please.

15 MR TAKU: I do not know whether he needs more time to look at this, your Honour.

16 THE WITNESS: I probably might need another system to figure out what the reason  
17 is. Of course, we have a few possibilities to send it to the same name. Our agent  
18 also allows, for example, when the name, when there is one letter is wrong, for  
19 example, then they would also accept this transaction.

20 But it would take me quite a while, we have other systems where we can check this.

21 I cannot say exactly what the reason is. I know that it's possible to send to the same  
22 name, but there could be a mistake on the agent side. We have a few systems where  
23 I would like to check this. I can make some notes or you can give me a piece of  
24 paper and I can send it within one day or so.

25 PRESIDING JUDGE SCHMITT: But you did confirm that it is possible that of course

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 it's the same person? You can send it to the same person, sender and receiver --

2 THE WITNESS: Yes.

3 PRESIDING JUDGE SCHMITT: -- can be the same person, you confirmed? But it  
4 could also be a different person, this Arido with one S and with two S?

5 THE WITNESS: Right.

6 PRESIDING JUDGE SCHMITT: Is this the point that you wanted to make, Mr Taku?

7 MR TAKU: Yes, your Honour. I wanted just to get him to confirm to complete my  
8 cross-examination that the system is -- there are possibilities, significant possibilities  
9 of errors in the system under that, the agents, to whom they have outsourced these  
10 services could commit very, very serious offences and which make the reliability of  
11 the entry doubtful in some cases.

12 PRESIDING JUDGE SCHMITT: Let's put it this way, the process of making may be  
13 interesting, but it's not always interesting to follow --

14 MR TAKU: Yes, your Honour.

15 PRESIDING JUDGE SCHMITT: -- may I put it this way. Could I persuade you to  
16 move on with your questioning, or do we want to make a break and give the witness  
17 time to really go into this line 69 and the reason why at one point we have Arido with  
18 one S and with two S.

19 MR TAKU: I can just ask one or two questions and complete my cross-examination.

20 Q. Now, Witness, these errors, this, the forms that we have here requiring the  
21 information is supplied by Western Union. But the agents working on them, I  
22 suggest, do not have a consistent training and, therefore, sometimes they make entries  
23 with these errors which makes the information in some circumstances difficult to rely  
24 on comprehensively to ascertain the parties for a transaction; do you agree?

25 A. Well, we have our standard rules, and all the agents have to apply. Of course,

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 human mistakes may appear when they enter the data, it's not Western Union itself.  
2 We have our agent locations which are contractors to us. We have certain standards  
3 and rules and what is allowed and not allowed. But overall our Western Union  
4 money transfer works really well, and we can really identify the persons.  
5 We have also other systems which we can use to make sure what the reason was it,  
6 but it would take me a little bit more time to figure out the problem here, because I  
7 need the full pictures on the screen, and that would probably take too long for this  
8 Court to see what the issue was on that one.

9 Q. Thank you very much, sir, for cooperating.

10 MR TAKU: Your Honours, that was my cross-examination.

11 PRESIDING JUDGE SCHMITT: Thank you, Mr Taku. And my last remark  
12 referred not to your questioning, to clarify that, but to this process that would take a  
13 very long time to make that sure.

14 Who is the next to question? Mrs Taylor.

15 QUESTIONED BY MS TAYLOR:

16 Q. Good morning, Mr Witness.

17 A. Good morning.

18 Q. My name is Melinda Taylor and I will be putting a few questions to you on  
19 behalf of the Defence for Mr Jean-Pierre Bemba.

20 A. You're welcome.

21 Q. Thank you. Now, Mr Witness, you met the Prosecution on 19 October 2012 at  
22 Western Union offices in Vienna, didn't you?

23 A. As far as I remember, yes.

24 Q. Was this the first contact you had with members of the Prosecution?

25 A. I think yes.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 Q. Do you recall whether it was you or the Prosecution that initiated the meeting?

2 A. I think it was the Prosecution as far as I know.

3 Q. Did they call or write to you to organize it?

4 A. I believe it was an email.

5 Q. Do you recall when they sent you the email?

6 A. It's a good question after that time. I maybe have to look at it and I can let you  
7 know.

8 Q. Would you recall if it was a month or a couple of weeks before the meeting  
9 roughly?

10 A. It was in -- let me see if I have it in summary here.  
11 I haven't got that one. You said in 2013?

12 Q. Sorry, 2012, Mr Witness.

13 A. And '12. I think in February, March, but I can't really remember that far. I  
14 have so many meetings and so many trips, so I'm sorry about that. I cannot say it  
15 now.

16 Q. Of course, Mr Witness. Do you happen to recall the name of the person who  
17 contacted you to arrange for the meeting?

18 A. We had --

19 PRESIDING JUDGE SCHMITT: Mrs Struyven?

20 MS STRUYVEN: Excuse me, but if we are going to go into specific names of the  
21 members of the Prosecution, we would prefer to go into private session.

22 PRESIDING JUDGE SCHMITT: Why not. Let me go into private session. But we  
23 can I think relatively quick again go into open session again afterwards.

24 \*(Private session at 10.47 a.m.) Reclassified as open session

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

Trial Hearing  
Witness: CAR-OTP-P-0267

(Private Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: Please, Mr Smetana.

2 THE WITNESS: Okay. The two names I remember is (Redacted) and Ms  
3 Olivia Struyven.

4 MS TAYLOR:

5 Q. Just to be clear, Mr Witness, these were the persons who contacted you to  
6 organize for a meeting in 2012?

7 A. Yes.

8 Q. Did they explain to you what the purpose of the meeting was?

9 A. The purpose of the meeting was to discuss the law in Austria, to discuss with  
10 the Austrian Prosecutor to see the possibilities and legal opportunities.

11 Q. During this meeting of 19 October, do you recall who was present?

12 A. Sorry?

13 Q. Do you recall who was present in the Western Union offices on 19 October?

14 A. Who, you mean who was present?

15 Q. Yes. Who attended the meeting?

16 A. First we had the meeting with (Redacted), and later we had this  
17 witness statement with Mrs Olivia Struyven.

18 Q. During this first meeting, do you recall if anyone was taking notes or recording  
19 the meeting?

20 A. No.

21 Q. You don't recall or no one was taking notes?

22 A. No, no one was taking notes.

23 Q. And when you met the Prosecution on this date, did they explain to you what  
24 type of crimes they were investigating?

25 A. I think yes, they were talking about type of crimes and seeing what we or the

Trial Hearing  
Witness: CAR-OTP-P-0267

(Private Session)

ICC-01/05-01/13

1 Austrian Prosecutor can support.

2 Q. So by the type of crimes, do you recall the type of crimes?

3 A. Well, it's about, it was talked about African war crimes.

4 Q. Did they inform you that it concerned an urgent matter? Was there an urgency  
5 to the meeting?

6 A. About the urgency?

7 Q. Yes. Did they -- did they imply that they needed your assistance on an urgent  
8 basis?

9 A. Actually, not. They said they will probably need my assistance in the future  
10 when we get all these things run through the Austrian Prosecutor.

11 Q. Did they explain to you that the matter concerned an ongoing case?

12 A. Not really. It was just a basic meeting to learn, to learn each other and to have  
13 a point of contact.

14 Q. But during this basic meeting, the Prosecution gave you a list of names?

15 A. Not at -- not at the beginning. After the Prosecutor sent a list of names to me.

16 Q. Afterwards. Could I perhaps bring up onto the screen CAR-OTP-0091-0351,  
17 and if I could bring you to page 0354, and if you could have a look at paragraph 6 of  
18 this document.

19 And if you will see from this paragraph it mentions that the Prosecution met you on  
20 that date, and the Prosecution has subsequently informed us that they gave you a list  
21 of 67 names on that date and that there was a screening of documents concerning  
22 those names. Does that refresh your memory?

23 A. What time was that in --

24 Q. It was 19 October.

25 A. 19 October.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Private Session)

ICC-01/05-01/13

1 Q. 2012.

2 A. 2012. Yeah, that -- yeah. Now I can remember because, yeah, you have to  
3 understand that I work probably every week other cases.

4 Q. Of course.

5 A. And this is not the only one, and I get lots of requests. But now I can  
6 remember, yes.

7 Q. So, Mr Witness, during this 19 October decision, did the Prosecution give you a  
8 list of 67 names?

9 A. Yes, I think, yeah.

10 Q. And did they ask you to screen the documents in your possession for these  
11 names?

12 A. Yeah, that's correct.

13 Q. What does this screening process involve?

14 A. So we, we just basically check if the transactions are available in our system, and  
15 if it's necessary, if at all there are transactions, if it's necessary to send in a request of  
16 assistance through the Austrian Prosecutor.

17 Q. Mr Witness, I'd just like you to look at paragraph 6 again, where it says that the  
18 screening identified a number of transactions and movements of large sums of  
19 money.

20 Now, Mr Witness, would you agree that if this paragraph is true, then it means that  
21 Western Union must have confirmed that certain individuals transferred specific  
22 sums of money to each other?

23 A. Yes, that's what this says, yeah.

24 Q. So is it correct, Mr Witness, that Western Union informed the Prosecution of the  
25 contents of certain transactions?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Private Session)

ICC-01/05-01/13

1 A. We informed of the contents, but not -- we didn't give the details away before  
2 we have received official documents from the Prosecution.

3 Q. So you gave the names and the contents of the amounts?

4 A. Not, not at that time we give this away until we get the Austrian Prosecutor's  
5 writing and letter.

6 MS TAYLOR: I'm sorry, Mr President, should we have a break now?

7 PRESIDING JUDGE SCHMITT: If you don't mind, if you suggest it, why not?

8 Then we meet at 11.30.

9 MS TAYLOR: Thank you.

10 THE COURT USHER: All rise.

11 (Recess taken at 10.56 a.m.)

12 \*(Upon resuming in private session at 11.32 a.m.) Reclassified as open session

13 THE COURT USHER: All rise.

14 THE COURT OFFICER: Mr President, for the record, we are still in private session.

15 PRESIDING JUDGE SCHMITT: Mrs Taylor still has the floor and could indicate if  
16 we could go into open session or if we should stay in private session.

17 MS TAYLOR: Thank you, Mr President. I think we can go into open session  
18 provided that the documents aren't shown publicly. It's my understanding they're  
19 confidential.

20 PRESIDING JUDGE SCHMITT: We go into open session.

21 (Open session at 11.33 a.m.)

22 MS TAYLOR: If we could bring up on the screen for the Witness CAR-OTP -- sorry.

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

24 MS TAYLOR: If we could just bring up the first page of the document you were  
25 looking at, and that was CAR-OTP-0091-0351, and if the witness could be -- if it could

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 be scrolled up to the top of the page.

2 Q. Mr Witness, can you see the date of this document?

3 A. I have only French speaking on my --

4 Q. I'm not speaking French, but there must be a problem I see.

5 PRESIDING JUDGE SCHMITT: I think this problem will easily be solved.

6 MS TAYLOR: I wish I had this problem every day.

7 THE WITNESS: This one? Thank you.

8 MS TAYLOR:

9 Q. I'll repeat my question. Can you see the date on the document?

10 A. Yes. It's dated 2 November 2012.

11 Q. And can you see the code above the date? I think it's OTP-CAR I think there is  
12 an AUT. I think we can assume that's Autriche?

13 Oh, sorry, perhaps the President can --

14 A. Austrian, yes.

15 Q. We see a 1?

16 A. You mean at the top of the --

17 Q. Yes.

18 A. Sheet?

19 Q. Yes.

20 A. To Dr Wolfgang Paul, Embassy of the Republic of Austria.

21 Q. But in the reference you see a dash 1 after Austria?

22 A. Yes. That's AUT-1.

23 Q. So we could presume from this that perhaps this is the first request for  
24 assistance?

25 A. Yes, it looks.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 Q. Is this the first request for assistance that you're aware of?

2 A. Yes. I got a couple, but I think it's the first one from 2012.

3 Q. So this was several weeks after you met the Prosecutor in Vienna?

4 A. Actually, the Prosecutor I met much later. It was (Redacted)

5 who was first meeting with me in Austria, because we were trying to establish the

6 contact within the Austrian Prosecution, and also we discussed with our lawyers the

7 possibilities to support the International Criminal Court, and there was a meeting

8 with the Austrian Prosecutor and (Redacted) and myself. We agreed to

9 assist with certain requests from the International Criminal Court.

10 Q. Mr Witness, if I could just ask you not to mention specific names.

11 A. Okay.

12 Q. This meeting that you referred to with the Prosecutor and the Austrian

13 Prosecutor, do you remember the date of that meeting? Was that the October

14 meeting or was it afterwards?

15 A. This was -- this was I think before, before this November 2012. I can't

16 remember the date at the moment.

17 Q. So I'm just trying to situate myself, Mr Witness. During the October meeting,

18 is it correct that the Austrian Prosecutor was also present?

19 A. Yes. It was not present in our company. We had a meeting at the Austrian

20 Prosecution office.

21 Q. Who had a meeting? Again, don't mention names, but if you could just

22 mention --

23 Perhaps we can go into private session, Mr President. I think that's easiest.

24 PRESIDING JUDGE SCHMITT: I think this would be too complicated.

25 MS TAYLOR: Yes.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Private Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: Private session.

2 \*(Private session at 11.38 a.m.) Reclassified as open session

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

4 THE WITNESS: Okay? So this meeting was initiated between ICC, myself and the  
5 Austrian Prosecutor, as I said before, to establish or to look out for the possibility to  
6 support the International Criminal Court on its certain requests for assistance since  
7 Western Union has an office also in Austria, and we were discussing how far we can  
8 release information about international transactions by going through the Austrian  
9 Prosecutor, who agreed, and after that the first letters of -- the first requests of  
10 assistance arrived at the Austrian Prosecutors, and who translated it partly and sent it  
11 to Western Union in Vienna, and we collected the information requested and have  
12 sent it back to the Austrian Prosecutor.

13 MS TAYLOR:

14 Q. Mr Witness, if I could just bring you back to what you said, which is this  
15 meeting was initiated between ICC, myself and the Austrian Prosecutor. What do  
16 you mean by that? Who requested the meeting and how did they request it?

17 A. Actually we -- I think we both came to this opportunity. One person from ICC,  
18 myself, and we discussed also with the lawyers from Western Union, and then the  
19 one person, I don't mention any names, from ICC set up the meeting with the  
20 Austrian Prosecutor.

21 Q. So it's correct that the first meeting was a meeting between yourself -- and we're  
22 in private session, so we can mention names.

23 A. Yes.

24 Q. (Redacted), is that correct?

25 A. Yes.

Trial Hearing

(Private Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 Q. And was that the meeting of October 2012, or was there another meeting before  
2 that?

3 A. I have so many meetings, I'm sorry about that, but that was the initial meeting,  
4 which I think this was before the November sometime. You have to understand I  
5 travel every second week. I have thousands of meetings in the last years, and I  
6 cannot really remember every date, except I have to look in all my files and stuff to  
7 remember that.

8 Q. So there was a meeting between yourself and (Redacted) at Western  
9 Union?

10 A. Yes, where we afterwards went to the Prosecutor's office in Vienna.

11 Q. Do you remember the date when you went to the Prosecutor's?

12 A. No.

13 Q. But it was before the first request for assistance or afterwards?

14 A. I think it was before the request, before the first request. These were all the  
15 initial meetings to how to handle requests from the International Criminal Court.

16 Q. And the meeting at the Prosecutor's office, how was that arranged? Was there  
17 correspondence? How did you confirm the date?

18 A. As far as I remember, it was the gentleman from ICC who got in touch with the  
19 Austrian Prosecutor and then they set up the meeting.

20 Q. So the Austrian Prosecutor wrote to you, or did the ICC also write to you about  
21 the meeting?

22 A. The ICC actually asked me to attend this meeting, because previously we spoke  
23 to our lawyers, and if we agree with having this meeting and discussing the  
24 possibilities to assist.

25 Q. And this meeting took place in the Prosecutor's office?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Private Session)

ICC-01/05-01/13

1 A. Exactly.

2 Q. And in the Prosecutor's office, you wouldn't have had access to your Western  
3 Union files?

4 A. No.

5 Q. So is it correct that the information you provided concerning these transactions  
6 must have been at the earlier October meeting?

7 A. No. All I provided should be after the first initial meeting, because before we  
8 didn't know if we are allowed -- if we can support this, if we get request letters or  
9 orders from the Austrian Prosecutor.

10 PRESIDING JUDGE SCHMITT: Can we go into open session again, do you think  
11 so?

12 MS TAYLOR: Yes, we can go into open session.

13 PRESIDING JUDGE SCHMITT: Yes, then we go into open session.

14 (Open session at 11.44 a.m.)

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

16 MS TAYLOR:

17 Q. If we could just bring up on your screen again page 6 of the document, that's  
18 0354 -- sorry, not page 6, but page 0354. And if we could look at paragraph 6 again,  
19 Mr Witness.

20 A. Okay.

21 Q. Are you in a better position to tell us when this screening occurred?

22 A. I believe this, it's on 19 October 2012, but I think it is after the initial meeting  
23 with the Austrian Prosecutor. I think that was pretty much the first thing we came  
24 together with ICC and discussed the possibilities.

25 Q. So, Mr Witness, again, was there three meetings, because so far we've discussed

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 a meeting in Western Union, then a meeting with the Prosecution?

2 A. Right.

3 Q. Were there three meetings or two meetings?

4 A. There were the initial meeting with the one gentleman from ICC where we have  
5 discussed the possibilities. I introduced him to our lawyers. Then we had -- we set  
6 up together basically ICC, it set up the meeting with the Prosecutor, and I attended  
7 the meeting, because the Prosecutor also, the Austrian Prosecutor also asked me if our  
8 company is also willing to assist from our company perspective.

9 I just don't know exactly what you mean with all these questions. I would like just  
10 to state that I have answered all the Austrian Prosecutor's letters and requests or  
11 orders as we should, and that was my job, and not setting up meetings there and  
12 there. It was just agreed by the Austrian Prosecutor to assist ICC, and then we go  
13 and confirm the law and answer this with all the data we can provide, so --

14 Q. Perhaps if I could put it this way, Mr Witness, would you agree, since you have  
15 confirmed that you can't or you couldn't have provided the information at the  
16 Prosecutor's office, but either there was three meetings or the information must have  
17 been provided during the first meeting with the Prosecution?

18 A. No, I did not provide any information at the first meeting with the Prosecutor's  
19 office, because we were waiting for the official papers from the Prosecutor to release  
20 the information. Of course, if I have any names or whatever, I can do some  
21 pre-checks and then see if we have something in the system, but we always waiting  
22 for the important order of the Prosecutor or court order, whatever it needs to release  
23 this information.

24 Q. So these pre-checks, you could look at the names in the system and the amounts  
25 of money?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 A. We can always do pre-checks, because our company is also filing suspicious  
2 activity reports. For example, like we have a unit in our company, which is called  
3 financial investigations unit from Western Union, for example. When they learn  
4 about a name and you have it officially on the website some of the names of the  
5 accused or other people, we learn -- once we learn it, and these names are official,  
6 dates of birth are official, we run -- our company is running checks to make sure that  
7 if there are suspicious activities we can report this to the authorities in the countries  
8 needed.

9 Q. Mr Witness, did you do pre-checks in the presence of the Prosecution when they  
10 met you?

11 A. Not directly there. I didn't even have my laptop with me at that point.

12 Q. Did you do pre-checks subsequently?

13 A. I did pre-checks as soon as I learned about any names to make sure if we have  
14 something in the system or not to see in advance, to see is there any suspicious  
15 activities running as soon as we learn about names, for example.

16 Q. And since you didn't do these pre-checks in the presence of the Prosecution, you  
17 must have informed them afterwards of the results of your pre-checks?

18 A. Exactly. I mean, we're waiting actually until we get the letter from the  
19 Prosecutor with the names. I mean, I can do pre-checks as many as I want, but we  
20 hand over this data as soon as we get the official request from the Court.

21 Q. Now, Mr Witness, you've acknowledged that this document was the first official  
22 request from the Court. It's dated 2 November 2012.

23 A. I believe this is the first one.

24 Q. And it refers to information received from Western Union concerning the  
25 content of transactions concerning specific individuals. So would you agree, Mr

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 Witness, that this information must have been provided to the Prosecution prior to  
2 this date?

3 A. I didn't provide anything prior to up to the time I get the official letter.

4 Q. So is the Prosecution wrong here?

5 A. I'm not sure, but usually I'm waiting for the official data to search for, and then  
6 it will be officially handed over to the Office of the Prosecution in Austria.

7 Q. Mr Witness, I'd like to bring up on your screen the order that you very kindly  
8 provided to us. And the German order is CAR-D24-0002-1349. The English version  
9 is the translation very kindly provided by the Arido team is CAR-D24-0002-1363.  
10 Do you recall if this is the first order from a court that you received?

11 A. What was this one dated?

12 Q. I think the date might be on the second page.

13 A. That's dated 8 November 2012.

14 Q. I think that's the Prosecutor's request. And I think under that date you should  
15 have the date on which the Court authorized it.

16 A. Yeah, that's there 5/11/12. And we had time to respond I think until 13  
17 March 2013, which is in handwritten.

18 Okay. So what's your question?

19 Q. Is this the first order from the Court that you recall receiving?

20 A. Let me check if I find an earlier one. Yeah, I believe in this case it's the first  
21 one.

22 Q. Mr Witness, if you go to the bottom of the first page -- and I appreciate you're  
23 not a lawyer, but you are the director of global investigations. It refers to section I  
24 think 116 of the Criminal Procedure Code. And this refers to the principle of privacy  
25 and that banks are required to keep secret these orders, and it also above it sets out

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 the legal elements for issuing the order. And would it be correct, Mr Witness, based  
2 on your experience that to get such an order, the request has to concern an offence  
3 under Austrian law?

4 A. Yes. Usually it will be mentioned, the offence will be mentioned. But in  
5 certain cases when we get MLATs like law enforcement requests from other countries,  
6 it might be slightly different. I'm not a lawyer, as I said, and I'm not a Prosecutor.  
7 All I know, it takes usually ages to get this done through the Embassy in Austria.  
8 When ICC is requesting something, it goes through the Embassy in Austria, then it  
9 goes to Austrian court. Then it will be distributed, can take three, four months  
10 sometimes to get this translated and in our possession to act accordingly.

11 Q. Mr Witness, based on the legal reasoning you can see in this order -- and do you  
12 want to read it first just to go through?

13 A. I mean, at the top you can see it's because genocide, it is mentioned what's going  
14 on in this order.

15 Q. I think it also states that, it refers to I think Section 109 and said that the order is  
16 permitted for the following reasons. And it's correct that it refers to the principle of  
17 necessity and proportionality, doesn't it?

18 A. Yes. It says we have to release all the transactions related to those persons.

19 Q. And it says that the order is proportionate given the specific nature of the  
20 offences, that is, as you've mentioned war crimes, crimes against humanity?

21 A. Yes, it's mainly mentioned in those orders.

22 Q. And in going through the justification, it also refers to certain criteria, and I  
23 think we can boil those down to the fact that normally the person involved in the  
24 transactions, it must be established that they're involved in criminal activity or that  
25 the transactions concerned the furtherance of a crime. Would that correlate to your

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 understanding of the order?

2 A. Well, in such an order we usually give out all this, the transactions we find on  
3 these people. This is not necessarily did I understand why or what happened. If  
4 we get this order, we have to reply in a certain time frame with our output. And I'm  
5 just here to select all those transactions from the system which are in connection to  
6 this case. I'm not -- I'm not really part of it to say I need to read the full document, I  
7 need to have some certain reasons where we cannot give it away. We can give this  
8 data as soon as we request -- we got the law enforcement order or request.

9 Q. I appreciate you're not a lawyer, Mr Witness. But at the first part of the order it  
10 orders Western Union to provide information which is integral to the order. So  
11 wouldn't that imply that Western Union must provide such information which relates  
12 specifically to the factual basis for this order?

13 A. Yes. We have to respond accordingly to this order. So that's all I can say.

14 Q. So if you've been ordered to transmit information which is integral to the order,  
15 would it follow that Western Union shouldn't provide information concerning  
16 transactions which have no relationship to the offences set out in this order or  
17 criminal activities?

18 A. No. It just -- it's just an order to release all data about the persons named.  
19 That's what we answer to.

20 PRESIDING JUDGE SCHMITT: Mrs Taylor, I think the witness is in that respect not  
21 the right person to question. You understand what I mean by this?

22 MS TAYLOR: I understand.

23 PRESIDING JUDGE SCHMITT: I understand, of course, the legal question that is  
24 behind your questioning. But as the witness has said, he has received this order and  
25 Western Union, and he has executed it, obviously has obliged.

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 MS TAYLOR: Thank you, Mr President. I was just trying to understand how  
2 Western Union complies with orders. But I'll move on from that issue.

3 Q. Just one final question on this order. At the end of it, it makes -- I understand  
4 it to make the transmission of the information contingent on the authorities first  
5 receiving a German translation of the Prosecution's request for assistance. Did you  
6 receive the German translation before you transmitted the information?

7 A. Yes. This is what you can see here.

8 Q. See where, sir?

9 A. I mean, that's already written in German. "Anordnung der auskunftserteilung  
10 bankkonten und bankgeschäfte."

11 Q. Are you referring to the list of names, Mr Witness?

12 A. I'm referring to this case, but not to the list of names at the moment.

13 PRESIDING JUDGE SCHMITT: Would you mind, Mrs Taylor?

14 Mr Smetana.

15 THE WITNESS: Yes, I have it here. It's in German, and the list of names is in annex

16 A on this list. I don't know exactly what you're --

17 PRESIDING JUDGE SCHMITT: Mr Smetana.

18 THE WITNESS: Yes.

19 PRESIDING JUDGE SCHMITT: May I perhaps help you. I don't know if -- and

20 Mrs Taylor may interrupt me, of course, if I'm on the wrong path, perhaps we can go

21 to page 3 of this document we have on the screen. So we have this handwritten part.

22 And when you look at that handwritten part, you see that there is an abbreviation, do

23 you see that, RHE? Do you see that, RHE?

24 For the interpreters, don't mind when I speak three or four words in German, "Mit der

25 maßgabe dass das RHE;" do you see that?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 THE WITNESS: Okay.

2 PRESIDING JUDGE SCHMITT: RHE, RHE and that means in German  
3 Rechtschilfeersuchen.

4 THE WITNESS: Rechtshilfeersuchen, I see.

5 PRESIDING JUDGE SCHMITT: And I think, Mrs Taylor, if I'm correct refers to that  
6 and asks you if you have received that document Rechtshilfeersuchen. And that is  
7 not the document we have on the monitor now. That must be something different.  
8 And perhaps the reason being why this was ordered when I understand the  
9 handwriting correctly is that the request refers to this Rechtshilfeersuchen, to this  
10 RHE, and because of that it should be incorporated, so to speak.

11 THE WITNESS: What kind of direct question would you like for the moment?

12 PRESIDING JUDGE SCHMITT: I think Mrs Taylor can take over. I just wanted to  
13 clarify what we are talking about. And I don't, of course, I don't want to take over  
14 the questioning, but since this is a sort of a condition of this Anordnung, you see what  
15 I mean, the question would be if you had this Rechtshilfeersuchen, if you have  
16 received it in German?

17 THE WITNESS: I'm sure, I'm sure I have received it. The only thing I'm not sure,  
18 just took parts of it from our files to here because I didn't even know that part of this  
19 questioning. So I have -- I have a couple more, and even one or two of our lawyers  
20 might have some papers of this. This is all I had in my files at the moment and I  
21 brought them.

22 PRESIDING JUDGE SCHMITT: Neither I and I'm sure also Mrs Taylor wants to  
23 criticize you. I just want to explore what the legal background is.

24 MS TAYLOR:

25 Q. Perhaps if I could refresh your memory, Mr Witness, the document in English

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 that you were looking through before, did you receive that in German before you  
2 provided the information to the Prosecutor?

3 A. Usually this document I should have received, and I know that I receive a lot of  
4 these kind of documents, but I'm sure I have received it, otherwise she wouldn't write  
5 it here.

6 MS TAYLOR: Thank you, Mr Witness. I don't have any further questions.

7 PRESIDING JUDGE SCHMITT: Thank you very much, Mrs Taylor.

8 Mr Gosnell is rising.

9 MR GOSNELL: Yes, Mr President, I do have a few.

10 PRESIDING JUDGE SCHMITT: There are many people rising at the moment. Four  
11 are standing, but Mr Vanderpuye first.

12 MR VANDERPUYE: Thank you, Mr President. And I apologise for interrupting  
13 my learned colleague. I just received an email that we had some emails in relation to  
14 this witness, so I didn't want Ms Taylor to rest without giving her that information.  
15 I'm having trouble getting them, so I'm going to get them. And as soon as I get them,  
16 I will disclose them to the Defence. Literally I received this email 30 seconds ago  
17 from some investigators --

18 PRESIDING JUDGE SCHMITT: Information what these emails will be about?

19 MR VANDERPUYE: They relate to the contacts with the witness, which is what the  
20 Defence was specifically asking for and what we've been trying to ascertain.

21 PRESIDING JUDGE SCHMITT: So would it make sense to wait until you receive  
22 these emails and then provide them to the Defence before they continue the  
23 questioning perhaps.

24 MR VANDERPUYE: Yes. We can continue the questioning. I just wanted to  
25 point that out, because I don't want her to rest without having that information. She

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 may have additional questions once that information is provided.

2 PRESIDING JUDGE SCHMITT: Comments by the Defence how to proceed?

3 Should we await these emails?

4 MR GOSNELL: I'd prefer to proceed with my questions now and perhaps my  
5 learned colleague, Mrs Taylor, would reserve her right to ask questions based on  
6 anything that is disclosed.

7 PRESIDING JUDGE SCHMITT: Absolutely, I think that's the best solution. So  
8 please, Mr Gosnell, you have the floor.

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

10 QUESTIONED BY MR GOSNELL:

11 Q. Good afternoon, Mr Smetana. My name is Christopher Gosnell. I represent  
12 one of the defendants in this case --

13 A. Good afternoon.

14 Q. -- Mr Mangenda.

15 Could we pull up the last document that was just on the screen or do I need to --

16 Just while that is coming up, Mr Smetana, I can already start with a question for you,  
17 and it has to do with an explanation that you were giving just before the break when  
18 we went and had coffee. And you were asked the question by my friend Ms Taylor  
19 What does this screening process involve? You were talking about the screening  
20 process.

21 And your answer was, "So we just basically check if the transactions are available in  
22 our system. And if it's necessary, if at all, there are transactions, if it's necessary to  
23 send in request of assistance through the Austrian Prosecutor."

24 And then there is a question and then there is another question, which is, "So is it  
25 correct, Mr Witness, that Western Union informed the Prosecution of the contents of

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 certain transactions?"

2 And just to situate you, you'll remember that this is following on from your first  
3 meeting with an investigator of the Office of the Prosecutor of the ICC, just to situate  
4 you in time.

5 So the question is, "So is it correct, Mr Witness, that Western Union informed the  
6 Prosecution of the contents of certain transactions?"

7 Answer: We informed of the contents, but not -- we didn't give the details away  
8 before we have received official documents from the Prosecution."

9 Now, just first can I clarify, when you refer to "the Prosecution" in this answer, you're  
10 referring to the Austrian Prosecutor, is that right?

11 A. Yes.

12 Q. And just to summarize what you were trying to describe to us in these questions  
13 and answers, am I correct in understanding that the essential process is that a law  
14 enforcement official will come to you with a particular issue or suspected criminal  
15 activity, describe that to you, perhaps in an informal fashion such as a meeting of  
16 somebody at your offices. You will provide what we might describe as preliminary  
17 information, not going into all the details, but at least giving an indication as to  
18 whether transactions, you have records of transactions with the person, how many  
19 there might be, when they were generally. You provide that information back to the  
20 law enforcement official, and then they use that information to go and obtain a court  
21 order.

22 Does that roughly explain your understanding of how the process works and how it  
23 works in practise?

24 A. This is very, very limited. It is usually we always wait for a court order. We  
25 have certain cases, like life-threatening cases, where we respond faster. We can in

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 certain circumstances -- it's very difficult for law enforcement internationally, since  
2 we are transacting internationally, and you know how long it takes to maintain law  
3 enforcement requests from other countries through MLATs or assistance requests  
4 which makes it really very difficult for law enforcement internationally to get all this  
5 data together.

6 What we can do and in certain circumstances is just to tell them, yes, there are  
7 transactions, especially when we have kidnapping cases, other cases, to let them  
8 know there is something sent, send the order as soon as possible, or to direct these  
9 people to other countries' police and request it through other law enforcement, at  
10 least to let them know where can they receive this information that we can provide.

11 Q. You've just referred to -- you've just referred to kidnapping and life-threatening  
12 cases. Does that mean to say that this process you've described usually, this  
13 preliminary provision of information usually would only occur in cases that are life  
14 threatening or that involve kidnapping?

15 A. Usually in very urgent cases or in also if there are urgent cases on human  
16 smuggling or trafficking or other things. And when it's explicit, very complicated  
17 for law enforcement to somehow get this information, because, first of all, we need to  
18 look into the transaction to see is this transaction related to Germany or to another  
19 third-party country? Where do they have to go? It would be a long way around to  
20 let them dig and search, and it would really slow down all the investigations from  
21 law enforcement, so we try to help them to see how can we obtain this information as  
22 soon as possible from our company.

23 And that's also the reason why we work together with the Austrian Prosecutor's office,  
24 to see and find the best way for international transactions to be provided to the  
25 International Criminal Court.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 Q. So if we have a situation where it's life threatening or where it's presented to  
2 you as being excessively complicated for law enforcement, you then provide some  
3 additional preliminary information to assist them in formulating appropriately a  
4 request for judicial order? Is that a fair summary of the situation?

5 A. That's the summary. But as I said, it should be very limited, and especially  
6 when I know that the International Criminal Court work with other countries can be  
7 very difficult. So this was the reason why we reached this agreement with the  
8 Austrian Prosecutor to release information.

9 Q. So you say that that was an agreement that was reached with the involvement  
10 of the Austrian Prosecutor; is that correct?

11 A. Exactly. The Austrian Prosecutor allow us to release the data from  
12 international transactions.

13 Q. Well, I'm referring to this specific case. Let's be sure that we're not talking in  
14 general. In this specific case I'm asking whether it was on the basis of an agreement  
15 with the Austrian Prosecutor that you did that in this case?

16 A. Yes, of course.

17 Q. And to be clear, I'm talking about prior, prior to the issuance of the official  
18 judicial order. Do we understand each other on that?

19 A. This prior information is just an information if we have something in the system  
20 or not, and this is the only thing.

21 Q. I'm just trying to pin down that that disclosure of that preliminary information,  
22 whether you do or don't have information in your system, that disclosure, are you  
23 telling us, was made with the agreement of the Austrian Prosecutor in this case?

24 A. No. In this case we agreed that the Austrian Prosecutor only supports the ICC  
25 request.

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 Q. I'm not sure I got an answer to my question. Just let's be clear, Mr Smetana,  
2 I'm talking about the disclosure, what you call the screening process and the  
3 disclosure of information that occurred before the issuance of the first judicial order.  
4 What I'm asking you is whether that disclosure occurred with the agreements or on  
5 the authorization of the Austrian Prosecutor?

6 A. There is actually no real disclosure in this kind of information.

7 Q. Well, you're providing some information because that information showed up  
8 in the Prosecution's first RFA. So you did provide some information, didn't you?

9 A. In which RFA?

10 Q. The very first one, the one at the beginning of November that preceded the  
11 issuance of the first Austrian judicial order.

12 A. I believe I have followed only the Prosecutor's order.

13 Q. Mr Smetana, let's be clear, I'm not criticizing you. I'm not trying to put you on  
14 the spot or say that you've done anything wrong. I'm merely trying to understand  
15 the sequence of events and who approved what at what time. Do you understand  
16 that that's what I'm trying to get at?

17 A. Yes.

18 Q. Now, the question that I'm posing to you, and I'm coming back to it because I  
19 haven't yet gotten an answer, is whether the information that was shown to you in the  
20 document by Ms Taylor, which is general about transactions, not specific, but general,  
21 and specifies that certain individuals are involved in transactions, this information  
22 appeared in a document created by the Prosecution before the first Austrian judicial  
23 order, from which I would suggest the information can be inferred to have come from  
24 you. And I'm just asking you whether the disclosure of -- and you've confirmed that  
25 this is a general -- this is normal procedure or it does occur under certain

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 circumstances, and I'm just asking whether that disclosure, as general as it may be, as  
2 preliminary as it may have been, was that disclosure done with the agreement of the  
3 Austrian Prosecutor?

4 A. As I say, I will have to check all the Prosecutor's letters again if this was a  
5 preliminary disclosure. But I think there was an Austrian Prosecutor's letter before  
6 that. I really have not all the papers with me, so --

7 Q. Well, thank you for that information. That's helpful. Just so you know, we  
8 don't have any such written or no written documentation indicating that that was the  
9 case. Is it possible that you received this agreement or this authorization occurred  
10 orally during the meeting you had, or must it have been in writing?

11 A. Usually it must have been in writing.

12 Q. And if you can tell us, is this something that you have in your past experience,  
13 which is abundant, what form would such writing take? Would it be a letter?  
14 Would it be some kind of an official order from the Prosecutor?

15 A. Well, it's also up to each country's law. For example, it can be in England, it  
16 can be a DPA. It can be --

17 Q. Let me just stop you there. I'm not talking about other countries' legal systems.  
18 I'm only talking about Austria.

19 A. In Austria, we usually get only written orders.

20 Q. Okay. In terms of documents that are emanating from the Prosecutor as  
21 opposed to a judge, a Prosecutor at least as far as I know even in Austria, certainly not  
22 here, can't issue an order. So would it be a letter? What would it be?

23 A. It would be a letter, of course.

24 Q. Can we just please turn to page 3 of the document that's on the screen. And  
25 we've been looking at this document previously. I won't go through it in any great

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 detail. But I simply want to use this document to assist you with the chronology and  
2 the sequence and timing of events. And if we look there under the "Landesgericht  
3 für Strafsachen Wien" -- apologies for pronunciation -- the date appears to be the 15th  
4 of November 2012. Do you see that?

5 A. Yes, at the left bottom.

6 Q. And I realise it's been a very long time, and you confirmed earlier today that  
7 you believe that this is the first judicial order on the basis that you received from the  
8 Judge -- yes, do you want to say something, Mr Smetana?

9 A. There might be a previous order, because we can see also this  
10 "Rechtshilfeersuchen," which I might not have here right now. So I have to really  
11 double check what I have received probably previous to this. As I said, I'm not sure  
12 if this is the first one.

13 Q. Well, I for one would be very interested if you do have an additional order that  
14 precedes this date for you to provide it to the Prosecution so that it can be disclosed to  
15 us. Could you undertake to do that?

16 A. Yes. It might take some time, but I can send this document or whatever.

17 Q. In any event, whether this was the very first or not the very first order, this date,  
18 the 15th of November 2012, is approximately three weeks after the first meeting at  
19 least that we're aware of that you had with the investigator -- and don't name  
20 him -- the investigator of the Office of the Prosecutor in your offices in Vienna.  
21 Now, does that roughly correspond to your recollection of events, that there was your  
22 very first, what you've described as a basic meeting with an investigator of the Office  
23 of the Prosecutor, and at then approximately three weeks later, a little more than three  
24 weeks later you get an official order from the Court in Vienna?

25 A. To be honest, I cannot remember the first meeting with the investigator. I can

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 also try to figure out when that was. I have meetings every week, you know, and --

2 Q. This is completely --

3 A. If you ask me for this certain time, it's a little bit difficult for me.

4 Q. Completely understandable. Exact dates don't really matter. But what does  
5 matter to some extent is the sequence. And as I understand from your testimony  
6 earlier today, the sequence is you have what you've described as a basic meeting with  
7 an investigator from the International Criminal Court, then you have a second  
8 meeting with -- which involves the Austrian Prosecutor?

9 A. Exact, we had also a meeting with the Austrian Prosecutor then, yeah.

10 Q. And do I understand correctly that the Prosecution investigator was present at  
11 that meeting with the Austrian Prosecutor?

12 A. Yes.

13 Q. Anyone else?

14 A. Yes. There were a lady, I think her name is on here. It's this (Redacted)  
15 (Redacted). She's a State Attorney as well. And one of the doctors, the head of the  
16 department for the Prosecutors.

17 Q. So four people. Anyone else?

18 A. Not as far as I remember, no.

19 Q. I know it's been a long time, and I'm not asking you to distinguish between the  
20 very first contact with the ICC investigator and the meeting that involved the four of  
21 you, but do you have a general recollection that at those two meetings or at either of  
22 those two meetings the list of individuals who were -- in whom the Prosecution of the  
23 ICC was interested was presented to you? Do you recall that?

24 A. Sorry, say again.

25 Q. At either of these meetings, did the person from the ICC give to you, if you can

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 recall, a list of the individuals in whom they were interested?

2 A. Not as far as I remember.

3 Q. Do you remember generally that individuals were identified as being of interest  
4 by the representative of the ICC?

5 A. I just heard about these four names, and that's basically it. I have so many  
6 other cases that I don't really pay a lot of attention on things like that. When I get an  
7 order, I will of course run the names and do my job, but I do not really pay attention  
8 of how many names.

9 Q. But names were mentioned, correct?

10 A. The names were, some names were mentioned because they were anyway  
11 already officially in the ICC pages to see on another crime so --

12 Q. Are you telling us that your recollection is that the only people who were  
13 identified as people of interest for you to look into were people who already had been  
14 charged as of the date of that meeting?

15 A. Yes. I heard about those few names which already were officially in some of  
16 the web sites or wherever, ICC web sites on other crimes.

17 PRESIDING JUDGE SCHMITT: Mrs Struyven.

18 MS STRUYVEN: Yes, your Honour. Maybe just to clarify, the information that we  
19 gave to the Judges and the parties beforehand, which was that the cooperation is not  
20 limited to this particular case, and we would not want to have any information about  
21 any other cases being revealed; if this cryptic way of saying things could help?

22 PRESIDING JUDGE SCHMITT: I understand Mr Gosnell and all the other Defence  
23 teams, they are interested in this case.

24 MR GOSNELL: Quite right, indeed, Mr President.

25 Could I have another document, please, on the screen that may assist. And this is

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 our tab 1, Mr President.

2 And for the Registry it's CAR-OTP-0091-003 -- excuse me -- 0091-0351.

3 Q. You've already been shown this document, Mr Smetana, by my colleague,  
4 Ms Taylor. If we could turn please to 0091-0353. You'll recall, Mr Smetana, having  
5 looked at this just a few minutes ago?

6 A. Yeah.

7 Q. If we could turn the page, please. I'll just draw your attention there, Mr  
8 Smetana, to paragraph 6. You've already read that, but I'm just situating you in the  
9 document.

10 And then please could we go over to 0356.

11 Now, this is an annex to this document. Does it look familiar to you? Have you  
12 seen it before?

13 A. Yes. That's actually the names I had to search or run for the Austrian  
14 Prosecutor anyway.

15 Q. Can you recall, and, again, it may be difficult, but was this a list that was given  
16 to you at one of the first two initial meetings, so to speak, or was it only given to you  
17 after the judicial order was issued on 15 November 2012?

18 A. As far as I know, it was from the Austrian Prosecutor.

19 Q. When you say "from the Austrian Prosecutor," when in time do you think you  
20 would have received that annex for this list? Would it have been during the meeting  
21 with four people, the four participants that you referred to earlier?

22 A. No. That must have been sent to our office. And I think I got also an updated  
23 one. There was also a second one for a certain period of time to update this list again.  
24 So I got actually two of them at least from the Prosecutor.

25 Q. And leaving aside what you've said earlier about believing that the targets were

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 people who were already defendants in cases in proceedings before the ICC, were  
2 you told anything else about who any of these other people might be or why you  
3 were being asked to look into transactions involving them?

4 A. No, I had no idea about those people before that.

5 Q. No information at all --

6 A. No.

7 Q. -- to your recollection?

8 Could we now have please our tab 12, which for the registrar is CAR-D23-0002-0021.

9 Now, this is, if I understand correctly, an order to provide bank account and financial  
10 transaction information. Does that accord with the German as you read it, Mr  
11 Smetana?

12 A. Yes, financial business or bank accounts through Western Union.

13 Q. And if we can just please -- and am I right, just to recall to your memory, this is  
14 in substantially the same form as the previous judicial order that we looked at, is that  
15 correct, the one from the 15th of November 2012?

16 A. Exactly. There is just a different date, because that might be an update request  
17 on the transaction from January 2013 to 1/11/2013 until 23/11/2013. So I got updates  
18 on that as well.

19 Q. If we could go please to page 3 of this document. And again there is the  
20 "Landesgericht für Strafsachen Wien." Do we agree that the date there seems to be 5  
21 November 2013?

22 A. 15/11, yes, of '12.

23 Q. If you look at the stamped date next to the signature just to the left?

24 A. 15 of November 2012, I think.

25 Q. We seem to have the wrong document on the screen. But let me just use this

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 document for one moment while we've got it.

2 This actually appears to be what I would call the first judicial order, and it does seem  
3 to be dated the 15th of November 2012.

4 And could we now please have CAR-D23-0002-0024.

5 And actually this was the page that I wanted to show it to you and ask whether it was  
6 in generally the same form as the first one. Do we agree on that, Mr Smetana?

7 A. Yes, that's one of the orders I have, I have done on 23rd of December '13.

8 Q. It seems that the listing of crimes has changed slightly though, would we agree  
9 on that?

10 A. Yeah, there are three different ones like genocide, crimes against humanity and  
11 war crimes, it says --

12 Q. Right.

13 A. -- on this one.

14 Q. And this expands the list from just genocide from the first judicial order,  
15 correct?

16 A. Yeah.

17 Q. Now, could we just have page 3 of this document, please. I think we need the  
18 next page.

19 And just taking this very quickly, if we look down next to the signature, left of the  
20 signature, the date there is 5 November 2013, correct?

21 A. Yeah.

22 Q. Now I just want to understand something, and I'm sure this is beyond obvious,  
23 but sometimes it's important to have these questions answered. Let's assume this is  
24 the second judicial order that was issued in respect of this order and that the previous  
25 judicial order that I showed you was the first judicial order and that there were no

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 intervening judicial orders. Would I be correct that any disclosures that you made of  
2 financial transactions or records from Western Union would have been made on the  
3 basis and under the authority of the first judicial order?

4 A. I really don't know if there was anything before this, otherwise, yes. If there  
5 was any order before, I really would have to double check a lot of papers and see if I  
6 received anything else from the Austrian court.

7 PRESIDING JUDGE SCHMITT: Mr Gosnell, may I just, just to comment?

8 This seems to be a renewal since the first order has sort of an expired date. And here  
9 we have also an expired date again. So it looks like this, there has perhaps been  
10 something in between, could be. We don't know. We don't know. But perhaps  
11 we can ask the witness if there were any further orders.

12 THE WITNESS: Yes. Your Honour, it takes sometimes quite long to get these  
13 orders. Sometimes we are travelling, and there might be more time to answer all this.  
14 So there could be a few additional orders in between.

15 PRESIDING JUDGE SCHMITT: And perhaps there is also handwritten addendum,  
16 which is interesting, which says squarely that the order is under the condition that the  
17 time --

18 Could you have it a little bit bigger there, this one, the handwritten part? Yes.

19 That it is ordered with regard that the crimes and the offences concerned, with regard  
20 to the crimes concerned, it is proportional. That it says squarely. It's just, of course,  
21 not an official interpretation by me. The interpreters will forgive me for this.

22 MR GOSNELL: Just for the Court's information, if you look under the title "Annex  
23 A" under each of these two documents, you will see, and this assists in respect of the  
24 question as to whether there may have been intervening orders, you will see in  
25 respect of the first document a reference to, and there is a reference number, to the

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 first RFA, it says OTP/CAR/AUT-1/ID-PT. And then the second document has a  
2 reference number OTP/CAR/AUT-2/ID-PTH. So that was essentially the basis for  
3 my questions.

4 PRESIDING JUDGE SCHMITT: Thank you for this information, yes.

5 MR GOSNELL:

6 Q. Mr Smetana, I guess I can just put it like this: Do you remember whether you  
7 received any other official -- and I recall that back when you were testifying in  
8 response to my learned friend's questions, you mentioned four, I believe, orders or  
9 RFA?

10 A. Four or five. I can't remember that.

11 Q. Okay. In any event, do you recall whether there was any judicial order  
12 between these two documents that I've shown you?

13 A. Yeah, there could have been an update or I haven't -- I haven't really everything  
14 with me, and so I have to really check if -- I can also talk to the Austrian Prosecutor  
15 whatever I get.

16 MR GOSNELL: Thank you very much, Mr Smetana, for your answers.

17 THE WITNESS: You're welcome.

18 MR GOSNELL: And thank you, Mr President.

19 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Gosnell.

20 Are there further questions by the Defence teams?

21 Mr Kilenda.

22 MR KILENDA: (Interpretation) Thank you, Mr President. In view of the  
23 performance of my learned colleagues, I have not many questions to put to the  
24 witness. But with your authorization, just one question.

25 THE INTERPRETER: The sound is very, very bad, Mr President. We can hardly

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 hear counsel.

2 Could counsel please speak into a microphone?

3 PRESIDING JUDGE SCHMITT: Counsel, could you please speak into the  
4 microphone. The interpreters just tell me that they have problems to hear you.

5 QUESTIONED BY MR KILENDA: (Interpretation)

6 Q. Good morning, Mr Witness -- or good afternoon, in fact.

7 A. Good morning.

8 Q. I am counsel for Mr Fidèle Babala, who is seated to my right, and I have just one  
9 clarification to put to you with your leave.

10 A. Yes, please.

11 Q. Thank you. On occasion do you refuse to execute an order that you have  
12 received from the Austrian Prosecution's public Prosecution office?

13 A. If I refused an order that I have received? Not at all.

14 Q. And whenever the public Prosecution office in Austria gives you the instruction  
15 to proceed as you have in this case, do you have any -- do you ever receive any  
16 information on a subsequent right to appeal?

17 A. First of all, also on the other question, it is not always my office receiving court  
18 orders. So we have another institution in Austria which is called Western Union  
19 International Bank, and the compliance team there also receives court orders. It  
20 could happen that they received something which I didn't receive. This is a  
21 possibility.

22 On the second question, I'm not sure if somebody could help me to understand that?

23 Q. I'm going to shed light on the matter myself. I have the French translation of  
24 the document in German. And it is written here that it is the translation of the  
25 evidence. And I see towards the end of the document "Decision on the injunction of

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 the Vienna Prosecutor's office is authorized for the reasons contained therein." And  
2 then I see an execution order, after which I see written information pertaining to the  
3 right to appeal.

4 Have you -- are you aware of this information? Have you read this document?

5 A. Did you have it on the screen here?

6 Q. CAR-OTP-0087-0010 is the reference for the document. And we shall be  
7 consulting 0013, page 0013 and page 0014.

8 Can you see said document?

9 A. Yes.

10 Q. So you can see there is written "Decision," then if we go further down -- could  
11 we please show the following. Can you see "Execution Order" written there?  
12 "Ordre d'exécution" in French.

13 A. I can see, but I cannot understand French.

14 Q. So you did receive the original document in German, did you not?

15 A. I believe so. I cannot read what's on it, but I think I received it.

16 Q. Because this document is only the translation of the document, the original  
17 document in German. And after this order d'exécution, execution order, there is  
18 written information relative to the right to appeal. Do you see that?

19 A. Okay.

20 Q. Did you know that you had 14 days to appeal this order?

21 A. 14 days?

22 Q. Did you know that you had 14 days to appeal?

23 A. Yes.

24 Q. And could you explain to us and to the Chamber why in the instant case you  
25 did not appeal?

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 A. I mean, just give me the correct explanation to --

2 PRESIDING JUDGE SCHMITT: Mr Kilenda, do you allow me, do you allow me to  
3 intervene? Yes.

4 Mr Smetana, this shows, this "Rechtsmittelbelehrung" shows that the addressee of the  
5 order has in principle the right to appeal within the time limit of 14 days.

6 And the question was, if you can answer it, if you recall it, did you reflect on the  
7 possibility to have an appeal here in this case, and if so, why did you not appeal? I  
8 think that was the question.

9 THE WITNESS: Is it necessary to answer that?

10 PRESIDING JUDGE SCHMITT: Of course. It is a question. And I don't want to  
11 give the answer for you.

12 THE WITNESS: No, no.

13 PRESIDING JUDGE SCHMITT: Just answer it what you really think you can  
14 responsibly do.

15 THE WITNESS: If you just translate me the word "appeal" again.

16 PRESIDING JUDGE SCHMITT: In German it would be "Beschwerde."

17 THE WITNESS: Okay. I don't have any appeal on that.

18 PRESIDING JUDGE SCHMITT: So "appeal" means just so that in principle Western  
19 Union, of course, you not personally, in principle Western Union has the right to  
20 appeal, meaning Beschwerde einlegen in German against this order.

21 And the question was: Why didn't you do it here? That was the question. That's  
22 not my question. That was the question by Mr Kilenda.

23 THE WITNESS: Actually, I would have to double check since I have also put the  
24 papers that I received to our lawyers, so I didn't -- I didn't insert any appeal.

25 PRESIDING JUDGE SCHMITT: And, of course, this was the background of the first

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 question of Mr Kilenda, if you ever have made use of this possibility to appeal against  
2 such an order.

3 THE WITNESS: I'm personally not.

4 PRESIDING JUDGE SCHMITT: I think, Mr Kilenda, that is enough on that matter.

5 MR KILENDA: (Interpretation)

6 Q. Thank you, Witness.

7 Mr President, I have no further questions for this witness. Thank you.

8 PRESIDING JUDGE SCHMITT: So I think it's the right time to have the lunch-break  
9 until 2.30.

10 Do you have further questions, Mrs Struyven or Mr Vanderpuye? And perhaps you  
11 have also the emails until then or can you give us notice currently, at the moment?

12 MR VANDERPUYE: Thank you, Mr President. A bit of both. I think there is  
13 some redirect. I'm working on those emails still. I'll get them to the Defence as  
14 soon as possible.

15 PRESIDING JUDGE SCHMITT: So break until 2.30.

16 THE COURT USHER: All rise.

17 (Recess taken at 12.57 p.m.)

18 (Upon resuming in open session at 2.31 p.m.)

19 THE COURT USHER: All rise.

20 THE COURT OFFICER: Mr President, for the record, we are in open session.

21 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, do you have information for us?

22 MR VANDERPUYE: Yes, Mr President, I do. It's not good information, but I have  
23 it nevertheless. As I mentioned before we broke, there was the issue concerning

24 certain disclosure in the form of email communications between the Office of the

25 Prosecutor and Western Union. There were some emails that were communicated to

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 me. They were sent in a form that they were still archived, so I could not open them  
2 to see what they were. I managed to do that over the break, and I forwarded those  
3 emails to the Defence.  
4 Those emails also contain certain attachments, which we've also forwarded to the  
5 Defence. I think there is one attachment which contained information relevant both  
6 to this case and to another case, which I did not forward, because that material has to  
7 be redacted in order to -- in order for it to be furnished to the Defence.  
8 It appears that there may be yet a few other emails, and so I wanted to raise that and  
9 bring that to the Court's attention, because I'm not sure how the Chamber would like  
10 to proceed in these unfortunate circumstances. I'm not sure what the content of  
11 those emails are or may be; and, therefore, I would imagine if I were certainly in the  
12 position of the Defence, I would not rest my examination until I had an opportunity  
13 to look at it. I'm not sure how my colleagues feel about that.  
14 So there are a couple of different ways I think we can proceed. One is to finish  
15 where we are with the witness. The Defence will have an opportunity to review the  
16 material, and if it's necessary to call the witness back to be examined, that might be  
17 something depending also on the witness's availability and the Court's scheduling  
18 that could happen.  
19 Another thing that could be done is to potentially interrupt the witness's evidence at  
20 this point, have the Defence go through the material that I have given them so far. I  
21 will try to get the rest of the material to the extent that it's possible to the Defence so  
22 they can review it overnight and, if necessary, the witness can continue tomorrow.  
23 That would be another option.  
24 And the third option would be simply to suspend the witness's examination and call  
25 him back without, you know -- just set a date for the witness to come back so that it

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 can be done. I don't think that is the most efficient way to proceed. But I just  
2 wanted to be straight with the Court so that you can make an informed decision on  
3 how you wish to proceed.

4 I don't anticipate we're going to be digging up much more stuff than we have already,  
5 but I really don't know. I really cannot say that at this point and I don't want to  
6 make that representation.

7 PRESIDING JUDGE SCHMITT: Can you at least estimate when the digging process  
8 will be finalized?

9 MR VANDERPUYE: I'm hoping it will be done today. That's what I've asked to be  
10 done. I had asked for it to be done before I came back after the break. But I  
11 understand that hasn't been completed yet. So I'm hoping that it will be done by the  
12 end of today.

13 PRESIDING JUDGE SCHMITT: I'm not very inclined to release the witness and call  
14 him back some other time, to be honest. But I would first hear if the Defence has any  
15 comments in that respect.

16 MS TAYLOR: Thank you, Mr President, your Honours. We have had  
17 approximately, I would say, 10 minutes to go through the emails. There are attached  
18 Excel sheets which are quite voluminous, well, at least not something I can read in 2  
19 seconds, let's put it that way.

20 And it would appear that this might not be the first of the correspondence and that  
21 the dates of this correspondence is of crucial importance to the issues we have raised.  
22 So we would certainly benefit from having the entire picture before pursuing certain  
23 questions, and I think we would benefit from being able to have these documents in a  
24 format that we can put to the witness as well, if that's possible.

25 PRESIDING JUDGE SCHMITT: Then I think the best idea would be to be as flexible

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 as possible.

2 This would mean for you, Mr Smetana, that we I think would interrupt your  
3 examination at this point in time, and you would have to wait in the beautiful The  
4 Hague for one or two days. We will have to decide that then. Perhaps we can  
5 manage to continue your examination tomorrow. I'm not sure when the Prosecution  
6 will have finished the process, but when Mr Vanderpuye tells us, for example,  
7 tomorrow morning with all probability "This is it and we don't have more," then  
8 perhaps we could for example say with, as I said flexible, tomorrow afternoon with  
9 an extended break, for example, that you can go through it, have time to go through it  
10 as the Defence and then question the witness. I think we do it this way.

11 And even, but I would not really like it, but perhaps even continue on Thursday  
12 morning, for example, with the witness is also a possibility.

13 Mr Smetana ,I think this is for you even better than to send you back home to Austria,  
14 and you would have to come back in two or three weeks or something like that, yes?

15 THE WITNESS: I will.

16 PRESIDING JUDGE SCHMITT: You want to say something, Mr Smetana?

17 THE WITNESS: I will try to manage with my company to stay longer here.

18 PRESIDING JUDGE SCHMITT: We would very much appreciate it. You have  
19 heard it. Because of that it is good that you are inside of the courtroom to hear the  
20 problems that we have. And it would be very important that you are available  
21 tomorrow and at the least date on Thursday. But I can assure you on Thursday it  
22 will definitely finish.

23 THE WITNESS: Okay, I will.

24 PRESIDING JUDGE SCHMITT: This would mean that we now continue with  
25 214 -- wait a moment, Mr Taku -- and that Mr Smetana would be released for today

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 and is on standby, so to speak, you understand what I mean by that. Thank you.

2 THE WITNESS: Okay.

3 PRESIDING JUDGE SCHMITT: Mr Taku has --

4 MR TAKU: Yes, your Honour. Your Honours, I rise to bring to your attention a  
5 matter of grave concern to my client Mr Arido and obviously to me also. And while  
6 the distinguished witness is here, it would be good that I raise this issue in his  
7 presence. It is something that our intention, your Honours, at least to be able to  
8 mitigate the perception of probably the damage that had been done.

9 I just wanted to say that Mr Arido is not -- did not commit genocide, is not a  
10 génocidaire in the course of these proceedings or anywhere.

11 I have been involved in this proceeding from 1999, 15 years in the tribunal in Rwanda  
12 and Sierra Leone. And I know the gravity of what happened. I come from that  
13 sub-region. And my legal assistant is actually a victim. And when we hear saying  
14 that our client, whatever, in whatever context of a génocidaire is a matter of grave  
15 concern.

16 Now, why do I bring this in the presence of the witness? Western Union has a world  
17 reach. It is actually important. We in Africa rely on it. The Africa diaspora rely  
18 on Western Union. We just wondered if the Court or the Prosecutor could make  
19 sure, they inform the witness to correct that perception within their data, that that  
20 information that is in their data that he was a génocidaire, and also in the legal system,  
21 in fact, it formed that -- it formed part of an order of a judge that remains in the  
22 system, that the Prosecutor could correct that perception that he is not a génocidaire,  
23 who address the matter in the wider context as the trial goes on.

24 And also, your Honours, it is good, it is in the interest of justice as far as we are all  
25 here, your Honours, you are the guarantors of international justice, and in the course

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 of trying to prove a point in this case, it would not -- it would be wrong for Mr Arido  
2 or his family in any way to be hurt by this information.

3 And above all, your Honours, and permit me if I am wrong, correcting this  
4 information or the Prosecutor correcting at this point in time would send a wide  
5 message that one can be an African and not be a génocidaire.

6 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Taku. We have noted  
7 that and the witness has also heard it. Of course, this came up on a legal document,  
8 and this has been discussed. The Defence had the possibility to put questions to the  
9 witness, and we have seen the documents, and we can put it into perspective to put it  
10 neutrally to the Bench. But, of course, we cannot order, cannot give any order to the  
11 witness that that's perfectly clear, and I think the Prosecution will also and can also  
12 not do that.

13 Mr Powles.

14 MR POWLES: Mr President, yes, I'm asked by my client, because obviously this is a  
15 matter of some sensitivity, if there are records that do indicate that any of the accused  
16 in this case were at any time mentioned in relation to other far, far, far more serious  
17 offences, then it would be appropriate to correct any records that exist, whether with  
18 Western Union or indeed with any other organizations. If the Prosecution have  
19 circulated such information to other bodies, then it is a matter of concern for my client  
20 that those records are corrected and something is put on the system to correct those  
21 misstatements, lest it lead to any problems further down the line.

22 PRESIDING JUDGE SCHMITT: Thank you very much.

23 Mrs Struyven.

24 MS STRUYVEN: Maybe just very shortly to correct. These documents date  
25 November 2012, and at the time the investigation was taking place in the main case,

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 meaning in relation to the Bemba case in which war crimes and crimes against  
2 humanity were alleged. So that is why these documents refer to these crimes, just  
3 simply because at that time there was no separate Article 70 case.

4 MR TAKU: Your Honours.

5 PRESIDING JUDGE SCHMITT: Yes, please, Mr Taku.

6 MR TAKU: Your Honours, yes. I'm not disputing what my colleague is saying, but  
7 for the witness himself who brought up this, we would never have known, they  
8 probably knew about this long ago, they would have corrected that. And if I  
9 understand they cannot correct it, we will seek permission of the Court to pursue the  
10 matter ourselves outside these proceedings, your Honours, because there is actually a  
11 need that the record be corrected, and that when he leaves here, he and his family as  
12 they move around the world, the police and other crime investigation units do not  
13 consider him as a génocidaire.

14 I know the weight of that. I've been there. I've seen the victims. And as I told you  
15 that we are very, very close to it, and when that word is used lightly, especially to  
16 describe an innocent person and this proceeding will have and it is not corrected,  
17 timely corrected, and allowed on the record for so long, your Honours, is a matter of  
18 grave concern.

19 PRESIDING JUDGE SCHMITT: As I said, we have noted that. And we all know  
20 that we are here in this courtroom dealing with the Article 70 case.

21 Mr Kilenda, but then I think we should then after your comments, we should then  
22 continue.

23 MR KILENDA: (Interpretation) I was waiting for the interpreter to complete.

24 Thank you, your Honour.

25 I am not the counsel of Mr Bemba, but given the Prosecutor's comment, in fact, even

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 at the time, Bemba was not being prosecuted for genocide. And the documents  
2 circulating indicate that all the defendants here might be considered as genocide  
3 perpetrators. In my country, people are talking about Mr Babala, and this is not  
4 good. I believe it is today that the Prosecution has to make those corrections.

5 PRESIDING JUDGE SCHMITT: Any further comments by the Prosecution on that?

6 As I said, this Chamber established, as we every morning say, to try the case of Article  
7 70 and not try a genocide case and not try an Article 5 case, is aware of what this case  
8 is about. And we have taken note of the documents and we have read what is in the  
9 documents, and we as the Bench and as professional Judges can put this into  
10 perspective. The Chamber cannot order anything in that respect.

11 You have made your point, and we can understand that, of course. But I think we  
12 have now discussed this, I would not say sufficiently for you, I can imagine that's not  
13 sufficient for you, but you have had the possibility to make your point, and we have  
14 taken note of that, and also in the presence of the witness, Mr Taku wanted it  
15 especially that it is in the presence of the witness. But I have, of course, also to say  
16 that we cannot blame the witness for this. I have to make this perfectly clear.

17 So, Mr Smetana, this was a very lively afternoon session for you now. We would  
18 really appreciate it, as I said, if you would be available, we hope that we can finish  
19 your testimony by the day of tomorrow. But for the sake of -- you have the option at  
20 least that we could also call you on Thursday, please be available as an option until  
21 Thursday.

22 Thank you very much for the moment and have a good day. You are released for  
23 today.

24 THE WITNESS: You're welcome. Thank you.

25 MR GOSNELL: I'm sorry, Mr President, just before the witness is released for the

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 day, may I just ask your Honour to consider what instructions ought to be given to  
2 the witness as he leaves in terms of whether he's permitted to discuss his testimony.  
3 And this is a bit more complex than usual, because, of course, for example, I myself  
4 asked that he look into certain things. So I'm not sure what is your Honour's  
5 preference or what --

6 PRESIDING JUDGE SCHMITT: That is a tricky question, of course, with respect to  
7 this witness. Normally we would of course, and I think Mr Smetana would be  
8 aware, that he must not discuss his testimony with anybody else. But I would not, at  
9 least I would not see a problem if Mr Smetana produced or finds other documents  
10 that are perhaps of relevance. So I understand your intervention a little bit in that  
11 respect.

12 MR GOSNELL: Yes. May I just suggest, Mr President, that the parameters of the  
13 instruction be that the witness be permitted to look into obtaining, of course,  
14 documents that may have been in his possession that he wishes to produce that are  
15 responsive to what has been requested. But then I would also say that it should be  
16 made clear that he shouldn't discuss with his colleagues any substantive matters,  
17 even in the course of seeking out such documents, because such discussions could  
18 have an impact on his testimony.

19 PRESIDING JUDGE SCHMITT: Any comments by the Prosecution? I don't think  
20 so.

21 I think that makes sense, what you are saying, that's reasonable.

22 So, Mr Witness, you have heard it, but I reiterate it: You must not talk with  
23 colleagues about the content of this testimony. But if you can in your search for  
24 other documents make any findings, you can do that.

25 THE WITNESS: I will.

Trial Hearing  
Witness: CAR-OTP-P-0267

(Open Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: Any sort of research, I understood, you are  
2 permitted to do that, but please do not talk about your testimony with other people.

3 THE WITNESS: I understood. I will certainly try to find something. I'm not sure  
4 if it's possible to get it that fast, until tomorrow or Thursday, since some of my  
5 colleagues have also some of the data or some of the court orders. I really have to  
6 check if there is something around. So I'm not sure if I can bring the rest of the  
7 evidence until tomorrow, after tomorrow, because our people are also travelling a lot.  
8 So I will look what I can find.

9 PRESIDING JUDGE SCHMITT: But in so far perhaps the witness would have to talk  
10 to his colleagues. So when you can produce -- I think we should not do it too  
11 mechanically. If you are able to produce other documents that are perhaps relevant  
12 for this case, emails, letters, court orders, be free to unearth them, to put it this way,  
13 and to present them.

14 THE WITNESS: Yes. Just one more thing, on emails, our company is deleting  
15 officially all emails after two months.

16 PRESIDING JUDGE SCHMITT: So you are not obliged --

17 THE WITNESS: Yeah.

18 PRESIDING JUDGE SCHMITT: Don't misunderstand me, you are not obliged, but  
19 you yourself said, and you have heard the questioning by the parties, you yourself  
20 heard that there could be perhaps other documents, and if you can find them, you are  
21 allowed to do that. But furthermore, don't discuss your testimony with other  
22 people.

23 THE WITNESS: I will do that.

24 PRESIDING JUDGE SCHMITT: Thank you very much.

25 (The witness stands down)

Trial Hearing

(Open Session)

ICC-01/05-01/13

Witness: CAR-OTP-P-0267

1 PRESIDING JUDGE SCHMITT: I have just been informed that it would need 15  
2 minutes to change the witnesses, to put it this way. So we have a short break, I  
3 would say until perhaps 10 past 3.

4 MR POWLES: Your Honours, perhaps before the next witness commences his  
5 evidence, it will be appropriate for me to put on the record a concern on behalf of our  
6 team in relation to a very late disclosure by the Prosecution in relation to the contact  
7 logs with this witness.

8 We were given yesterday some 65 pages of details of contacts with the Office of the  
9 Prosecutor by this witness, some of them potentially quite significant in relation to his  
10 feelings after having been dealt with by the (Redacted)

11 Perhaps of most concern in relation to the contact log is an entry on (Redacted)

12 shortly after correspondence from the Office of the Prosecutor to the Defence for

13 Mr Kilolo, indicating that the witness did not want to be in contact with the Defence.

14 But it appears from the contact log on (Redacted), as I say, only days after

15 correspondence from the Office of the Prosecutor to the contrary, saying that the

16 witness had changed his mind and he agreed to be contacted by any Defence team.

17 My concern on behalf of my clients and our team is that that wasn't ever

18 communicated as far as I'm aware to the Defence for Mr Kilolo. I don't know if it

19 was communicated to any other Defence team, but certainly that change of mind on

20 the part of the witness was never communicated to the Defence of Mr Kilolo as far as

21 I'm aware. And it's a matter of some concern to us.

22 PRESIDING JUDGE SCHMITT: Of course, I cannot give any comment because I do  
23 not know, and the information is new of course also for the Bench.

24 Is there anything from the Prosecution, any comment to that?

25 MR VANDERPUYE: No comment, Mr President.

Trial Hearing  
Witness: CAR-OTP-P-0214

(Closed Session)

ICC-01/05-01/13

1 PRESIDING JUDGE SCHMITT: (Microphone not activated)

2 THE COURT USHER: All rise.

3 (Recess taken at 2.53 p.m.)

4 (Upon resuming in open session at 3.12 p.m.)

5 THE COURT USHER: All rise.

6 PRESIDING JUDGE SCHMITT: I see a new face in the courtroom. I assume that  
7 you are Mr Chaussonnière. Could you please introduce yourself for the record.

8 MR CHAUSSONNIÈRE: (Interpretation) Yes, good afternoon. Jean-Marie  
9 Chaussonnière from Val d'Oise, from the Val d'Oise Bar office, and I am here to give  
10 assistance to P-0214. Thank you, sir.

11 PRESIDING JUDGE SCHMITT: Thank you very much.

12 I have been informed that Mrs Taylor wants to address -- no? It's not so that I don't  
13 like you to address the Chamber, but I also accept of course that we can bring in the  
14 witness now, and we have to go into closed session for that.

15 \*(Closed session at 3.15 p.m.) Reclassified as open session

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

17 PRESIDING JUDGE SCHMITT: Mr Vanderpuye.

18 MR VANDERPUYE: Mr President, I just wanted to remind the Chamber about the  
19 issue with respect to 242 and the possible Thursday appearance of that witness. But  
20 we can deal with it at a later point.

21 (The witness enters the courtroom)

22 PRESIDING JUDGE SCHMITT: Mr Vanderpuye, I can clarify that the Defence  
23 teams have been told via email to tell the Chamber how we can proceed with 242. I  
24 think until tomorrow.

25 Matt, that's correct? Until tomorrow they tell us or this afternoon?

Trial Hearing  
Witness: CAR-OTP-P-0214

(Closed Session)

ICC-01/05-01/13

1 This afternoon. But I think for practical matters this will not be really decisive in the  
2 end.

3 Good afternoon, Mr Witness, and welcome in the courtroom. The Chamber turns  
4 now to the upcoming testimony of this witness, 214. First we discuss the issue of  
5 protective measures and Rule 74 assurances. We can go for that into private session.  
6 That means that the blinds can go up, but we are of course in private session.

7 \*(Private session at 3.17 p.m.) Reclassified as open session

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

9 PRESIDING JUDGE SCHMITT: The Chamber notes that the witness testified as a  
10 Defence witness in the case of the Prosecutor versus Jean-Pierre Bemba Gombo  
11 (Redacted). The Trial Chamber III granted the following protection  
12 measures: The use of image and voice distortion, the continued use of pseudonyms,  
13 as well as the use of private session where necessary to protect his identity. (Redacted)  
14 (Redacted)  
15 (Redacted)

16 According to Regulation 42(1) of the Regulations of the Court, the same protective  
17 measures shall apply in proceeding before this Court, with the clarification that the  
18 pseudonym that has been attributed by the Prosecution in this case, P-214, shall be  
19 used.

20 The Chamber will now discuss the matters of assurances pursuant to Rule 74 of the  
21 Rules for this witness.

22 Mr Chaussonnière, on 29 October 2015, you submitted a filing concerning Rule 74.

23 Therein you stated that you have explained the content of Rule 74 to your client.

24 However, it is not entirely clear if Rule 74 assurances are requested. To clarify that  
25 and in light of this counsel, could you please tell us if Rule 74 assurances on behalf of

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 your client are requested?

2 MR CHAUSSONNIÈRE: (Interpretation) Yes. Good afternoon. Thank you.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE SCHMITT: I understand what you said insofar that you would

21 also think it -- I understand your words that you think it appropriate that we apply

22 these protective measures that I have mentioned that have been applied before by

23 Trial Chamber III, and do I also understand you correctly that you also apply for

24 these Rule 74 assurances for your client?

25 MR CHAUSSONNIÈRE: (Interpretation) This is the reason why I had a prior

26

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 contact with him, and this is the reason why he has finally decided to come here  
2 today, because it has been clearly established, Mr President, having had the  
3 appropriate exchanges with the competent services that those measures would be  
4 taken, and this is the reason why he has spontaneously appeared before you today in  
5 the knowledge that such measures would indeed be taken.

6 PRESIDING JUDGE SCHMITT: But it is, you know, we have to confirm that these  
7 Rule 74 assurances are really requested. I understand your words in this way. If  
8 you do not object to that, then, Prosecution, what are your views on this request?

9 MR VANDERPUYE: Thank you, Mr President. Our views are consistent with  
10 other witnesses that have come. We think that there is a basis for Rule 74 assurances  
11 to be granted to this witness. And in the same circumstances as previously, that is,  
12 resorting to private session as is appropriate both for the issues of self-incrimination  
13 and for the issues of security as the Court deems necessary.

14 I should also note, Mr President, we have a slightly different configuration than we  
15 had previously. Just for the record, very quickly, to my left is Nema Milaninia;  
16 behind him is Ester Kosova, next to her is Sylvie Vidinha. Thank you, Mr President.

17 PRESIDING JUDGE SCHMITT: Thank you very much.

18 Any comments by the Defence?

19 (Trial Chamber confers)

20 PRESIDING JUDGE SCHMITT: We render a decision on the requested assurances.

21 Mindful of the factors specified in Rule 74(5) of the Rules, the Chamber has decided to  
22 provide assurances pursuant to Rule 74 of the Rules of Procedure and Evidence in  
23 order to enable the witness to testify truthfully without fear of the consequences of  
24 self-incrimination.

25 These assurances are granted with respect to Witness 214 under the conditions

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 specified in Rule 74(3)(c) and 74(7).

2 This means that the witness can still be prosecuted under Article 70 and 71 for his  
3 future conduct, such as testifying falsely before this Chamber in this case. However,  
4 the witness's testimony as to his past conduct cannot be used against him in a  
5 subsequent court prosecution.

6 This concludes the ruling of the Chamber.

7 And I add for the witness that I will explain it to you what this means.

8 We have an oral decision with regard to the Rule 68 request for P-214. The Chamber  
9 will now render a short oral decision with respect to Rule 68.

10 On 17 September 2015, the Prosecution requested that the prior recorded testimony of  
11 P-214 be admitted according Rule 68(3) of the Rules. The request is contained in  
12 filing 1262.

13 The Defence teams for Mr Babala, Mr Bemba and Mr Kilolo provided their responses  
14 on 24th September 2015. They are contained in filings 1283, 1293, and 1294.

15 Yesterday the witness signaled that he would like to be able to have his prior  
16 statement with him in the courtroom because he identified translation mistakes. The  
17 Chamber has not granted this request of the witness. But the witness was assured  
18 that he will have the opportunity to address his concerns during his testimony in  
19 court should this be necessary and to confer with his counsel if he wishes to do so.

20 The Chamber provisionally grants the Rule 68(3) request provided that P-214 does not  
21 object to the submission of his previously recorded testimony. The Chamber will  
22 provide a fully reasoned decision in due course.

23 In order to give effect to the purpose of Rule 68, that is the expeditiousness of the  
24 proceedings, the Prosecution need not have the witness identify each individual  
25 component of his prior recorded testimony so long as the witness confirms dates of

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 his prior testimony and does not object to the formal submission of the prior recorded  
2 testimony as a whole.

3 The ERNs of the prior recorded testimony can instead be submitted after the hearing  
4 in accordance with decision 1423 of the Chamber.

5 The Prosecution is also reminded that it is not necessary to re-elicite prior recorded  
6 testimony in court once the prerequisites of Rule 68(3) are met. However, this does  
7 not preclude the Prosecution to ask follow-up questions or to pose questions with the  
8 aim to clarify the witness's testimony.

9 This concludes the ruling by the Chamber.

10 And, again, Mr Witness, the Prosecutor will explain to you later on what this means  
11 to have objections or not objections to introduce former statements.

12 Then we again go for the solemn undertaking into open session shortly.

13 (Open session at 3.27 p.m.)

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

15 PRESIDING JUDGE SCHMITT: Mr Witness, there is a card in front of you with the  
16 solemn undertaking to tell the truth. Could you please read out loud this card.

17 WITNESS: CAR-OTP-P-0214

18 (The witness speaks French)

19 THE WITNESS: (Interpretation) Solemn undertaking. I solemnly declare that I  
20 will speak the truth, the whole truth and nothing but the truth.

21 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Witness. You are now  
22 under oath. AS you have just promised, you have to speak the truth. And I have to  
23 inform you that it is an offence within the jurisdiction of this Court to give false  
24 testimony.

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

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 \*(Private session at 3.28 p.m.) Reclassified as open session

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

3 PRESIDING JUDGE SCHMITT: Mr Witness, as I have told you before, I would like

4 a little bit to explain to you what these technical matters that we talked before are

5 about and what they mean. We know that you have already provided testimony

6 before this Court in another case. This Chamber wants you to testify truthfully

7 without any fear of consequences of self-incrimination.

8 This is why this Chamber has granted you assurances that nothing that you say

9 during your testimony before this Chamber can be used against you in proceedings

10 before this Court. This includes anything that you tell this Chamber with regard to

11 your testimony before the other Chamber. But what is important follows now, as

12 long as you tell the truth and follow the directions of this Chamber, you can be

13 assured that nothing you say will be used against you by this Court. However,

14 should you not tell the truth to this Chamber, this means that there can be future

15 Prosecutions against you for falsely testifying before this Chamber. I want you to

16 have this in mind when you are going to testify now. Do you understand that, Mr

17 Witness?

18 THE WITNESS: (Interpretation) Yes, your Honour, I have fully understood you.

19 PRESIDING JUDGE SCHMITT: Thank you. We can't guarantee you that there will

20 be no prosecutions against you in domestic jurisdictions for what you say here. The

21 Chamber does not have the power to do this. But what we will do in order to

22 protect you is that nothing incriminating you say will be disclosed to a State or

23 anyone outside of this courtroom.

24 Every time you say something that is potentially self-incriminating we will go into

25 what we call private session. At the moment we are in private session. That means

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 that this will not be broadcast outside of the courtroom and only the people in the  
2 courtroom can hear it.

3 The Chamber's ruling today means that the lawyers and everybody else in the  
4 courtroom are not allowed to disclose your identity or anything self-incriminating  
5 you say. There can be proceedings against anyone who does not obey this order.  
6 Do you understand that, Mr Witness?

7 THE WITNESS: (Interpretation) Yes, Mr President, I have understood.

8 PRESIDING JUDGE SCHMITT: Now I explain to you the protective measures. We  
9 have also talked about them before and your counsel has addressed it.

10 The following measures are put in place to protect you. Face distortion has been put  
11 in place, which means that no one outside the courtroom can see your face during the  
12 testimony on the screen. There will also be the use of a pseudonym. In accordance  
13 with that we will all refer to you only as "Mr Witness," as I am doing at the moment,  
14 to make sure that the public does not know your name.

15 When you answer questions that will not give away who you are or might  
16 incriminate you, we will do so in open session, which means that the public can hear  
17 what is being said in the courtroom. You can see that we are in open session if the  
18 light in front of you is red.

19 When you are asked to describe anything that relates specifically to you or you are  
20 asked to mention facts that might reveal your identity, for example, any locations  
21 where you live or persons close to you, we will do this in private session. The light  
22 in front of you will then be green.

23 As I've already explained to you, in private session there is no broadcast, and no one  
24 outside the courtroom can hear your answer.

25 If ever anything gets said during open session which should have been said in private

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 session, we will do our best to protect this information. Your testimony will be  
2 broadcast on a delay, and we can remove any such remarks from the broadcast which  
3 will be heard by the public and we can remove it also from the public transcript of the  
4 proceedings.

5 Finally on this matter, the Chamber recognizes that your security and well-being is  
6 important during the course of the trial. If at any point you feel that you would like  
7 a brief break from giving your testimony or if you feel unwell, do not hesitate to let us  
8 know.

9 Now a few practical matters you should have in mind when giving your testimony.  
10 Everything we say here in the courtroom is written down and interpreted into  
11 English and French. It is, therefore, important to speak clearly and to speak at a  
12 moderate or rather slow pace. We also here in the courtroom, and we are here since  
13 29 September of this year, forget that from time to time.

14 We want to make sure that your words can be well understood by the interpreters  
15 and then by the rest of us. Please speak into the microphone and only start speaking  
16 when the person asking you the question has finished. To allow for the  
17 interpretation, everyone has to wait a few seconds before starting to speak.

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

20 Have you understood all these many preliminary matters that I have addressed?

21 THE WITNESS: (Interpretation) Yes, Mr President, I've fully understood you.

22 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Witness. Then we will  
23 start with your testimony.

24 Mr Vanderpuye, you have the floor.

25 MR VANDERPUYE: Thank you, Mr President, and your Honours.

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 QUESTIONED BY MR VANDERPUYE:

2 Q. And good afternoon to you, Witness.

3 A. Good afternoon.

4 Q. I just want to make clear that if there is anything that I ask you that you don't  
5 understand well, just let me know so that I can rephrase it in a manner that we can  
6 better understand one another.

7 I also tend to speak quite quickly, so I'll try to slow down, and you try to slow down  
8 so that the interpreters can keep up with us.

9 And one last thing is try to restrict your answers as closely as you can so that they're  
10 responsive to the question that's put to you, okay?

11 A. Very well.

12 Q. We may from time to time move in and out of private session to open session  
13 and back. When we are in open session, I'll try to remind you to refrain from  
14 revealing any information which may tend to identify you. For the moment we're in  
15 private session, so we'll proceed, we'll proceed that way.

16 And if you could, please state your full name for the record and spell your last name?

17 A. My name is (Redacted). And if you want me to spell  
18 my family name (Redacted)

19 Q. Thank you, sir. What is your date of birth?

20 A. I was born on (Redacted)

21 Q. Where were you born?

22 A. I was born in (Redacted)

23 Q. And, sir, is that where you were raised and did you attend school there?

24 (Redacted)

25 (Redacted)

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. Sir, without telling us the address, can you tell us where you currently live?

13 A. I currently live in (Redacted). I live in (Redacted).

14 Q. And how long have you lived in (Redacted)

15 A. I've been living in (Redacted)

16 Q. Are you working there, sir?

17 A. Yes, of course, I'm working.

18 Q. How long have you been employed in your current job?

19 A. It has been about four years, approximately four years that I have been working  
20 in my current job.

21 Q. Thank you, sir.

22 I'd like to go into open session for just a moment. So again I would like to remind  
23 you just to refrain from revealing anything that might tend to identify you, okay?

24 PRESIDING JUDGE SCHMITT: We go into open session.

25 (Open session at 3.43 p.m.)

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

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

2 MR VANDERPUYE: Thank you, sir.

3 Q. You may have heard Mr President's reference to your prior testimony in the  
4 case of Prosecutor versus Jean-Pierre Bemba Gombo. What I would like to ask you is  
5 do you recall having testified in that case? And if you do, can you tell the Chamber  
6 approximately when that was to your recollection?

7 A. Yes, I have fully understood your question. It is correct that I testified in the  
8 previous case. I have a problem because I'm very bad with remembering dates.  
9 But if I'm not mistaken, it was slightly more than two years ago when I testified in the  
10 main case in this very courtroom.

11 Q. Okay. If I were to suggest to you that you testified between (Redacted)  
12 and (Redacted), would that sound about right?

13 A. In principle I will have to crosscheck in my documents. Frankly, I no longer  
14 remember the precise dates. It is something, it is a problem that I have. But I  
15 simply remember that I testified in this courtroom in the previous case.

16 Q. Okay, that's fine. And the Chamber can take notice of when you testified as we  
17 have the records of that testimony.

18 And do you recall whether you were called to testify in that case by the Defence, by  
19 the Prosecution or by the Court?

20 A. Yes, of course. I was examined by all the parties, that is when I was called to  
21 testify.

22 Q. Who called you to testify?

23 A. I testified in the Jean-Pierre Bemba case, and it was following contacts that I had  
24 had with Maître Kilolo.

25 Q. Okay. And did you testify in that case in the favour of Mr Bemba?

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 A. That is correct.

2 MR VANDERPUYE: If we can go into private session for a moment, Mr President?

3 PRESIDING JUDGE SCHMITT: Private session, please.

4 \*(Private session at 3.48 p.m.) Reclassified as open session

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

6 MR VANDERPUYE:

7 Q. Sir, I'm going to go into some questions just concerning the circumstances under  
8 which you came to give evidence in the Bemba case and about the evidence that you  
9 gave in that case. But before I do that, I would like to ask you some questions  
10 concerning a prior statement that you gave concerning those circumstances, all right?  
11 Okay.

12 A. Yes, I am ready for your questions.

13 Q. My first question is: Do you remember being interviewed about the  
14 circumstances under which you came to be a witness in the Bemba trial and  
15 ultimately testified? Do you remember being interviewed concerning that?

16 A. You're referring to the main case? Yes, I remember that I was interviewed  
17 regarding the circumstances that ended up with my coming to testify in favour of  
18 Senator Bemba. Is that what you mean?

19 Q. Pretty close. What I'm talking about is an interview following your testimony  
20 in the case. Do you recall being interviewed about the circumstances under which  
21 you testified, how it is you became a witness at some point after you testified in the  
22 case?

23 A. You have to assist me. Are you talking about what I said in this courtroom or a  
24 statement that I gave elsewhere?

25 Q. Right. I'm talking about a statement that you gave elsewhere, not in this

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 courtroom.

2 A. A statement gave elsewhere. Are you talking about when the investigators  
3 came to see me in (Redacted)

4 Q. Yes, I am. Do you remember when that was?

5 A. Yes. If I remember correctly, it must have been in (Redacted), that is if I'm  
6 not mistaken. I was called up in (Redacted) police service. They  
7 summoned me. And when I went to the police station, there was a delegation from  
8 the OTP. Is that what you are referring to?

9 Q. It is indeed, Witness.

10 A. Very well. Now I understand what you are talking about. Yes, I was taken to  
11 the police station to give a statement. I no longer remember the date, but I believe it  
12 was in (Redacted). I spent the first day there. And on the second day I went to work  
13 and then I returned to the station in the afternoon to continue with the interview. So  
14 I do remember.

15 Q. All right. I'd just like to show you a document.

16 And if I can have in eCourt please, it's tab 3 for the Chamber's binder,  
17 CAR-OTP-0074-0860. There is a French translation of that document also at tab 4.  
18 But I'd like to show in eCourt the one that I've mentioned.

19 Sir, do you recognize the document that's in eCourt now, that's on the monitor in  
20 front of you?

21 A. Yes, I can recognize this document on the screen, and it is in (Redacted)

22 Q. And I'd just like to blow up the upper part of the screen where we can see the  
23 witness's name. That will work.

24 Do you see your name on the screen, sir?

25 A. Yes.

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 Q. And you can see a date immediately beneath that. Does that refresh your  
2 recollection as to when that interview was carried out and when you gave your  
3 statement?

4 A. Yes, of course. As I said a short while ago, it was in (Redacted), and here it is  
5 stated (Redacted)

6 Q. I'd just like to go, I'm sorry if I'm -- I'd just like to go to the bottom of the page,  
7 please. Sir, do you recognize the signatures that appear at the bottom of the page?

8 A. Yes, I recognize my signature.

9 Q. And if I could just go briefly to the page ending 0868. I'd like you to take a  
10 look at that as well. We can go a little bit down the page so the witness can see the  
11 signatures on the page.

12 Do you recognize the signatures on that page, sir?

13 A. Yes, I recognize it.

14 Q. Is any of these signatures yours?

15 A. Yes, the first signature is mine.

16 Q. Thank you, sir. For the record that refers to line 213 of that, of this document.  
17 Did you subsequently have an opportunity to review this statement?

18 A. Whether I subsequently had the opportunity to review the document? Yes, I  
19 reviewed it yesterday.

20 Q. And did you have a chance to read it through, this version in (Redacted), or did  
21 you review it in another language?

22 A. The document that was given to me yesterday was in (Redacted) and in French.  
23 I read it in both languages.

24 Q. Now, we understood earlier that you had certain corrections you wanted to  
25 make with respect to the versions of that statement that you read; is that correct?

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 A. Yes, because there are certain nuances, perhaps it comes from the translation  
2 from (Redacted) into French. It is the first time that I read the document in French,  
3 and I was able to identify a few things that could be helpful to the Court, the  
4 Prosecutor or even the Defence, because as the Presiding Judge said, I want to be as  
5 correct and objective as possible.

6 PRESIDING JUDGE SCHMITT: In just a moment we have 4 o'clock. But I would  
7 like to continue if this is possible until we have clarified this point, and then I would  
8 not want to interrupt at the moment. So I think further 5, 10, at the maximum 15  
9 minutes, is this possible?

10 MR VANDERPUYE: It is, Mr President. I appreciate it. Thank you. If it's okay  
11 with everybody else. Thank you, Mr President.

12 Q. All right. So you had a chance to read the document you said in French just  
13 recently, that's right. Did you have a chance to review the document prior to  
14 yesterday or, rather, review your statement prior to yesterday?

15 A. Prior to yesterday, reviewing my statement, no. I think it was at the request of  
16 the OTP that (Redacted) read to me my certification in (Redacted), and I,  
17 therefore, had that certification read to me in (Redacted). But as for my reading it in  
18 French, I only did it yesterday. However, the certification took place I believe or was  
19 read to me in the month of, in the month of (Redacted) I believe, yes, in the month of  
20 (Redacted)

21 Q. And if I could just ask very briefly, are the issues that you have with respect to  
22 the translations matters that you addressed when the statement was reviewed with  
23 the (Redacted) or are they different issues?

24 A. I made a statement to the (Redacted), and as I stated earlier, there  
25 are few nuances, but the substance of my statement remains unchanged. It remains

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 unchanged, but there are a few nuances, a few interpretations that are not exactly  
2 correct, but the substance is exactly the same.

3 When I was given the document I asked the question, since I had jotted down a few  
4 things myself, I wanted to have that document with me in the room. I asked that  
5 person to give it to me, because I don't have an elephant's memory, and I wanted to  
6 look at the document to see exactly what I had said and the things that I would have  
7 wanted to correct.

8 Q. All right. What I would like to show you very quickly in eCourt is  
9 CAR-OTP-0090-2005. I think it's in tab 11, by the way, for the Chamber's benefit.  
10 And I think we have a French translation of that version behind tab 12. It's  
11 CAR-OTP-0091-0715. What I'd like to have in eCourt is the original, which is in the  
12 (Redacted) language.

13 Okay. First thing I'd like to note -- can you see the document, Witness?

14 A. Yes, sir, I can.

15 Q. Okay. And, first, does this refresh your recollection as to when it was that you  
16 met with (Redacted) officials regarding the previous statement which is indicated at  
17 (Redacted)

18 A. Yes, indeed, I can see the date. (Redacted), that is correct.

19 Q. And what I would like to do if I can is just slowly go down the page, and there  
20 we can see some information relating to you. Do you recognize that, sir?

21 A. I do.

22 Q. And if we go to the first paragraph, a little bit down, there we are, we can see a  
23 reference to your being accompanied by a lawyer. Do you recall that being the case?

24 A. Yes, I do recall that I was in the company of a lawyer in the room. The  
25 (Redacted) had also prepared a lawyer.

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 Q. Now I'd like to go to the next page of this document, please.

2 And for the Chamber's benefit, the French translation of this part of the document is  
3 at CAR-OTP-0091-0717, behind the same tab.

4 And here what we have is an attestation. Do you see that, sir?

5 A. Yes.

6 Q. And if we could go further down the page so we can see the signatures. Do  
7 you recognize your signature on this page, sir?

8 A. Yes, I recognize my signature.

9 Q. And did you attest at that time that the statement that you gave subject to the  
10 corrections that are indicated in this document was true, truthful, I should say,  
11 accurate and made voluntarily with respect to this declaration and the corrections as  
12 well as the (Redacted) statement?

13 A. Yes, I see the statement. I recognize the statement.

14 Q. And do you stand by your corrections and the statement that you made on (Redacted)  
15 (Redacted)

16 A. I do, because I was called in for the certification by the (Redacted) in my area. And  
17 they said that they wanted me to be there for the certification of what had been taking  
18 place before, because what had gone on before had been done without the presence of  
19 a lawyer. So there I was asked to verify that and agree to that certification.

20 Q. You can confirm that what you said at that time on (Redacted) and on (Redacted)  
21 well, (Redacted) of this year and (Redacted) of last year was true and accurate, yes?

22 A. I already said so before. The statement is exactly the statement I made. It is  
23 correct. However, as I believe I have already said, there are a few nuances,  
24 corrections that I would -- that I would suggest are necessary, but the substance of the  
25 statement is correct.

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 Q. Thank you, sir.

2 MR VANDERPUYE: Mr President, I would move to admit the statements as they're  
3 indicated in the filing that the Chamber referred to earlier.

4 PRESIDING JUDGE SCHMITT: I think we have done it with the last witnesses,  
5 perhaps you try it with the legal wording, and I think we have here an intelligent  
6 witness that is able to understand it, we try it this way; and otherwise you have  
7 already circumscribed it a little bit, but give it a try with the wording of Rule 68(3).

8 MR VANDERPUYE: I will do, Mr President. I don't have the statement in front of  
9 me, but I will ask the witness.

10 Q. Do you have any objection, sir, to your statement being placed before the  
11 Chamber in the record of this case as evidence?

12 A. As I have already stated and I shall now repeat yet again, it can be put before  
13 this Chamber since I indeed declared that, I stated that. However, and this is very  
14 important, because these are nuances -- you see, I speak (Redacted), but my  
15 (Redacted) is not really fluent. And what is happening here is this, there may be a  
16 few things here and there that are not totally correct. And since I read it yesterday  
17 for the first time in French, I would want that document to be given to me as I  
18 suggested yesterday to see what is really good and what should be corrected; or  
19 either we accept the document however in the course of the procedure later, because I  
20 will probably ask to read parts of the document, and if there are parts where I believe  
21 that I have to include something different and include some minor corrections, they  
22 will be important, you see, because everything has to be crystal clear.  
23 So I go back to what the Presiding Judge was telling me earlier, I know that I have  
24 been called here after the main trial. I would not want us to go back, as the  
25 Presiding Judge said, back to some errors that may have been committed in the

Trial Hearing  
Witness: CAR-OTP-P-0214

(Private Session)

ICC-01/05-01/13

1 course of the first trial. So I would like to be as clear as possible, and I should like to  
2 be as impartial as possible.

3 I know that I have come here and that my contribution may be of service to justice,  
4 and I am convinced that I may help justice, and this is why I'm asking that these  
5 minor corrections be made. However, this being said, you can accept that document  
6 and tender it as evidence if you want to, but I wanted to make that clear from the  
7 beginning. Thank you.

8 Q. Thank you, sir. And we'll deal with that as well tomorrow with the Chamber's  
9 leave. At this time as far as I know --

10 PRESIDING JUDGE SCHMITT: Exactly, we defer this to tomorrow. I think this is  
11 the absolutely perfect moment in time to conclude today's hearing and to resume  
12 tomorrow at 9.30.

13 Thank you very much, Mr Witness. We will, as you are perfectly aware of, we will  
14 continue with your testimony tomorrow. And in the meantime you must not speak  
15 to anybody over the testimony or about what you have said today, and we wish you a  
16 nice evening, and we will see each other tomorrow and also with Mr Chaussonnière.

17 THE COURT USHER: All rise.

18 \*(The hearing ends in private session at 4.13 p.m.) Reclassified as open session

19 RECLASSIFICATION REPORT

20 Pursuant to Trial Chamber VII's instructions, ICC-01/05-01/13-1209, dated  
21 2 September 2015, this lesser redacted public version of the transcript is filed in the  
22 record of the case.