

1 International Criminal Court

2 Pre-Trial Chamber III

3 Situation in the Central African Republic - ICC-01/05-01/08

4 Confirmation of Charges Hearing - Open Session

5 Tuesday, 13 January 2009

6 The hearing starts at 9.32 a.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session.

9 JUDGE TRENDAFILOVA: Please take a seat.

10 The Confirmation Hearing is now in session. I welcome everyone
11 who is here in the courtroom today and in the public gallery.

12 Security officers, would you invite Mr. Bemba into the courtroom,
13 please.

14 (The suspect entered court)

15 JUDGE TRENDAFILOVA: Good morning. On behalf of the Bench, I
16 welcome you, Mr. Bemba, to this hearing today.

17 Court Officer, could you please call the case for the public
18 where might be some new people there in the public gallery.

19 COURT OFFICER: Situation in the Central African Republic, case
20 the Prosecutor against Jean-Pierre Bemba Gombo, ICC-01/05-01/08.

21 JUDGE TRENDAFILOVA: Thank you. Are there some new faces in the
22 courtroom? Mr. Prosecutor -- the Prosecution's team, do you have someone
23 new to present?

24 MS. KNEUER: Good morning, Madam President, your Honours. Yes,
25 indeed. The Prosecution has one new face today in the court and it's

1 Ms. Horejah Bala-Gaye, assistant trial lawyer. Otherwise, the same
2 persons are present that were present yesterday, except the Prosecutor
3 himself.

4 JUDGE TRENDAFILOVA: Thank you, Ms. Kneuer.

5 On behalf of the Defence team. Mr. Khan, do you have some -- for
6 myself I do not see, but as if Ms. Lindsay is absent.

7 MR. KHAN: She is indeed. Otherwise the same old faces.

8 JUDGE TRENDAFILOVA: Thank you. The victims' legal
9 representatives.

10 MS. MASSIDDA: No new faces. Thank you, your Honours.

11 JUDGE TRENDAFILOVA: Thank you, Ms. Massidda. Ms. Douzima, are
12 you fine? Thank you.

13 On behalf of the Bench, I would like to present
14 Ms. Leila Bourguiba, who is associate legal officer for the division, and
15 Ms. Julianna Koppany, who is research assistant for the pre-trial
16 division.

17 Now, before we proceed with our agenda for today, I would like to
18 say that we have advanced our schedule quite well, and today we shall
19 listen to the presentation -- for the presentation of the Prosecution's
20 team on the counts of rape, torture, and murder as crimes against
21 humanity. Thereafter, the Defence will respond and present its evidence.

22 Before we start today's presentation, I would like to make some
23 important points. First point is related to the Flash presentations.

24 In yesterday's session the Defence showed interest in having the
25 Prosecutor's Flash presentation. The Prosecution's team has already

1 provided the participants with DVDs of the Flash presentations of its
2 evidence. However, the Chamber would like to know whether the OTP is
3 also willing to provide, in advance, the Flash presentation. It is up to
4 your strategic approach to how you present your case, so if you're very
5 courteous to the opposing party, you will present it. If not, after you
6 finish with your presentation you will be so kind to submit the DVDs to
7 all participants, and to the Bench as well, of course.

8 MS. KNEUER: Madam President, your Honours, the question of the
9 timing of handing over the DVDs is not so much a strategic one, it's
10 one of getting ready. As you know, sometimes we have last-minute
11 changes, and for that reason we sometimes only finish right before the
12 commencement of the Confirmation Hearing with the Flash presentations.

13 We are trying to improve for tomorrow, but again for today we
14 will hand over the Flash presentation DVDs to the participants after the
15 conclusion of the Confirmation Hearing.

16 JUDGE TRENDABILOVA: Yes. Thank you, Ms. Kneuer. Of course it
17 is up to you, and we shall appreciate if the exchange of some material
18 between the parties go -- goes on as smoothly as until now, and I would
19 like to express my personal satisfaction that in this courtroom everyone
20 is performing professionally his or her functions, and there is respect
21 for everyone who is present here in the courtroom. Thank you very much.

22 The second point that I would like to make is related to an issue
23 raised by the Defence yesterday about the incriminatory or exculpatory
24 nature of some evidence.

25 The Defence raised the issue of alleged improper treatment of the

1 Prosecution of some pieces of evidence as incriminatory while they, in
2 the opinion of the Defence, appear to be of exculpatory nature. The
3 Chamber finds it unnecessary that any of the parties re-file the evidence
4 which has already been disclosed and is in the Ringtail. The parties are
5 free to evaluate the evidence in terms of its nature and content and
6 accordingly may present and treat it in a manner that they perceive
7 appropriate. Of course the Chamber, on our behalf, we are going to
8 assess the evidence and evaluate it the way we find it most appropriate
9 regardless of the approach of the parties. Of course this does not mean
10 that we're not going to take into account your comments and your
11 arguments, but finally it is our evaluation.

12 And third, filing documents, again a point that was raised
13 yesterday by the Defence that appeared to wish to file some documents
14 pursuant to Rule 121(9).

15 The Defence -- the Chamber would like to point out that the
16 Defence should have lodged written submissions on points of facts and
17 law -- or law by the 8th of January. So any submissions in this regard
18 will be rejected in limine. I point out in this regard.

19 So I would now like to invite -- Mr. Khan, do you want to take
20 the floor?

21 MR. KHAN: Your Honour, Madam President, with your leave, yes.
22 In relation to the issue raised by the legal consultant Virginia Lindsay
23 yesterday, I fully accept the ruling of the Court and it seems, with a
24 greatest of respect, eminently sensible. It would appear at first blush
25 to be a rather technical point. There is no prejudice suffered by the

1 Defence because, of course, we have been given the information. I think
2 if I can just clarify, I think the point that was being made yesterday or
3 was attempted to have been made was that the fact that evidence was being
4 classified by the Prosecution as incriminatory when in fact it was
5 exculpatory provided some evidence that perhaps the Prosecution have not
6 fully understood the nature of their own evidence, and we wanted the
7 Trial Chamber -- the Pre-Trial Chamber to be alive to the nature of the
8 evidence rather than its classification.

9 Your Honour, in relation to the Rule 121, of course it's a
10 permissive rule. It's not a mandatory rule that evidence must be filed
11 three days before the hearing. It's an option for the parties, and I did
12 refer to the statement by Mr. Van der Spoel at a previous Status
13 Conference, but, your Honour, I accept the points raised, but I want the
14 background as to the decision of the team to be understood by your
15 Honours.

16 JUDGE TRENDABILOVA: Thank you, Mr. Khan. You would like to take
17 the floor, Ms. Kneuer.

18 MS. KNEUER: Thank you, your Honours. The Prosecution
19 appreciates very much that your Chambers, as well as my colleague from
20 the Defence, is of the opinion that the most important issue occurred,
21 meaning the exculpatory material was disclosed to the Defence and is in
22 the possession of the Defence.

23 The Prosecution would like to point out that during the course of
24 disclosure we were faced with a situation that a piece of evidence
25 included sometimes several types, meaning inculpatory, exculpatory

1 material or material that falls under Rule 77.

2 In order to be very transparent, when the Prosecution disclosed
3 evidence to the Defence which was of inculpatory nature and has to go to
4 the list of evidence since the Prosecution wished to rely upon this piece
5 of evidence, we always indicated in writing that these inculpatory
6 materials could also include potentially exculpatory material as well as
7 material under Rule 77.

8 Thank you, Your Honours.

9 JUDGE TRENDABILOVA: Thank you, Ms. Kneuer. What you're saying
10 has been thoroughly discussed by the Chamber when we have prepared the
11 decision on disclosure, because anyone who is professional in the field
12 knows that quite often pieces of evidence have mixed nature, containing
13 paragraphs or even some parts that are incriminatory and others
14 exculpatory.

15 With regard to the comment you made, Mr. Khan, of course it is
16 your business to address the Chamber and to turn the attention of the
17 Chamber to the points that are very important for the proper conduct of
18 the Defence. However, I would like to reassure you that the Chamber
19 purposefully approached the Defence at the disclosure proceedings a
20 little bit differently, following of course the legal provisions, after
21 the evidence has been disclosed to the parties all the evidence to be
22 communicated to the Chamber, because the Chamber has to make its own
23 assessment, and the Chamber is going to bear in mind especially evidence
24 important for the Defence if this evidence has been disclosed but not
25 presented during the Confirmation Hearing. So in this regard you're

1 properly conducting your functions, but do not forget that the Chamber is
2 always keeping an eye on the proper -- on the proper care to be taken of
3 the rights of the Defence.

4 With regard to your second point that you made related to
5 Rule 121(9), I think that I have to express my personal disagreement that
6 you say the Defence cannot be limited in presenting new evidence till the
7 end of this Confirmation Hearing, for example.

8 I'm referring to Rule 79(1) and (2), you're right but only with
9 regard to evidence that is related to alibi or to grounds for excluding
10 criminal responsibility. Otherwise, I would highlight that the
11 obligations of the Defence to disclose evidence that is important to --
12 important for the Defence and should be disclosed before the
13 Confirmation Hearing, Rule 121(6) applies 15 days before the
14 Confirmation Hearing. So at least that is my response as if I properly
15 understood your comments. Thank you, Mr. Khan.

16 MR. KHAN: Your Honour, I'm most grateful. Perhaps we're at
17 cross-purposes. I accept regarding evidence -- I think the issues raised
18 yesterday perhaps didn't deal with substantive evidence but were rather
19 procedural issues, for example, an indication, as a matter of courtesy as
20 much as anything else, that the Defence were going to file various
21 motions including a motion on vagueness of the indictment, and of course
22 there doesn't appear at first blush to be any procedural prohibition on
23 doing that, and indeed it may assist your Honours in your function in
24 assessing the evidence and deciding what, if any, charges should proceed.
25 Your Honour, I hope that clarifies.

1 JUDGE TRENDABILOVA: Thank you very much. I close the matter,
2 and let us go ahead with the presentation of the Prosecutor. Yesterday I
3 couldn't keep track on the time that is left for the two teams, the
4 Prosecutors and the Defence team, and I'm very grateful to the legal
5 officers. I would like to announce that for the team of the Prosecutor,
6 they have 1 hour and 24 minutes left; and for the team of the Defence,
7 47 or 48 minutes left. Of course the Chamber is not going to adhere very
8 strictly. We're always here to listen to the best presentation of the
9 Prosecution's office and of the Defence but just to keep informed how
10 much time you have in addition to the time allotted to you in the
11 schedule.

12 Thus I would invite the Prosecution's team, if you're ready, to
13 go ahead with your presentation on the counts of rape, torture, and
14 murder as crimes against humanity. You have the floor. Thank you.

15 MS. KNEUER: Thank you, Madam President. The submissions for
16 rape, torture and murder will be presented today by myself first, then by
17 my colleague trial lawyer Mr. Scaliotti and then by my colleague
18 Ms. Bala-Gaye. Each of us will approximately need 25 minutes, and all
19 the presentations will be supported by Flash presentations.

20 Madam President, your Honours, on behalf of the Prosecution, I
21 will address Count 1 and 2 dealing with rape, both charged -- charged
22 both as a crime against humanity and a war crime in the Prosecution's
23 amended document containing the charges. The Prosecution submits that
24 the evidence as a whole, as included in its amended document containing
25 the charges, amended list of evidence, and the in-depth analysis chart

1 establishes substantial grounds to believe that from on or about
2 26th of October, 2002 to 15th of March, 2003, in the Central African
3 Republic Jean-Pierre Bemba committed, jointly with another, the crimes of
4 rape constituting a crime against humanity within the meaning of
5 Article 7(1)(g) of the Statute, and rape constituting a war crime
6 pursuant to Article 8(2)(e)(vi) of the Statute.

7 Madam President, your Honours, the individual pieces of evidence
8 you will hear are samples indicative of the wide phenomenon of rapes
9 perpetrated by the MLC in the Central African Republic between
10 October 2002 and March 2003. The evidence will show that
11 Jean-Pierre Bemba's MLC gang-raped men, women, and children, some as
12 young as 10. They raped them in homes, compounds, in the streets, in the
13 field, and in the open, often by means of violence or the threat of
14 violence.

15 MLC combatants typically raped these civilians in teams in an
16 organised manner. They used rape as a weapon of war to beat the
17 Central African Republic population into submission and to punish them
18 for their perceived support for Bozize's rebels. To this day, your
19 Honours, some of the victims of the MLC rapes live with the scars of
20 these rapes, including HIV infections, the inability to conceive, social
21 stigma, ostracisation from communities, and physical and psychological
22 destruction.

23 To put these submissions into context, the Prosecution invites
24 your Honours to listen briefly to a radio broadcast from Radio France
25 Internationale which depicts a wider picture of the nature, types, and

1 severity of rapes to which Jean-Pierre Bemba's MLC subjected Central
2 African Republic civilian population.

3 Madam Court Officer, the Prosecution kindly requests that the
4 radio broadcast CAR-OTP-0031-0093, EVD-P-02162, track 1 at minute 1.52 to
5 minute 2.53 will be played.

6 (Audiotape played)

7 "(Voiceover): (Interpretation) In the Central African Republic we
8 are trying to normalise the situation. The situation in the northern
9 areas is calm. That's what the authorities are saying, but the
10 populations in the north of Oubangui are still afraid of pillaging and
11 rape, and the populations of the northern areas are hesitating to go back
12 to their domiciles. Actually, for several days the men of Jean-Pierre
13 Bemba who came to help the Central African loyalists are subjecting them
14 to a lot of abuse. At PK12, several hundred men were subjected to
15 pillaging and rape, rape on women and also children and -- is a mother
16 under -- who is still in shock. They raped my child. That's the
17 tragedy. She was called Patricia, only 12 years of age. That is the
18 tragedy. They came to kill us or to hurt us. They raped little girls.
19 They did anything that they wanted to do, even my own child. They went
20 house to house. They took little girls and forced them to -- and raped
21 them. When they take action here, the Banyamulenge, if they want to kill
22 me, they can. They carry weapons. If you open your mouth to talk to the
23 Banyamulenge, they don't want it. They only want to kill. It's
24 terrible, I tell you."

25 MS. KNEUER: The first count of rape falls under the chapeau of

1 Article 7 of the Statute, and the second falls under the chapeau of
2 Article 8 of the Statute.

3 In this submission the Prosecution will focus firstly on the
4 specific elements of rape both as a crime against humanity and a war
5 crime and secondly will address the counts of victims in both Counts 1
6 and 2.

7 The Prosecution will conclude by showing how these individual
8 accounts meet the specific elements of rape as charged in both Counts 1
9 and 2.

10 Throughout the present -- Prosecution's submission about the
11 specific elements of crimes of rape, torture, murder, outrages upon
12 personal dignity, and pillaging, the presenters will use a Flash
13 presentation showing a chart. On the horizontal axis the witnesses on
14 whose statements the Prosecution relies throughout the hearing are
15 listed.

16 The witnesses listed in dark blue are those which are relevant to
17 the specific count being presented. Any witnesses listed in light blue
18 are those which are not relevant to the specific count being presented.
19 On the left-hand vertical axis, the contextual and specific elements of
20 each crime are listed. As the contextual elements of each crime will be
21 discussed in separate submissions, the corresponding boxes below the
22 relevant witnesses' names will appear checked early in each speaker's
23 submission about the specific crimes.

24 When the speaker has finished explaining how all the specific
25 elements of a crime are satisfied by a witness statement, the boxes below

1 that witness name will then appear checked at -- all at once. This tool
2 will illustrate for the Chamber how the Prosecution has provided
3 sufficient evidence of each element of the crimes charged.

4 For the purposes of Count 1 and in order to avoid repetition, I
5 ask your Honours to incorporate by reference submissions by my colleagues
6 on the contextual elements of crimes against humanity, including rape,
7 and Jean-Pierre Bemba's knowledge as it relates to Article 7 of the
8 Statute.

9 Similarly with respect to Count 2, I ask your Honours to
10 incorporate by reference the submissions that my colleagues will make
11 later today on the contextual elements of war crimes and
12 Jean-Pierre Bemba's knowledge of the factual circumstances establishing
13 the existence of an armed conflict in the Central African Republic
14 between October 2002 and March 2003.

15 Rape as a crime against humanity has four specific elements.
16 These are: First, the invasion of the body of a person by conduct
17 resulting in penetration, however slight, of any part of the body of the
18 victim or the perpetrator with a sexual organ or the anal or genital
19 opening of the victim with any object or any other part of the body.

20 Second, the invasion was committed by force, by threat of force,
21 or by coercion.

22 Third --

23 MR. KHAN: Your Honour, I do apologise. Mr. Nkwebe has just
24 pointed out that, of course, he doesn't have a copy of this chart in
25 French. I wonder perhaps -- it needn't delay matters but perhaps

1 later -- well, as soon as possible a hard copy in French can be given and
2 perhaps for future presentations, because of course it's not fair if at
3 least two members of the team are prejudiced because they can't follow a
4 chart because the chart does not appear in a language that they
5 understand.

6 JUDGE TRENDAFILOVA: Ms. Kneuer, do you think that you can manage
7 providing the Defence with what they require to be useful for their work?

8 MS. KNEUER: Technically, I think it's not feasible because we
9 cannot display two charts on one screen. However, the Prosecution will
10 do its utmost to present a French translation in a hard copy for the
11 further proceedings.

12 JUDGE TRENDAFILOVA: Okay. Thank you.

13 MS. KNEUER: If that is acceptable.

14 JUDGE TRENDAFILOVA: Thank you for being cooperative. Thank you.

15 MS. KNEUER: Third, --

16 JUDGE TRENDAFILOVA: Mr. Liriss would like to take the floor.

17 MR. NKWEBE LIRISS (interpretation): President, since the first
18 appearance, Mr. Bemba requested his trial to be in a language he
19 understands correctly, French. He repeated this. So if now during this
20 presentation documents are in English -- it's not the same thing for us
21 to be given the documents afterwards. We need to be ready to react at
22 the right time. To make us listen to a presentation in English and to
23 make him listen to a presentation in English, which wasn't the language
24 he chose, is against the right of the Defence. Thank you.

25 MS. KNEUER: May I please the Court. First of all, the

1 submission of the Prosecution is the oral submission, which is, as far as
2 the Prosecution understands, is translated into French for Mr. Bemba.
3 The Flash presentation has the only purpose to support the oral
4 presentation. Further, Mr. Bemba is represented also by an
5 English-speaking lawyer.

6 I understand the concerns of the Defence. However, I would like
7 to stress that the manner and format that the Prosecution has chosen
8 satisfies, from our perspective, the needs of the Defence.

9 JUDGE TRENDAFILOVA: Just a moment before you proceed,
10 Ms. Kneuer. I would like to give some clarification to the team of the
11 Defence.

12 We have been approached by the Defence team on language issues,
13 and I as a Single Judge have issued a decision on that relying on the
14 existing -- on the statutory provisions, on the existing jurisprudence in
15 this institution and in other tribunals. And we made it very clear,
16 because I was performing my duties as a Single Judge on behalf of the
17 Chamber, that an interpretation from English into French and vice versa
18 will be always available not only to Mr. Bemba but to his Defence
19 counsels as well.

20 With regard to the translation of written documents, this is a
21 requirement that is going to be fulfilled only with regard to the most
22 important written documents related to the Defence, and we have
23 identified them as the arrest warrant, as document containing the
24 charges, as the final decision on the confirmation or not of the charges,
25 and that your duties to respond, to file an application will start as of

1 the date you receive the French translation. So this is what I would
2 like to say again recalling you the decision that we have taken on the
3 issue of languages. We shall proceed with the French interpretation and
4 the English interpretation simultaneous, but with regard to the written
5 documents we have to adhere to this decision and to the statutory
6 provisions of this institution. Thank you.

7 Would you please go ahead, Ms. Kneuer.

8 MS. KNEUER: Thank you, Your Honours. Third, the conduct was
9 committed as part of a widespread or systematic attack directed against
10 the civilian population.

11 And fourth, the perpetrator knew that the conduct was part of or
12 intended the conduct to be part of a widespread or systematic attack
13 directed against a civilian population.

14 For rape as a war crime, the first two elements are the same as
15 the first two elements of rape as a crime against humanity. The
16 difference between the two counts pertains to the context in which the
17 crime is committed.

18 Based on the context, rape as a war crime has three distinct
19 elements which do not apply to rape as a crime against humanity. These
20 three distinct elements are: First, that the conduct takes place in the
21 context of and was associated with an armed conflict not of an
22 international character. Second, that the victims were civilians, as
23 such taking no part in hostilities. And third, the perpetrator was aware
24 of factual circumstances that established the existence of an armed
25 conflict.

1 The Prosecution proposes to take your Honours through a selection
2 of its core evidence from both victims and witnesses of MLC rapes against
3 Central African Republic civilians specified in Counts 1 and 2. These
4 victims and witnesses provided detailed account of MLC's consistent rapes
5 of civilians in homes, compounds, in the streets, publicly in the open,
6 and in the presence of family members. They identified the attackers as,
7 I quote, "Bemba's men, Banyamulenge, MLC combatant," and the like.

8 The victims further describe in detail attacks by MLC combatant
9 which included penetration of their bodies where the invasion was
10 committed by force or by threat of force or coercion.

11 The Prosecution will now present the individual accounts of a
12 sample of these victims.

13 The first sample in the Prosecution's submission is the multiple
14 rapes of Witness 68 by Jean-Pierre Bemba's MLC troops. Witness 68 states
15 that she and her sister-in-law were fleeing when a group of armed MLC
16 soldiers stopped them and demanded their assistance near Fouh, which is
17 not far from PK12. These MLC soldiers spoke to the witness in Lingala, a
18 language she had heard before when people came from the Democratic
19 Republic of the Congo to trade.

20 One of the MLC soldiers took the witness and her sister-in-law's
21 possession. Afterwards, a number of MLC soldiers took the witness to a
22 nearby compound close to the Miskine high school. At this location one
23 of the soldiers held down the witness by force while two other MLC
24 soldiers forcibly had sexual intercourse with her in turns. In the words
25 of the witness describing whether she consented, the witness said, and I

1 quote, "It was against my will. I was crying."

2 Both soldiers ejaculated inside her. Witness 68 feared that the
3 MLC soldiers would kill her after being raped, but once done, one of the
4 soldiers pushed her and gestured her to go away.

5 As a result of these multiple MLC rapes, the witness now has
6 no -- has now problems with her womb and is HIV positive.

7 Finally, the witness was not the only victim of MLC rape during
8 this incident. The witness states that she heard her sister-in-law
9 screaming as three other MLC soldiers raped her.

10 The Prosecution now submits its second rape in its sample, the
11 gang-rape of Witness 22 by Jean-Pierre Bemba's MLC combatants.

12 Witness 22 states that near PK12 armed MLC soldiers arrived early
13 in the morning at the home where she was staying. The MLC soldiers
14 entered her home by forcing -- by force, demanding money. They said, I
15 quote, "We received an order from President Patasse to kill any boy at
16 the age of 10, but we didn't do it, so we are doing you a favour now."
17 And that, I quote again, "The rebels," meaning Bozize, "came through
18 PK12. You, the people at PK12 with the big fences, you -- these people,
19 protected the rebels," and that was why they received the order to go
20 from house to house. The MLC's soldiers who had pushed back Bozize's
21 forces and occupied the area mixed Lingala with French with a Congolese
22 accent when they spoke.

23 Six MLC soldiers came into the bedroom of the witness. One of
24 them ordered the witness to lie on the bed. She refused. He ordered, I
25 quote, "Deshabille-toi." Again, she refused. He pointed his gun at her

1 head and pushed her on the bed. He cut her clothes with a knife. The
2 witness states that she was subsequently raped by the three MLC soldiers
3 in succession with a gun at her throat. All three perpetrators
4 ejaculated in her. As a result of these multiple MLC rapes the witness
5 is now HIV positive.

6 Your Honours will subsequently hear other submissions that
7 describe the additional violence and degradation to which
8 Jean-Pierre Bemba's MLC subjected Witness 22 and her family.

9 The Prosecution's third sample relates to Witness 87 who also was
10 gang-raped in the compound outside her home. Your Honours will
11 subsequently hear details of the killing of Witness 87's brother and
12 submissions on the degradation to which Jean-Pierre Bemba's MLC subjected
13 this witness. This submission, however, will focus on rapes specified in
14 Counts 1 and 2.

15 The witness states that after Bozize's men had withdrawn, the MLC
16 soldiers arrived in Boy-Rabe in Bangui. Seven armed MLC soldiers arrived
17 at her home in the morning hours and asked her, I quote,
18 "(Interpretation) There are rebels here." (In English) She replied,
19 "(Interpretation) No, they're over there by the market." (In
20 English)(Previous translation continues) ... evening another group of
21 four armed soldiers came to her home. Three entered the house, asked for
22 money and took some of the possessions from the house and left. A few
23 hours later more groups of MLC soldiers came. They said, I quote,
24 "(Interpretation) Give money. Don't kill -- or we won't kill. My
25 commander --" (In English)(Previous translation continues) ... then took

1 Witness 87 outside by force, took off her clothes, pushed her down to the
2 ground and raped her.

3 I further quote, "He penetrated my woman part of the body with
4 his own man part of the body, and he ejaculated inside me." When he
5 finished, he stood on her and call the next MLC soldier. The second did
6 the same, so did the third. Each soldier kept his gun nearby during the
7 rapes. The witness feared being killed by the MLC soldiers after they
8 had raped her.

9 The fourth sample is the multiple rapes of Witnesses 23 and 80,
10 husband and wife. Witness 23 states that in early November 2002, he ran
11 into MLC soldiers near PK12. He informed them of his position in the
12 community. The MLC soldiers responded that he was exactly the type of
13 person they were looking for and I quote, "Because you protect the
14 rebels," and promised that they would return.

15 Shortly thereafter, eight MLC soldiers came to the witness's
16 family compound firing their guns. These MLC soldiers asked him if he
17 wanted to live or to die. The witness told them that he wanted to live.
18 The soldiers respond was, and I quote, "Okay. You will live, but we will
19 have to fuck your anus." A number of these MLC soldiers penetrated the
20 witness's anus with their male parts, in turns, in the presence of his
21 wife and children. After being raped Witness 23 was forced to watch as
22 MLC soldiers raped his wife and daughters. The MLC soldiers raped the
23 witness's youngest daughter, aged 11 at that time. She is reportedly
24 destroyed both psychologically and physically by the rapes.

25 Witness 80 also provides an account of the rape of her husband,

1 Witness 23, and his four daughters. Afterwards the soldiers came back to
2 Witness 23's home and committed other crimes which will be covered by my
3 colleagues.

4 The fifth sample is the multiple rapes of Witness 81. The
5 witness states that a group of MLC soldiers came to her home. They
6 referred to themselves as chiefs, and they informed the witness that they
7 were looking for women to sleep with. One MLC soldier identified himself
8 to the witness as Leopard. Leopard informed the witness that he was the
9 commander of Jean-Pierre Bemba's rebels. I quote, (Interpretation) "I am
10 the commander of Bemba's rebels." (In English) Leopard chose Witness 81
11 to sleep with, and when her husband objected to this, Leopard responded
12 that he did not care.

13 The MLC soldiers gave the witness husband an ultimatum that if he
14 resisted them sleeping with his wife, they would have to sleep with him
15 as well.

16 The MLC soldiers thereafter took the witness's husband outside.
17 Witness 81 informed Leopard that she had recently given birth, and
18 Leopard responded that, I quote, "It is not my problem." Leopard hit her
19 with the butt of a gun and beat her. Leopard then forcibly raped
20 Witness 81, after which other MLC soldiers raped her in the presence of
21 her mother and her brother. As a result of the MLC soldiers' rapes the
22 witness can no longer conceive.

23 The sixth sample is the rape of Witness 42's daughter.
24 Your Honours will subsequently hear detailed evidence on the inhuman and
25 degrading treatment to which Jean-Pierre Bemba's MLC combatants subjected

1 the witness. This submission will focus on the rape of this witness's
2 daughter by Jean-Pierre Bemba's MLC.

3 Witness 42 states that the troops of Jean-Pierre Bemba arrived in
4 PK12 and came to her home repeatedly. According to this witness, armed
5 MLC soldiers forcibly entered his home, hit him, and forced him to lie
6 facedown on the ground with his wife. The sons of the witness were also
7 present. The MLC soldiers fired their guns. One of the MLC soldiers
8 referred to as Sergeant kept saying to the witness, I quote,
9 "(Interpretation) Papa, I'm going to marry your daughter." (In English)
10 The witness states that while his head was forced to the ground, he heard
11 cries from his 10 years old daughter. I quote, "(Interpretation) Papa,
12 they're pulling me to take my away." (In English) Briefly thereafter the
13 witness could not hear cries of her daughter anymore. When the MLC
14 soldiers left, the witness saw blood on his daughter's skirt. His
15 daughter informed her mother, Witness 42's wife, that two of the MLC
16 soldiers raped her.

17 The seventh sample is MLC's multiple rapes of Witness 29. The
18 witness states that whilst the MLC soldiers were retreating through
19 Mongoumba sometime in March 2003, residents of the town started to flee.
20 As the witness was about to flee, she was stopped by a group of armed MLC
21 soldiers. She said, I quote, "(Interpretation) If I attempt to flee,
22 they might open fire on me, so I stayed put and waited."

23 (In English) Three MLC soldiers told her to go inside her home.
24 They searched it and then ordered the witness to go -- to get to the
25 ground, but she refused. They tripped her to the ground and raped her in

1 turns. All three ejaculated inside of her.

2 The witness further states that she was forced by the MLC
3 soldiers, I quote again, "(Interpretation) He made love to me by force.
4 He penetrated me by force, and I cried as hard as I could." (In
5 English)(Previous translation continues) ... subsequently fled because
6 she had heard that women who refused the MLC's sexual advances were
7 killed and feared that more MLC soldiers would come and rape her again.

8 As a result of the rape, the witness is now HIV positive.

9 The witness spoke of other women who had suffered the same
10 aggression during MLC's intervention in 2002. She stated, I quote,
11 "(Interpretation) In 2002, in the northern area of Bangui, at that time
12 or during that period any women who did not want to yield were killed,
13 and that came back to my mind. If I refuse, they are sure to kill me."

14 (In English) Your Honours, for the final submission on the
15 individual cases of rape, the Prosecution will now submit information on
16 the rapes of Unidentified Victims 1 to 35, information which is contained
17 in the summary statement of Witness 47. The Prosecution submits that
18 Pre-Trial Chamber I has accepted to use -- the use of unidentified
19 victims in the past confirmation of charges decision. In particular, the
20 Prosecution refers your Honours to the Prosecution v. Germain Katanga and
21 Mathieu Ngudjolo Chui. Pre-Trial Chamber I confirmed proof of the charge
22 of murder as a crime against humanity with the use of unidentified
23 victims.

24 Witness 47 provides information that approximately 20 MLC
25 soldiers publicly and repeatedly raped eight Central African women after

1 they ripped their clothes. While one MLC soldier was raping a woman, the
2 others forced her to take their penis in their mouth. The witness heard
3 the MLC say that they were lucky to have sexual relations with
4 Central African thanks to Jean-Pierre Bemba.

5 After the rapes they terrorised the women with their weapons and
6 quickly left.

7 Secondly, the witness provides information that MLC soldiers
8 raped and beat up 22 young women, two of whom were disabled at that time.
9 Thirdly, the provides information that MLC militia kidnapped 40
10 Central African Republic women of varying ages at PK22 and PK26 and took
11 them to an isolated location where they raped and terrorised the women
12 and stole their jewellery.

13 In sum, each of the cases the Prosecution's evidence provides
14 substantial grounds to believe that MLC soldiers invaded the bodies of
15 the specified civilians with their sexual organs resulting in penetration
16 and that these acts were committed by force and threats of force.

17 To demonstrate the prevalence of force as tool for MLC rapes, the
18 Prosecution refers to the evidence of Witnesses 42, 29, and 80. In
19 particular, Witness 80 states, and I quote, "When they came, they could
20 take you in front of your husband and sleep with you. They could also
21 sleep with your daughter in front of you. And when we wanted to open our
22 mouth to say something, they threatened you with guns, saying that if you
23 continue, they will kill you."

24 It is submitted that in each of the cases there are substantial
25 grounds to believe that each direct perpetrator intended to commit the

1 crimes pursuant to Article 30 of the Statute. Clearly, each perpetrator
2 intended to invade and penetrate the body of their victims as required by
3 the elements of the crimes. Each direct perpetrator knew that the
4 invasion was committed by force or by threat of force or by coercion.

5 Further, Jean-Pierre Bemba had the requisite intent and
6 knowledge. As you will hear shortly, at the time Jean-Pierre Bemba
7 deployed his troops in the Central African Republic in 2002, he knew that
8 they had committed similar crimes in the Central African Republic in 2001
9 and Mambasa in 2002.

10 Accordingly, it is submitted that all of the required elements
11 for Counts 1 and 2 have been met and that the evidence as a whole
12 establishes substantial grounds to believe that, first, rape constituting
13 a crime against humanity as alleged occurred in the context of the MLC's
14 widespread or systematic attack against the Central African Republic
15 civilian population within the meaning of Article 7(1)(g) of the Statute
16 and, second, rape constituting a war crime occurred pursuant to
17 Article 8(2)(e)(vi) of the Statute.

18 This concludes the Prosecution's submissions to Counts 1 and 2.
19 Thank you.

20 JUDGE TRENDAFILOVA: Now another member of your team will proceed
21 with the other counts, and this is Mr. -- I'm sorry, I can't recall your
22 name.

23 MR. SCALIOTTI: Mr. Scaliotti, your Honours.

24 JUDGE TRENDAFILOVA: Thank you. Go ahead, Mr. Scaliotti.

25 MR. SCALIOTTI: Madam President, your Honours, the Prosecution

1 will now present Counts 3 and 4, namely the crime of torture through acts
2 of rape or other forms of sexual violence both as a crime against
3 humanity and as a war crime.

4 During this presentation which will be supported by visual
5 presentation, the Prosecution will first address the legal requirements
6 of the crime of torture. I will then turn to the evidence supporting the
7 charges of torture. The Prosecution will finally summarise the reasons
8 why the evidence as a whole as included in the amended document
9 containing the charges, the amended list of evidence, and the in-depth
10 analysis chart establishes substantial grounds to believe that from on or
11 about 26 October 2002 to 15 March 2003, in the Central African Republic,
12 Jean-Pierre Bemba's MLC troops committed the crime of torture
13 constituting a crime against humanity and the crime of torture
14 constituting a war crime under the Rome Statute.

15 Your Honours, I will -- I will begin by introducing the legal
16 elements of the crime of torture.

17 My colleague Mr. Yillah has already addressed the contextual
18 elements common to all crimes against humanity. Another colleague will
19 address later the contextual elements common to all war crimes. In order
20 to avoid repetitions, I incorporate here Mr. Yillah's submission relating
21 to the widespread or systematic attack against the Central African
22 civilian population. For the same purpose, the part of this presentation
23 concerning torture as a war crime will be then incorporated by reference
24 into the submissions on the existence of an armed conflict in the
25 Central African Republic during the period relevant to the current case.

1 I will now turn to the specific elements of the crime of torture.

2 The first specific element of the actus reus is common to both
3 torture as a crime against humanity and as a war crime, whereas the other
4 elements -- whereas the other specific elements are different.

5 The actus reus of torture as a crime against humanity under
6 Article 7(1)(f) includes the following three elements: Infliction of
7 severe physical or mental pain or suffering upon one or more persons.
8 Such person or persons were in the custody or under the control of the
9 perpetrator. Such pain or suffering did not arise only from and was not
10 inherent in or incidental to lawful sanctions.

11 The actus reus of torture as a war crime under
12 Article (8)(2)(c)(i) includes the following three elements: Again the
13 infliction of severe physical or mental pain or suffering upon one or
14 more persons. The perpetrator inflicted the pain or suffering for such
15 purposes as obtaining information or a confession, punishment,
16 intimidation or coercion, or for any reason based on discrimination of
17 any kind. The victims were civilians as such taking no part in the
18 hostilities.

19 The mens rea under Article 30 includes one element common to both
20 torture as a crime against humanity and a war crime and specific
21 elements. The common element is the perpetrator intended to inflict
22 severe physical or mental pain or suffering upon one or more persons, or
23 the perpetrator was aware that severe physical or mental pain or
24 suffering will occur in the ordinary course of events.

25 Elements specific to torture as a crime against humanity are:

1 The perpetrator was aware that such person or persons were in the custody
2 or under the control of the perpetrator. The perpetrator was aware that
3 such pain or suffering did not arise only from and was not inherent in or
4 incidental to lawful sanctions.

5 Finally, specific elements to torture as a war crime are: The
6 perpetrator intended to inflict the pain or suffering for such purposes
7 as obtaining information or confession, punishment, intimidation or
8 coercion, or for any reason based on discrimination of any kind. The
9 perpetrator was aware of the factual circumstances establishing the
10 civilian status of the victims.

11 Your Honours, the Prosecution will now address the evidence
12 supporting the charges of torture. Again, in order to avoid repetition,
13 I incorporate by reference the evidence presented by Ms. Kneuer with
14 regard to specific incidents of rape.

15 Ms. Kneuer described how this rape occur. This presentation will
16 now shortly focus on the extreme pain and suffering that victims endured
17 and will explain why it constitutes torture. The jurisprudence of
18 several international judicial bodies has established that rape
19 necessarily implies severe pain or suffering whether physical or mental.
20 Therefore, once rape has been proved, severe pain or suffering as
21 required by definition of torture can be said to be established.

22 This presentation, as I said, would only focus shortly on certain
23 conditions, on certain specific circumstances surrounding the rapes which
24 increased the degree of pain or suffering, and include the fact that men,
25 women and children were raped by multiple perpetrators, were raped in

1 front of family members, were raped in public locations, were forced to
2 watch rapes of their family members.

3 I will start with the account of Witness 22. Witness 22, as you
4 heard from Ms. Kneuer, states that six MLC soldiers entered her bedroom.
5 She was then raped by three MLC men. The sexual attack was brutal. When
6 she refused to take off her clothes, the MLC soldier pointed a gun at her
7 head and cut her underwear off with a knife. The MLC soldier put the gun
8 against her neck during the rape. The witness states that after the rape
9 she wanted to commit suicide.

10 I would like to remind you now of the crimes suffered by
11 Witnesses 23 and 80. Witness 23 explains his in statement that the MLC
12 men forced him to lie on the ground in front of his wife and children and
13 in the position of a horse. He was then sodomised by several MLC
14 soldiers on the outside ground in front of his family from 10.00 in the
15 morning to 2.00 in the afternoon, which means for four hours. After he
16 was raped the MLC raped his wife, Witness 80, in front of him.

17 Witness 80 describes how three MLC soldiers raped her in the
18 living-room in front of some of her children until she lost
19 consciousness. Following the crimes perpetrated by the MLC on Witness 23
20 and Witness 80's family, two of their daughters were abandoned by their
21 husbands, and one of Witness 23's wife left him, telling him that he was
22 like a woman.

23 I will now proceed with the account of Witness 81. Witness 81,
24 another daughter of Witness 23, explains in her statement that the
25 commander of a group of MLC soldiers raped her despite the fact that she

1 told him she had recently given birth. He hit her with the butt of a
2 gun, beat her and forced her to take off her clothes in front of her
3 family. The MLC commander then raped her in the living-room. The
4 witness states, and I quote, "When he slept with me it was not quite long
5 after I had given birth, so I felt very bad in my abdomen since he was
6 sleeping with me with brutality." After the first rape, three other MLC
7 men also raped her in front of her mother and brother. She explains that
8 after the fourth rape she started bleeding.

9 Your Honours, I will now make reference to Witness 42.
10 Witness 42, his wife and children, are victims of torture for witnessing
11 the rape of Witness 42's 10-year-old daughter. Witness 42 states that
12 several groups of MLC soldiers went to his house and took his son whom
13 they called a rebel. When he tried to intervene, the MLC said, and I
14 quote in French, "(Interpretation) There is an old man with a rebel son.
15 After that the MLC soldiers ordered him and his family" -- (In
16 English)(Previous translation continues)... the house. The witness
17 relates that he was hit and forced to lie facedown on the ground with his
18 wife, his three sons and his daughter. The witness states that when he
19 was lying on the floor one of the MLC soldiers put a foot on his neck and
20 another foot on his back to prevent him from moving. The witness further
21 explains that one MLC soldier told him that he was going to marry his
22 daughter. He then heard his 10-year-old daughter crying before she was
23 taken behind the house. When she came back, his daughter said that she
24 had been raped by two MLC men. He could see the blood on her little
25 skirt.

1 Your Honours, the Prosecution submits that all the victims of
2 rape under Counts 1 and 2 of the amended document containing the charges
3 are also victims of torture under Counts 3 and 4 because of the rape.
4 Some of them, as you heard, were also victims of torture as they were
5 forced to watch the rapes of their family members.

6 However, there are additional victims of torture under Counts 3
7 and 4. These victims are persons who without being raped had to witness
8 the rape of their family members. The Prosecution submits in this regard
9 that according to jurisprudence of the international tribunals, the
10 mental suffering caused to an individual who is forced to watch sexual
11 violence on a relative amounts to torture.

12 In conclusion, your Honours, the evidence as a whole relied upon
13 by the Prosecution indicates that all the incidents of torture occurred
14 as part of a widespread and systematic attack against the Central African
15 civilian population. These incidents also occurred in the context of and
16 were associated with an armed conflict from on or about 26 October 2002
17 to 15 March 2003.

18 The evidence also indicates that all the victims were subjected
19 to severe pain or suffering, whether physical or mental. They were in
20 the custody or under the control of the MLC, the physical perpetrators,
21 and the pain or suffering were totally unrelated to any lawful sanctions.

22 The evidence also shows that all the victims were civilians, as
23 such taking no part in the conflict. Victims were caught by the
24 perpetrators while fleeing or in their house with their family.

25 The evidence also demonstrates that Jean-Pierre Bemba's MLC

1 troops used torture through acts of sexual violence for the purpose of
2 punishing and intimidating the civilian population for allegedly
3 sympathising with Bozize's rebels.

4 The Prosecution further submits that the perpetrator had both
5 intent and knowledge to cause severe physical or mental pain or
6 suffering. Furthermore, the systematic use of threat of force, threat or
7 coercion against the victims indicates that the MLC soldiers were aware
8 that victims were under their control.

9 It can be inferred from the circumstances that the perpetrators
10 were aware that the acts of torture through acts of sexual violence do
11 not constitute sanctions admitted under international law and standards.
12 The circumstances also indicate that the MLC soldiers were aware of the
13 civilian status of their victims.

14 The infliction -- sorry, the intention to inflict pain or
15 suffering for the specific purpose stated above can be inferred from the
16 perpetrators statements during the various incidents. The Prosecution
17 emphasises that Bemba is criminally responsible for the crimes of torture
18 irrespective of whether or not the physical perpetrators carried out
19 these acts with the requisite intent and knowledge. However, the
20 evidence shows that the physical perpetrators committed the crimes to
21 discriminate, to punish, or to intimidate their victims. The evidence,
22 therefore, corroborates the Prosecution's case that the acts of torture
23 have not been committed as opportunistic or isolated crimes but they were
24 intended by Bemba to further the implementation of the common plan
25 between him and Patasse. Therefore, on the basis of that evidence an

1 inference can be drawn as to the criminal intent and knowledge of Bemba
2 with regard to the crimes of torture.

3 Your Honours, in conclusion, the Prosecution submits that all
4 required elements for Counts 3 and 4 have been fulfilled, and the
5 evidence as a whole establishes substantial grounds to believe that
6 torture constituting a crime against humanity was committed by
7 Jean-Pierre Bemba's MLC troops within the meaning of Article 7(1)(f) of
8 the Rome Statute, and torture constituting a war crime was committed by
9 Jean-Pierre Bemba's troops pursuant to Article (8)(2)(c)(i) of the
10 Rome Statute as charged in the amended document containing the charges.
11 Jean-Pierre Bemba's criminal responsibility for these crimes will be
12 covered by my colleague Ms. Tai in her submission on the mode of
13 liability. This conclude this presentation. Madam President,
14 your Honours, thank you for your attention.

15 JUDGE TRENDABILOVA: Thank you, Mr. Scaliotti. Now we have left
16 murder as the last count as a crime against humanity, and the
17 Prosecution's team has 20 minutes till 11.00, because then we're going to
18 take a break. Please you have the floor, Ms. Kneuer.

19 MS. KNEUER: Thank you, your Honours. This is correct. My
20 colleague Ms. Bala-Gaye will submit the Prosecution's observations with
21 respect to murder. She will make use of the Flash presentation and also
22 display one audio feature. Thank you.

23 JUDGE TRENDABILOVA: So Ms. Bala-Gaye, you have the floor.

24 MS. BALA-GAYE: Good morning. Madam President, your Honours, the
25 Prosecution's evidence will establish substantial grounds to believe that

1 on or about 26 October 2002 to 15 March 2003, in the Central African
2 Republic, Jean-Pierre Bemba committed, jointly with another, the crimes
3 of murder constituting a war crime and murder constituting a crime
4 against humanity under the Rome Statute.

5 The first charge of murder falls under the chapeau of Article 8,
6 and the second falls under the chapeau of Article 7. This submission
7 will address some of those victims cited in Counts 6 and 7 of the amended
8 document containing the charges.

9 Ms. Court Officer, could you kindly display the visual
10 presentation on the screen. The horizontal axis of the chart contains
11 the names of witnesses on whose statements the Prosecution relies and the
12 victims addressed. The contextual and specific and legal elements
13 relevant to the crimes of murder appear on the left -- on the vertical
14 axis on the left-hand column of the chart.

15 Your Honours, yesterday you heard Mr. Yillah's submission on the
16 contextual elements common to all crimes against humanity, including
17 murder. A subsequent submission by Ms. Carl will address them in
18 relation to war crimes. This submission therefore focuses only on the
19 specific elements of murder.

20 For the war crime of murder under Article (8)(2)(c)(i), I refer
21 your Honours to the elements of crimes which have three specific
22 objective requirements.

23 One, the perpetrator killed one or more persons. Two, such
24 person or persons were either hors de combat or civilians, medical
25 personnel or religious personnel, taking no active part in the

1 hostilities. And three, the perpetrator was aware of the factual
2 circumstances that established this status.

3 For murder as a crime against humanity under Article 7(1)(a), the
4 elements of crimes have one specific objective requirement. The
5 perpetrator killed one or more persons. Thus the requirement that a
6 person is killed is identical to both counts and proof of this common
7 element will be dealt with simultaneously.

8 Concurrently at the outset, evidence will be presented to
9 indicate that such victims were civilians. Furthermore, evidence will be
10 led to infer and conclude that the perpetrators were aware of the
11 protected status of their victims as civilians. Additionally, this
12 evidence will show that the subjective element which requires both intent
13 and knowledge as specified under Article 30 was present for both charges
14 of murder. That is, death was either the intended conduct or consequence
15 and the perpetrator was aware that death would occur in the ordinary
16 course of events.

17 The Prosecution will lead the Chamber through a selection of its
18 core evidence. These are statements of witnesses interviewed by the
19 Office of the Prosecutor which appear on its amended list of evidence.
20 This evidence will show that troops of Jean-Pierre Bemba, the MLC, had
21 both the means and authority to kill unarmed civilians, a licence to kill
22 without repercussion. More specifically, to instill fear and make the
23 civilian population unwilling and unable to support the rebel forces,
24 murder was a tool available to MLC troops. They killed whenever they
25 chose and wherever they went. They killed particularly when faced with

1 any resistance and in the furtherance of perpetrating other grave and
2 systematic crimes such as rape and pillaging.

3 To provide the Chamber with a sample symptomatic of a wider
4 phenomenon, this submission will first address three individual cases of
5 murder. In each case Jean-Pierre Bemba's MLC troops used guns or other
6 means to cause the death of Central African civilians.

7 The first account of murder is the killing of Witness 87's
8 brother by Jean-Pierre Bemba's MLC troops.

9 On or about 30th October 2002, during the night at Boy-Rabe,
10 Bangui, in the Central African Republic, three MLC soldiers arrived at
11 the home of Witness 87 and her brother. At the time of this incident,
12 the MLC soldiers were in control of the Bangui area, including
13 Quartier Votongbo in Boy-Rabe where Witness 87 and her brother, who were
14 both civilians, resided.

15 Witness 87 was a coffee trader and her brother was with her at
16 their home. Earlier that same day, MLC soldiers had broken into their
17 main house on three separate occasions. After being raped and her home
18 looted, Witness 87 fears another attack by the MLC soldiers. She decides
19 to move to the second house which is located directly behind the main
20 house in the same compound.

21 Leaving her brother and one of her cousins in the main house,
22 sometime after 9.00 p.m. that night she hardly reaches the stairs leading
23 to the second house when the MLC soldiers arrive again. She hears them
24 kick open and enter the door to the main house.

25 Witness 87 stays behind the door of the second house, which is

1 about a distance of 15 steps away from the main house. With the help of
2 a lamp coming from the living-room of the main house, she can see all
3 three MLC soldiers in that living-room. She describes these MLC soldiers
4 as wearing military uniforms similar to those worn by the Central African
5 National Armed Forces and carrying guns in their hands. Unlike the
6 Central African National Armed Forces, however, she recognises that they
7 are speaking a different language, Lingala. She can identify this
8 language which she hears spoken by people travelling frequently along the
9 river between Bangui and Congo.

10 She sees one MLC soldier move to another room, the room where her
11 father's motorbike is parked. Her brother who is the victim of this
12 murder follows the MLC soldier into that room. At that moment, she can
13 see that the two other MLC soldiers are still in the living-room but her
14 cousin who was present earlier is nowhere to be seen.

15 Coming from the room where the motorbike is parked, Witness 87
16 can hear her brother talking to the MLC soldier. She believes that her
17 brother is resisting this MLC soldier who wants to steal their father's
18 motorbike because she hears him saying, "non, non." A moment later she
19 sees the two MLC soldiers in the living-room who are the only two other
20 people in the house leaving. The last MLC soldier stays in the other
21 room with her brother. Suddenly she hears three shots, gunshots, in the
22 house. After the shooting she sees the third MLC soldier leaving. She
23 then hears the voice of her brother saying his last words, "Thank you.
24 Thank you. You have already killed me. You can go now."

25 Fearful for her life, Witness 87 remains in her position in the

1 second house. A moment later she hears her brother groan three times and
2 then there is silence. She goes to look for her cousin who also tells
3 her that he also heard the gunshot but it was too late. Her cousin tells
4 her to wait until morning since MLC soldiers are still moving around.
5 She goes to see another relative who gives her the same advice.

6 At sunrise she goes to the main house with her cousin. When they
7 enter, they see her brother lying on the ground in his own blood.

8 When her cousin tells her -- tells her that he is dead,
9 Witness 87 starts shouting and crying. People responding to her cries
10 come to see what is happening. Witness 87 can see three wounds on her
11 brother's chest and on his back where the bullets pass through. They
12 take the corpse out and bury her brother's body next to the house.

13 Jean-Pierre Bemba's MLC have not only killed her brother, they
14 leave his young child without a father.

15 I refer your Honours to the chart.

16 The Prosecution will now address its second case of murder. Like
17 Witness 87, Jean-Pierre Bemba's MLC troops also killed a family member of
18 Witness 22, her nephew. This account will describe how Witness 22
19 learned about her nephew's death when he tried to stop MLC soldiers from
20 pillaging his family's livestock.

21 Your Honours have heard details of Witness 22's rape on or about
22 26 October 2002 at her home, including her description of the MLC
23 soldiers whom she identified as the perpetrators.

24 During this attack, the MLC soldiers tell Witness 22 that Patasse
25 gave them orders to kill any boy from the age of 10 and to kill any man.

1 After this, she decides to go with her family to Bossangoa to stay with
2 some relatives.

3 When she arrives in Bossangoa, her relatives and other people
4 tell Witness 22 that the MLC soldiers have been attacking and killing
5 many, many civilians. Her relatives tell her that this was why they had
6 been hiding in the bush for about four to six months. They also tell her
7 that they were all at home when MLC soldiers arrive at their home in
8 Bossangoa trying to steal some of the family's livestock. Her nephew, a
9 civilian child residing at home, tries to prevent them from pillaging
10 some of their goats. These soldiers respond by killing him.
11 Witness 22's relatives take her to see the tomb where her dead nephew is
12 buried.

13 I refer your Honours to the chart.

14 The third and final presentation on the individual cases of
15 murder is the brief summary of the incident in Witness 47's summary
16 statement. He describes an MLC soldier killing a civilian who resisted
17 the attempt to rape her. The Court has heard evidence of the rapes
18 recounted by Witness 47, including his description of the MLC troops who
19 perpetrated those rapes. He can testify that MLC commanders in the
20 Central African Republic were giving MLC troops instructions and pledging
21 their allegiance to Jean-Pierre Bemba.

22 Witness 47 is present and listening as a MLC commander is giving
23 instructions in Lingala. He hears him telling MLC soldiers that,
24 (Interpretation) "In the Central African Republic you don't have any
25 parents, women, children, you're going to war. Kill and destroy all

1 those you come across -- sent you to kill, not to have fun."

2 (In English) Witness 47 sees and learns about attacks by such MLC
3 troops against civilian women. One day between October and 31st December
4 2002, he's watching some MLC soldiers in their 4X4 vehicles. They take
5 about 40 women of all ages to an empty ground next to the Sodeca pumping
6 station near Bangui. Two of those women later tell Witness 47 that MLC
7 troops had abducted them in PK22 and PK26. As he is watching, Witness 47
8 can see about 20 MLC troops stripping these women of their belongings.
9 He continues to watch as five MLC soldiers start to "knock about," as
10 Witness 48 puts it, these women.

11 As a result of their attempts to resist rape, he sees three of
12 them fall into the water. As he watches, one MLC soldier shoots at these
13 women in the water. He kills one of the women referred to by the
14 Prosecution as Unidentified Victim 36. The other two women are severely
15 injured.

16 The Prosecution recalls, as stated by Ms. Kneuer, that in the
17 Prosecutor and Germain Katanga and Mathieu Ngudjolo, hereinafter to be
18 referred to as the Katanga case, the Pre-Trial Chamber I stated in
19 paragraph 22 of the confirmation decision that it was sufficient to
20 demonstrate that there was an intention to cause death and death was
21 caused even if the identities of such civilians are unknown.

22 I refer your Honours to the chart.

23 Your Honours, the accounts described show that MLC troops were
24 aware of their -- that their victims were civilians and intended to kill
25 them despite their status. In the Katanga confirmation decision the

1 Pre-Trial Chamber I, in paragraphs 297 and 306, held that awareness of
2 the victim's status as protected person can be inferred on an objective
3 basis and in accordance with precedents established by international
4 criminal tribunals.

5 The evidence presented to your Honours shows that all of the
6 victims were unarmed civilians taking no active part in the hostilities
7 and supports the inference that MLC soldiers knew this. The surrounding
8 circumstances of each attack show that victims could not have been
9 mistaken for combatants. In some of these cases MLC troops were in
10 control of the area where they perpetrated these murders. In fact, most
11 of these victims were directly attacked and fatally wounded with weapons
12 such as guns by MLC troops inside their homes. In another case the
13 victim was taken by MLC troops from one location and attacked in another.

14 I refer your Honours to the chart.

15 From the evidence presented, it can be inferred that the
16 perpetrator had both intent and knowledge to cause death, including
17 knowledge that death would occur in the ordinary course of events. The
18 conduct of the MLC troops was the sole cause of each victim's death. For
19 example, where MLC troops shot and killed their victims such as
20 Witness 87, 87's brother and unidentified victim 36, death was the clear
21 intent. These MLC soldiers were aware that by shooting a loaded gun
22 directly at the body of another person death would be the most probable
23 consequence. This is further evident, for example, in Witness 87's
24 brother's case where three shots were fired directly at the same victim.

25 Furthermore, the soldiers intent to cause death and their

1 knowledge that death would occur can also be inferred from other accounts
2 in the statements of Prosecution witnesses under amended list of
3 evidence. For example, Witness 47 states that MLC troops were killing
4 many people in Bangui. About 22 young women and girls who were taken and
5 raped by MLC troops at the naval base tell Witness 47 about the burning
6 of three civilians in the yard of the Begoa school which occurred in the
7 afternoon when they arrived in PK12. Also, Witness 42 states that MLC
8 soldiers killed many people, particularly in PK22. His cousin was killed
9 by MLC troops because they accused him of being a rebel. Similarly,
10 Witness 80 stated that MLC soldiers killed many people and they could see
11 corpses in the street.

12 A relative coming from Begoa on foot also saw many corpses in the
13 street on his way to Mala-Kaga Bandoro.

14 I refer your Honours to the slides.

15 I'm afraid I'm unable to conclude at this point, your Honours,
16 because I think my time is up.

17 JUDGE TREDAFILOVA: Yes. I was about to ask you where you stand
18 and how much time do you need to finalise your presentation. I hate to
19 interrupt the parties but still we have to be quite strict, although our
20 sessions started two, three minutes later because there was some
21 organisational issues to be handled. So how much time do you need?
22 Where do you stand?

23 MS. KNEUER: Madam President, your Honours, it's the
24 Prosecution's assumption that we need probably five to seven minutes
25 more.

1 JUDGE TRENDAFILOVA: So what about the interpreters? Could we
2 rely that they be gracious and give us this time or -- you shall start.
3 You shall continue when we start with the -- they agree. So thank you
4 very much. The interpreters do agree, and you have the time. Seven
5 minutes, no more. Thank you.

6 MS. BALA-GAYE: Thank you very much, Madam President.

7 Your Honours, the accounts of the witnesses I have just
8 summarised are merely symptomatic of a wider phenomenon of the murders
9 perpetrated by MLC troops in the Central African Republic. Murder was
10 perpetrated in many areas even after MLC troops had dislodged rebel
11 forces and gained complete control over the area. In these areas MLC
12 troops killed men, women, and children indiscriminately. They murdered
13 boys and girls from as young as seven months old to grandmothers and
14 grandfathers. To provide the Court with the widespread context within
15 which MLC troops murdered defenseless civilians, this submission will
16 conclude by providing a few more incidents from public sources which are
17 available and contained in the in-depth analysis chart of incriminatory
18 evidence.

19 The Federation Internationale des Droits de l'Homme, FIDH, in its
20 report, "Forgotten, Stigmatised: The Double Suffering of Victims of
21 International Crimes," provided various accounts of civilian murders by
22 MLC troops in the Central African Republic during the relevant period.
23 For example, a woman stated that her father was killed by MLC soldiers in
24 October 2002 at their home in PK12. They shot him twice when he tried to
25 prevent seven of them from stealing her money. This woman's account is

1 also corroborated by her two daughters. Another victim reported that MLC
2 soldiers were speaking Lingala. They came to her home and killed her
3 grandfather by shooting him in the skull. They then killed four other
4 men in the house.

5 Furthermore, I refer your Honours to an Amnesty International
6 report entitled, "Central African Republic, Five Months of War Against
7 Women." It states that husbands of female rape victims were targeted
8 because MLC troops accused them of collaborating with rebel forces. At
9 least 15 men who were reportedly shot dead in a village beside a road at
10 PK12 were buried in a mass grave. This is supported by the Prosecution's
11 Witness 6 who stated that he saw about two or three mass graves at PK12
12 and one at PK15.

13 With your Honours' leave, the Prosecution will now play about
14 38 seconds of audio footage from Radio France Internationale entitled,
15 "CD 4, Exactions des Hommes de Jean-Pierre Bemba en Centrafrique." This
16 is the testimony of a witness from PK12 reporting a murder incident by
17 MLC troops in PK22.

18 Ms. Court Officer, can you kindly play the audio file
19 EVD-P-02258.

20 Voiceover: "Men pulled back Wednesday evening, so Thursday
21 morning Bemba's men were back at PK22, but what they really did was
22 massacre. They killed people. They took kid goats, the chickens,
23 anything. They broke doors. They emptied houses. They even killed my
24 brother-in-law. The little one was in the kitchen of his mother and they
25 called him. They asked him for money. And he said he didn't have any

1 money and automatically they killed him. He's 21 years old, 21, and up
2 until today his mother is really upset."

3 MS. BALA-GAYE: Your Honours, in clarifying Article 61 the
4 Pre-Trial Chamber I in the Prosecutor and Thomas Lubanga Dyilo stated in
5 paragraph 39, which is also referred to in the Katanga case, that for the
6 Prosecution to meet its burden it must offer concrete and tangible proof
7 demonstrating a clear line of reasoning underpinning its specific
8 allegations. Your Honours, the Prosecution has met this burden. The
9 evidence in its entirety shows that MLC troops in this permissive
10 environment had licence to kill. They killed systematically people who
11 resisted their commission of other crimes. They killed in a widespread
12 manner in all areas which they occupied. They killed as part of the
13 armed conflict in order to instill fear and terrorise the civilian
14 population with the aim of marginalising the rebel forces.

15 Your Honours, there is substantial grounds to believe that at all
16 times material to the charges Jean-Pierre Bemba had control over MLC
17 troops and the crimes they committed in the Central African Republic.
18 This makes Jean-Pierre Bemba criminally responsible for committing,
19 jointly with another, these crimes of murder constituting a war crime and
20 a crime against humanity as charged. Jean-Pierre Bemba's criminal
21 responsibility will be covered in the submissions on the mode of
22 liability.

23 Subject to any questions that your Honours may have, this
24 concludes the submission on the counts of murder. Thank you,
25 Madam President, your Honours.

1 JUDGE TRENDAFILOVA: Thank you Ms. Bala-Gaye. Now we shall
2 adjourn the hearing, and we shall resume at 20 minutes to 12.00 with the
3 presentation of the Defence and response to the case of the Prosecutor
4 related to crimes against humanity. Thank you. I adjourn the hearing.

5 COURT USHER: All rise.

6 Break taken at 11.08 a.m.

7 On resuming at 11.42 a.m.

8 COURT USHER: All rise.

9 JUDGE TRENDAFILOVA: Please be seated. The hearing is resumed.
10 The security officer, could you invite Mr. Bemba into the
11 courtroom, please.

12 (The suspect entered court)

13 JUDGE TRENDAFILOVA: Now we proceed with the case of the Defence.
14 The Defence will have until the lunch break, one hour and a half, to
15 respond to the case of the Prosecutor related to crimes against humanity
16 and to present their own evidence related to contextual and specific
17 elements of the crimes. So you have the floor. Have you decided how
18 you're going to use your time, Mr. Liriss, Mr. Khan, and Mr. Kilolo?

19 MR. NKWEBE LIRISS (interpretation): Madam President,
20 your Honours, I'll take 30 minutes to criticise the evidence presented by
21 the Prosecution yesterday. Mr. Kilolo, Counsel Kilolo, will have an hour
22 at his disposal to discuss matters that concern legal issues, and then we
23 will conclude, unless Mr. Karim Khan, Counsel Karim Khan, has anything
24 else to add.

25 Madam Registrar --

1 JUDGE TREDAFILOVA: Excuse me, Mr. Liriss, the intervention of
2 Mr. Khan then will be after the lunch break if you would like to -- to
3 participate in this part of the session. So now we're going to listen to
4 Mr. Liriss and Mr. Kilolo. Okay. You have the floor.

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6 Luncheon recess taken at 1.00 p.m.

7 On resuming at 2.33 p.m.

8 (Open session)

9 COURT USHER: All rise.

10 JUDGE TRENDABILOVA: The court is in session. Resume our
11 session. Please be seated.

12 The security officers, would you please bring Mr. Bemba.

13 (The suspect entered court)

14 JUDGE TRENDABILOVA: You already did this without waiting for the
15 order, but we cannot proceed without him.

16 Now we shall proceed with the presentation of the Defence in a
17 public session.

18 MR. KHAN: I'm grateful, Madam President. For the purposes of
19 organizing our time efficiently, I wonder, your Honour, if we could be
20 informed of how much time allotted to us is remaining. Obviously quite
21 some time was lost --

22 JUDGE TRENDABILOVA: Yes.

23 MR. KHAN: -- in the earlier session, and so we want to factor
24 that in as to the amount of time to cover the issues that we have to
25 cover.

1 JUDGE TRENDABILOVA: Yes. First I would like to say that a lot
2 of time was lost, this is true, and the Chamber invites the parties
3 whenever the parties have some concerns with regard to anything that
4 falls within the ambit of their responsibilities to approach the Chamber,
5 and the Presiding Judge in particular, and if there are some fears,
6 especially on behalf of the Prosecutor that is related to their duty to
7 protect witnesses and victims, we can discuss the matter with the
8 microphones cut off, but these quite complicated channel communication
9 via the Court Officer is -- appears to the Chamber not to be very
10 efficient, and that is why, please, both parties do not hesitate. There
11 is a Chamber here, Presiding Judge to rule on everything that is going on
12 in the courtroom, and we have to be efficient and professional.

13 With regard to the presentation of the Defence, it is available
14 only for those present here in the courtroom. As long as the Defence
15 would like to present some piece of evidence publicly, they have to
16 inform the Court Officer or myself directly, and we're going to take a
17 decision.

18 So with regard to your question, Counsel Khan, how much time
19 remains for the team of the Defence, I have not calculated, but you can
20 go ahead at least one hour with the presentation related to crimes
21 against humanity, and then after -- we have to make a break after one
22 hour and a half. The Prosecutor will proceed with war crimes. We shall
23 make a break, and the Defence will finalise its presentation related to
24 war crimes. That is how we envisage to proceed with our afternoon
25 session.

1 Now, Mr. Liriss -- Mr. Nkwebe Liriss has the floor. Oh, you
2 would like to --

3 MR. KHAN: Well, your Honour, perhaps I've misunderstood. If we
4 are simply given the one hour that was previously allotted to us --

5 JUDGE TRENDAFILOVA: No, no, no. You have one hour to conclude
6 the presentation of your evidence related to crimes against humanity,
7 because Mr. Liriss explained to me that his intention was to take one
8 hour and after that -- half an hour and then one hour for Counsel Kilolo.
9 Due to discussions related to the security matters some time was lost.
10 Of course I was not with my pencil calculating exactly the time, but it
11 will be given one hour for the Defence, Mr. Nkwebe Liriss and Mr. Kilolo.
12 If you need, of course, some additional time, the Chamber will reconsider
13 the time allotted to you. You might have more time, one hour and a half.
14 If it is fine with you, we can proceed.

15 MR. KHAN: Well, your Honour, I do think my learned friend
16 Mr. Kilolo requires one hour for his portion by itself.

17 JUDGE TRENDAFILOVA: Yes.

18 MR. KHAN: As is quite obvious, Mr. Nkwebe has not finished.

19 JUDGE TRENDAFILOVA: Yes.

20 MR. KHAN: And that's not due to any -- not directly due to fault
21 on our part.

22 JUDGE TRENDAFILOVA: Doesn't it make one hour and a half?

23 MR. KHAN: Yes, indeed. As long as we get the hour and a half,
24 then that will be fine.

25 JUDGE TRENDAFILOVA: You have it.

1 MR. KHAN: I'm grateful.

2 JUDGE TRENDAFILOVA: The floor is over to you, Mr. Liriss.

3 MR. NKWEBE LIRISS (interpretation): Thank you, President. I'll
4 now continue with the presentation I had started with.

5 So I stopped on page 8, EVD-P-02174 at number 0177.

6 Now, in response to the Prosecution's allegations according to
7 which Mr. Bemba received reports on the MLC's crime in the
8 Central African Republic, the -- it is not to be assumed automatically
9 that the crimes committed result -- are the result of a policy
10 authorising them. Most of the victims were Patasse partisan, that is,
11 people from the north of Bangui with the areas inhabited by people in
12 favour of Mr. Patasse. I would be surprised that instructions were given
13 against them. This abuse -- troops on the offensive cannot have received
14 instructions not to deal with the attackers but to rape women instead.
15 This would not have been in Bemba's interest, nor in those of Patasse to
16 say to continue -- to go on continuing raping women and to let the rebels
17 move forward.

18 Witness 26, EVD-P-0136 and EVD-P-0137. All the vehicles they had
19 been given were abandoned before they left.

20 EVD-P-00148. No individual's vehicles were requisitioned. There
21 were no complaints about this. They did not leave with the vehicles.
22 And this isn't just a supposition. It's what the investigation shows.
23 They couldn't cross with vehicles in their canoes (phoen).

24 Now, the Prosecution alleges that Bemba had a complete control
25 over the MLC. To support this allegation they only presented one

1 witness, Witness 36.

2 Now, to contradict this witness of the Prosecution, we have four
3 or five others.

4 Witness 80, EVD-P-02394 at 0172, and EVD-P-02395 at 0199.
5 Patasse gave the orders to the MLC troops in the Central African
6 Republic.

7 Witness 31, EVD -- and I'd like to remind you that these are
8 Prosecution witnesses. We have not been able to find witnesses, because
9 we were not given sufficient resources to find any.

10 So I come back to what I was saying. Witness 26, EVD-P-00136 at
11 number 0153, 154, and 0204. MLC troops in the Central African Republic
12 were under the Ministry of Defence which took orders from the head of
13 state, Patasse, which -- who gave instructions to his troops through the
14 Ministry of Defence.

15 Now, evidence EVD-P-02174. And this again in response to the
16 single Prosecution witness. So this witness at 0183 and 0184.
17 And EVD-P-00148 at 0140 and 0144. Everybody reported back to
18 President Patasse, even the head of the Banyamulenge. Mr. Jean-Pierre
19 Bemba's men serve the state. Mr. Bemba wasn't in charge of feeding them.
20 Witness 40 had been received by the head of state, Patasse.

21 EVD-P-00098 at 0109. The MLC troops had all the cars checked as
22 ordered by President Patasse.

23 EVD-P-00006 at 0080. At the time of the events, Ange-Felix
24 Patasse was the Commander-in-Chief of the army on the basis of the
25 constitution of the CAR, and as a result he was de facto and de jure

1 Abdoulaye Miskine's superior, who was the head of the USP, Presidential
2 Security Unit. He was also Paul Barril's superior, the superior of SCPS,
3 and also he was the head or the superior of Jean-Pierre Bemba's men.

4 EVD-P-00098 at 0113. It was Patasse who was responsible for the
5 main coordination of operations, and it was he who would decide on
6 attacks or counter-attacks together with the Minister of Defence.

7 The victims informed Bemba of MLC crimes when he visited the CAR
8 in November 2002. The Prosecution has referred to two witnesses, or has
9 presented two witnesses, Witness 23 and Witness 31. I remain reserved
10 with regard to Witness 23, since I haven't carried out effective checks,
11 but if we manage to do so, we'll provide you with the information
12 obtained in our final submissions, and the Prosecution will naturally be
13 duly informed of the results.

14 Witness 31, EVD-P-00102 at 0368 and 036. This witness,
15 Witness 31, stated that Bemba was hard and that he had relieved two
16 commanders of their duty. Everyone knew that Bemba was not happy. He
17 really was very hard. So we're dealing with the visit, Bemba's visit to
18 his troops in November after the troops had taken control of PK12.

19 The same EVD, 0430, at 0430, there is a case of theft. I saw
20 their superior. He assembled everybody before the group, and he arrested
21 and punished the guilty individuals.

22 The same EVD at 0432. Bemba's visit to PK12 changed something
23 with regard to the incidents, because some of the leaders had been
24 punished. The Prosecution alleges that Bemba was aware of crimes
25 committed by the MLC from October 2002 to March 2003. In relation to

1 these crimes the Prosecution relies on three -- on four witnesses,
2 Witness 37, Witness 45, 26, and 42. The Defence has seven witnesses that
3 come from the Prosecution itself.

4 Witness 23 -- and I had the same reservations as just a minute
5 ago.

6 Witness 23, EVD-P-00102 at 0368 and 036, stated that Bemba was a
7 hard man and that he had relieved two commanders of his duties, and
8 everyone knew about the fact. At 0430 the witness stated that there'd
9 been a case of theft. The commander, the leader, had been informed and
10 he had punished the person concerned.

11 At 0432, it was stated that Mr. Bemba's visit to PK12 was good.

12 EVD-P-02355 at 0817. Whenever there was a case of theft, the
13 material was recuperated and given back to the owner.

14 At 0201, the stolen property would cross the river, so it went to
15 the Democratic Republic of Congo, was transported there without the
16 authorisation of their superiors.

17 Witness 42, EVD-P-02355 at 0817. The superior of the MLC troops
18 gathered the men at PK12, at the level of the Begoua maternity hospital.
19 He told them that if you maltreat or brutalise the population and it
20 leaves the site, how are you going to live?

21 The same EVD at 0802. When troops behaved badly, they were
22 punished by being given a number of blows.

23 Witness 37, EVD-P-0525 at 0538. These vehicles, the ones that
24 the witness had seen, didn't have any number plates, the vehicles
25 allegedly stolen by Mr. Bemba in the Central African Republic. I'm not

1 saying that they came from the CAR. I don't know where they were from,
2 because they arrived when I was absent, when I was in South Africa.

3 Prosecution's allegation according to which Bemba benefitted from
4 the pillaging carried out by the MLC and the CAR. There are two
5 witnesses, 33 and 45. Contrary to what was stated here, Witness 26
6 stated the following and it's EVD-P-0136 and EVD-P-0137. This witness
7 stated that all the vehicles that they were been provided with had been
8 abandoned before they left. And EVD-P-00148, and just as was the case a
9 minute ago, the following was stated: No vehicles were seized from
10 individuals and there were no complaints in relation to such acts. They
11 did not leave with these vehicles in canoes. The Prosecution alleges
12 that there was a modus operandi and alleges certain acts refers to prior
13 conduct of the MLC in the CAR in 2001 and in Mambasa in the Democratic
14 Republic of Congo in 2002.

15 Witness 36, EVD-P-0143 at 0139. The troops that operated or were
16 engaged in Mambasa are not the same troops as the ones that were engaged
17 in Bangui. You will also see EVD-P-00006, as well as relevant elements
18 from the Prosecution with regard to this matter.

19 And now for the conclusion with regard to the Prosecution
20 allegation that there is proof that Bemba committed acts under Count 1,
21 3, and 7. Well, the observation of the Defence is as follows: To the
22 extent that the Prosecution does provide evidence that MLC troops placed
23 at the disposal of the Central African Republic government within the
24 framework of regional agreements were, nevertheless, under the authority
25 and control of Mr. Bemba, there is -- or there are, rather, no serious

1 grounds to believe that Mr. Bemba committed the crimes alleged. The
2 Prosecution says that the evidence establishes that Bemba had intent and
3 knowledge of the acts. To the extent that the Prosecution provides
4 evidence of the power of control in the circumstances referred to above,
5 there is, however, no evidence that demonstrates that Mr. Bemba had
6 knowledge and the requisite intent.

7 Madam Prosecutor, Madam President, thank you for your attention.
8 A study of the national programme of the UN programme for development on
9 the cases of light arms and conflicts in the DRC noted that there was the
10 presence of the armies at the time of the events. Apart from the FACA,
11 the Central African Army, there was the Special Presidential Unit. There
12 was also the armed militia of the MLPC, Mr. Patasse's political party.
13 There were the Carodos (phoen), the Balawas (phoen), and the Sadawi
14 (phoen) who were armed militia recruited from the young impoverished of
15 Bangui by the government, and they operated in the northern areas of
16 Bangui, that is to say in Boy-Rabe, Boy-Rabe, I think, the Quartier
17 Commandant Sara (phoen), Malimata, Miskine, Moustapha, Usemant (phoen).
18 They were badly dressed. And EVD-D01-00063 at 0713.

19 In addition there were mercenaries of Martin Koumtamaji, also
20 known as Abdoulaye Miskine. EVD-P-0006. In August the mercenaries under
21 the control of a French captain who was retired, Paul Barril, SCPS --
22 also known as SCPS, or there were in addition rebels of the current
23 president, Bozize. They were composed of mercenaries from Chad and of
24 dissidents from the regular army. And finally, there were the Libyans,
25 the Djibouti, the Sudanese, and the MLC.

1 In its statement, the Prosecution, from the Central African
2 Republic imputes all the crimes to the loyalist troops and excludes the
3 rebels. The Prosecution does not state the criteria according to which
4 they were able to impute the alleged crimes to MLC soldiers alone. They
5 only based themselves on witness's testimony, testimony gathered under
6 the circumstances that I have already referred to. And they also based
7 themselves on reports from humanitarian organisations.

8 One should bear in mind the fact that the rebels had the northern
9 parts of Bangui under control until the 31st of October. And I do insist
10 on this date.

11 According to the victims, imputing these crimes, attributing
12 these crimes to the MLC is based on the following criteria: Language.
13 They spoke Lingala. They spoke French badly, as if speaking French
14 poorly was only the prerogative of people from the DRC. They were badly
15 dressed. That was the second criteria. They wore plastic boots, or they
16 didn't have footwear at all.

17 These criteria don't seem to be decisive to me. As for the
18 Lingala language, Madam President, your Honours, the former president of
19 the Appeals Court in Kinshasa is Congolese, but his cousin, the
20 ambassador of the Central African Republic in Congo was a
21 Central African, because these two peoples are brothers, in fact. It's
22 just a matter of colonial division that created this history. We have
23 two peoples, because when you speak about the Yakoma, well, they are
24 present in Congo too. The Oumbaka, Mr. Bemba's tribe, we're dealing with
25 two peoples who practically speak the same language. In addition, they

1 are call the Bangala. This is the Ngala people. Just like the people
2 from Kinshasa and Brazzaville are called the Bakongo.

3 President, your Honours, to date, the Lingala language is one of
4 the most used languages in Africa because it's a language used in African
5 music.

6 I have furnished a study on this, on the use of Lingala in
7 Central Africa, and you'll see that it is not only spoken by MLC troops.

8 And then bad French. Is that really a criteria that can enable
9 you to distinguish between different troops in the field? Do
10 Central African people speak very good French? Actually, let's recall
11 that at the time of the facts there were more than 20.000 Congolese
12 there. They had fled the war of 1999 and were in Bangui and its
13 surrounding area, and that even near the PK12 there was a refugee camp
14 for Congolese, a Congolese refugee camp. So how can you use Lingala as a
15 criteria for determining where they're from?

16 Now, about the uniforms. All of the Prosecution's witnesses say
17 that when they arrived on the 30th of October, the MLC troops were given
18 uniforms. These uniforms were from the Central African Armed Forces.
19 Actually, one witness says that, "How would you want us to go and fight
20 in a different uniform?" So nobody contradicts the fact that the MLC
21 troops had the same equipment as the regular Central African troops.

22 And then you start playing around with criteria such as, well,
23 they didn't have any -- any markings. Actually, a high-ranking member of
24 the army said, "Well, you don't go to war with garlands. You don't wear
25 these. You don't wear your stripes at war."

1 President, your Honours, are we going to prosecute war crimes,
2 crimes against humanity with that type of criteria, with the shoes and
3 judge according to one's shoes? I think that the ICC is far too high to
4 lower itself to that level.

5 And what happened? Earlier on we listened to the Prosecution.
6 They showed us a tape, a recording from a radio station. Actually, all
7 the Prosecution's accusations are based on the FIDH's reports and
8 Human Rights Watch's reports. How were the witnesses recruited?

9 If you allow me, your Honour, I would like to ask the
10 Court Officer to play a video which is a statement made by an important
11 person, someone who is also in charge of a NGO affiliated to Reporters
12 Sans Frontieres. Please listen to this reportage from Bangui. It was
13 given the support of the Congolese government and the Central African
14 Minister of Social Affairs and also the famous organisation OCODEFAD.

15 JUDGE TRENDAFILOVA: I would like to ask you whether you have
16 submitted, according to Regulation 63 of the Regulations of the Registry,
17 transcripts to the interpreters, or at least that you have given them
18 enough time to prepare themselves for the interpretation. Thank you very
19 much. So Court Officer, please proceed.

20 MR. NKWEBE LIRISS (interpretation): Thank you, your Honour.

21 Your Honour, this video will then be followed with the
22 presentation of a document which will appear on your screens, which is
23 the statement of the cameraman who accompanied the journalist. He will
24 explain to you what happened, how the witnesses were recruited. And when
25 you'll hear about the time this happened, you might then make a finding

1 on the probative value of the Prosecution's witnesses and of the
2 evidence.

3 If the Registry's ready, I would like to proceed and then take a
4 minute to conclude. Can I be seated? Thank you.

5 JUDGE TRENDAFILOVA: We're waiting. Some -- there is some
6 technical issues to be properly handled.

7 Shall we have the video?

8 (Trial Chamber and Court Officer confer)

9 COURT OFFICER (interpretation): Is this document in Ringtail?
10 So is it document EVD-D01-00040?

11 Could you tell me the minute at which you want this document to
12 be shown?

13 MR. KABONGO MANGENDA (interpretation): The first portion is 0.44
14 to 1.04, and then there's a second portion from 6.45 to a minute 12.37.

15 JUDGE TRENDAFILOVA: The document should be displayed to the
16 public. That's why the Court Officer has to switch into the regime for
17 the public.

18 (Videotape played)

19 "(Voiceover): (Interpretation) Hello. Let me introduce myself,
20 Philippe Mathieu Emonz (phoen). I am one of Mr. Jean-Pierre Bemba's
21 lawyers. I was contacted on this Monday who informed me of very
22 important elements which justified this recording to show certain
23 essential elements.

24 "Please, could you introduce yourself and give me your name."

25 JUDGE TRENDAFILOVA: What is the problem?

1 (Trial Chamber and Court Officer confer)

2 COURT OFFICER (interpretation): The video will be projected a
3 second time. To find it you have to select button 1-2, and then select
4 button PC1.

5 Thank you, President.

6 (Videotape played)

7 "(Voiceover): My name is Donnat Mbaya Tshimanga. I am a
8 journalist and the president of the Organisation Journaliste en danger,
9 which is an NGO to defend and promote the freedom of the press. It is
10 based in Kinshasa in the Democratic Republic of the Congo."

11 COURT OFFICER (interpretation): Would you like us now to show
12 the second part of the video?

13 (Videotape played)

14 "(Voiceover): (Interpretation) So our investigations concerned
15 the accusations about the work of a journalist who was paid by political
16 adversaries. We invited the cameraman who accompanied Mr. Kabeya to
17 Bangui to our office. He filmed all the statements on site where the
18 crimes were about -- or allegedly committed by the MLC were allegedly
19 committed. He arrived at our office and was received by my colleague
20 Tshivis Tshivuadi, and I arrived a couple of minutes later, and so I was
21 a witness to the interview.

22 "The cameraman told us as follows: First he told us that he had
23 gone ahead. He went to Brazzaville. He stayed there a couple of days
24 and was then joined by Mr. Kabeya Pindi Pasi. And then from Brazzaville
25 they both took a flight to Bangui, and when they arrived at Bangui

1 airport they were received by the ambassador of the Democratic Republic
2 of the Congo in the Central African Republic, and he took care of them.

3 "The cameraman then went on to say that the work was very
4 organised because the ambassador had already entered into contact with
5 the persons he needed to and where we needed to get statements on the
6 sites we needed to visit to also film. So he said that the work went
7 well and that he was very organised. So when we asked him whether he was
8 paid for this work, the cameraman admitted that he was paid by
9 Mr. Kabeya Pindi Pasi and received \$2.000 American as cameraman. We
10 asked him whether he used the \$2.000 American to pay for his hotel, his
11 food and his stay in Bangui. And he answered that, no, that he been
12 given the money for his work and that his housing, food, and all the
13 other costs he incurred had been paid for. He didn't know who paid for
14 them, but, for instance, as regards food, when he ate, he just initialed
15 the bill, so it was paid somewhere. So the \$2.000 were just money for
16 the work he did, and he even added that the -- in view of the work, he
17 considered that the \$2.000 weren't enough, because he in total filmed at
18 least eight hours of images.

19 "So based on those elements, we asked ourselves the question
20 whether or not this report from Bangui was paid for by someone other than
21 the television, because the cameraman, journalist -- Congolese journalist
22 and those from Tropicana TV receive a monthly salary of between \$50 and
23 \$150. So I don't see how this television channel would have been able to
24 come up with \$2.000 to pay the normal work of a cameraman. But his
25 stay -- and on top of that his stay and all the travel costs incurred

1 were paid for. So it was paid by someone else. And as a journalist I
2 can say that whenever a Congolese journalist goes outside Kinshasa,
3 normally it's the organiser of the event that pays for the camera crew,
4 the film crew, and also the mission expenses, housing and food, and also
5 the broadcasting when they come back with the images. And we are sure
6 that the Bangui report was paid for by another protagonist than the
7 television channel.

8 "Now, as to who paid, well, the cameraman himself admitted that
9 he didn't know who paid. He received the money from his team leader,
10 Mr. Kabeya Pindi Pasi, who was a journalist who led the investigations,
11 and so he couldn't know exactly who paid. But we at JD, we consider that
12 this money must have been paid by someone else than the television
13 channel.

14 "When a reporting team arrives in a country and is received at
15 the airport by the Democratic Republic of the Congo's ambassador, we ask
16 ourselves whether -- and we assume that the ambassador of the
17 Democratic Republic of the Congo is obeying orders by the government, so
18 that the government ordered him to order a team and to carry out such
19 work. And as the cameraman said, the ambassador even chose the sites the
20 testimonies would be taken, the statements would be taken, and he even
21 chose the person who had to give the statements. So that's about what we
22 found -- what we found out. And at that time in May 2006 that was when
23 all the events took place."

24 JUDGE TRENDAFILOVA: This is everything that you would like to
25 present now to the Chamber and to the participants. Thank you.

1 Would you proceed -- would you proceed --

2 MR. NKWEBE LIRISS (interpretation): Yes, Madam President. No,
3 Madam President. I just wanted to close by saying that this statement
4 has been confirmed by a serious report that emanates from the Dutch
5 Institute for Africa, Southern Africa. It's a Defence exhibit which has
6 been disclosed. Unfortunately, I don't have the number. I'll see if it
7 can be found.

8 I'll close by -- or I'll conclude by asking the Registry to -- to
9 place at our disposal the exhibit, the references of which I have provide
10 the Registrar with. It concerns the written statement from the
11 cameraman.

12 Madam President, your Honours --

13 JUDGE TRENDAFILOVA: Mr. Liriss, excuse me. Could you ask the
14 case manager about the number of this Dutch institute document, to be
15 submitted later on, but still for the record it would be useful.

16 MR. NKWEBE LIRISS (interpretation): Thank you very much,
17 Madam President. The numbers of the document are EVD-D01-00040. We will
18 make a correction. EVD-D01-0057, ERN numbers are 00624 to 0627.

19 JUDGE TRENDAFILOVA: This is it?

20 MR. NKWEBE LIRISS: Yes.

21 JUDGE TRENDAFILOVA: Thank you.

22 MR. NKWEBE LIRISS (interpretation): Madam President, I would
23 like to thank you. I believe you that have shown much patience with my
24 regard. I thank you for listening to my submissions, and on behalf of
25 Mr. Bemba, I would like to thank you for your patience that was seriously

1 tried.

2 JUDGE TRENDAFILOVA: Thank you, Counsel Liriss. This is our
3 duty, and we perform it with pleasure and attentively.

4 So now the floor is to Counsel Kilolo.

5 MR. YILLAH: May it please your Honours.

6 JUDGE TRENDAFILOVA: Half an hour is left for you, Mr. Kilolo.
7 Maybe after the break we shall proceed if you would like to extend your
8 presentation beyond these 30 minutes.

9 MR. YILLAH: May it please your Honours, Madam President, your
10 Honours. May it please --

11 JUDGE TRENDAFILOVA: Mr. Ibrahim, you have the floor.

12 MR. YILLAH: Thank you, your Honour. If it pleases the Bench,
13 the Prosecution would like to note that it has listened attentively to
14 the Defence's complaints yesterday about not disclosing exculpatory
15 evidence or about not properly classifying evidence. The Prosecution
16 would like to note for the record that the video that has just been
17 played, that has just been displayed by the Defence was disclosed by the
18 Prosecution as exculpatory evidence to the Defence on the
19 15th of December, 2008. This is a position that the Prosecution would
20 like to note for the record. Thank you.

21 JUDGE TRENDAFILOVA: Thank you, Mr. Ibrahim. I think that the
22 Defence was making a general, a general point with regard to their
23 assessment of some pieces of evidence, but in the morning we have started
24 our morning session with the explanation on behalf of the Chamber that it
25 is up to the parties, according to the nature and the contents of the

1 evidence, to evaluate them and to decide whether their nature is
2 exculpatory or incriminatory, and finally it is the decision of the
3 Chamber. But -- well, thank you.

4 MR. YILLAH: Thank you, Madam President.

5 MR. KHAN: Madam President, my learned friend, of course, needn't
6 be so sensitive. One needle can be taken from a haystack without making
7 any inroads on the primary Defence submission. But, your Honour, I'd be
8 very grateful for my learned friend at the break to give me the exhibit
9 number that the Prosecution attached to this document if indeed they gave
10 it to us, because certainly the information from the case manager and
11 from Mr. Nkwebe is that this document did not come from the Prosecution
12 and came from the Defence, but if I'm in error, of course I stand to be
13 corrected. But perhaps my learned friend can clarify it over the break
14 and it needn't be a matter of controversy. I'm sure the clarification
15 can be obtained.

16 JUDGE TRENDAFILOVA: Do you have some clarification to make?

17 MR. YILLAH: It's fine, your Honours. It was just for the
18 record, but it's not a matter of controversy and I -- I'm fully in
19 agreement with my learned friend that it's not a matter of controversy at
20 all.

21 MR. KHAN: I'm just saying I'd be very grateful for the
22 Prosecution's number to the document. I'd like to know if it was given
23 by the Prosecution, so in the break my learned friend can spend a few
24 minutes and give us the number.

25 MR. YILLAH: The Prosecution would consult its record and get

1 back to the Defence in the break.

2 JUDGE TRENDAFILOVA: Okay. After the break.

3 MR. YILLAH: Thank you, your Honour.

4 JUDGE TRENDAFILOVA: But it's important, Mr. Counsel, that you
5 have this evidence. This is the point. Of course you want to be very
6 precise, which is the origin of the document and who has disclosed the
7 document, but still, for the Chamber, it's important that we have it.

8 MR. KHAN: Indeed. I'm grateful.

9 JUDGE TRENDAFILOVA: Thank you.

10 Now, Mr. Kilolo, Counsel Kilolo, you have the floor.

11 MR. KILOLO (interpretation): Thank you, Madam President,
12 your Honours. I think that we have had the opportunity to carefully
13 follow the reading of the indictment, the DCC. We heard that there were
14 in fact a number of victims of various sorts of crimes. Reference was
15 made to crimes against humanity. I know that you are here to act as an
16 arbitrary act that these victims could be subjected to, but I know that
17 you have been following us very carefully as impartial Judges, and I am
18 aware of the fact that you're also here to serve as a barrier against the
19 injustice that Mr. Jean-Pierre Bemba could be a victim of.

20 I would also like to refer to something -- a legal issue, the
21 problem of crimes against humanity. In fact, the Prosecution has the
22 obligation within the framework of the burden of proof to provide five
23 elements to establish the existence of crimes against humanity. It's
24 necessary to demonstrate that inhumane acts were committed by soldiers
25 that these crimes are attributed to.

1 It's also necessary to show that there was a attack, a general
2 attack with regard to each of the alleged crimes. So it's also necessary
3 to demonstrate that a political element is involved in relation to war
4 strategy that the MLC troops allegedly followed in relation to the
5 alleged crimes. It's necessary to show that MLC soldiers actually
6 targeted the civilian population with regard to all of the three crimes
7 against humanity.

8 And finally, it is necessary to demonstrate that
9 Mr. Jean-Pierre Bemba had knowledge, specific knowledge, and I underline
10 the fact, specific knowledge of each alleged crime.

11 I fear that I may be able to conclude, together with you, that
12 the Prosecution will fail or -- to show sufficient evidence that
13 demonstrate that the five elements have been covered with regard to all
14 crimes that I have referred to.

15 Now with your leave, I would like to go back to the jurisprudence
16 that states that the perpetrator of a crime against humanity must have
17 acted with knowledge. He must have the knowledge of the general context
18 within which his act was committed. He must also be aware of the context
19 within which the crime against humanity was committed, and above all, the
20 suspect must be aware of the degree of gravity of the crime in order to
21 be held responsible for the crimes attributed to him.

22 According to the jurisprudence, the accused -- or, rather, the
23 suspect, since that's what we're concerned with here, must also be aware
24 of the fact that his act is an integral part of a general and systematic
25 attack directed against the civilian population, and must be aware of the

1 fact that it was carried out for the purposes of politics or carrying out
2 a given plan.

3 I have the feeling with regard to the presentation made by the
4 Prosecution that we are not being given a systematic presentation crime
5 by crime. We are not being shown that Mr. Jean-Pierre Bemba had specific
6 knowledge concerning three elements. We're not being shown that he knew
7 each time, crime by crime, that there was an attack of a general nature,
8 of a systematic nature. We're not being shown that MLC soldiers in the
9 CAR targeted the CAR civilian population, and that was to put a plan that
10 had been decided on into effect. I fear that the presentation, such as
11 it is, is not in accordance with the jurisprudence, and I will quote from
12 the jurisprudence of the ICTR, 21st of May, 1999, decision, paragraphs
13 133 to 134. The case is the Kayishema, Ruzindana case, and I will quote
14 from that case.

15 Madam President, your Honours, I would also like to point out
16 that Mr. Jean-Pierre Bemba received no information during the relevant
17 period, not a single complaint, not even a minor protest from NGOs
18 present in the field, nor did he receive any such complaints from the UN
19 that was present in the field. It was in fact Mr. Bemba himself who took
20 the initiative to contact them in tempore non-suspecto, to ask them to
21 provide him with the expertise when launching an international
22 investigation. We'll go back to that with EVD evidence in our support.

23 According to international jurisprudence, if the facts concerned
24 took place very far from the suspect, it's difficult to demonstrate that
25 the suspect was aware of them or had knowledge of the facts concerned.

1 I will quote a decision from the ICTY, case IT-97-25-T. I'll
2 spell this, Krnojelac, K-r-n-o-j-e-l-a-c, 15th of March, 2002, paragraph
3 332, also paragraph 333 to 345.

4 According to the jurisprudence in this case, there wasn't a
5 presumption that Mr. Jean-Pierre Bemba had knowledge of the crimes. He
6 was very far from the battlefield, the theatre of operations. He was
7 mainly in Congo where he was dealing with managing the territory, 700.000
8 square kilometres, and at the same time he was completely absorbed in the
9 conclusions on -- in concluding peace agreements in view of the
10 democratic elections in Congo. He was also occupied with establishing
11 democratic institutions in the country and pacifying the region. And one
12 should be aware of the fact that he was in fact in Congo, over 800
13 kilometres away from Bangui.

14 THE INTERPRETER: Counsel is kindly asked to slow down for the
15 sake of the interpretation.

16 MR. KILOLO (interpretation): I would also like to inform you,
17 Madam President and your Honours, that in a judgement dated the 16th of
18 November, 2005, the ICTY considered, and I quote: "(In English)
19 (Previous translation continues) ... difficult and temporal
20 circumstances, the more physically distant the suspect was from the scene
21 of the crimes, the more evidence which may be necessary to prove that he
22 had actual knowledge of them."

23 (Interpretation) So I believe that the jurisprudence is quite
24 clear.

25 There's no information to date that allow one to be persuaded of

1 the fact that Mr. Jean-Pierre Bemba received real information from the
2 commander of the operations or from the main staff in the CAR. All the
3 reports centralised by the command that received copies of for his
4 information, all these reports excluded criminal acts carried out by MLC
5 soldiers.

6 It is in vain that the Prosecution loses itself in allegations
7 and they fail to provide sufficient or credible evidence with regard to
8 this information and the manner in which this information was relayed to
9 Mr. Jean-Pierre Bemba given that Mr. Bemba didn't take part in the
10 military operations in the CAR. He received information at some point in
11 time in the Congo, and according to this information there was a
12 suspension of some of the elements of MLC troops. He conducted internal
13 investigations to the extent that this was authorised by the CAR
14 authorities in order to seize the suspects of crimes. About a hundred
15 soldiers at the time were arrested, put on trial and convicted by the
16 military court in the -- in DRC. They were convicted for theft in the
17 CAR. At the initiative of Mr. Jean-Pierre Bemba, there were sanctions.

18 One should also be aware of the fact that when he heard about
19 violations by troops, and these suspicions had not yet been elucidated,
20 given the limited means of investigation he decided that there should be
21 an international investigation into the CAR, and this should be also
22 under the Secretary-General of the United Nations. We'll go back to
23 this. There was an exchange of letters with the UN at the time, with
24 Amnesty International, Human Rights Watch, FIDH, and requests were made
25 for an international investigation. He took all the necessary measures,

1 all reasonable measures that he could take.

2 I wanted to make these preliminary observations before moving on
3 to the evidence that you have been provided with by my learned colleague,
4 Mr. Nkwebe. You will see that there are some elements that render less
5 credible the allegations of the Prosecution with regard to the fact that
6 Jean-Pierre Bemba was allegedly aware of crimes against humanity being
7 committed by MLC soldiers in the CAR, and I am referring to soldiers who
8 have not yet been identified.

9 First I'll come back to what the Prosecutor was saying yesterday
10 about this essential element of the crime against humanity. The
11 Prosecution only presented two witnesses. This is quite surprising,
12 whereas in the record we have 4.000 and -- 450.000 pages, 5.000 pages
13 covering Rule 77. So we have approximately more than 10.000 pages about
14 this. However, now concerning this essential element, knowledge,
15 knowledge to determine the responsibility or the fact that Mr. Bemba is
16 responsible for these crimes against humanity, two witnesses, 0045 and
17 0033.

18 Well, first I'll move on very quickly about Witness 033. He's
19 anonymous. We don't have his identity. So concerning this identified
20 witness, 0045, he was -- we were given his information by the Office of
21 the Prosecutor, he is the one that gave us -- that gives us the evidence
22 about knowledge in committing these crimes against humanity allegedly
23 committed by Mr. Jean-Pierre Bemba.

24 Now, President, your Honours, I would like to ask you to look
25 very carefully at the statements made by this witness. I would like you

1 to find that the Office of the Prosecutor only selected one version and
2 suppressed another part of the statement made by the witness, which was,
3 however, essential to understand it.

4 Look at document EVD-P-02392, page number EVD-0452, and you'll
5 see that actually this witness never stated that Mr. Jean-Pierre Bemba
6 was informed of the crimes against humanity committed by the MLC
7 soldiers. Actually, this soldier differentiates between two distinct
8 elements. The witness believes that Mr. Jean-Pierre Bemba was aware of
9 the military situation, but the same witness, on the page I have given
10 you, adds that Mr. Jean-Pierre Bemba did not have any information about
11 the abuse that he is alleged -- or the MLC's soldiers are alleged to have
12 committed. So there's a difference there between -- between what they're
13 saying and what we're saying. We are quite stunned, because here before
14 an International Criminal Court we note that the Office of the Prosecutor
15 has to investigate incriminating and exculpatory evidence equally and has
16 to give us exhaustive items from the record that we need to know of so
17 that we -- you can decide based on the full knowledge of the fact. We
18 hope to have an answer one day from either the Office of the Prosecutor
19 or through the decision we will read following the discussion during this
20 hearing.

21 We would like an answer as to why we haven't been given full
22 information. We would like to know why such an important record
23 concerning a person's opinion, a senator in his own country, somebody who
24 received more than 40 per cent of the votes at the last elections in the
25 Congo, somebody who was just days from being named head of the

1 opposition, a second personality in the Democratic Republic of the Congo,
2 at a time when the whole of the international community was spending a
3 lot of money on moving towards a democratic state for the Congo. So why
4 was this taken so lightly? Why is this taken so lightly? That is the
5 question we are asking ourselves and which I think suffices to show that
6 in this case, at this time, it is impossible to accuse Mr. Jean-Pierre
7 Bemba of crimes against humanity.

8 Actually, I would like you to withdraw any charges made that are
9 related to crimes against humanity in this case.

10 Now, the Office of the Prosecutor will have to inform us whether
11 or not they wish to investigate anew in this area. However, I,
12 President, don't want to just stop at this one item of evidence that was
13 furnished by the OTP. I would like you to look also at the FIDH report
14 entitled "War crimes in the Central African Republic," because when
15 elephants fight, it's the grass that suffers. EVD-P-0001.

16 This report actually triggered the information that the Office of
17 the Prosecutor has, and it says a lot about Mr. Jean-Pierre Bemba. If
18 you read pages 21 and 22, actually, you'll see that the report is very
19 clear. It is unambiguous on the question of the attribution or the
20 responsibility or direct participation of Mr. Bemba in these crimes
21 against humanity.

22 Now, I would also like to go to a second item which is a document
23 from the military court. We have a document number EVD-P-0062. This
24 document clearly shows that Mr. Bemba was not informed of any of the
25 crimes other than those he had been informed of through reports, through

1 the hearings at the Gbadolite military court concerning rapes and
2 pillaging in Bangui in the Central African Republic.

3 When the NGOs did not do anything about Mr. Jean-Pierre Bemba's
4 request for cooperation, he had to turn to the courts and tribunals in
5 the Congo which had jurisdiction on these matters. And once they had
6 taken judicial notice of the facts that happened in Bangui and that were
7 attributed to some Congolese soldiers, these courts decided that the
8 facts had to be qualified or characterized as rape according to the
9 applicable laws, and that's how these persons came to be punished. But
10 according to the judicial truth that was given at the time, this is what
11 had happened, and Mr. Bemba didn't have any further information. That's
12 the information he was given.

13 You might want to read, President and your Honours, you might
14 want to read the statement of Witness 0040, again a Prosecution witness,
15 in the record, EVD-P-02198.

16 On page 18, number ERN 0281, this witness is very formal. He
17 only recalls two visits by Mr. Jean-Pierre Bemba in the Central African
18 Republic, and he states that Mr. Jean-Pierre Bemba never went to the
19 battlefield. So he couldn't himself take stock of the abuse allegedly
20 committed.

21 You will also read in the same Prosecution statement, 0040, in
22 another document, EVD-02346, ERN 0596, this witness says that actually
23 the ALC (as interpreted) soldiers informed the witness and stated -- and
24 you'll see what this witness's function was, that it was the Chad
25 soldiers and Patasse's soldiers that pillaged. That's the official

1 information that was given and that the MLC's official high-ranking
2 leaders had, and it's now through the OTP's information that we have been
3 given and the information which is considered incriminatory but which has
4 not been given to us in its entirety, this new information.

5 Now, in the file EVD-P-02348, ERN number 0633, you'll see that
6 Mr. Bemba never went to Damara where most MLC men were stationed. So if
7 you link up all the facts with the information we have, it contradicts
8 the allegations which are not supported by evidence and which were
9 advanced by the Prosecution according to which Mr. Bemba was in the
10 Central African Republic and knew, therefore, about the abuse committed
11 by the MLC troops.

12 President, you'll see in another document by the same Prosecution
13 witness -- and I know that it's almost 4.00, and even if I've not
14 finished my presentation, I imagine I will need half an hour after the
15 break to continue on this issue which I believe to be essential, the
16 crimes against humanity.

17 JUDGE TRENDABILOVA: Thank you, Counsel Kilolo. We have to take
18 reasonable breaks because we're under the obligation to respect one hour
19 and a half of work for the interpreters and half-hour break. So would
20 you mind if you stop right now and proceed with your presentation further
21 on after the break.

22 MR. KILOLO (interpretation): Thank you. I hope half of an hour
23 will be enough, half an hour after the break.

24 JUDGE TRENDABILOVA: We adjourn the session, and we shall resume
25 it in half an hour, 4.30. Thank you.

1 COURT USHER: All rise.

2 Break taken at 4.00 p.m.

3 On resuming at 4.32 p.m.

4 COURT USHER: All rise.

5 JUDGE TRENDABILOVA: The hearing is in session. Please be
6 seated.

7 The security officer, would you please invite Mr. Bemba into the
8 courtroom.

9 (The suspect entered court)

10 JUDGE TRENDABILOVA: Although I'm a little bit shortsighted, I
11 can notice some new faces on the Bench of the Prosecution. Would you be
12 so kind to tell us who they are. Thank you, Ms. Kneuer.

13 MS. KNEUER: Madam President, you are correct. We have three new
14 faces. In the team of the Prosecution is Ms. Barbel Carl,
15 Ms. Elsa Papageorgiou, and Mr. Thomas Bifwoli.

16 JUDGE TRENDABILOVA: Thank you, Ms. Kneuer.

17 We proceed with the Defence. You have half an hour,
18 Counsel Kilolo.

19 MR. KILOLO (interpretation): Thank you, Madam President.

20 JUDGE TRENDABILOVA: Just to remind you that we expect -- the
21 Chamber invites you to present to all participants, including the
22 victims' representatives your presentation of today after the hearing is
23 over.

24 MR. KILOLO (interpretation): I gave you --

25 JUDGE TRENDABILOVA: The presentation you had on the screens.

1 MR. KHAN: We've given it.

2 MS. MASSIDDA: Madam President, we are already served with the
3 presentation. Thank you.

4 JUDGE TRENDABILOVA: Thank you. Thank you. So Mr. Kilolo, you
5 have the floor.

6 MR. KILOLO (interpretation): Thank you, Madam President. Thank
7 you, your Honours.

8 I'd like to ask for the interpreters' indulgence. I was told a
9 while ago that I was very fast and it was a little difficult for the
10 interpretation.

11 I'd also like to go back to two issues very briefly. First of
12 all, it has to do with the summary of our point of view concerning
13 knowledge of the events, in fact. It is shown by the Prosecution file
14 itself. It is shown that Mr. Jean-Pierre Bemba never obtained any
15 information whatsoever on the most serious violations that resulted in
16 atrocious suffering for the civilian population. There's absolutely no
17 doubt, not a shadow of doubt about the matter.

18 On the other hand, at one point in time he was provided with
19 contradictory information. There was information that came from the
20 international press on the one hand, and mostly from the French press,
21 and this was in a context, we know, within the framework of the
22 Prosecution's file, that there were French political interests at the
23 time and it's a Prosecution witness who stated this. And according --
24 because of these interests, Bozize who was a part of the rebellion at the
25 time and was supported by certain foreign countries, he was supported by

1 certain foreign countries who wanted him to become president. Given that
2 Mr. Jean-Pierre Bemba quite rightly supported agreements and supported
3 CEN-SAD pursuant to regional agreements, in good faith he didn't give any
4 importance to information that came from the foreign press or parts of
5 the foreign press. That was all the more the case in that there was
6 another information that came from reports forwarded to the
7 Central African authorities, and in these reports no war crimes or crimes
8 against humanity were ever mentioned. The only information that he
9 obtained or could obtain referred to minor incidents, isolated incidents,
10 and these were directly under the commander of operations in
11 Central Africa, and in Bangui he punished the soldiers who were
12 responsible for certain acts.

13 I wanted to make this quite clear. I wanted to underline this
14 fact. Perhaps it didn't appear that clear in the comments that I made
15 just a while ago.

16 I would also like to go back to a document, EVD-P-00001, a report
17 from the FIDH, page 21, and this document shows that there's no evidence
18 of the direct involvement of Mr. Jean-Pierre Bemba in crimes committed in
19 the CAR. This is what we've discovered in an important document from the
20 Prosecution that emanates from an international ONG, that comes from an
21 ONG that investigated the matter a while after the events in question.

22 Having said that, Madam President, your Honours, I would also
23 like to ask you something about the element of knowledge -- or, rather,
24 could you read EVD-02336. This concerns a witness who affirms that this
25 witness had no information, that the commander of the operations

1 forwarded direct reports to Mr. Bemba.

2 In addition, this witness states or affirms that he had never
3 seen the Congolese commander of the operations in the field entering into
4 contact with Mr. Komba (phoen) by using a Thuraya phone, whereas this is
5 what the Prosecution alleges. Why is there such a contradiction between
6 the Prosecution's allegations and the allegations made by the
7 Prosecution's very own witnesses?

8 And there is another important matter that I would like you to
9 focus on, and this is the testimony of Witness 009, EVD document 00149,
10 ERN number 0176.

11 In this document it says that this witness who was one of the
12 investigators, I won't go into the details, one of the investigators into
13 the legal case in Bangui, the judicial case in Bangui. Well, the witness
14 said that as far as the acts of abuse are concerned, the acts of abuse
15 that were imputed or alleged, it appears that Jean-Pierre Bemba was not
16 aware of the fact that MLC soldiers acted in a way that was contrary to
17 the reasons for which they were in the CAR in the first place. So
18 this -- this legal official says that in fact he was not aware of such
19 information.

20 With regard to another Prosecution witness, 0045, file number
21 EVD-P-02340, page 27, ERN number 0492.

22 MS. MASSIDDA (interpretation): I believe that my learned friend
23 has just referred to the position of one of the Prosecution's witnesses,
24 and I think that this is the very same information that was redacted this
25 morning by order of the Chamber when Mr. Liriss was addressing the

1 Chamber. This is line or at line 101 (Previous translation continues)
2 ... (in English) transcript.

3 JUDGE TRENDAFILOVA: I ask you, Mr. Kilolo, as I asked the other
4 members of the Defence team to be very cautious, very careful. Go ahead
5 with your Defence strategy, but still be aware of our duties to respect
6 these important interests that we have to take care of.

7 MR. KILOLO (interpretation): Thank you, Madam President. I'll
8 proceed with utmost caution.

9 I'll go back to an EVD document, P-02340, ERN number 0492. And
10 this Prosecution witness stated that Mr. Bemba did not believe that the
11 information on acts of abuse relayed by certain members of the press
12 corresponded to the situation on the ground. In good faith he believed
13 that this was just a matter of propaganda organised by France against the
14 MLC. So this is the testimony of a Prosecution witness, and you have the
15 reference.

16 This quite clearly demonstrates that, in any event, as far as
17 knowledge is concerned, as far as awareness of crimes against humanity,
18 as far as these crimes are concerned, well, this hasn't been
19 demonstrated. The evidence isn't sufficient against Mr. Bemba, the
20 evidence that the Prosecution has present so far.

21 I'd also like to refer to EVD-P-2340, page 51, and here the
22 Prosecution witness informs us that eventual crimes attributed to MLC
23 soldiers in the CAR appeared to be acts of banditism, delinquents, that
24 the soldiers themselves wilfully engaged in. So you can see that under
25 such conditions, as far as information or knowledge is concerned, we

1 don't have any convincing evidence, or at least sufficient evidence
2 against Mr. Bemba.
3 Expunged
4 Expunged
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6 Expunged. You can
7 clearly see that according to these witnesses, and I won't mention their
8 positions, you can see for that yourselves in the documents. You can see
9 that these witnesses themselves state that there was --

10 MS. KNEUER: The Prosecution raises concerns about another phrase
11 that the Defence just used. It's on the English transcript, page 102,
12 line 11. Sorry, it starts at line 10, and it also exposes the witness's
13 position.

14 MR. KILOLO (interpretation): I don't see anything that is
15 inappropriate.

16 JUDGE TREDAFILOVA: Otherwise, we have to turn into closed
17 session, or private session, and this is not the desire of this Chamber.

18 MR. KHAN: Your Honour, I fully accept, in fact I passed a note
19 to my learned friend Mr. Kilolo in relation to the earlier issue that
20 required a redaction and it's very correct that that issue was redacted,
21 but it does seem to be in fairness that this particular line that has
22 been pointed out by my learned friend does not result in the exposure of
23 the witness, at least not until my learned friend drew attention to it.
24 It's not saying that this particular individual performed any particular
25 function. Not at all. Many individuals can come to a degree of

1 knowledge for a whole host of reasons.

2 Your Honour, you've seen it for yourself but I think -- of course
3 now it's been raised it can be redacted, but I do think perhaps that it
4 was an example where my learned friend could have been a little bit more
5 cautious but one where I don't think any rule was breached at all.

6 JUDGE TRENDABILOVA: Mr. Khan, I shall answer you with my
7 microphone switched off. (Microphone not activated)

8 MS. KNEUER: (Microphone not activated)

9 JUDGE TRENDABILOVA: (Microphone not activated)

10 MS. KNEUER: (Microphone not activated)

11 JUDGE TRENDABILOVA: Mr. Kilolo, you have the floor, please.

12 MR. KILOLO (interpretation): Thank you, Madam President. Thank
13 you, Your Honours.

14 Since I was interrupted when referring to an issue, well, we
15 referred to EVD-P-0098, page 9. 0107 is the page, and this Prosecution
16 witness says that there is no information on violations that amount to
17 killing on a massive scale by MLC troops, and this contradicts the
18 Prosecution's position. The Prosecution supports the thesis that
19 Mr. Bemba was informed, whereas their own evidence contradicts this.

20 I'd like to go back to another exhibit, EVD-P-00122, page 16 to
21 20, ERN number 0065 to 0069. And this is a document that has to do with
22 the arguments raised by the Prosecution yesterday, arguments that allege
23 that the victims contacted Mr. Jean-Pierre Bemba to inform him of acts of
24 abuse that they were the victims of, but the Prosecution forgot to
25 mention with regard to this exhibit, with regard to this evidence, that

1 this very same anonymous witness stated that in fact Mr. Jean-Pierre
2 Bemba spoke to his troops, and as a result acts of crime were reduced.
3 He introduced a mechanism that made it possible for the population to
4 lodge complaints with various leaders of MLC soldiers, and in fact the
5 complaints made were followed up on and punishment was meted out to
6 soldiers who acted inappropriately. So to the extent that
7 Mr. Jean-Pierre Bemba was informed, he took action.

8 The Prosecution says nothing about such evidence. Naturally, I
9 do appreciate the fact that they are cautious when we have confidential
10 information, but we would like to see the same rigor demonstrated when it
11 comes to disclosure of evidence and when it comes to transparency with
12 regard to all the evidence that the Prosecution has.

13 Madam President, I would also like you to focus on document
14 EVD-P-00143, page 22, ERN 0423. This is also a Prosecution witness who
15 states that as far as the violations attributed to MLC soldiers are
16 concerned, the incidents were never very significant or very grave. He
17 even stated -- or the witness even stated that these were minor incidents
18 and individual cases, isolated cases. He claims that -- or he or she
19 claims it wasn't organised and it wasn't on a large scale. So this is
20 the information that a Prosecution witness has provided.

21 Why doesn't the Prosecution mention this? Why does the
22 Prosecution, in fact, state something contrary to this testimony? So you
23 can understand very well the kind of information that Mr. Jean-Pierre
24 Bemba may have received. And as far as the same EVD file is concerned,
25 ERN page 0426, the witness states that in fact the commander in the field

1 took all the necessary measures and punished troops who had shown
2 themselves to be guilty of isolated acts of violations. Minor incidents
3 were locally punished. So we can see the extent to which delinquent
4 behaviour, violations, were matters that were matters relayed to
5 Mr. Jean-Pierre Bemba. We can see what the Prosecution has informed us
6 of, and we won't refer to Defence information at this point in time.

7 Madam President, your Honours, I would also like you to focus on
8 EVD-P-02390, ERN number 0482. This witness states that the file on the
9 wall (as interpreted) on the CAR wasn't a matter of priority in relation
10 to the national negotiations, the Congolese negotiations. There was an
11 attempt of an agreement for the reunification of Congo during the same
12 period, and this is what explains that at that level that he wasn't
13 informed of the acts of abuse that took place or were committed in the
14 CAR. You will understand or you will see that Mr. Jean-Pierre Bemba as
15 President of the MLC was involved in these negotiations, and this is why
16 one should think once more about the extent of knowledge that he had
17 about the alleged crimes.

18 You will also see in this very same dossier, 0484, the witness
19 states that the information relayed to Mr. Jean-Pierre Bemba was limited
20 and partial. It had to do with the military situation itself, and at no
21 point in time did he receive information on serious crimes.

22 This is evidence from the Prosecution that we are still dealing
23 with.

24 And another piece of evidence I'd like you to focus on is
25 EVD-P-02391, page ERN 0538. The witness here answered the question as to

1 whether Mr. Jean-Pierre Bemba was aware of acts of abuse committed by
2 soldiers in the field, and he said quite clearly, there was nothing
3 ambiguous about it, that the Congolese military leaders did not inform
4 Mr. Bemba of the acts of abuse committed in the field. The only
5 information that Mr. Bemba could have been provided with was information
6 relayed via the media, and therefore it's possible to conclude that
7 Mr. Jean-Pierre Bemba was faced with a situation in which there was
8 contradictory information. There was information from the MLC, from the
9 CAR, and information from the media, and this information was
10 contradictory.

11 According to information, the second sort of information,
12 Mr. Bemba believed that information was being used for certain purposes.
13 So this is the information that we've been provided with by the
14 Prosecution, and, Madam President, your Honours, we've been through
15 10.000 pages in order to come across this evidence. We would never have
16 come across it otherwise. And that's all more the case in that much of
17 this evidence that is of an exculpatory nature comes under Rule 77. We
18 don't quite know why.

19 Madam President, I'd also like you to focus on EVD-P-00141,
20 ERN 0455. This Prosecution witness in fact states the Sun City
21 negotiations, and this is part of the Congolese negotiations, took place
22 from 2002 to 2003 and lasted for several months during the period of
23 armed conflict. And during this period, these negotiations that
24 concerned the future of the Congo and all of Mr. Bemba acts were for this
25 purpose, well, this was also the fate of the MLC as a political movement.

1 It's the existential reason for the MLC that was at issue. Mr. Bemba had
2 other concerns during the period of armed conflict, and this explains why
3 he was not in a position to have perfect knowledge of the events. This
4 is evidence that we have come across in the Prosecution file.

5 As regards the same evidence, I'd like to refer you to page
6 ERN 0482 where you will see that the Prosecutor's witness says that
7 Mr. Bemba did not believe in the truthfulness of the facts that were
8 recounted by the media as regards abuses committed by MLC troops. He
9 says that Mr. Bemba did not have confidence that that media -- those
10 media reports were true. There was a feeling that the media accounts
11 were being orchestrated in service of various Western interests.

12 Your Honours, these -- such is the evidence which you find in the
13 Prosecutor's case. And here we speak only of the element of knowledge of
14 crimes against humanity.

15 The fact of the matter is that the Prosecutor's case speaks for
16 itself. Your task is to establish whether these charges of crimes
17 against humanity can be confirmed. To my mind, the only conclusion which
18 can be drawn is that there is in here no case to answer.

19 We will return to these issues when we address the matter of war
20 crimes and also the matter of individual criminal responsibility, which
21 is of capital importance.

22 Your Honour, I see that it is now 5.00, and I have not yet
23 addressed other important aspects relating to inhumane acts, the whole
24 matter of attacks, and also the question as to whether the Prosecutor's
25 case contains sufficient evidence to establish that MLC troops were

1 responsible for the suffering of this CAR population.

2 Your Honour, could you accord me another 20 minutes to address
3 these issues which are of the greatest importance for the life of a man
4 who is here charged with very serious crimes? In light of the
5 allegations brought against Mr. Bemba, I think that one must admit that
6 no more serious crimes can be alleged against a man.

7 Your Honour, would it thus be possible to benefit from such a
8 period of time?

9 (The Trial Chamber confers)

10 JUDGE TRENDAFILOVA: After very shortly conferring with my
11 colleagues, we would like to grant you additional 15 minutes, Mr. Kilolo,
12 relying on your professional skills to make your presentation concise and
13 focussed. Of course not only the life but the freedom and any important
14 human values are not going to be at stake due to some time constraints,
15 but please be focussed. You have 15 minutes to 5.20. Until 5.20.

16 MR. KILOLO (interpretation): Thank you, your Honour. You would
17 appreciate that I am summarising more than 10.000 pages. The task is
18 arduous.

19 Allow me to take the -- the element of inhuman acts. For the
20 crime -- crimes against humanity to be proven sufficiently, there must be
21 sufficient evidence to demonstrate that MLC troops carried out inhuman
22 acts and inflicted serious suffering to people and committed outrages
23 against physical integrity and the psychological well-being of
24 individuals.

25 I would refer you to the case law of the ICTR, Trial Chamber,

1 2nd of September, 1998, paragraph 5.000 -- sorry, 578, the Rutaganda case
2 at the ICTR Trial Chamber, 6th of December, 1999, at paragraph 66.

3 In inspecting the Prosecutor's dossier, I noted EVD-P-00143,
4 ERN 0438. This Prosecution witness affirms that the nature and the
5 gravity of the facts have been exaggerated as regards the abuses placed
6 at the door of the MLC troops. Here we speak of the Prosecution witness.

7 We see also in another document, EVD-P-001002, ERN 0425, another
8 Prosecution witness tells us what happened in reality in the
9 Central African Republic, and he refers to isolated incidents of theft
10 perpetrated by MLC troops rather than incidents of rape, for instance.

11 In another document in the Prosecutor's file we find document
12 EVD-P-02500, ERN 0311, and ERN 0314. This witness specifies that he has
13 no knowledge of rapes being carried out by MLC troops in the
14 Central African Republic, and he draws attention to the fact that the
15 medical certificates that may have been drawn up after the fact have no
16 credibility.

17 Another Prosecution witness speaks to the gravity of inhumane
18 acts, and in document EVD-D01-0044, ERN --

19 MS. KNEUER: I apologise for interrupting my learned colleague
20 but we only detected now that there's another problem disclosing with
21 exposing one of the Prosecution's witnesses. It's on page 100, lines 19,
22 20, and 21, and it also relates to the position of this very specific
23 witness. We're seeking redactions. Thank you, your Honours.

24 JUDGE TRENDAFILOVA: Okay. So Court Officer, would you approach
25 me, please.

1 (Trial Chamber and Court Officer confer)

2 JUDGE TRENDAFILOVA: Thank you, Ms. Kneuer. Would you repeat
3 once again the page and the paragraph. And the line was from 19 to 21,
4 but which page?

5 MS. KNEUER: Correct, Madam President. It is page 100, lines 19
6 to 20 --

7 JUDGE TRENDAFILOVA: 21.

8 MS. KNEUER: -- and 21.

9 JUDGE TRENDAFILOVA: Yes.

10 MS. KNEUER: Thank you, Your Honours.

11 JUDGE TRENDAFILOVA: Mr. Kilolo, would you proceed, please.

12 MR. KILOLO (interpretation): Thank you, your Honour. Once again
13 I would invite you to consult another Prosecution document, EVD-D01-0044,
14 ERN 0108, and also ERN 0121.

15 This witness tells us that, in fact, all of the serious crimes
16 carried out in the six main cities in the Central African Republic,
17 Bossemptele, Damara, Sibut, et cetera, all of those crimes were
18 attributable to Bozize's troops.

19 Once again, your Honours, I would refer you to the Prosecutor's
20 file and EVD-P-023022, ERN 0337 to 0338. This witness, in fact,
21 specifies that in fact when some civilians found themselves in difficulty
22 in these same -- self-same cities, Damara, Sibut, et cetera, in the wake
23 of abuses committed by the troops of the current president of the
24 Central African Republic, Bozize, it was the MLC who came to the rescue
25 of children.

1 I would direct you to document EVD-P-0103, ERN 0495, and another
2 document, EVD-P-02269, ERN 0495. This important Prosecution witness
3 tells us that in reality the serious crimes that we are here to talk
4 about today which took place at PK12 in Bangui were the acts of
5 President Bozize's troops.

6 Your Honours, faced with this evidence, we note that the
7 Prosecutor fails to provide sufficient evidence not only regarding
8 knowledge of the crimes but also of the three crimes of -- against
9 humanity which are alleged in relation to the inhumane nature of acts
10 said to have been committed by MLC troops.

11 With your leave, your Honours, I would like to address another
12 important point, and that is to say whether there is sufficient evidence
13 in the Prosecutor's case to prove that MLC soldiers genuinely and
14 specifically, crime by crime, targeted the civilian population in the
15 Central African Republic.

16 In any case, I note that the witnesses advanced by the
17 Prosecutor, document EVD-P-0098, ERN 0102, and this is a core witness in
18 relation to the specific aspect, the targeting of the CAR civilian
19 population, here we see that Expunged
20 Expunged
21 Expunged. And this is the --
22 the lightweight approach, I would say, to the constitution of this
23 dossier.

24 MS. KNEUER: Madam President, the Prosecution requests redactions
25 on the current page, line 23, because it relates to the position.

1 JUDGE TRENDAFILOVA: It is the same.

2 Ms. Officer -- Court Officer, I think it will be on time now.

3 (Trial Chamber and Court Officer confer)

4 JUDGE TRENDAFILOVA: Yes.

5 MR. KILOLO (interpretation): Your Honour, I apologise most
6 sincerely for these slight slipups in oral my submissions.

7 MS. BENSOUDA: Madam President, your Honours --

8 JUDGE TRENDAFILOVA: Ms. -- yes.

9 MS. BENSOUDA: -- we are really becoming very concerned that this
10 is going on and not stopping, and we would be requesting that we go into
11 closed session if this is to be the case.

12 JUDGE TRENDAFILOVA: Thank you, Madam Bensouda. We have five
13 minutes and I hope that in the course of these five minutes we are going
14 to have strict adherence on behalf of Mr. Kilolo to what the Chamber has
15 required. Thank you.

16 MR. KILOLO (interpretation): Mr. Kilolo, in the following five
17 minutes, your Honours, I would like to conclude, conclude on an important
18 constituent element of crimes against humanity, and that is to say the
19 political element.

20 For -- for crimes against humanity to be proven, the Prosecutor
21 must also provide sound evidence that MLC troops genuinely had a plan to
22 carry out abuses, acts of violence as a strategy of war, and given that
23 I'm now coming to the end of my time, I would simply request of you --
24 your Honour, if I might, this is undoubtedly a matter to which we will
25 return later. I'm concerned about confidentiality in order to support

1 certain lines of argument. There is a risk that too much might be
2 revealed. Therefore, I would suggest that I stop here as regards crimes
3 against humanity.

4 I have my eye on the clock and I see that I'm almost at the end
5 of the time allowed to me, but I would most sincerely ask you to be most
6 attentive to the position or the situation of Mr. Jean-Pierre Bemba. He
7 is being accused of the most serious of crimes, and I've had the
8 opportunity to say that to him.

9 We hear of people who have been victims of serious abuses in
10 Africa. However, however, I do believe that with hindsight, distance,
11 some distance, one can certainly review the -- what has actually
12 happened.

13 This International Criminal Court is establishing jurisprudence.
14 I do not share the view that the Bemba case is the biggest case before
15 the International Criminal Court and that, therefore, the charges against
16 him must be confirmed against a big, an important person such as him. I
17 believe that your task is to ensure that justice is done for all, for the
18 victims, but also for the suspect. I have full confidence in your
19 appraisal -- or, rather, appraisal of the evidence put before you, and I
20 believe that you will come to share my deep-held conviction that there
21 is -- there are tremendous weaknesses in this case when it comes to
22 crimes against humanity.

23 In cases that are brought before courts in Paris, Brussels, and
24 elsewhere, prosecutors produce dozens, hundreds of pieces of evidence.
25 Here we have -- those cases might comprise a couple of thousand pages.

1 Here we have a case record of tens of thousands of pages, and my
2 examination of it has been that only two pieces of witness testimony can
3 be brought in support of these charges. How can -- could a man be
4 convicted to a lengthy stay in prison on such a basis?

5 Members of his family are here in the public gallery. He is a --
6 the father of five children, young children. I do not even appeal to
7 your sense of humanity but simply your sense of law and that which is
8 just. Thank you.

9 JUDGE TRENDABILOVA: Thank you, Counsel Kilolo.

10 Now we shall go into the next item on our agenda, the
11 presentation on the war crime charge, and we shall ask the Prosecution's
12 team to take the floor.

13 You are not going to be repetitious as you have been following
14 the ruling of the Chamber, and now you have the floor, Ms. Kneuer. Are
15 you going to present the war crimes charge or someone else from your
16 team?

17 MS. KNEUER: Madam President, your Honours, the submission on war
18 crimes will be done by my colleague Ms. Barbel Carl. However, with your
19 leave, I would address briefly two issues since it is a public hearing.

20 First, my learned colleague Maitre Liriss mentioned in his
21 submission prostitutes. The Prosecution wishes to address that the
22 Prosecution, and presumably the Court, are not judging the profession of
23 prostitutes. The Prosecution submits that prostitutes are also civilians
24 who enjoy the protection of the Statute.

25 Secondly, it was the Prosecution's impression that during the

1 presentation or submission of the Defence counsellors today with respect
2 to crimes against humanity, a number of issues related to the liability
3 of Jean-Pierre Bemba were addressed, and the Prosecution would like to
4 clarify that the Prosecution reserves its submission on this topic for
5 tomorrow pursuant to the Single Judge's decision.

6 I invite now my colleague Ms. Barbel Carl to address the topic of
7 war crimes under Article 8 of the Rome Statute. Thank you, your Honours.

8 JUDGE TRENDAFILOVA: Thank you.

9 Ms. Carl, you have the floor.

10 MS. CARL: Thank you. Madam President --

11 JUDGE TRENDAFILOVA: Excuse me, Ms. Carl. And we have -- I have
12 made a special point on this, that one of the major principles on which
13 this institution is based is the principle that the Defence has the last
14 word. So maybe Mr. Liriss would like to take the floor in response to
15 what Ms. Kneuer said, although on the individual criminal responsibility
16 we have tomorrow. Most of the time tomorrow we are going to deal with
17 this.

18 MR. NKWEBE LIRISS (interpretation): Thank you, your Honour. I
19 would like to say to the Prosecutor that I read what was written in her
20 case. I did not say that I had any contempt for any profession. What
21 I'm saying is that I read what I read. Do I have to water down what I
22 read? I have respect for all professions, and I presume, your Honour,
23 that you understand that it is not I who said the word. And if you
24 allow, I can provide you with the information, and you will see that the
25 word is used in the case file, the case file disclosed by the Prosecutor.

1 Thank you, Your Honour. And we agree with you that we shall
2 speak to criminal responsibility tomorrow.

3 JUDGE TRENDAFILOVA: You will speak. The Chamber knows very well
4 the evidence. What you are saying is true, but still you have to be
5 mindful of Rule 71 of the Rules of Procedure and Evidence.

6 Now, Ms. Carl, you have the floor.

7 MS. CARL: Thank you.

8 Madam President, your Honours, the Prosecution will now lead you
9 through a selection of its core evidence in relation to the chapeau
10 elements of the war crimes alleged in Counts 2, 4, 5, 6, and 8 of the
11 amended document containing the charges. This submission will also be
12 assisted by a Flash presentation.

13 The evidence tendered in the Prosecution's amended list of
14 evidence and in the analysis chart demonstrates that there are
15 substantial grounds to believe that the war crimes were committed in the
16 context of a protracted armed conflict of a non-international nature,
17 that there was a nexus between the conduct and the armed conflict, and
18 that Jean-Pierre Bemba was aware of the existence of the conflict.

19 I would like to refer to the first slide of the visual animation.
20 It refers to civilians who became victims of war crimes in the conflict
21 and whom the Prosecution has listed in the amended DCC as examples for
22 all those that have been victimised.

23 As you can see, the table is arranged in order of locations and
24 dates. It illustrates where and when war crimes were committed against
25 Prosecution witnesses, witnesses' family members, as well as against

1 unidentified victims as referred to in the amended DCC.

2 Your Honours, let me point out that the crimes committed against
3 the victims depicted in the chart are only meant to be representative of
4 the totality of crimes committed against a much higher number of men,
5 women, and children that have suffered the MLC troops' atrocities during
6 the conflict.

7 The war crimes Jean-Pierre Bemba are charged for include 46 cases
8 of rape, 50 cases of torture, 46 cases of outrages upon personal dignity,
9 4 cases of murder, and 14 cases of pillaging.

10 Allow me to draw your attention to one specific location, PK12.
11 As my colleague Mr. Scaliotti has pointed out yesterday, PK12 was a
12 strategically important place for the MLC troops where they established
13 their base and stayed for around one month.

14 During this time, the MLC troops committed war crimes against the
15 civilian population. Accordingly, the table shows the direct correlation
16 between the duration of the MLC troops presence at PK12 and the large
17 number of victims.

18 Your Honours, the evidence the Prosecution will present shortly
19 shows that the war crimes of rape, torture, outrages upon personal
20 dignity, murder, and pillaging occurred in the context of a protracted
21 armed conflict between the troops of Francois Bozize and troops in
22 support of Patasse, including the MLC.

23 In regards to the nature of the conflict in the Central African
24 Republic from 25th October 2002 to 15th March 2003, the core evidence
25 supports that there are substantial grounds to believe that the alleged

1 conduct occurred as part of a non-international armed conflict.

2 Further, the Prosecution will establish that there was a nexus
3 between the conduct and the armed conflict, proving that the armed
4 conflict played a substantial part in Jean-Pierre Bemba's ability and
5 decision to commit a crime, the manner in which it was committed, and the
6 purpose for which it was committed.

7 Finally, the Prosecution will present evidence showing that
8 during all times relevant to the charges Jean-Pierre Bemba was aware of
9 the existence of the armed conflict.

10 Madam President, your Honours, I will now proceed to establish
11 the existence of a protracted armed conflict.

12 The Prosecution submits that the conflict went beyond a situation
13 of internal disturbances and tensions as defined in Article 8(2)(f) of
14 the Rome Statute. Rather, it was characterized by its intensity and the
15 extent of organisations of the parties involved. Further, the evidence
16 will show the temporal and geographical scope of the conflict. The
17 intensity of the conflict is reflected in the involvement of a high
18 number of armed troops and the strong impact the hostilities had on the
19 civilian population.

20 Please allow me to first elaborate on the various troops taking
21 part in the conflict. The troops and their strength will be displayed
22 subsequently on the screen.

23 On 25th October, 2002, forces loyal to Bozize, the former army
24 Chief of Staff of the FACA, invaded Bangui in an effort to unseat
25 Patasse. The rebel forces were composed of soldiers that had left the

1 FACA with Bozize. They were also supported by elements from Chad.

2 In response to Bozize's attack, Patasse mobilised the FACA troops
3 that had stayed loyal to him. The FACA also included the Unite de
4 Securite Presidentielle, USP, a special unit under the direct orders of
5 Patasse.

6 According to Witness 31, a member of the FACA, the number of FACA
7 troops was over 1.500. This information is further corroborated by a
8 report of the Federation Internationale des Droits de l'Homme.

9 In addition, Witness 26 states that in October 2002, the USP had
10 about 700 elements.

11 To supplement his forces, Patasse gathered troops from multiple
12 countries. The MLC contingent sent by its president and
13 Commander-in-Chief Jean-Pierre Bemba was the strongest group among the
14 troops supporting Patasse. As Witness 31 testifies, on 27th October,
15 2002, there were already around 500 MLC troops in the Central African
16 Republic. These numbers grew quickly. Witnesses 40 and 36 state that
17 during the conflict their collective strength rose up to over 1.500.

18 Jean-Pierre Bemba himself, in an interview broadcasted on
19 Radio France Internationale on 13th February 2003, numbered his troops as
20 more than 1.500 men.

21 In addition to MLC troops, Patasse recruited forces from the
22 Bataillon de Securite Frontaliere, a mostly Chadian mercenary force of
23 500 troops led by Abdoulaye Miskine, as well as at least 100 Libyan
24 troops. Bozize, as Patasse's opponent in the conflict, was commanding
25 approximately 600 troops, including Chadian elements and soldiers that

1 had defected from FACA.

2 Your Honours, the evidence further establishes the degree of
3 organisations of the troops involved in the conflict. Witness 15 and
4 Witness 33 confirm that the MLC was hierarchically organised as a
5 conventional army with the ability to plan and execute military
6 operations. Witness 36 states that the MLC structure comprised G1 up to
7 G5 officers responsible for administration, intelligence, operations,
8 logistics, as well as planning and liaison. Witness 33 confirms that the
9 Chief of Staff reported to Jean-Pierre Bemba as Commander-in-Chief of the
10 army.

11 MLC commanders further describe the military structure of the MLC
12 as composed of brigades, battalions, companies, platoons, and sections.

13 With regards to weaponry, Witness 31 explains that the MLC troops
14 brought their own weapons and ammunition to the Central African Republic.
15 They had assault weapons like Kalashnikovs as well as machine-guns and
16 mortars.

17 Witness 6 adds that the MLC troops were led by Jean-Pierre Bemba,
18 and they did not require any support from other troops when deployed.

19 In regards to the other group involved in the conflict, Bozize
20 troops were also organised. This can be deduced from the fact that his
21 forces mainly consisted of former FACA military that had defected from
22 the national armed forces to join General Bozize when he was dismissed as
23 Chief of Staff of the FACA. Furthermore, the rebel troops disposed of
24 heavy weapons and logistics such as vehicles. Moreover, reports state
25 that Bozize's forces formed an organised armed group with the ability to

1 plan and carry out military operations for a prolonged period of time.

2 As illustrated on the present slide, the rebel forces had control
3 over large parts of the Central African Republic territory and conducted
4 continuous and concerted operations. As an example, I refer to the
5 cities of Sibut, Bossangoa, and Bozoum that were occupied by Bozize's
6 troops for over three months until retaken by the MLC.

7 According to the assessment of the UN resident coordinator in
8 March 2003, I quote: "The rebels might still have significant capacity
9 left to launch counter-offensives or incursions as they have done in the
10 past."

11 Lastly, the degree of organisation of Bozize's troops can be
12 inferred from the fact that they finally seized power in March 2003.

13 Your Honours, let me proceed with the evidence showing that the
14 armed conflict had a great impact on the civilian population.

15 Although the most intense fighting and the greatest volume of
16 atrocities, at least in Bangui, occurred during the first two to three
17 weeks, the conflict continued for five months throughout the country. As
18 one of many examples, I'm referring to the UN resident coordinator's
19 reports of December 2002 and March 2003 addressing the humanitarian
20 situation in the Central African Republic.

21 During this period, radio broadcasts reported that large number
22 of sexual abuses took place and that civilians were deprived of their
23 belongings, displaced, and killed. The evidence shows that the number of
24 victims is high, particularly given the time-frame of the conflict.

25 Shortly after the beginning of the hostilities in late

1 October 2002, the CAR Ministry of Social Affairs with the support of the
2 United Nations Development Programme initiated an aid project for
3 victims, the Projet d'Assistance Humanitaire aux Femmes et Filles
4 victimes de viols et de violences inherents aux conflits armes du 25
5 Octobre 2002.

6 Opposed to what the Defence alleges, the Prosecution submits that
7 this project had already started in December 2002, before the seizure of
8 power by Bozize.

9 In its final report, the project identifies 789 victims, among
10 them 533 victims of rape and other forms of physical violence and
11 256 victims of pillaging and destruction of property. The project report
12 numbers the victims of rape as amounting to 293 and states that women and
13 girls between 12 and 60 years old had been raped.

14 Based on the work of the CAR Ministry of Social Affairs,
15 Witness 6 estimates that the number of victims came to almost 1.000.
16 They were mostly rape victims.

17 Although the witness cannot determine the exact number of victims
18 of pillaging, he states that in Bangui, I quote, "You regularly saw
19 Jean-Pierre Bemba's soldiers moving through town with the spoils of their
20 looting."

21 Similarly, a Human Rights Watch report states that
22 Jean-Pierre Bemba's MLC forces committed widespread atrocities including
23 massacres and rapes during 2002 and 2003. The prolonged fighting between
24 the rebels and Patasse's forces had a devastating impact in the north as
25 warring parties pillaged from the population, destroyed the limited state

1 infrastructure, burned many villages, and committed widespread killings
2 and rapes.

3 Your Honours, to demonstrate the great impact on the civilian
4 population, let me cite Witness 6: "(Interpretation) The victims came
5 from everywhere, from Bangui, Mongoumba, Bossembele, Damara, Bossemptele,
6 and Bozoum. No one was spared."

7 (In English) Witness 47 confirms how the civilian population has
8 been victimised by the MLC militiamen. In particular, he witnessed three
9 acts of gang-rape and a murder and also saw MLC troops return to the
10 Democratic Republic of Congo with goods plundered in the Central African
11 Republic. Your Honours, the evidence presented by the Prosecution also
12 shows the temporal and geographical scope of the conflict. The
13 Prosecution invites your Honours to view the following slide which
14 highlights the locations where the MLC troops conducted attacks,
15 including the respective dates.

16 MR. KHAN: Your Honour, before my learned friend goes on to the
17 next slide, perhaps we could have for the record an EVD number for the
18 Human Rights Watch report that's referred to at page 122, line 12. That
19 would be very helpful.

20 MS. CARL: If I may provide you with --

21 JUDGE TRENDABILOVA: Could you provide it? Yes.

22 MS. CARL: -- the EVD number. It's 00031.

23 JUDGE TRENDABILOVA: Thank you, Ms. Carl. Go ahead.

24 MS. CARL: As illustrated on the map, the MLC dominated a
25 sufficient part of the CAR territory and conducted operations in a

1 continuous and planned manner during a five-month period. Specifically,
2 NGO reports describe that fighting continued from October 2002 to
3 March 2003, when Bozize's rebel troops finally seized power. During that
4 time, the evidence shows that MLC troops spread throughout parts of the
5 Central African Republic.

6 Witness 9 states that during the conflict MLC troops were all
7 over the conflict zone, inter alia at Camp Beal, at PK12, in Damara,
8 Bossangoa, and Sibut.

9 Witness 6 explains that the MLC established bases along strategic
10 axes. They had various camps in Bangui and several in Bossembele and
11 also on the roads of Damara, Bossangoa, and Bouar.

12 In his report of March 2003, the UN resident coordinator states
13 that starting from mid-February 2003, the government forces backed by the
14 MLC troops launched a counter-offensive against the armed rebellion and
15 retook the towns of Sibut, midway between Bangui and the north, as well
16 as Bossangoa and Bozoum further north. All of which had been occupied by
17 the rebels for over three months.

18 Your Honours, let me establish that the crimes occurred only as a
19 direct result of the conflict. I would like to refer you to the next
20 slide.

21 During the MLC's presence in the Central African Republic, crimes
22 arose in particular areas where fighting took place. The incidents of
23 crimes were not only geographically extensive, their occurrence followed
24 the movement of the MLC forces as the fighting progressed to the northern
25 part of the country. Amnesty International reports that widespread rape

1 started simultaneously with the intervention of MLC combatants around
2 25 October 2002, and that the MLC committed rapes and other forms of
3 sexual violence and robbed the local population as they advanced
4 northwards.

5 Media report that after the MLC and the Central African
6 government forces recaptured Bozoum and Sibut in February 2003,
7 large-scale crimes against civilians were committed.

8 Allow me to refer to Witness 9, stating with regards to the MLC
9 troops --

10 MR. KHAN: Your Honour. I do apologise, your Honour. Your
11 Honour, if one looks at the speech of my learned friend, it's very
12 difficult for us to be able to respond, because we talk about human
13 rights in Amnesty International reports without an EVD number. When we
14 were talking earlier about Human Rights Watch, my learned friend gave a
15 list of cities, and we don't know where -- what is the reference? 006.
16 What is the EVD number relating to those matters? So in order to
17 respond, I would ask my learned friend to be specific and give
18 EVD numbers and ERN numbers when she's referring to evidence. Otherwise,
19 it's very difficult for us to respond in due course.

20 JUDGE TRENDAFILOVA: Thank you, Mr. Khan. I didn't repeat what
21 was clarified in the beginning of this hearing yesterday, how the parties
22 are expected to present their evidence in order to make it possible for
23 the opposite party and for the Chamber to have an easy access to this
24 particular piece of evidence. So before you started with your
25 presentation, I didn't repeat this because I think that the parties are

1 already aware of how they're expected to present the evidence with the
2 EVD number, with the four digits, with the source, identifying with the
3 ERN number and so on.

4 MS. CARL: Yeah. Thank you, your Honour.

5 JUDGE TRENDAFILOVA: So would you be so kind to submit all these
6 necessary information to the Defence when you finish your presentation or
7 to do it while you're presenting your evidence.

8 MS. CARL: It was the understanding of the Prosecution that we
9 would submit our presentations with -- with the EVD numbers, of course,
10 afterwards, but I'm happy to cite the EVD numbers while I'm presenting.

11 JUDGE TRENDAFILOVA: Mr. Khan, I think that as far as the
12 Prosecutor is going to present to all the participants their slides with
13 the EVD numbers as footnotes, and you will not have time to respond right
14 now, so it will serve very well the purposes of the Defence if after the
15 presentation of the Prosecutor you receive the slides.

16 MR. KHAN: Your Honour, if we get it today --

17 JUDGE TRENDAFILOVA: Today.

18 MR. KHAN: -- with the EVD numbers so that we can --

19 JUDGE TRENDAFILOVA: To prepare for tomorrow.

20 MR. KHAN: -- do the necessary preparation overnight, that would
21 be sufficient.

22 JUDGE TRENDAFILOVA: Yes, yes. Would you be in a position to
23 present it to the participants, Ms. Kneuer, as you did yesterday?

24 MS. KNEUER: Madam President, your Honours, during the lunch
25 break we provided to our learned colleagues from the Defence hard copies

1 of our presentations of today. So they are in possession of the --

2 JUDGE TRENDAFILOVA: Including this one.

3 MS. KNEUER: Including this one. Your Honours, on the button of
4 each slide it is referred to the source.

5 JUDGE TRENDAFILOVA: Yes.

6 MS. KNEUER: My understanding was that from -- from the decision
7 of your Chambers that the parties have to be -- have to be prepared upon
8 request to provide for each single source that they use in their
9 respective presentations to be ready to provide it. However, it was also
10 our understanding that we do not have to speak out loud every single
11 source that we are quoting.

12 JUDGE TRENDAFILOVA: I think your point is correct, but at the
13 same time, I'm sure that the Defence didn't have time during the lunch
14 break to go through what you have submitted to them. So I think that the
15 parties now have reached an understanding. You have the DVD?

16 MR. KHAN: Well, your Honour, I may be missing something. What
17 my learned friend handed me directly, not the case manager, are these
18 documents, and I don't have what's on the screen. I was given something
19 completely different. It's in my hand. I can return it to my learned
20 friend so she can check it. I do not have that. That's the first point.

21 JUDGE TRENDAFILOVA: Do you refer, Mr. Khan, to what you have
22 been given during the lunch break?

23 MR. KHAN: Indeed. It's in my hand. She said there were three
24 copies, and these sketches are not included. Unless I'm getting the
25 wrong end of the stick. That's the first point.

1 Your Honour, the second point is my submission did not simply
2 relate to the slides. My learned friend that was presenting and on her
3 feet made a submission in which she detailed a number of villages and
4 talked about 0006. We don't have the reference for that evidence. We
5 want to be able to have the reference to that evidence in order to
6 prepare and respond tomorrow. We're not asking for anything
7 extraordinary. We're asking for something very basic to which we are, of
8 course, ordinarily very naturally entitled.

9 JUDGE TREDAFILOVA: So the Prosecution's team, you either go
10 quite slowly, I must confess, when you present the evidence, and this is
11 quite a lot of pieces of evidence. You have to refer to every single
12 EVD number or you're going to give to the Defence everything that you
13 have presented now. I think that the second option is the better one and
14 it serves better the purposes of our hearing. Would you be able to do
15 this after the hearing?

16 MS. KNEUER: Madam President, your Honours, I have to apologise.
17 I was mistaken. My colleague Mr. Karim Khan is correct. This very
18 specific slide was not presented to him. I apologise for that.

19 As indicated yesterday, the Prosecution will share after the
20 sessions of each day with the Defence and the colleagues from the OPCV
21 DVDs including the Flash presentations in both languages, in English and
22 in French. We will also follow your Honour's instructions to go slowly
23 with respect to this very specific portion to make it more transparent
24 and understandable for our colleagues from the Defence and read out and
25 refer to the very specific sources. We try to not delay our allocated

1 time. Thank you, Your Honours.

2 JUDGE TRENDAFILOVA: Of course you shouldn't forget Ms. Douzima,
3 to give to Ms. Douzima what you're going to give to Ms. Massidda as well.
4 Okay.

5 So you have the floor, Ms. Carl.

6 MS. CARL: Excuse me. Your Honour, if I understand correctly for
7 now should I mention the EVDs or I go on as I did before?

8 MS. KNEUER: Again, your Honours, the EVD numbers are on the
9 slide, on the button.

10 JUDGE TRENDAFILOVA: As long as you're going to submit to the
11 Defence what the Defence requires as a necessary basis for their proper
12 preparation for tomorrow, I don't think that you have to refer now to the
13 EVD numbers.

14 MR. KHAN: Your Honour, I don't want to be difficult, but that
15 would be all right if it was very clear which EVD number referred to
16 which particular submission of my learned friend. If she's making a
17 number of submissions that are focussed upon one slide, I don't -- we
18 don't have time to go through overnight and double-check what's in the
19 mind of my learned friend. I'm asking for something very limited. If
20 she is making a particular point in which she is saying that for this
21 reason, based upon this evidence the charges against my client should be
22 confirmed, she should be obligated to refer to the evidence in support of
23 that proposition, and I would ask that the Prosecution be held to, what I
24 submit, is a very reasonable standard.

25 JUDGE TRENDAFILOVA: I think that you have to follow this

1 approach, because we have one slide and you're referring to many events
2 related to this slide. So would you please go ahead, but we have just
3 several minutes. I have to ask the interpreters, but we cannot all the
4 time ask for the understanding of the interpreters.

5 Ms. Court Officer, would you be so kind --

6 (Trial Chamber and Court Officer confer)

7 JUDGE TREDAFILOVA: How much time do you need, Ms. Carl, going
8 along this line, that is useful for the Defence.

9 MS. CARL: I think not more than seven, eight minutes.

10 JUDGE TREDAFILOVA: Do we have 10 minutes? Thank you very much.
11 Thank you. Thank you. You go.

12 MS. KNEUER: Madam President, if I may. Of course the
13 Prosecution wants to facilitate the proceedings, however, it's surprising
14 that today something is criticised by the Defence that was not criticised
15 during the other presentations which were similar. Thank you,
16 your Honours.

17 JUDGE TREDAFILOVA: Let us close the matter and will you refer
18 to the EVD numbers while you proceed but let's not exhaust the kindness
19 of the interpreters.

20 MS. CARL: Thank you. I will continue with establishing the
21 nexus element. The MLC troops committed rapes and pillaging when
22 retreating towards the Democratic Republic of Congo in March 2003. As
23 one example, and I'm referring to EVD 02367, Witness 29 was gang-raped
24 and her family's house pillaged by MLC troops passing through Mongoumba
25 in March 2003.

1 Let me come to the last point of my submission. The evidence
2 demonstrates that Jean-Pierre Bemba was at all times aware of the
3 existence of the armed conflict. Jean-Pierre Bemba himself, in an
4 interview held in February 2003, publicly acknowledged his participation
5 as the Commander-in-Chief of the MLC troops in the Central African
6 Republic. He states that his troops composed of more than 1.500 soldiers
7 present in the Central African Republic would start to withdraw on the
8 15th, leaving from Zongo port and Bangui airport with their equipment.
9 In the same interview, he displays his knowledge about the reinforcement
10 and movement of the MLC troops. For this point I refer to EVD 00022,
11 ERN 0159.

12 Other witnesses give evidence showing that Jean-Pierre Bemba was
13 aware of the conflict. Witness 33 states that during the period in
14 question, Jean-Pierre Bemba exercised his command and control over the
15 military wing either through the chain of command or by bypassing the
16 echelon and giving orders and instructions directly to the commanders on
17 the field using radio or satellite telephones. The respective references
18 are EVD 00151, ERN 0167.

19 Accordingly, Witness 40 confirms that during the CAR operation,
20 he received instructions from Jean-Pierre Bemba. The reference is
21 EVD 02298 at ERN 0282.

22 Witness 44 declares that Jean-Pierre Bemba must have known about
23 the incidents in the Central African Republic as three international
24 radio stations, Radio France Internationale, BBC, and Voice of America
25 reported about the events. The respective EVD number is 02391. The

1 ERN number is 0537.

2 Witnesses 26, 15, and 32 confirm that Jean-Pierre Bemba was a
3 very well-informed man and knew about the events on the grounds. This is
4 contained in EVD 00137, ERN 0205, as well as in EVD 02168 at ERN 0544, as
5 well as in EVD 02371 at ERN 0344.

6 This point is further corroborated by Witness 46, stating that
7 Jean-Pierre Bemba received regular reports about the operations of the
8 troops in the Central African Republic from his commander in the field.
9 I cite EVD 02336 at ERN 0355.

10 Furthermore, several witnesses confirm Jean-Pierre Bemba's
11 presence in the Central African Republic, supporting that he was aware of
12 the conflict.

13 First, Witness 47 states that Jean-Pierre Bemba went to Bangui on
14 two occasions during the conflict. This is to be found at EVD 02412, and
15 ERN 0137.

16 Similarly, according to Witness 31, Jean-Pierre Bemba visited his
17 troops on at least one occasion at PK12 during the military operation.
18 The reference is EVD 00102 at ERN 0368.

19 Witness 23 testifies that during his visit to Bangui,
20 Jean-Pierre Bemba talked to his troops. The civilian population
21 approached him and explained they were not rebels and asked why MLC
22 troops committed abuses against them. Jean-Pierre Bemba replied, "Thank
23 you for your complaints. I'll listen to them." To be found in EVD 02363
24 at ERN 0065.

25 In sum, Madam President, your Honours, the evidence shows the

1 existence of a protracted armed conflict that the crimes in the
2 Central African Republic occurred only as a direct result of this
3 conflict and that Jean-Pierre Bemba was aware of the existence of the
4 armed conflict. As such, the Prosecution submits that the evidence
5 supports the chapeau elements of war crimes set forth in Article 8 of the
6 Statute.

7 Thank you, your Honours. This concludes the Prosecution's
8 submission on Article 8 chapeau elements.

9 JUDGE TRENDAFILOVA: Thank you very much, Ms. Carl.

10 We didn't even exhaust the ten minutes that the interpreters us
11 for this hearing. Are there some other questions or we can just end this
12 session and resume tomorrow morning at 9.30? Just for one second,
13 Counsel Liriss.

14 MR. NKWEBE LIRISS (interpretation): I would like to return to
15 the issue raised by the Prosecutor regarding prostitutes. We did not
16 say --

17 JUDGE TRENDAFILOVA: Mr. Liriss, you will have time tomorrow when
18 you're going to discuss the case presented by them. Let us --

19 MR. NKWEBE LIRISS (interpretation): (Overlapping speakers) Thank
20 you.

21 JUDGE TRENDAFILOVA: Let us -- this is for today. I would like
22 very much to thank all the participants, to thank especially very much
23 the interpreters and the court reporters. So we close the session, and
24 tomorrow we convene again at 9.30 proceeding further on with war crimes.

25 COURT USHER: All rise.

1 The hearing ends at 6.06 p.m.

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