

Trial Hearing  
Witness: CAR-OTP-PPPP-0006

(Open Session)

ICC-01/05-01/08

1 International Criminal Court  
2 Trial Chamber III - Courtroom 1  
3 Situation: Central African Republic  
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08  
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and  
6 Judge Kuniko Ozaki  
7 Trial Hearing  
8 Thursday, 7 April 2011  
9 (The hearing starts in open session at 2.05 p.m.)  
10 THE COURT USHER: All rise. The International Criminal Court is now in session.  
11 Please be seated.  
12 THE COURT OFFICER: Good afternoon, your Honours, Madam President. We are  
13 in open session.  
14 PRESIDING JUDGE STEINER: Good afternoon. Could, please, the court officer  
15 call the case.  
16 THE COURT OFFICER: Yes, Madam President. The situation in the Central  
17 African Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, case  
18 reference ICC-01/05-01/08.  
19 PRESIDING JUDGE STEINER: Thank you very much. Good afternoon and  
20 welcome the Prosecution team. I realise that today we have not new faces, but not  
21 usual faces in the Prosecution bench.  
22 MR SCALIOTTI: Good afternoon, Madam President, your Honours. In fact, Ms  
23 Kneuer today is absent, and I am Massimo Scaliotti, trial lawyer. Thank you.  
24 PRESIDING JUDGE STEINER: Thank you, Mr Scaliotti. Good afternoon and  
25 welcome to the legal representatives of victims, the Defence team, Mr Jean-Pierre

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1 Bemba Gombo. Any problem, Mr Haynes?

2 MR HAYNES: (Microphone not activated)

3 THE INTERPRETER: Microphone, please.

4 MR HAYNES: (Microphone not activated)

5 PRESIDING JUDGE STEINER: It was just a welcome and good afternoon.

6 Welcome to our interpreters, court reporters. We will continue today with the

7 questioning of Witness 06. Before the witness is brought into the courtroom, the

8 Chamber needs to address some, a few issues.

9 The first one is the inclusion of EVD-T numbers in lists of documents. In order to

10 facilitate the work of the parties and participants, as well as the Chamber and that of

11 the court officer, the Chamber would suggest and encourage parties and participants

12 that when providing the Chamber with the list of documents intended for use in

13 questioning a witness, pursuant to decision 1023, parties and participants also

14 provide the EVD-T number assigned to these documents.

15 The Chamber is mindful that not all documents that the parties and participants

16 intend to use have been assigned an EVD-T number at this stage, but in the event that

17 such a number has been assigned the Chamber would appreciate its inclusion in the

18 list.

19 The second issue is related to the Defence length of questioning of Witness 6. The

20 Chamber received an email yesterday from the Defence following the Chamber's

21 instruction of Monday, 4 April, whereby it had requested the Defence to provide the

22 justification for the 20-hour estimate given for the length of time needed by the

23 Defence to question the present witness, Witness 6.

24 Having considered the reasons provided by the Defence, the estimate of 20 hours

25 would appear to be a little excessive as the Defence's objectives should still be able to

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1 be achieved in rather less time through careful and concise questioning. The  
2 Chamber has a duty to ensure that the trial is conducted expeditiously with full  
3 respect to the rights of the accused pursuant to Article 64 of the Statute and it must,  
4 therefore, balance these two aspects against each other.

5 Therefore, in principle, the Chamber will not limit the time that the Defence has to  
6 question Witness 6 but, instead, it will closely monitor the form of questioning and  
7 intervene whenever it considers that the questioning is becoming repetitive or  
8 irrelevant.

9 And, finally - just a reminder - before bringing the witness in and before giving the  
10 floor to Maître Zarambaud, the Chamber wants to remind Maître Zarambaud  
11 following its oral decision of Monday, 4 April, that he needs to rephrase question 3,  
12 part 6; question 4, part 2; and question 11 from his list of questions, since the original  
13 phrasing of these questions was considered by the nature to be speculative in nature.  
14 So the Chamber hopes it doesn't have to intervene when Maître Zarambaud is  
15 questioning the witness.

16 Could, please, the court usher bring the witness in.

17 (The witness enters the courtroom)

18 WITNESS: CAR-OTP-PPPP-0006 (On former oath)

19 (The witness speaks French)

20 PRESIDING JUDGE STEINER: Good afternoon, Mr Witness.

21 THE WITNESS: (Interpretation) Good afternoon, your Honour.

22 PRESIDING JUDGE STEINER: We hope you had a restful night and that you are  
23 ready to continue giving evidence before this Court.

24 THE WITNESS: (Interpretation) I did have an opportunity to rest and I'm ready.

25 PRESIDING JUDGE STEINER: Mr Witness, as always, I need to remind you that

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1 you are still under oath and ask you whether you understand that?

2 THE WITNESS: (Interpretation) I entirely understand that.

3 PRESIDING JUDGE STEINER: Thank you very much. Today you will be  
4 questioned by the legal representative of victims Maître Zarambaud. Maître  
5 Zarambaud, you have the floor.

6 MR ZARAMBAUD: (Interpretation) Thank you, your Honour, your Honours.

7 QUESTIONED BY MR ZARAMBAUD: (Interpretation)

8 Q. Good afternoon, Witness.

9 A. Good afternoon, sir.

10 MR ZARAMBAUD: (Interpretation) Your Honour, first of all, I'd like to say that  
11 with regard to the questions that the Court asked me to rephrase, I decided that I  
12 would rather drop those particular questions on our side. In any event, most of the  
13 questions I was planning to ask of the witness have actually been asked by the Office  
14 of the Prosecutor, and the answers were quite clear and concise, so I think I shall be  
15 omitting those questions as well.

16 Q. Witness, as you know, since we both served at the same court in Bangui, I am  
17 Mr Zarambaud and I am here as the representative of the victims, along with my  
18 colleague Marie-Edith Douzima, so I will have this opportunity to ask a few  
19 additional questions which I did submit to the Court in advance and which were  
20 approved. My first question is as follows: You stated, and I quote, "At the end of  
21 the war, there was a general situation of danger. The police had no equipment,  
22 weapons were moving about freely throughout the town and potential witnesses  
23 were afraid to speak. They were fearing reprisals." And that reference is  
24 CAR-OTP-005-0102, paragraph 19. My question is as follows: According to these  
25 potential witnesses, who did these potential reprisals come from?

1 A. Thank you very much. I do remember that I made that statement. Indeed the  
2 witnesses feared reprisals, because nothing was clear in Bangui. General Bozizé's  
3 rebels had come in, they had entered the town of Bangui.  
4 Furthermore, the MLC rebels in the meantime had occupied a number of strategic  
5 locations, and with the advance of Bozizé's men, these rebels were -- they had to  
6 withdraw, or fall back. So really, there was no form of -- the State was not really  
7 present, so to speak. A State that is in existence is a State that provides a certain  
8 amount of security and safety to the people, and at that time there were no strong  
9 guarantees of safety, so people were fearful. They feared their assailants. I'm  
10 speaking of the MLC soldiers or any other person who had provided assistance to the  
11 MLC when they came into Bangui and I would like to make reference to the  
12 established authority that had been overthrown. I don't know whether I have been  
13 clear?

14 Q. Entirely so. Your answer is completely clear and is entirely satisfactory to me.  
15 As for my second question, I'd like to begin with a statement that you made and this  
16 particular statement, same reference, the same reference as the one I gave previously,  
17 you stated, "Consequently, we did not visit the actual locations where the incidents  
18 occurred. Under the circumstances, we've based ourselves on the inquiry that the  
19 Ministry of Social Affairs had conducted with the cooperation of the UNDP." My  
20 question is: Which ministry or which minister of the time, who was the minister at  
21 that time when you speak of the minister of social affairs and I believe you can give  
22 the answer in public session?

23 A. It can be provided in open session? Now, unless I'm mistaken, it must have  
24 been Ms Solange Pagonendji Ndakala, who was appointed after the events of  
25 15 March 2003. That's when she was appointed Minister of Social Affairs.

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1 Q. Thank you. Also, if we start with that particular statement that you made, I  
2 would like to know whether you yourself, as the Prosecutor of the Republic, did you  
3 question any witnesses before bringing the matter before the examining judge?

4 A. Well, I would like to go back to one of the questions that the Prosecution asked  
5 of me, which is very much similar to this question. I had said that I did not conduct  
6 an inquiry as such. I did talk to a number of witnesses, but in practical terms, but an  
7 official -- an official inquiry or a judicial inquiry, no, that was not done; a criminal  
8 inquiry, that was not done. That work was done by the examining judge.

9 Q. Thank you, Witness. My third question -- well, actually, my third series of  
10 questions I will not be asking because those questions had to do with the date on  
11 which the Banyamulengue arrived, their clothing, the places where they landed, all of  
12 those questions have been answered. You answered them fully in response to  
13 questions from the OTP and thus the fourth series of questions will not be asked  
14 either. Those questions had to do with the destination of the goods that were looted,  
15 where they eventually ended up.

16 My fifth series of questions are based on the following statement that you made.  
17 You said, "I knew that there was a detention camp near Damara where the  
18 Banyamulengue killed some detainees including a former staff sergeant and I heard  
19 about the existence of this detention centre because the son of this sergeant, who was  
20 a doctor, had filed a complaint regarding the murder of his father and he had  
21 received some information about the circumstances surrounding the murder of his  
22 father from the only survivor from that detention centre." My question is: During  
23 the investigation, was it possible to identify the only survivor of that massacre that  
24 occurred in Damara?

25 A. Thank you. If that person were identified, I would have made note of his

1 situation, both for the Court and also for the inquiry. Indeed, the doctor in question,  
2 the son of the deceased sergeant, yesterday I was mistaken. I said he was a warrant  
3 officer, but he was a sergeant. Yes, that matter was brought before me after, after the  
4 matter was brought before the examining judge, at a time when the people had  
5 already been informed of the existence of an inquiry into the violations that some of  
6 the people had been victims of, and when I received that particular file I gave  
7 additional instructions so that the matter could be brought before the investigating  
8 judge and the items of information regarding this particular survivor, I'm afraid I  
9 can't give you that information.

10 Q. Thank you, Witness. You stated - and the reference is CAR-OTP-005-0103,  
11 paragraph 21, that "At PK12 there were two or three mass graves and at PK15 there  
12 was also one. I did not make an inquiry at that -- in this regard, but I did visit the  
13 site of those graves in a personal capacity." My question is: Now, since you did  
14 visit those places in a personal capacity, what did you see? What did you observe?

15 A. I made a number of observations. The mass graves, well, a small building had  
16 been erected around or close to each mass grave, a sort of a tombstone, so to speak,  
17 and they were around each one of these graves. It formed a sort of enclosure not far  
18 from the market, the cattle market. It's quite visible. You need only to go to that  
19 market, go behind the market, not from -- not far from the place where the oxes are  
20 left, one finds those mass graves. Now, to get back to your question, what I saw  
21 specifically is what I have just described to you. So these enclosures have been built  
22 around each one of the graves. I don't know whether that question is satisfactory to  
23 you?

24 Q. Quite so, Witness. You have described what you saw and I won't ask you  
25 anything more than that. My next series of questions had to do with the

1 coordination between the USP and the MLC troops. You said that the MLC troops  
2 needed the USP only when they were unfamiliar with the terrain, and I think that you  
3 have provided satisfactory answers to those questions, those questions from the OTP,  
4 so I won't be asking you those particular questions. The same holds true for my  
5 eighth series of questions.

6 My next question is as follows: When and where was Colonel Zakatao killed, a  
7 FACA officer who was responsible for general intelligence, a murder that you spoke  
8 of and I make reference CAR-OTP-005-0109, paragraph 47?

9 A. Thank you. Colonel Zakatao was in charge of general intelligence for the army  
10 and he carried out his duties in the premises at Camp Béal. Colonel -- the colonel  
11 disappeared mysteriously as soon as the MLC rebel troops arrived and shortly  
12 thereafter they had that misunderstanding with the FACA soldiers.

13 In the framework of the inquiry, we asked a number of questions to several witnesses  
14 to try to determine what became of the man, but unfortunately, all the information  
15 that we received was that only his beret was found. He disappeared. People  
16 looked for him, but no one was able to find him. Apparently the authorities had not  
17 really -- had not made much of a fuss about the whole matter. He truly vanished  
18 under mysterious circumstances and I really don't know where he was, but he was  
19 staying at this camp, the camp of the support regiment, and he was working at Camp  
20 Béal. So those are the details in general terms that I can provide you with, counsel.

21 Q. Thank you very much, Witness. I also had a series of questions about  
22 the -- about responsibility, because you did make a determination regarding the  
23 intellectual -- the people who had intellectual responsibility and accomplices, but I  
24 don't think it is necessary to go back to those questions because the OTP asked you a  
25 number of questions and you provided some entirely satisfactory replies, or specific



1 replies.

2 My last series of questions will be as follows: In the course of your investigation,  
3 what was the status -- at least according to your investigation, what was the legal  
4 status of Mr Jean-Pierre Bemba Gombo in his dealings with President Patassé? In  
5 your dossier, was he considered to be a Head of State, was he considered to be a  
6 warlord, or was there any other specification regarding his status?

7 A. At the time we commenced the investigation, the specific status of Mr  
8 Jean-Pierre Bemba Gombo, President of the MLC, had not been altered or changed.  
9 He was still President of the MLC, which at the time was a rebellious movement. He  
10 had no official public or political office in Democratic Congo, and it's therefore in that  
11 capacity and that capacity only that he engaged in his dealings with President Patassé.  
12 He had already been in contact with President Patassé since 2002, until we  
13 commenced our investigation, when he was a rebel chief. I don't know whether I  
14 have answered your question. But it is only afterwards - only afterwards - which  
15 thanks to the reconciliation with the Democratic Republic of the Congo, it was only  
16 afterwards -- and thanks to that reconciliation that he became, I believe, first  
17 Vice-President - and I can't remember whether it was first, but in any case,  
18 Vice-President of the Republic, but that was later. During our investigation, he was  
19 a rebel chief.

20 Q. Mr Witness, I should like to thank you very much for your answer. You have  
21 answered in a very satisfactory manner. Thanks to this investigation, were you able  
22 to obtain a copy of a treaty or any other thing that may have been use as a legal  
23 foundation for the intervention of the MLC troops in the Central African Republic, or  
24 was it simply a verbal agreement?

25 A. There was no text showing the agreement reached by Jean-Pierre

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1 Bemba - Mr Jean-Pierre Bemba - and the MLC group with President Patassé. This is  
2 precisely one of the questions we asked in the course of the investigation to General  
3 Bombayake, because he was very close to President Patassé. We asked him whether  
4 he was in a position to provide us with a document which could have been the basis  
5 for the intervention of the MLC in the Central African Republic. His answer was  
6 that he had had no part in those negotiations and that there was no document that he  
7 could provide us with and, unless otherwise shown, I think that I can certify to the  
8 fact that it was only a verbal agreement, not based on any written document, because  
9 had a written document existed and since this intervention was to be for the benefit of  
10 the Central African Republic, that document should have been made public, but  
11 unfortunately that was not the case.

12 Q. Thank you very much, Witness. I have another question, very close to the one  
13 I have just asked, and this is whether in the Central African Republic, in order to have  
14 foreign troops coming into the country, was it necessary to obtain a prior  
15 authorisation of the national assembly, and to your knowledge, sir, according to your  
16 own investigation, was such a prior authorisation for the national assembly sought  
17 and obtained?

18 A. May I perhaps give you some explanations as to the exact circumstances  
19 surrounding the intervention? On 25 October 2002, there was an attack unleashed in  
20 Bangui by the troops of General Bozizé. Two days after that, the MLC troops came  
21 into the picture. The national assembly was never convened in order to pronounce  
22 on that intervention. I repeat that it was an understanding that I would even qualify  
23 as a secret understanding between Mr Jean-Pierre Bemba Gombo and President  
24 Patassé. The national assembly was never asked to give its opinion on that. And  
25 this is how that intervention took place, and we have seen the consequences of it.

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1 I don't know whether I have been sufficiently clear.

2 MR ZARAMBAUD: (Interpretation) You have been totally clear, sir. With this  
3 question I have reached the end of the questions I had for you. I should like to thank  
4 you, sir, for having been so kind as to answer my questions. And thank you, your  
5 Honour, for having given me this opportunity to address the witness.

6 PRESIDING JUDGE STEINER: Thank you very much, Maître Zarambaud. Now,  
7 Witness, the Defence will start questioning you, and I ask whether it is going to be  
8 Maître Kilolo.

9 Maître Kilolo, you have the floor.

10 MR KILOLO: (Interpretation) Thank you, your Honour, for giving me this  
11 opportunity to speak.

12 QUESTIONED BY MR KILOLO: (Interpretation)

13 Q. Good afternoon, Witness.

14 A. Good afternoon, counsel.

15 Q. My name is Aimé Kilolo Musamba, associate counsel for Mr Bemba. I will be  
16 asking some questions of you and I will be -- I will appeal to you, sir, to be as brief as I  
17 am in my questions to you. Are you in agreement, sir, to also answer briefly to my  
18 brief questions?

19 A. I believe that if you ask a question of me, you will at least give me enough time  
20 to give you full explanations related to the question you ask me, because if I have to  
21 interrupt myself when I still have other things to say, I'm afraid I would not find that  
22 suitable. I am sorry to make this observation right from the very beginning.

23 Q. Be that as it may, I rely on you, sir, to be as brief and concise as possible. This  
24 is my first question: Could you, Mr Witness, tell this Court what the difference is in  
25 Central African law between a decision to dismiss charges and the decision not to

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1 pursue the matter judicially at all?

2 A. The decision not to pursue the matter further is a decision to be taken by the  
3 Prosecutor of the Republic. The dismissal of charges is one that comes from a court,  
4 but actually is a decision made by an examining judge. As regards the decision not  
5 to pursue the matter any further, this happens when the Prosecutor of the Republic  
6 believes that the prosecution would be untimely or that there is no serious grounds  
7 for this or that there has been no disturbance of the social peace and therefore the case  
8 can be totally dropped, but such a decision is not definitive. The examining judge,  
9 when he decides that there is going to be dismissal of charges, this is therefore to  
10 make sure that the person being investigated is not committed for trial. I hope I  
11 have been clear.

12 Q. Well, when there is a dismissal of charges, does that mean therefore there's a  
13 pronouncement also on the status of those charges?

14 A. Of course. When the examining judge makes a decision that there's going to be  
15 a dismissal of charges, the reason is that the charges themselves are not sufficiently  
16 substantial, or there may any other reasons, obviously, leading the examining judge  
17 to come to such a decision.

18 Q. Would you please clarify for the Court what a charge is according to Central  
19 African law?

20 A. A charge is an element of fact and of culpability that can be imputed against a  
21 person who is being prosecuted.

22 PRESIDING JUDGE STEINER: Maitre Kilolo, I'm sorry, it's not interrupting you, it's  
23 just to remind you and Mr Witness, because you speak the same language, you forgot  
24 that we have interpretation into English. So we need to apply here as well the  
25 five-seconds rule between -- a space between the answer and the next question and a

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1 space when you finish the question for the witness to start answering, please.

2 MR KILOLO: (Interpretation) Thank you very much, your Honour, for this  
3 reminder. Would you like me, your Honour, to come back to the previous question?

4 PRESIDING JUDGE STEINER: I don't think it is necessary because our interpreters  
5 are so efficient that they could finish the transcript, but in order to avoid that they  
6 have difficulties, we can try to apply the five-seconds golden rule. Thank you.

7 THE INTERPRETER: Many thanks from the interpreters.

8 MR KILOLO: (Interpretation) Thank you, your Honour.

9 PRESIDING JUDGE STEINER: I just received from the interpretation the request  
10 that you please repeat your previous question.

11 MR KILOLO: (Interpretation)

12 Q. Witness, would you kindly clarify for the benefit of the Court what a charge  
13 means in criminal proceedings in the Central African Republic?

14 A. A charge is constituted of elements of fact. It is a presumption of guilt to be  
15 imputed against a person who is being investigated for the purposes of prosecution.

16 Q. Is it possible, or is it accurate -- is it accurate, Witness, to say that a dismissal of  
17 charges, according to Central African criminal proceedings, is only possible in two  
18 cases: When the facts in question cannot be considered to constitute a crime or an  
19 offence, or when there are not enough charges?

20 A. When there is dismissal, dismissal is grounded either in the absence of charges  
21 or whether -- in the case that no crime has been committed, there can also be a  
22 dismissal. Also, for instance, when there has been an amnesty applying to the facts  
23 in question.

24 Q. Mr Witness, may I remind you of the text of Article 115 of the Central African  
25 Criminal Code which I believe that you are quite familiar with. For the Chamber,

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1 this is document 28 of the list of documents of the Defence,

2 ICC-01/05-01/08-752-Anx1.

3 Witness, I am going to re-read for you, sir, the text, and I quote, "If the examining  
4 judge is of the opinion that the facts do not entail a crime or an offence or a  
5 misdemeanour, or that there were not enough charges against the accused, he  
6 declares by means of an order that there is no reason to prosecute; and if the accused  
7 had been arrested, he is to be released," end of quote.

8 Witness, sir, in the light of the text I have just read out, is it your opinion that the two  
9 cases provided for under this rule and which would justify a decision of dismissal of  
10 charges by the examining judge are based on the fact that the facts involved are not a  
11 violation or is it in your opinion the fact that the charges were not sufficient?

12 A. Earlier I believe that I tried to shed some light on this specific situation, and I  
13 said that either the facts themselves cannot be constituted as being an offence or a  
14 crime - and, in that case, there can be dismissal - or there is an absence of charges; in  
15 which case, obviously, the examining judge also can come to the decision of a  
16 dismissal.

17 However, when there is an amnesty involving those facts - and that's a third  
18 possibility - that is also enough grounds for a decision of dismissal on the part of the  
19 examining judge. So it's not only the penal criminal code that applies; there's also  
20 jurisprudence that applies.

21 Q. Mr Witness, is it accurate to say that there is a difference in Central African law  
22 between the fact of being co-perpetrator and being an accomplice?

23 A. Would you be so kind as to rephrase that question, please?

24 Q. According to Central African criminal proceedings, is there a difference  
25 between the main perpetrator or even the co-perpetrator? This is the concept of

1 being a co-perpetrator in law, which is different from being an accomplice from  
2 complicity which, in fact, means an accomplice who is totally different from the main  
3 perpetrator.

4 A. Thank you. The co-perpetrator is assimilated to the perpetrator. The  
5 perpetrator is the one committing the violation responsible for the facts that constitute  
6 the violation. The co-perpetrator is the one who, together with the perpetrator, has  
7 committed the violation. The accomplice is neither the perpetrator, nor the  
8 co-perpetrator. The accomplice is an intellectual perpetrator; he may have given  
9 instructions, he may have made available the necessary means or he may have  
10 assisted in the preparation and the carrying out of the violation.

11 Q. In the proceedings concerning the Bemba dossier in Batangi (phon), do you  
12 remember having said to the Court that President Patassé was always at the very top  
13 of these proceedings?

14 A. In these proceedings that were undertaken, indeed, there is President Patassé  
15 involved, as well as Mr Jean-Pierre Bemba and other well-known people. If I say  
16 President Patassé first and at the top, it is simply because he's been the number 1  
17 Central African.

18 Q. Would you specify for the benefit of the Bench whether President Patassé was  
19 being prosecuted as a co-perpetrator, or as an accomplice?

20 A. He was being prosecuted as an accomplice, and I have given you the definition  
21 in the light of the question you put to me earlier pertaining to the difference between  
22 co-perpetrator and accomplice. President Patassé did not physically perform any of  
23 the violations. President Patassé had no physical participation in the commission of  
24 these violations; he confined himself to giving means, instructions and providing  
25 certain forms of assistance to those who were the actual perpetrators of the crime on

1 the ground. He was being prosecuted in his capacity as accomplice and not  
2 co-perpetrator. I hope I have been clear.

3 Q. That is very clear, Witness. Can you tell the Court who, within the Central  
4 African structures, has the capacity of drawing up judicial records?

5 A. I'm afraid I would need to ask you to ask that question again, because that's  
6 very generally couched, unless you are asking me to give you all the details  
7 concerning how records are kept of legal proceedings in Central African Republic.  
8 Should I confine myself only to judicial proceedings, or should I go into every single  
9 aspect of record-keeping?

10 Q. No. Perhaps we could move on, Witness. Are there any particular  
11 guarantees, according to Central African criminal law, to make sure that whatever is  
12 noted down in the records of the proceedings actually accurately reflect the words  
13 uttered by the person being heard?

14 A. Central African criminal proceedings have, indeed, established a certain  
15 number of guarantees in order to fully establish the trustworthiness and the probative  
16 value of the evidence given; an official from the criminal investigation department, a  
17 magistrate of public prosecution or an examining judge would be entitled to keep  
18 these records.

19 These records, under Central African law, are authoritative. I don't actually have the  
20 exact article in mind; otherwise, I could give it to you.

21 What do I mean by the fact that they are authoritative? That means that when the  
22 record is actually made by a criminal investigation official, an examining judge or any  
23 other judicial authority entitled to do so, as long as that particular official is under  
24 oath, has taken the necessary oath of office, then that record has force of authority  
25 unless it were later to be considered false which is a procedure available to he who



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1 may believe that the record does not fully reflect the truth, in which case that person  
2 is entitled to appeal to the Court of Cassation in order to repeal that record.  
3 So let me repeat that the record is, indeed, a guarantee of procedure; until such a time  
4 as there may have been a claim that the record is false, an appeal would then be  
5 lodged.

6 Q. Could you please make the effort of telling the Bench, give us a range more or  
7 less, how many witnesses were heard in the course of the investigation you  
8 conducted? More than 500? More than 1,000? Could we have an idea?

9 A. I am very much afraid I cannot give you a figure. I can't. The investigation,  
10 however, lasted for some time. It commenced, I believe, towards the end of the  
11 year -- of the month of August 2003 and it went on for several months. And  
12 throughout this time, many, many people either were heard as witnesses or they were  
13 heard as victims.

14 I cannot, however, give you an exact figure of the witnesses involved, but I hasten to  
15 add that the number of witnesses is very close to the number of victims. That is as  
16 far as I can go. Today and here I'm afraid I cannot give you an exact figure of the  
17 number of victims, nor can I give you an exact figure of the number of witnesses, but  
18 tens, scores of witnesses and victims were heard.

19 Q. When you say "scores," when you say "scores," do you mean more than 100, for  
20 instance?

21 A. I cannot tell you whether it's more than -- well, it was more than 100. More  
22 than 150. Many witnesses were heard.

23 Q. Among the witnesses, were there military authorities who at the time, because  
24 of their position, were associated with confidential matters pertaining to the Central  
25 African Republic?

1 A. Yes, some military authorities. Amongst them, some who were in charge of  
2 the operation carried out by some military contingents, and even those involved with  
3 the executive offices -- office of the minister of defence, the commanding officer for  
4 operational activities, the chief of the USP, the unit for presidential security, all of  
5 these military officials were heard. These were high-ranking officers and were in  
6 fact conversant with and privy to defence secrets.

7 Q. Thank you for telling us who the military witnesses were. How about the  
8 civilians perhaps close to President Patassé and attached to the presidency of the  
9 Republic?

10 A. The hearings that were carried out were never intended to be carried out in a  
11 general way like that. They were targeted in order to really focus on what was  
12 interesting for the investigation. So a civilian of prominence, who may have worked  
13 with the presidency of the Republic, but who had nothing to do with the investigation,  
14 couldn't simply be called upon to testify, or to be heard, because there was no reason  
15 to do so. If I am not mistaken, some people of note, but people of note who were  
16 also victims, and who were connected with the office of the presidency of the  
17 Republic, were also heard.

18 Q. Were former Central African ministers of national defence interviewed?

19 A. I'm sorry, I have not followed the five-second rule. Yes, to answer that  
20 question, the minister of defence at the time the events occurred was interviewed  
21 about this question.

22 Q. Could you please confirm his name?

23 A. I can't remember if his name is public; has it already been publicly announced?  
24 If it has been, I can give it. It was Mr Angoa Pierre, who was Minister of Defence at  
25 the time of the events.

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1 Q. What about Sylvester Yangongo?

2 A. Sorry I answered too quickly. The general of the division, Sylvester Yangongo,  
3 was Deputy Minister of Defence. We interviewed the Minister of Defence and the  
4 examining judge also interviewed General Sylvester Yangongo.

5 Q. Was the head of the government at the time of the events, the prime minister at  
6 the time, was he interviewed?

7 A. No, the Prime Minister at the time, Martin Ziguele, was not interviewed. Why?  
8 Because as soon as the regime of his government was overturned, he went into exile  
9 and the examination group could not carry out any questioning of him.

10 Q. Witness, did some people amongst those who were interviewed, tell you what  
11 authority decided on which sectors the MLC troops would be deployed in?

12 A. All the important figures, both military and civilian, who were involved in one  
13 way or another with management of State affairs, and who were questioned, pointed  
14 out to us that they were not involved in decision-making. I'd like to come back to a  
15 question; a question asked yesterday or the day before by the Prosecution. It was a  
16 question about the way the crisis was managed. I told you that the Central African  
17 armed forces were outside the management area. The operational command had  
18 never been called in. The head of the command stated that to us during the legal  
19 examination process, and I went on to explain what an officer, a colonel, had said in  
20 his position as head of operational command.

21 He had taken action with a rebel group, an MLC group, and ten minutes later he got a  
22 phone call from Mr Ange-Félix Patassé, who said, "My son's men must be left to do  
23 their work. I don't want you to get involved in that." So the instructions came from  
24 Patassé. He was in -- he was running things almost, and for the MLC troops there  
25 were also the commanders of the MLC that were managing the troops, so they were

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1 the ones giving the orders.

2 Q. What command are you talking about, please?

3 A. The MLC was represented in Bangui by Colonel Moustapha. The MLC had  
4 commanders at the head of the units and the MLC was directed at a distance by  
5 Mr Jean-Pierre Bemba Gombo.

6 Q. We'll come back to that later. Were some of the people questioned direct  
7 witnesses of military decisions taken and of the organisation of military operations in  
8 the field?

9 A. No, there were no witnesses who had been present at the military organisation  
10 in the field, whether Bemba's men, or USP men, or troops that were loyal to Patassé.  
11 That means asking a civilian or someone who is not in a position to do so to get close  
12 to a military leader and see how he gave orders. No, no, there were no witnesses  
13 who directly heard how the orders were given.

14 Q. What about the Central African military officers who were interviewed? Were  
15 they direct witnesses?

16 A. The military officers who were interviewed had different types of interviews,  
17 depending on the questions asked. Now, I have been endeavouring to make this  
18 clear to you. In the context of the investigation which we carried out the military  
19 officers -- the testimony of the military officers and of the few important civilian  
20 figures were steady, consistent and tallied.

21 The direction of operations, which under normal circumstances should be done by the  
22 operational command, was not done that way, and as the operational command did  
23 not work it was that command that had to pass on the instructions in the field, but as  
24 it didn't work everything happened between Patassé and his son, Jean-Pierre Bemba,  
25 and this was then passed on out in the field.

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1 Q. We'll come back to all these matters in detail later. Now, you said that you  
2 remembered a statement or a release on the radio calling for witnesses to report -- that  
3 you made one calling for witnesses?

4 A. First, I had a press conference. I held a press conference, sir, when the events  
5 started and -- or when the investigation started, to announce that the legal  
6 investigation was starting. We also issued releases or statements to ask the people  
7 concerned to get in touch with the legal departments, the courts, as need be. Yes, I  
8 remember that.

9 Q. Were these releases targeting a specific category of victims?

10 A. Could you please make your question a bit more specific; a bit clearer?

11 Q. Were the statements which you made at the radio for a specific type of victim in  
12 your country?

13 A. Okay. Well, in these statements, we pointed out what people were being  
14 investigated for which charges were likely to be laid. We didn't say specifically that  
15 a certain person being a victim of rape and so on. But after the statements had been  
16 released and after my press conference, the people could already see what the scope  
17 of action was for the investigation, and then people came in individually and each  
18 one according to his or her case, according to their experience. There was no  
19 statement which said "rape victims," looting victims," and so on, no. All of those  
20 who were victims of the violence that occurred in the period covered by the  
21 investigation had to contact the courts and provide the evidence that they had.

22 Q. Were these statements designed for all the victims of the violence carried out  
23 only by the MLC troops, or was it also victims of action by other troops, not MLC  
24 troops?

25 A. No, it was a general statement. It was a general statement that was released, as

1 I said. The message was for people who were victims of these painful events, sir,  
2 and this was the basis for opening up the legal investigation. We couldn't stigmatise  
3 them and say, "Okay, USP victims, MLC victims," no. It was a general message, and I  
4 shall repeat this. Each person came in to explain what they had experienced, what  
5 they had suffered.

6 Q. Would it be accurate to say that the final conclusions which you drew up at the  
7 end of your work was the result of the evidence which you collected after seeing the  
8 interviews, particularly the interview with the military leader Ferdinand Bombayake,  
9 General Bozizé and Colonel Lengbe, amongst others?

10 A. At the end of the examination process, the complete case file is forwarded to the  
11 Prosecutor of the Republic for him to draw up his conclusions and application. The  
12 Prosecutor of the Republic cannot ignore one part of the evidence in the case file to  
13 draw up his conclusions. The conclusions were done on the basis of all the evidence  
14 in the file and also on the basis of all the testimony, all the statements, by the victims;  
15 the conclusive elements of evidence filed in the course of the legal investigation. The  
16 officers whose names you've just cited are officers who were interviewed, and so on  
17 the basis of all these elements, the conclusions and application were drawn up so that  
18 it could be forwarded to the examining judge.

19 Q. Simply for the record of the hearing, did this also include the interviews with  
20 the former Minister or the Deputy Minister of the Defence, Mr Pierre Angoa and  
21 Mr Sylvester Yangongo?

22 A. Yes, this is the same question you've already asked. I have said that I could not  
23 disregard the proceedings, or one part of the proceedings, or some parts of evidence  
24 in the case file when drawing up the conclusions in a partial way. When it comes to  
25 quoting the witnesses, there are lots of witnesses, but it was all these statements

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1 which were analysed, including the statements by those you have just cited.

2 Q. To your knowledge, at the time of the events we are interested in here, was  
3 there a permanent military tribunal in the Central African Republic?

4 A. Yes, indeed.

5 Q. Would it be accurate to say that the commissioner of the government with that  
6 permanent military tribunal had the authority to conduct investigations on the acts of  
7 violence attributed to the MLC troops at the time which interests us here?

8 A. No, he did not have that authority. The distinguishing feature of the military  
9 tribunal in the Central African Republic is that it only recognises offences by members  
10 of the military forces or offences carried out during missions conducted by the army  
11 or in a military barracks, but when the commission which has to deal with such  
12 offences has a military man who is an offender or a co-defender, regardless of the  
13 level of involvement, and a civilian, then the military tribunal does not have the  
14 authority to recognise the offence. So this shows you that the government  
15 commissioner with that military tribunal no longer had the authority to deal with this  
16 case.

17 MR KILOLO: (Interpretation) Now, for the Court on this specific issue, I would  
18 like to refer to document CAR-OTP-0040-0074, page 5. This is the statement in the  
19 French version.

20 Q. Witness, would it be accurate to say that you could have summonsed a  
21 suspect to be interviewed by the examining judge in compliance with the Central  
22 African Criminal Code?

23 A. No, unless it is the examining judge who asks me to do so. When the  
24 examining judge, in accordance with the criminal proceedings in our country, has a  
25 case referred to him, he is the only one with the sovereign power to deal with the

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1 process and he is master of the proceedings. What's more, the examining judge also  
2 has the authority to issue summons to appear. So in the present case, the examining  
3 judge had had the case referred to him and so we could no longer -- how can I put it?  
4 We could no longer deal with such issues in his role. It was his role to do so.

5 PRESIDING JUDGE STEINER: Maître Kilolo, the court officer just asked, please,  
6 that when you mention a document that you want to be displayed, could you please  
7 inform that you want it to be displayed? Otherwise, the document will not be  
8 displayed.

9 MR KILOLO: (Interpretation) Thank you, your Honour. That was not my  
10 intention, and I'll come back to this later.

11 Q. Witness, to your knowledge, did the examining judge avail himself of the  
12 possibility of issuing a summons to call in Congolese suspects related to the events  
13 here before the Court?

14 A. The Congolese suspects had crossed the river, they'd gone, so the examining  
15 judge could not issue any summons. There you are. They'd gone.

16 Q. To your knowledge, is there a convention for legal cooperation between the  
17 Democratic Republic of the Congo and the Central African Republic?

18 A. At the time of the events, the Central African Republic was bound by the  
19 Antanarivo Convention. I don't know if the Democratic Republic of the Congo has  
20 ratified the Antanarivo Convention, and today there is also the agreement under the  
21 CEMAC member States agreement, but unless I'm mistaken, the Central African  
22 Republic did not have any agreement for mutual legal assistance with the Congo at  
23 that time.

24 Q. Would it be accurate to say that with no convention for legal cooperation, the  
25 Central African courts could have submitted a request for legal assistance to the



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1 Congo so that they could get the Congolese suspects?

2 A. This is done as part of a reciprocal practice. The Central African judges have to  
3 decide whether it is opportune to request such reciprocal arrangements. I think that  
4 for bilateral cooperation, when there is no agreement, a request can be made and  
5 submitted and if the request is accepted, then the other party must do it in the other  
6 direction too. That's what I can tell you.

7 Q. To your knowledge, did the examining judge avail himself of this possibility to  
8 make such a request for legal assistance so that the Congolese suspects could be  
9 brought within the jurisdiction of the Central African Republic?

10 PRESIDING JUDGE STEINER: Just a moment. Sorry to interrupt. Maître Yillah.

11 MR YILLAH: Madam President, your Honours, I am sorry to intervene, but this has  
12 been going on and it is speculative, firstly. He could not -- he could talk generally  
13 what the examining judge did in terms of the legal conclusions that they reach, but  
14 this question as to, "To your knowledge, did the examining judge avail himself of the  
15 possibility to make such a request for legal assistance to the Congolese suspects?",  
16 I think the question has been answered firstly and, secondly, now it is bordering on  
17 the speculative.

18 That question can be better directed at the appropriate time, because that question  
19 falls within the province of the examining judge. Thank you, Madam President.

20 PRESIDING JUDGE STEINER: Mr Yillah, I would like to remind the Prosecution,  
21 the Defence, the participants that this Chamber appreciates very much when parties  
22 and participants refrain from intervening, unless it's something really necessary. In  
23 this case, I don't think the question is speculative, because it's within the ambit of the  
24 procedure that took place in the national system in which the witness was a party.  
25 So I think the witness can answer the question, if maybe Maître Kilolo can repeat the

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1 question, please. Sorry. Before that, I think Judge Aluoch has a comment.

2 JUDGE ALUOCH: Thank you. I would have asked Mr Kilolo why don't you put a  
3 straightforward question and say, "Were the suspects from the DRC-Congo  
4 summoned?" Sorry, I didn't mean to put you off, Mr Kilolo. I just made a  
5 suggestion, because you suddenly looked --

6 MR KILOLO: (Interpretation) Thank you, your Honour. Thank you, Judge  
7 Aluoch. Let me assure you, your remarks are always very edifying and I thank you  
8 and I do intend to get more into the details with the upcoming questions.

9 Q. Witness, do you remember the last question, or would you like me to ask the  
10 question again?

11 A. If you could put the question again, please.

12 Q. To your knowledge, did the examining judge avail himself of the opportunity of  
13 requesting assistance - legal assistance - of the Congo so as to find the Congolese  
14 suspects and bring them before the Central African Republic justice system?

15 A. Thank you. I believe I said that that was a possibility, but not an obligation.  
16 Consequently, that really would depend on the determination made by the judge  
17 responsible for the file and he would make that determination in an entirely  
18 sovereign manner. Now, to answer your question, even if a request for legal  
19 assistance is to be made, it must go through the Office of the Prosecutor of the  
20 Republic. We did not avail ourselves of that opportunity, which was only an  
21 opportunity that you speak of.

22 Q. Is it correct that the examining judge under Central African criminal law can  
23 receive a statement from a representative of a foreign power?

24 A. No. A foreign power? No, the examining judge cannot do that. There are a  
25 number of conventions that govern dealings between States; and a foreign power, if

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1 there is a conflict with a particular State, well, the problem is settled by way of  
2 the -- through the Ministry of Foreign Affairs.

3 Q. I shall rephrase my question. My question is, under Central African criminal  
4 procedure, can an examining judge receive a statement not from a foreign power, but  
5 rather from a representative of a foreign power; for example, a minister of another  
6 State, a senator from another State?

7 A. Central African Republic law has not provided for this possibility that you  
8 mention. I said that multilateral and bilateral dealings between States are governed  
9 by international conventions, and these States are parties to these conventions. With  
10 regard to a representative of a State, no, that person enjoys immunity, he enjoys  
11 immunity, and he or she cannot come and give testimony or a statement before an  
12 examining judge.

13 Q. Would it be correct to say that the Central African Republic government has the  
14 legal tools that allows it to ask for immunity to be withdrawn or taken away, rather,  
15 from a representative of a foreign power?

16 A. I think you're asking a question about something that's impossible. Allow me  
17 to reiterate: The Central African Republic government works within a framework, a  
18 framework of international cooperation, pursuant to international conventions that  
19 have been duly ratified; and the rules that are set out in these conventions have been  
20 agreed to by the parties in question. The government of the Central African  
21 Republic has no legal tool or instrument to ask a State to withdraw immunity  
22 that -- that a person, a high-level person, from that State enjoys.

23 Q. To your knowledge, was that possibility used or not?

24 A. Well, since this is a possibility that does not exist, that cannot be used, it was not  
25 used.

1 Q. Do you remember telling this Court that you were preparing a thesis, a thesis in  
2 the area of international law?

3 A. Yes, quite so.

4 Q. Did you look at the doctrine regarding the withdrawal or removal of immunity  
5 in criminal matters dealing with a foreign person who enjoys immunity?

6 A. Doctrine is only doctrine; doctrine is not positive law and substantive law.  
7 Doctrine is opinion and doctrine must become passed or must become law to become  
8 substantive law. I really can't opt for a doctrine-based option if the doctrine has not  
9 been duly established.

10 Q. My question merely was whether you were aware of this doctrine and whether  
11 you had made use or reviewed, rather, this concept in the course of your studies?

12 A. Yes, but this is what I am telling you, that it is doctrine; that is to say, opinion.  
13 If an opinion in law is issued, the opinion has to be striking, it has to be quite striking  
14 and, in turn, included in substantive law; but if it is not the case, one cannot turn an  
15 opinion into a rule of law. I have read some documents and I informed myself  
16 sufficiently of that particular doctrine as well.

17 Q. Is it correct to say that you were in a position to ask -- or, well, the Central  
18 African Republic legal system could have asked for a special commission to question  
19 a suspect within the territory of the Republic for a matter -- for the matter having to  
20 do with these events in the Central African Republic?

21 A. A rogatory commission is one aspect of international law, yes, and that is  
22 provided for in cooperation agreements, bilateral cooperation, bilateral or multilateral  
23 agreements. The Central African Republic does not have a cooperation agreement  
24 with the Democratic Republic of the Congo. The only opportunity is the one that  
25 you described here; that is to say, a request for mutual assistance and reciprocal

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1 arrangements. And the existence of an international legal instrument that would  
2 cover such an operation, no request for a rogatory commission was made.

3 Q. In light of the previous questions and answers, is it correct to say that -- is it  
4 correct to say that there was no attempt to secure a warrant for appearance, there was  
5 no attempt to request cooperation from the Congo, nor was there any request to have  
6 his immunity taken away from him; is that correct?

7 A. That is correct, because there were no legal instruments on the basis of which  
8 the Central African Republic legal system could act in such a manner.

9 Q. Is it correct to say that this did not keep you as Prosecutor of the Republic at the  
10 end of the proceedings to issue final conclusions with regard to Mr Jean-Pierre  
11 Bemba.

12 A. Well, if I came to a number of conclusions with regard to the person in question,  
13 namely Mr Jean-Pierre Bemba, well, I did so because the offences were committed on  
14 Central African Republic territory. I did not go to the Congo to try to lay charges  
15 against Mr Jean-Pierre Bemba. The events occurred in our country and there is a  
16 fundamental rule in law; the rule of the place where the offence occurred. So with  
17 that in mind I did come to those conclusions; namely, the implementation of the  
18 responsibility or the -- my conclusions pointed towards the responsibility of  
19 Mr Jean-Pierre Bemba.

20 MR KILOLO: (Interpretation) In upcoming questions we will deal with the  
21 conclusions that you came to, but rather I'd like to ask the courtroom officer if he  
22 could display on the screens a document, document number 2 on the Defence list, and  
23 this is CAR-OTP-0004-0065.

24 PRESIDING JUDGE STEINER: Level of confidentiality, please?

25 MR KILOLO: (Interpretation) This is a confidential document, your Honour.

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- 1 PRESIDING JUDGE STEINER: So please, court officer, the blinds must be lowered.
- 2 Mr Yillah, or Mr Scaliotti, just a question: is there a translation of this document into
- 3 English, or not?
- 4 MR YILLAH: Madam President, is it the document that has just been referred to by
- 5 the Defence? Can I have one moment to just check, Madam President? Very well,
- 6 Madam President.
- 7 PRESIDING JUDGE STEINER: I think, yes, we have this one. Just to confirm,
- 8 Mr Yillah, the number?
- 9 MR YILLAH: Madam President, the ERN range in English is CAR-OTP-0019-0087 to
- 10 CAR-OTP-0019 to 0134.
- 11 PRESIDING JUDGE STEINER: No, it is not the same.
- 12 MR YILLAH: And on the title it is known as "Translation of evidence" and the
- 13 first -- the first ERN reference referred to is CAR-OTP-0019-0087 to
- 14 CAR-OTP-0019-0134. Is that the document?
- 15 PRESIDING JUDGE STEINER: Yes, this number you just gave is the document in
- 16 French, but I think the translation into English --
- 17 MR YILLAH: The translation into English, Madam President, is the first one that I
- 18 read. CAR-OTP-0019, but at the foot of the English pages, CAR-OTP-0061-0094.
- 19 PRESIDING JUDGE STEINER: Okay, yes. Thank you very much. Maître Kilolo.
- 20 MR KILOLO: (Interpretation)
- 21 Q. Witness, can you see the document that is displayed on the screen before you?
- 22 A. Yes, I can see it.
- 23 Q. Are you familiar with this document? Does it ring a bell?
- 24 A. This is the réquisitoire, the document that I sent to the judge.
- 25 Q. Would you mind reading out the --

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1 A. "This is the réquisitoire of order of partial non-dismissal and referral to the  
2 criminal court."

3 Q. Thank you. I'd like to ask the court officer if he could display page 0112 of the  
4 same document, 0004-0112, and I believe that would be the last page of this document.  
5 Might it be possible to scan down, to scroll down a bit? Thank you. Witness, do  
6 you recognise this document and what is found at the bottom.

7 A. Yes, I am the person who prepared and signed this document.

8 Q. Now, the seal that is beside the signature, is this the seal of the Prosecutor of the  
9 Republic of Bangui?

10 A. I repeat this document was prepared by me and I was the person who signed it.

11 Q. Now, the content of this order, does this correspond to the truth, to the best of  
12 your knowledge and to the best of your understanding?

13 A. Yes. This order, yesterday I explained this order in great detail yesterday. All  
14 the same, I can reiterate what I said with regard to this document. First of all, this  
15 order from the Prosecutor of the Republic is not a legal decision. It is a réquisitoire, a  
16 request, and the legal decision is taken by the examining judge. Secondly, I would  
17 like to hark back to the reasons.

18 Q. I'm so sorry, Witness, I'm terribly sorry to interrupt, but for the purposes of  
19 these proceedings I asked you a simple question. Allow me to reiterate. Yes or no,  
20 does the content of this document which you signed, is this the truth to the best of  
21 your knowledge and to the best of your understanding?

22 A. I think that if you are asking for proceedings to be conducted quickly, you  
23 should allow the witness to speak. If speed of the proceedings is only in your  
24 interest, well, I think that is not proper.

25 Q. Thank you, Witness, but I do have a problem with this way of going about

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1 things. I think that you are here to answer the specific questions that are put to you.  
2 You are not here to provide additional messages to the Chamber, and on this point  
3 the Presiding Judges may ask you questions at the end of this process, but my  
4 question was a simple one: Can you tell the Court whether the content of this  
5 request is the truth, to the best of your knowledge and your understanding?

6 A. The content, or the substance, of this order, well, I'm sorry, I will respond. The  
7 substance of this document, is it the truth to the best of my knowledge? That is your  
8 question. If we are speaking about the truth of the events, the truth is that acts of  
9 violence and abuse were committed on the soil of the Central African Republic by the  
10 MLC troops, and now, with regard to this particular document, and I was in the  
11 process of explaining something to you. I had said yesterday, or perhaps the day  
12 before that, here, that the fundamental reason that led us to ask for the dismissal with  
13 regard to -- of charges --

14 PRESIDING JUDGE STEINER: Mr Kilolo, I want to listen to the answer of the  
15 witness, please. You can proceed.

16 THE WITNESS: (Interpretation) Thank you, your Honour. Let me hark back to  
17 the reason that I was giving a few moments ago. I said that the reason that led to the  
18 preparation of this order for the dismissal of charges with regard to Mr Jean-Pierre  
19 Bemba -- the reasons are as follows.

20 First of all, in the Democratic Republic of the Congo there was no legal cooperation  
21 agreement that would allow the Central African Republic to summon Mr Jean-Pierre  
22 Bemba before Central African Republican -- Central African Republican courts.

23 Secondly, now all the charges that had been upheld in the procedure had to be  
24 decided upon by the criminal court of the Central African Republic, and the Central  
25 African Republic criminal procedure had not provided for the principle of universal



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1 jurisdiction and consequently the idea that we took as our guideline was that the  
2 events should be dealt with by Central African Republican -- Republic courts. So  
3 those were our reasons, your Honour. I thank you.

4 PRESIDING JUDGE STEINER: Maître Kilolo, I apologise for the abrupt intervention  
5 but, since the Defence requested to question the witness for 20 hours and the  
6 Chamber was quite patient during the first part of its questioning and questions about  
7 doctrine on international law, agreements why the government didn't do something  
8 that it could have done et cetera, I would like very much if the Defence respects as  
9 well the way by which witnesses answer to Defence questions. We never applied in  
10 this Chamber the rule of "Yes or no" with any witnesses. So I would like, please, the  
11 same way the Chamber sometimes has to be patient, that the Defence be patient as  
12 well.

13 We are going to suspend now. It's time for our break. Mr Witness, we will have a  
14 half-an-hour break. It's 4 o'clock. We will resume at 4.30 with the continuation of  
15 your questioning by the Defence. I ask, please, the court usher to take the witness  
16 outside the courtroom.

17 (The witness stands down)

18 PRESIDING JUDGE STEINER: The hearing is suspended.

19 THE COURT OFFICER: All rise.

20 (Recess taken at 4.01 p.m.)

21 (Upon resuming in open session at 4.34 p.m.)

22 THE COURT USHER: All rise. Please be seated.

23 PRESIDING JUDGE STEINER: Welcome back. I ask, please, court usher to bring  
24 the witness in.

25 (The witness enters the courtroom)

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- 1 PRESIDING JUDGE STEINER: Mr Witness, welcome back.
- 2 THE WITNESS: (Interpretation) Thank you.
- 3 PRESIDING JUDGE STEINER: Did you manage to rest a little bit?
- 4 THE WITNESS: (Interpretation) I did have some rest, your Honour.
- 5 PRESIDING JUDGE STEINER: Are you ready to continue giving your testimony?
- 6 THE WITNESS: (Interpretation) I am ready.
- 7 PRESIDING JUDGE STEINER: Thank you very much. Maître Kilolo.
- 8 MR KILOLO: (Interpretation) Thank you, your Honour, for allowing me to address
- 9 the witness again. First of all, for the record of this particular hearing, I would like
- 10 to say that four times I have asked the witness whether the contents of the document
- 11 that he signed actually corresponded to the truth, and I cannot fail to notice that he
- 12 did not answer the question. And when the time comes, we will be submitting -- we
- 13 will be making written submissions in connection with this refusal to answer. May I
- 14 now proceed to my following question?
- 15 JUDGE ALUOCH: May I just ask you a question. I am looking at the transcript, at
- 16 the statement you just made. Did you want to say "corresponds to" or with the truth
- 17 or whether it's the truth? What word do you want to use, that it corresponds with
- 18 the truth or it is the truth? I can see Mr Haynes is looking at you.
- 19 MR KILOLO: (Interpretation) Your Honour, I was asking the question of the
- 20 witness, whether the contents of the document submitted by him was truthful, to the
- 21 best of his knowledge and understanding, and I notice, your Honour, that he has
- 22 systematically refused to answer that question and I wanted to say that for the record.
- 23 PRESIDING JUDGE STEINER: Maître Kilolo, I don't want to start now with another
- 24 discussion on what you mean by "reflect the truth." What truth? The procedural
- 25 truth, the truth in relation to the facts? Maybe if you put the question in a more

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1 precise way, you would help a lot the witness to answer to it. I don't believe the  
2 witness really refused deliberately to answer but the question is -- I must confess that  
3 I, myself, did not understand what you meant. So maybe if you could even clarify  
4 for the Chamber what you meant by whether the result of his inquiry corresponds to  
5 the truth.

6 MR KILOLO: (Interpretation) Allow me to consult, please, your Honour.

7 (Pause in proceedings)

8 PRESIDING JUDGE STEINER: Maître Kilolo, are you still going to use the  
9 document that was displayed, the réquisitoire?

10 MR KILOLO: (Interpretation) At this particular stage I no longer need it but  
11 perhaps later I will be asking to refer to other pages.

12 PRESIDING JUDGE STEINER: So I will ask the court officer to attribute an EVD  
13 number for the document. The document has no EVD number until now.

14 THE COURT OFFICER: Yes, Madam President. The document that was displayed  
15 and is referenced as CAR-OTP-0004-0065 will be attributed reference  
16 EVD-T-D04-00016 and will be marked as confidential.

17 PRESIDING JUDGE STEINER: You can proceed, Maître.

18 MR KILOLO: (Interpretation) Thank you, your Honour. One final attempt with  
19 the witness.

20 Q. Mr Witness, the facts set out in your document, do these facts correspond to the  
21 truth, to the best of your knowledge?

22 A. Thank you. Thank you, dear counsel. I do not believe that I refused to  
23 answer that question. I have already furnished an answer to that question.  
24 Perhaps you did not grasp my answer, but I did give one. I am here to contribute,  
25 not to refuse to contribute, so I will go back to the question you have asked again.

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1 The question was, "Do the contents of the document reflect the truth, to the best of my  
2 knowledge?" My answer is as follows: First, when you use the word "truth," well,  
3 in truth, there were acts of violence and abuse committed in Bangui by the MLC  
4 troops.

5 Now, as regards the *réquisitoire*, or the final version of that *réquisitoire*, I said that we  
6 had requested dismissal for several reasons. The first reason was that there is no  
7 international instrument entered into by both Congo and the Central African  
8 Republic in connection with mutual legal assistance concerning the course that such a  
9 procedure should take.

10 Second, my *réquisitoire*, as for a referral to the criminal court of Bangui. Now at the  
11 time that particular criminal court in Bangui could not invoke the principle of  
12 universal jurisdiction because that concept of universal jurisdiction did not exist in  
13 the Central African Republic at the time, which would have enabled us to prosecute  
14 on Central African territory Mr Jean-Pierre Bemba Gombo, who had not been  
15 interviewed in the course of the preliminary investigation. So these are the reasons I  
16 adduced at the end.

17 And one further reason I gave, in answer to the Prosecutor's question, was that  
18 Mr Bemba had been appointed Vice-President in the Democratic Republic of Congo,  
19 thereby benefiting from immunity.

20 Congo at the time was in the process of reconciliation with the Central African  
21 Republic. So I believe I have fully answered that question, and I have never  
22 attempted to refuse to answer a question. I thank you.

23 Q. Mr Witness, may I simply remind you of the answer you gave the Presiding  
24 Judge when she asked you a similar question related to the statement you made to  
25 the ICC investigators in Bangui? 4 April 2011, French transcript, page 7, lines 15 to

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1 21, non-edited version. This is the question, your Honour,  
2 "The information you communicated in your statement or statements, are they  
3 truthful or exact, to the best of your knowledge and understanding?" And this is the  
4 answer you gave, "As I already stated in my statement, there are things that I heard,  
5 there are things I experienced and there are things that I saw; that I heard, that I saw  
6 and that I experienced, and I mentioned all of these in my statement."  
7 So your question is very simple, very clear, and I must ask the same question: What  
8 you declared in the *réquisitoire*, and let me specify that my question has to do with  
9 the presentation of the facts as they are set out in your *réquisitoire*; however, to  
10 choose to answer about the reasons for coming to the decision of dismissal. So let  
11 me move on to the next question.  
12 Mr Witness, is it accurate to say that through your dossier you were able to collect  
13 information attesting to the fact that the MLC soldiers were made available to the  
14 Director-General of Presidential Security, the Central African General Bombayake  
15 who ensured coordination between them and the USP soldiers?  
16 A. Let me spell out in answering this question the following: The MLC soldiers,  
17 when they came into the country, were welcomed by General Ferdinand Bombayake;  
18 this is maybe what you call being made available. This notwithstanding, as regards  
19 to the actual operations on the ground, the weapons were distributed to them by  
20 General Bombayake. Their uniforms were provided to them by the same general.  
21 As regards now the actual management of operations on the ground, I stated that an  
22 operational command structure was set up which never worked; it did not work.  
23 And even General Bombayake said in his deposition that he only received orders  
24 from the President of the Republic and he simply transmitted those orders as regards,  
25 for instance, the equipment to be issued, the uniforms to wear, the vehicles to be

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1 made available, but I did not say that it was General Bombayake who was actually  
2 directing the MLC troops. However, I specify the MLC troops at one point worked  
3 in conjunction with USP men. I wonder whether I have made myself clear this time.  
4 Q. Thank you. I would simply like to draw your attention to the fact that I'm not  
5 at all interested in your personal opinion. My questions are related exclusively to  
6 your réquisitoire, on the basis of such information as you, yourself, were able to  
7 gather in the course of your investigation. My following question: Would it be  
8 accurate to say that in the light of your investigation file, you were able to obtain  
9 information attesting to the fact that the relations at the level of military coordination  
10 of operations in the field existed between President Patassé, General Bombayake and  
11 Colonel Moustapha?

12 A. That is a very specific question. Relations at the level of coordination of the  
13 operations carried out in the field, fine. Allow me to repeat what I have already said.  
14 As regards relations in coordinating operations in the field as between President  
15 Patassé, General Bombayake and Colonel Moustapha, no, but I did say and I maintain  
16 what I have just said, i.e., that General Bombayake in the course of his interview  
17 declared that he received instructions and he implemented them, he carried them out,  
18 instructions on equipment, uniforms and weapons to be issued, but never in the  
19 course of an investigation, never was there any mention of relations between  
20 President Patassé, General Bombayake and Colonel Moustapha as far as the actual  
21 conduct of operations in the field was concerned.

22 MR KILOLO: (Interpretation) I will ask the court officer to please show on the  
23 screen document number 2; more specifically, page 0004-0078.

24 Q. Mr Witness, you should have the document before you and I would ask you,  
25 please, sir, to refer to the last paragraph you see here. I will read out an extract, and

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1 then on the basis of that I shall be asking a question of you, "That the relations in  
2 coordinating operations in the field existed between Mr Ange-Félix Patassé, General  
3 Bombayake, Colonel Moustapha, rebel officer under Jean-Pierre Bemba."  
4 Have I read something that actually corresponds to the information that you  
5 gathered?

6 A. These are elements in the file and transcribed as such.

7 Q. Mr Witness, let me move on to my following question. My question was only  
8 that. I simply wanted to know whether there was accurately transcribed as being  
9 information that you gathered.

10 PRESIDING JUDGE STEINER: Maître Kilolo and Mr Witness, once again I have to  
11 remind you both about the five-second rule. We are having overlapped  
12 conversations/discussions and this has been very difficult for the interpreters.

13 MR KILOLO: (Interpretation) I will, again, ask the court officer to be kind enough to  
14 show on the screen, to display on the screen, the selfsame document number 2, page  
15 0077, the very last paragraph. I do not know whether it's possible to show both the  
16 last paragraph of that page and the beginning of the following page; if not, we'll do it  
17 little-by-little.

18 Q. Mr Witness, I will read out the last paragraph on that page, "The rebel soldiers  
19 of the MLC had been made available to the Director-General of Presidential  
20 Security ...", next page, please, "... Brigadier General Bombayake, who ensured  
21 coordination between them and the soldiers belonging to the Unit of Presidential  
22 Security under his command." My question is, does this actually correspond to the  
23 facts that you were able to gather in the course of your investigation?

24 A. This definitely corresponds to the elements we were able to collect within the  
25 framework of the investigation. Your Honour, please, your Honour, do -- am I

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1 allowed to elaborate, or should I simply confine myself to saying "yes" or "no"?

2 PRESIDING JUDGE STEINER: If you deem it necessary to complete the question  
3 you can do it, although the question this time was quite precise objective, but of  
4 course if you deem it necessary to give further explanations you are allowed to do  
5 that.

6 THE WITNESS: (Interpretation) Your Honour, thank you very much, because I felt  
7 that I was being interrupted. This is the reason why I said what I said. That  
8 particular sentence that was read out is clear. I did say that Brigadier-General  
9 Bombayake was in charge of coordination between his men and those belonging to  
10 the unit, or rather between the MLC and the members of the unit of presidential  
11 security under his command. That is very clear. I am saying there that he ensures  
12 coordination. I'm not saying that he is actually conducting the operations. Thank  
13 you.

14 MR KILOLO: (Interpretation)

15 Q. I shall stay on this same page and I shall read an excerpt. It's from the fourth  
16 paragraph, "The relationship in coordination of operations in the field were between  
17 Ange-Félix Patassé, Brigadier-General Bombayake, Colonel Moustapha, a rebel officer  
18 with Jean-Pierre Bemba." Is this in line with the information which you collected as  
19 part of the case file?

20 A. Yes, indeed.

21 MR KILOLO: (Interpretation) Thank you very much. I shall ask the court officer  
22 once again to display the same document on page 0077.

23 Q. Witness, I'm going to ask you to look at the fourth and fifth paragraphs on this  
24 page and I shall read them, "Given that after the events of 25 October 2002 Ange-Félix  
25 Patassé had approximately a thousand rebel soldiers land on Central African soil,



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1 rebel soldiers belonging to the Movement for the Liberation of the Congo, MLC, led  
2 by the Congolese rebel Jean-Pierre Bemba, and that on his orders these soldiers once  
3 they reached Bangui were dressed in Central African Army military uniform and had  
4 combat equipment," end of quote.

5 Did you write this text?

6 A. It's my text. I wrote it.

7 Q. Is this in line with the information which you gathered in the course of your  
8 inquiry?

9 A. Yes, indeed.

10 MR KILOLO: (Interpretation) Thank you very much. I shall ask the court officer  
11 to display the same document on page 0080. Court officer, could you please start  
12 with the previous page, 0079, please.

13 Q. Witness, I shall again ask you to look at the last paragraph in this document,  
14 which is your text, your conclusions, and I shall read it out:  
15 "Given it has not been proven that Ange-Félix Patassé maintained intelligence with a  
16 number of unofficial foreign forces, i.e. the mercenaries of Koumta Madji Martin, of  
17 Barril Paul, of MLC troops under Jean-Pierre Bemba and also a militia run by his  
18 command driver, and that this situation ..."

19 Could we go to the next page, please, "... that this situation which disturbed the  
20 loyalty and cohesion of the Central African Armed Forces caused major disturbances  
21 to law and order leading to uprisings by civil communities and the cohesion of the  
22 Central African Armed Forces, and that to have them at his service he provided them  
23 with various means, both financial and material, that the national army humiliated  
24 and disarmed, then confined to barracks, was deprived of its duty to protect and  
25 secure property and persons. Given that in supplying the means and by giving

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1 orders to intervene for operations in the field, Ange-Félix Patassé also made himself  
2 an accomplice to all the offences committed by these unofficial forces and equivalent,"  
3 end of quote.

4 Is this what you said?

5 A. Yes, indeed, but I'd like to come back to the first paragraph which you read.  
6 There's a negative statement at the beginning of the sentence and then positive  
7 statements after -- sorry, I was speaking fast. I'd like to start again.  
8 I'd like to come back to the first paragraph. You have the verb in the negative,  
9 which I think is a typing error because the rest of this sentence is there to focus on the  
10 idea of intelligence with foreign forces, that's all, and I can confirm that.

11 Q. Thank you. Witness, I would like you to look at the same page and to focus on  
12 the second and third paragraphs and I shall read excerpts. Sorry, it's the next page,  
13 0080, the third and fourth paragraph. You wrote as follows in your text:  
14 "Under Article 38, second paragraph: '... shall be punished as an accomplice of an  
15 action described as a crime or felony those who have procured weapons, instruments  
16 or any other means used for the act knowing that they would be used for such,' given  
17 that at the time of the events Ange-Félix Patassé was by virtue of Article 21 of the  
18 Constitution dated 14 January 1995 the supreme leader of the armed forces and as  
19 such he convened and chaired the High Council of National Defence," end of quote.  
20 Witness, does this excerpt which I have just read tally with your own words? Are  
21 they your words?

22 A. Yes, indeed. I shall repeat that I wrote this text and I can make that as an  
23 official and solemn statement. They are my own words.

24 Q. Does this excerpt I've just read tally with the information which you gathered as  
25 part of the inquiry in the case?

1 A. Yes, indeed, for what relates to Ange-Félix Patassé.

2 Q. I shall now read on the same page the fifth paragraph of your text. I'm quoting,  
3 with reference to Ange-Félix Patassé, you say that, "In this position he is the  
4 hierarchical leader of the armed forces placed under his control, both the regular  
5 army and the mercenaries come -- that came at his request to fight beside them. He  
6 is therefore under law and de facto the hierarchical superior of Koumta Madji Martin,  
7 alias Abdoulaye Miskine, of the leader of the USP, the legal branch of the armed  
8 forces of Barril Paul, of the men of the SCPS and of the men of Jean-Pierre Bemba."  
9 Is this excerpt in your own words?

10 A. Yes, it is indeed.

11 Q. Is this excerpt in line with the information which you collected in the course of  
12 your inquiry?

13 A. Indeed, this is the analysis of the responsibility of Ange-Félix Patassé.

14 Q. Thank you very much. Witness, still at the same page, I would like to ask you  
15 to look at the very last paragraph on that same page, and I shall read you an excerpt  
16 from your text, and I'm quoting, "That inner speech delivered on 29 November 2002,  
17 addressing his people, Ange-Félix Patassé recognised that he had immediately called  
18 on his son Jean-Pierre Bemba so that he could send him his men in order ...", and  
19 could we go on to the next page please, 0081, "... in order to give our soldiers a hand,  
20 that he knew that things had happened and that, as a consequence, he was going to  
21 establish a commission to assess all that."

22 Witness, is this excerpt which I have just read your own words?

23 A. That is correct.

24 Q. Does this excerpt express the same information that you got in the course of  
25 your inquiry in Bangui?

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1 A. Yes, it does. And this here is the analysis of the responsibility of the President  
2 Ange-Félix Patassé.

3 Q. Thank you. I shall ask the court officer now to display the same document on  
4 page 0085. Witness, I would like to ask you to look at the first paragraph on this  
5 page of your text and I shall read an excerpt of what you wrote: "Given that it has  
6 been shown that Jean-Pierre Bemba went onto Central African soil a number of times  
7 during and after the events of 25 October 2002, and that he apparently even had  
8 meetings with some of his men, it should therefore be noted that to date, no evidence  
9 can prove his direct involvement in the commission of the offences perpetrated by  
10 these men. And while the fact that he sent his troop in at the request of  
11 Mr Ange-Félix Patassé, this fact has not been challenged but he has not been shown to  
12 be involved in their use on the field and it is therefore fitting to exclude him."

13 Witness, did you write this excerpt which I have just read?

14 A. Yes, I did write that myself, and I have said here that so far no evidence can  
15 prove his direct involvement in the commission of the offences and that is because in  
16 the course of the legal inquiry, the statements and testimony of the victims referred to  
17 offences being perpetrated by MLC rebel troops and in fact none of the witnesses  
18 cited Bemba as being a material, direct perpetrator of the offences. And also in the  
19 course of our legal inquiry we did not find any clear evidence on the involvement of  
20 Mr Bemba in these events.

21 Q. Thank you very much. My question, and all my questions, I would like to  
22 repeat this point, are only in relation to the text which you wrote and refer solely to  
23 the period when you conducted your inquiry. I would just like to remind you of  
24 that.

25 A. Thank you.

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1 Q. I would like to ask the court officer to display page 0086.

2 Witness, I would like to ask you to focus on the fourth paragraph, and I shall read an  
3 excerpt of the text which you wrote as part of your inquiry. I quote: "That when  
4 they arrived in Zongo," here you're referring to Jean-Pierre Bemba's men, "when they  
5 arrived in Zongo, these fighters had been refuelled by Lionel Gan-Befio, following  
6 instructions by Ange-Félix Patassé. That, in Bangui, they were grouped together at  
7 the naval force base, then sent on to the support regiment under the command of  
8 General Mazi and of Colonel Lengbe. These two men had set up an operational  
9 centre at Camp Béal comprised of a few FACA officers who themselves --" correction  
10 "-- who of their own accord and with Commander Mokodoui were representatives of  
11 the USP and an officer representing Jean-Pierre Bemba's rebels." Witness, is this  
12 excerpt which I have just read your own words?

13 A. Yes, indeed. This is evidence from the case file, indeed.

14 Q. Thank you. Is this excerpt in line with the information which you collected in  
15 the course of your inquiry?

16 A. This is evidence from the case file.

17 Q. Thank you. I shall ask you now, referring to this same page, to look at the last  
18 paragraph. I shall read an excerpt of what you wrote in your text. I quote,  
19 referring to MLC men, and you say that, "Ange-Félix Patassé, observing that these  
20 rebels were not wearing uniforms, gave orders for General Mazi to be provided with  
21 uniforms used by the Central African Army doing so for the Congolese fighters."

22 Witness, is this excerpt written in your own words?

23 A. This is part of the statement by General Bombayake which was then entered  
24 into the final conclusions and application. This was recorded as part of the legal  
25 inquiry.

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- 1 Q. Thank you. I shall now ask the court officer to go on to the next page, 0087.
- 2 Witness, if you could focus on the fourth paragraph of this page. I would like to
- 3 read out a passage of this text that you wrote, and I quote, "However, whereas the
- 4 claims of Ferdinand Bombayake are pure flights of fancy, dilatory and not
- 5 accompanied in any way by any form of evidence, as one can see from various items
- 6 of information within the case file, and in light of the steady and consistent testimony
- 7 that, once in Bangui, the Banyamulengue soldiers came under his direct command at
- 8 the orders of the former president, President Ange-Félix Patassé. The president
- 9 entirely trusted him, rather than placing his trust with the FACA forces who were
- 10 suspected of being behind an attempted coup d'état, then disarmed and then
- 11 confined to Camp Béal." I shall ask my question.
- 12 Now, I saw that you were smiling as I read out this passage. My question is as
- 13 follows: Now, does this passage correspond to your exact words?
- 14 A. I shall always repeat that this text was written by me and, thus, there is nothing
- 15 here that is unfamiliar to me. This text represents the analysis of the case file.
- 16 Q. Does this passage reflect the information that you may have gathered in the
- 17 course of the inquiry?
- 18 A. This document was drawn up on the basis of the items of information within
- 19 the case file. Everything to be found in this document reflects the items of
- 20 information found within the case file.
- 21 MR KILOLO: (Interpretation) Could the court officer move on to page 88.
- 22 PRESIDING JUDGE STEINER: Taking into account the last answer given by the
- 23 witness that the "document was drawn up on the basis of the items of information
- 24 within the case file, everything to be found in this document reflects the items of
- 25 information found within the case file."

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1 My question is, is it necessary to continue going paragraph by paragraph?

2 MR KILOLO: (Interpretation) If you don't mind, your Honour, I'd like to consult my  
3 fellow team members.

4 Your Honour, the Defence team wishes to read to the witness the various paragraphs  
5 that are relevant so that we can see his reactions to these passages and also to ensure  
6 that these passages are to be found on the transcript and, finally, we would like to ask  
7 that the entire document be tendered into evidence, if you have no objections.

8 PRESIDING JUDGE STEINER: We start to understand why the Defence asked for  
9 20 hours' questioning, but you can continue, Maître Kilolo.

10 MR KILOLO: (Interpretation) I am extremely grateful, your Honour. Thank you  
11 for being so indulgent towards us, and we do -- we are mindful for the need for the  
12 trial to continue without undue delay.

13 Q. Witness, if you could be so kind as to focus on the third paragraph of this  
14 particular document. Very well. I would like to read out one particular passage  
15 from what you wrote in this document, and I quote, "Whereas, as it has been  
16 demonstrated that Martin Ziguele, who at the time was the Prime Minister, although  
17 he was not directly involved in the fighting, all the same on several occasions, at his  
18 instructions, he had vehicles requisitioned and these vehicles were provided to the  
19 Banyamulengue soldiers for their operations in the field."

20 Witness, does this reflect the information that you gathered during your  
21 investigation?

22 A. Indeed, I repeat - and I shall continue to repeat - that this document which I  
23 have signed, this document was drawn up on the basis of the various items of  
24 information that were to be found in the case file.

25 MR KILOLO: (Interpretation) Court officer, if we could please move on to page

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1 1089 -- page 109. Page 109.

2 PRESIDING JUDGE STEINER: May I?

3 MR KILOLO: (Interpretation) Please --

4 PRESIDING JUDGE STEINER: This document that is being displayed in accordance  
5 with the references you are giving, it has some marks. My question is, were these  
6 marks made by the Defence or do these marks belong to the original? There are  
7 even some comments in the margins in many places, pointing out, for instance, a  
8 contradiction or -- that's my question.

9 MR KILOLO: (Interpretation) Your Honour, this document was disclosed to us by  
10 the Office of the Prosecution and, no doubt, they will be able to shed light on that  
11 particular matter.

12 PRESIDING JUDGE STEINER: I would like to be informed on what marks are these  
13 and who made the comments in some margins, for instance, on page 19, comments  
14 pointing out some contradiction with paragraph -- avec paragraph 14 on page 24.  
15 Who has made these marks?

16 MR YILLAH: Madam President, in order to give you an accurate answer, may I ask  
17 for just a short moment to confer?

18 PRESIDING JUDGE STEINER: Mr Yillah, I think we can proceed in order not to  
19 delay, but if these marks were not made by the Defence, that maybe this is the reason  
20 why we have two documents, the same documents, with two completely different  
21 numberings. And we just attributed an EVD number for this version that is being  
22 displayed during this hearing; although we have another version that was part of the  
23 list of documents to be used by the Defence in which there are no marks at all. And  
24 I wouldn't like that, in the future, when the Chamber is analysing the documents, to  
25 refer to one and not to the other. So the reason -- I don't understand why we have



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1 the same document with two different ERNs.

2 MR YILLAH: Madam President, I'll give you the brief background. Initially, the  
3 Defence, I saw in the transcript that they made an application a while ago that this  
4 document be offered into evidence. The Prosecution was waiting for the  
5 opportunity of the Bench to invite. Madam President, what happened is that when  
6 we disclosed these documents, at the time it was disclosed, we subsequently realised  
7 that it was disclosed annotated and, thereafter, we went again to the Central African  
8 authorities and obtained a new version which is unannotated, and that is document  
9 CAR-OTP-0019-0087. If the Chamber had -- upon the request of the Chamber at the  
10 time they moved this document to be tendered, would have made that submission.  
11 We're just waiting for your call, Madam President. Thank you.

12 PRESIDING JUDGE STEINER: For the time being, Maître Kilolo, you can just  
13 continue with your questioning.

14 MR KILOLO: (Interpretation)

15 Q. Witness, we are moving on now to the very last passage from your text, and  
16 I would like you to focus on the first two paragraphs and I'll read out this particular  
17 part of the text. I quote:

18 "Ange-Félix Patassé having -- in Bangui in any event for less than ten years having  
19 secret dealings with foreign powers, namely the rebel soldiers of the MLC of  
20 Jean-Pierre Bemba, mercenaries and militia groups such as Koumta Madji Martin,  
21 alias Abdoulaye Miskine, Barril Paul and their men, making it easier for them to come  
22 into the country of the Central African Republic, and by undermining the morale and  
23 faithfulness of the army and the air force by any and all means, by having -- in the  
24 same circumstances in time and at the same places having secret dealings with the  
25 rebel troops of Jean-Pierre Bemba, the Congolese man, having these secret dealings,

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1 thus undermining the military and diplomatic situation of the Central African  
2 Republic; in particular, by providing them with intelligence relating to the troop  
3 strength, the activities of the military bases of the Central African Republic, the  
4 frequency of the dealings of this base and also by having them conduct military  
5 interventions on the soil of the Central African Republic," end of quote.

6 Witness, is this passage an exact reflection of your words?

7 A. This is indeed my document, my text, which I drafted.

8 Q. Thank you. This concludes all the part of the cross-examination that has to do  
9 with your réquisitoire. Now, for the record, could you specify, Witness, that all the  
10 various passages that have been read out to you are the result of the investigation that  
11 you carried out in Bangui over the course of one year after hearing military officials  
12 from the Central African Republic who were involved in the operations in the field?

13 A. I did not conduct an investigation, as I stressed. I said that the matter was  
14 brought before the examining judge and I assisted the examining judge when various  
15 people were interviewed. This order is a reflection of the various items of  
16 information found in the case file of those particular proceedings. I wrote this  
17 document myself. It is a reflection of the various elements to be found within the  
18 case file. I don't know whether I've been clear?

19 MR KILOLO: (Interpretation) I thank you, Witness. Court officer, would you  
20 be so kind as to display on the screen a document bearing reference number -- well,  
21 this is document number 1 on the list of documents that the Defence will be using,  
22 0005-0099. This is a confidential document.

23 THE COURT OFFICER: The document is available on your screens, and for the  
24 record it bears reference EVD-T-OTP-00044 and it's marked as confidential.

25 MR KILOLO: (Interpretation) Before continuing, your Honour, would it be possible

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1 to tender into evidence document number 2, number 2 found on the Defence's list;  
2 namely, the order for partial dismissal and referral to the criminal court? This is  
3 document CAR-0004-0065 and the EVD number is EVD-P-00006.

4 PRESIDING JUDGE STEINER: Maître Kilolo, I am informed that the document has  
5 already been attributed an EVD-T number and so it's already prima facie admitted  
6 into evidence. The Chamber will have to decide at a later stage in due time what to  
7 do with the other version of the same document.

8 MR KILOLO: (Interpretation) I'm very grateful, your Honour.

9 Q. Witness, you have a document before you and this is the transcript of the  
10 interview that you had with the investigators from the OTP. Do you remember  
11 being interviewed by investigators of the OTP in Bangui?

12 A. Yes, certainly.

13 MR KILOLO: (Interpretation) Could the courtroom officer be so kind as to zoom  
14 into the bottom of the page, please. Thank you.

15 Q. Witness, do you recognise your signature on this document?

16 A. Yes, certainly.

17 PRESIDING JUDGE STEINER: Maître Kilolo, do we have in the record which page  
18 you are referring to, or --

19 MR KILOLO: (Interpretation) Thank you. I'm speaking of the first page,  
20 CAR-OTP-0005-0099.

21 Q. Witness, are you in a position to confirm what you said in the hearing room  
22 with the Presiding Judge when you arrived the first time? I am making reference to  
23 the French transcript, real-time version, of 4 April 2011, page 7, lines 15 to 21. Are  
24 you in a position to confirm that the information that you provided to the  
25 investigators of the ICC are truthful and exact, to the best of your knowledge and to

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1 the best of your understanding? And I'll -- I am paraphrasing what the Presiding  
2 Judge has said.

3 A. That is what I said and thus that is the case.

4 MR KILOLO: (Interpretation) I'd like to ask the courtroom officer if he could be so  
5 kind as to display on the screen the same document, document number 1 on our list,  
6 0005-0108.

7 Q. Witness, I'd like to read out a passage, this time from the statement that you  
8 yourself personally gave to the investigators of the Office of the Prosecutor, and I'd  
9 like to ask you to focus on paragraph 40 and I quote, "The coordination was carried  
10 out by President Patassé, who would give the orders. However, it was General  
11 Bombayake who carried out the practical coordination; that is to say, he implemented  
12 the instructions of the President." Can you confirm that statement?

13 A. Yes, I can confirm that that is what I stated.

14 Q. And what did you mean by that, could you please tell us?

15 A. I believe that I have explained. I think I've gone back several times to this  
16 whole matter of coordination; the coordination of operations in the field. I said that  
17 General Bombayake was the person who carried out the instructions that were given  
18 by the President of the Republic, Ange-Félix Patassé. He received the materiel that  
19 had been requisitioned by the prime minister, or the uniforms, the Ranger boots, the  
20 other things, that he provided to the MLC soldiers.

21 In practical terms, the practical coordination, well, I don't mean that he was the one  
22 who managed the operations in the field. He received the orders, he carried them  
23 out because there was no other officer that Patassé trusted at that particular time and  
24 he was the one who did that, but I didn't say that he managed the operations in the  
25 field.

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1 Q. If I could remain at this first paragraph, and I would like to quote one particular  
2 passage of your statement to the investigators. I quote, "The payment for the  
3 upkeep of the MLC soldiers was paid from the Central African Republic Treasury."  
4 Do you confirm that?

5 A. Yes, I confirm that. There was the overall allowance that was paid from the  
6 public purse from the Treasury of the Central African Republic.

7 Q. I'll move on to the next paragraph and I will read out an extract of what you  
8 said to the investigators, and I quote, "Moustapha ..." -- Witness, so that we can move  
9 forward and make progress, I'll ask you directly the question. You stated before the  
10 Chamber, and I make reference to the real-time French transcript of 6 April 2011,  
11 page 21, line 21 to 23. You said that Moustapha would receive 7 million francs from  
12 the Central African treasury and my question was: Could you tell the Court what  
13 that amount was, roughly, in American dollars?

14 A. I'm afraid I could not be able to answer because I do not -- I am not familiar  
15 with dollars, we only use CFA francs and I don't have any calculating -- any  
16 calculator here that would enable me to tell you how much that means in US dollars.

17 Q. By any chance, sir, would you know what that was in French francs?

18 A. Well, I would still need to calculate it.

19 Q. Witness, sir, in the course of your investigation or the proceedings that you  
20 undertook, either with the Central African General Mazi or from any other source,  
21 were you apprised of the fact that MLC soldiers received not only food given by the  
22 Central African state but over and beyond the food that they actually get wages, a  
23 salary, that came from a special allowance under the control of President Patassé?

24 A. No, I do not possess that information. What I have said here is what was  
25 stated by the person responsible for the public treasury and, unfortunately, I cannot

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1 remember his name and the person also responsible for finance, they were heard,  
2 they were interviewed. But this particular allowance that you are referring to,  
3 coming straight from the national treasury, I know nothing about.

4 Q. For the benefit of the Chamber, I'm referring to document CAR-OTP -- in  
5 connection with this final question, and for the benefit of the Bench, I'm referring to  
6 document CAR-OTP-0007-0151 up to page 0007-00152, but also on page 0007-0155,  
7 French transcript. Mr Witness, in the course of your investigation did you learn  
8 whether Mr George Badinga (phon) was the Central African person responsible for  
9 the USP who physically handed money to Moustapha coming from the Central  
10 African state treasury?

11 A. No, I didn't get to that level of detail. In the investigations carried out by the  
12 examining judge, we had not reached that level.

13 Q. For the chamber, and for the record, I would like to refer to document  
14 CAR-OTP-0027-00378 --

15 JUDGE ALUOCH: I'm very sorry to interrupt you, but before we lose -- just whilst  
16 we are on this allowance, I have a follow-up question on this allowance.

17 Mr Witness, during the -- as witness, so as -- I don't know whether to call it, as  
18 evidence was being gathered, as the inquiry was going on, was there anybody who  
19 said that they ever saw the MLC soldiers receiving money on a daily or a weekly  
20 basis? Did you have any -- did you gather anything like that during the inquiry?  
21 Anybody at all who saw them receive allowance since it was coming from the  
22 treasury, yes.

23 THE WITNESS: (Interpretation) Your Honour, would you be so kind as to rephrase?  
24 I'm afraid I didn't quite grasp your question.

25 JUDGE ALUOCH: I think that your attention has been drawn to yesterday's

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1 transcript where money was coming from the treasury and those who were  
2 interviewed you were not able to remember their names. What I want to know is,  
3 did anybody -- during the inquiry did you gather any information, whether there  
4 were any people who saw the MLC soldiers being paid allowance, either on a daily  
5 basis, on a weekly basis, out of this money that was coming from the treasury?

6 That's what I want. Did you gather anything, any information like that during the  
7 inquiry?

8 THE WITNESS: (Interpretation) Your Honour, that's not quite so. What I said -- in  
9 any case, the information I received from someone working for the public treasury,  
10 and borne out by the man responsible for finance, was confined strictly to that  
11 amount of 7 million that was paid out for what I call the overall food allowance. But  
12 apart from that I have no memory, in the course of the inquiry, of any case where  
13 anyone saw personally one of the officials actually physically handing out the money.

14 JUDGE ALUOCH: Thank you very much. Yes.

15 MR KILOLO: (Interpretation) Your Honour, I would simply like to refer the  
16 reference pertaining to the question that I had put earlier to the witness, and which  
17 was related to my question which was whether to his knowledge he ever learned that  
18 Mr George Badinga was the Central African official responsible for the USP giving  
19 money to Moustapha coming from the Central African coffers. This is document  
20 CAR-OTP-0027-0378, French transcript. I should like to ask the courtroom officer if  
21 he could kindly move to the page 005-0113 of the same document.

22 Before proceeding, I'd like to go back on a follow-up question.

23 Q. Witness, you declared in this Chamber, during the hearing of 6 April 2011,  
24 French transcript, real-time French transcript, page 21, lines 21 through to 23, you  
25 declared that Moustapha received the amount of 7 million francs per day. Do you

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1 confirm this?

2 A. This is what I stated.

3 Q. I will now ask you, please, to refer to paragraph 65. I would say the second  
4 part of paragraph 65, like the second subparagraph under 65 or, rather, excuse me, I  
5 apologise, paragraph 69. Mr Courtroom Officer, would you kindly -- thank you.  
6 Thank you very much. I will read out part of the statement that you personally gave  
7 to the investigators of the ICC, and I quote, "Patassé is responsible because he had the  
8 troops come over and he directly conducted the troops in the field and could not be  
9 ignorant of the consequences of their actions." Do you confirm this, Witness?

10 A. I do.

11 Q. May I now turn your attention to paragraph 70 in your statement, and I quote,  
12 "The main coordination of operations devolved upon the President. When an  
13 offensive or a counter-offensive was organised, it was the President that organised it  
14 because his Minister of Defence was ill and the Deputy Minister of Defence was  
15 General Yangongo, who remained very faithful to Patassé." Do you confirm this?

16 A. This is my statement.

17 Q. Continuing with the same paragraph, I shall now quote another excerpt, and I  
18 quote, "Jean-Pierre Bemba had troops here, but he could not take the initiative for a  
19 counter-attack. I will remind you of the case of Colonel Lengbe who wished to  
20 object to the MLC and who was called by the President ten minutes later." Do you  
21 confirm this?

22 A. I confirm it. Those are the terms of my statement?

23 Q. Would you also confirm that the president that you're referring to is, indeed,  
24 Ange-Félix Patassé?

25 A. The term "president" in this paragraph refers to Ange-Félix Patassé.



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1 Q. Again, on the same page, Witness, please turn your attention to paragraph 71,  
2 and I quote your own statement to the investigators, "These were survival actions for  
3 the Patassé regime and so he followed the development of things personally and  
4 directly. This has been borne out by General Bombayake, who maintained that it  
5 was Patassé who decided on everything and that he, General Bombayake, would only  
6 implement the instructions received."

7 Can you confirm this?

8 A. This is my statement. I bear this out. I confirm it. This is what I told the  
9 investigators.

10 Q. May we now proceed to paragraph 72 on the same page, and I will quote what  
11 you stated to the ICC investigators, "The upkeep of the MLC troops had been decided  
12 upon by Patassé and Ziguéle and came from public funds. Patassé bought  
13 all-terrain vehicles which he had assigned to Bemba's troops."

14 Do you confirm this?

15 A. I do.

16 MR KILOLO: (Interpretation) Mr Courtroom Officer, I will ask you, please, to  
17 display on the screen page 0115.

18 Q. Witness, I will ask you, please, to turn your attention to paragraph 82 at the  
19 bottom of the page, and the courtroom officer will be kind enough to display that  
20 paragraph on the screen. Thank you. This is what you stated to the investigators,  
21 and I quote, "I have no information on any type of payment that Bemba would have  
22 received for this operation."

23 A. That was my statement.

24 Q. Witness, in your statement to the OTP investigators, and I'm referring now to  
25 document CAR-OTP-0005-0109, paragraph 45 - I will ask the courtroom officer to be

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1 kind enough to display on the screen that same -- the document I've just mentioned.

2 Thank you.

3 Witness, I will read out part of the statement you made when you referred to the

4 Banyamulengue that reportedly you encountered at a toll gate in Bossembélé on the

5 road to Bouar. This is what you stated: "It was between November and

6 December 2002 and there were many of them at that place. They humiliated us and

7 they said they were only answerable to the president which, to me, meant President

8 Patassé. By way of example, they said they had received instructions in order to

9 check all the cars and that everyone had to comply because those instructions came  
10 from the president."

11 Do you confirm this?

12 A. I confirm it; that is my statement.

13 MR KILOLO: (Interpretation) I will ask the courtroom officer now to kindly display

14 page 0111. And I will ask the witness to refer to paragraph 55.

15 Q. I will read for your benefit, sir, what you stated, and I quote, "I do not know

16 whether the MLC men were true military men. One saw women carrying children

17 and weapons. They received the National Army uniform - the colour was army

18 green - and weapons."

19 Do you confirm this?

20 A. I do. This is my statement.

21 Q. Are you referring to the National Army of the Central African Republic?

22 A. No, I'm referring here to the troops of the MLC.

23 Q. I will clarify my question. You say that MLC troops were wearing the uniform

24 of the National Army. Whose national army are you referring to?

25 A. The Central African National Army.

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1 MR KILOLO: (Interpretation) I will ask the courtroom officer, and this will be my  
2 last question for today, to display on the screen the same document, page 0113.

3 Q. Witness, I will ask you now to turn your attention to paragraph 65, second  
4 subparagraph, and I will quote from your statement, "There is a rumour, a rumour  
5 I was not able to verify myself, according to which Patassé is said to have asked the  
6 rebels to organise patrols from the centre of town up to PK12 and not to spare any  
7 persons of the masculine gender, any males of over 14 years of age, and not to spare  
8 any males of over 14 years of age."

9 Can you confirm this?

10 A. I do.

11 Q. Who gave you this information?

12 A. I do say here that this is a rumour, a widespread rumour, but I have no specific  
13 source of information that I can point to.

14 Q. Now, my very ultimate question: You have for ten years been a professional  
15 magistrate and you have taken upon yourself the responsibility of submitting such  
16 serious information to the investigators of one of the highest international courts.

17 Can you not specify the source of your information?

18 A. If I may be allowed to repeat, I said here, I stated in this part of my statement,  
19 that there was a rumour that I was not able to verify myself. I was clear in an  
20 answer to the questions from the investigator; a rumour I was not able to verify.  
21 I could not possibly lay the blame on any one particular individual for this; I am  
22 saying it was a rumour.

23 MR KILOLO: (Interpretation) Thank you very much, Witness, for your patience.

24 That was my final question for today. We will allow you to take some rest.

25 Your Honour, I should like to thank you, indeed, for your very kind indulgence.

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- 1 PRESIDING JUDGE STEINER: Thank you very much, Maître Kilolo. Mr Witness,  
2 you are entitled to take some rest. We'll have a long weekend. Tomorrow the  
3 Chamber is not sitting, so we don't have a hearing tomorrow. We will resume,  
4 reconvene, on Monday at 9.30 in the morning in this very same courtroom.  
5 I would like to thank very much the Prosecution team, the legal representatives of  
6 victims, the Defence team, Mr Jean-Pierre Bemba Gombo. I would like to, again, to  
7 thank very much our interpreters and court reporters, court officer, court usher.  
8 I ask, please, the court usher to take the witness outside the courtroom. Wishing  
9 you a very, very nice weekend, Mr Witness.  
10 (The witness stands down)  
11 PRESIDING JUDGE STEINER: This hearing is adjourned.  
12 THE COURT OFFICER: All rise.  
13 (The hearing ends at 6.27 p.m.)