

Trial Hearing
Witness: CAR-D04-PPPP-0048

(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 Judge Kuniko Ozaki
6 Trial Hearing
7 Wednesday, 7 November 2012
8 (The hearing starts in open session at 9.04 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 THE COURT OFFICER: Good morning, your Honours, Madam President. We are in
13 open session.
14 PRESIDING JUDGE STEINER: Good morning.
15 Could, please, court officer call the case.
16 THE COURT OFFICER: Situation in the Central African Republic, in the case of The
17 Prosecutor versus Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.
18 PRESIDING JUDGE STEINER: Good morning. I welcome Prosecution team,
19 Ms Kneuer, legal representatives of victims, the Defence team, Mr Jean-Pierre Bemba
20 Gombo. Good morning our interpreters, court reporters.
21 We will continue today with questioning of Defence Witness D-48, and for that purpose I
22 ask, please, court officer to turn into closed session for the witness to be taken into the
23 courtroom -- to be brought into the courtroom.
24 (Closed session at 9.05 a.m.)
25 (Redacted)

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1 (Redacted)

2 (Redacted)

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5 (Open session at 9.07 a.m.)

6 THE COURT OFFICER: We are in open session, Madam President.

7 PRESIDING JUDGE STEINER: Mr Witness, good morning and welcome back.

8 THE WITNESS: (Interpretation) Good morning, your Honour.

9 PRESIDING JUDGE STEINER: I hope you had a restful night and that you are feeling
10 well and ready to continue with your testimony?

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

12 PRESIDING JUDGE STEINER: Mr Witness, I need to remind you that you are still under
13 oath. Do you understand that, sir?

14 THE WITNESS: (Interpretation) Yes, I do understand that, your Honour.

15 PRESIDING JUDGE STEINER: I also wanted to remind you about our ground rules, that
16 you are expected to speak slower than normal and to give the five seconds before you give
17 any answer in order to allow our interpreters to do their job.

18 THE WITNESS: (Interpretation) Yes, I will, your Honour.

19 PRESIDING JUDGE STEINER: I know we can count on you and we appreciate very
20 much.

21 I also wanted to remind you, Mr Witness, that you are under protective measures; that
22 your image and voice broadcast outside the courtroom are being distorted so that the
23 public cannot identify you, but in order to keep your identity concealed from the public
24 it's important that you help us and avoid giving information in public session that could
25 lead to your identification. Whenever needed we go into private session when you can

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1 speak freely because then the public cannot hear what is said inside the courtroom.

2 THE WITNESS: (Interpretation) Yes, I will keep an eye on that, your Honour.

3 PRESIDING JUDGE STEINER: Thank you very much.

4 I'll give back the floor to the Prosecution. Mr Iverson.

5 MR IVERSON: Thank you very much, Madam President, and good morning. Good
6 morning, your Honours.

7 QUESTIONED BY MR IVERSON: (Continuing)

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. I'm afraid that my cold hasn't gotten any better, so I just ask you to bear with me this
11 morning if you would. Sir, I'd like to pick up where we left off yesterday and I think that
12 we can stay in open session for the time being, but just be mindful of the fact that we are
13 in open session, sir.

14 So would it be fair to say that from your perspective that the MLC was capable of
15 pursuing fair and transparent justice?

16 A. Yes, the MLC was in a position to administer justice in a fair manner within the
17 context of the limited resources at that time.

18 Q. And was Mr Bemba aware of some of the problems that you mentioned yesterday,
19 the lack of magistrates and the lack of an appellate court?

20 A. Yes, he was fully aware of that. He was the leader. He knew. I reported to him.
21 I told him that there weren't enough magistrates and he was the one who authorised the
22 recruitments. If we had candidates we were to recruit because he wanted the justice
23 system to operate normally.

24 Q. And was there anything expressly prohibiting the prosecution of ALC soldiers
25 within the MLC civilian system of justice?

1 A. Yes, in principle. Within the operation of the justice system in the Congo there are
2 two forms: There is civil justice and military justice. It's not possible -- well actually,
3 there are two codes. There's the criminal code, which applies to everyone, but there's
4 also for soldiers a code of military justice. So there's the two, but it would not be easy for
5 a civilian court to try military people applying the military code.

6 It's absolutely necessary to have soldiers who are familiar with military discipline and
7 who are familiar with the day-to-day life of soldiers to try the person because it's not the
8 same kind of law that would be applied mechanically. You also have to understand the
9 environment within which the suspects operated. That is why soldiers in the Congo are
10 tried by other soldiers, because other soldiers are able to understand the behaviour of a
11 soldier properly. Civilians are unable to entirely understand the problems of soldiers.
12 That's why soldiers in the Congo are tried by other soldiers.

13 Q. And I understand that the preferred forum for soldiers would be military justice, but
14 was there anything legally or jurisdictionally obstructing the possibility that a soldier
15 could be prosecuted by the civilian system of justice? Were there any legal mechanisms
16 in place that prohibited that?

17 A. Well, I believe what I've just said. Congolese law and the organisation of the
18 Congolese system of justice makes a distinction between civilian justice and military
19 justice.

20 I said as well here in the courtroom that it would be acceptable within military justice to
21 have career magistrates generally speaking, but in the case of the MLC we had to
22 requisition, or call upon, civilian magistrates so that they could join this system of military
23 justice and at the same time they would also receive help with -- help from military people,
24 so soldiers, and there are some offences that civilians are not familiar with. There are
25 some offences that are strictly military in nature that a civilian cannot rule upon.

1 Q. Well, let's talk about an offence that isn't strictly military. So you have a strictly
2 military offence like for example desertion, right, that's not a civilian offence, but you also
3 have an offence such as murder or rape which is not necessarily a military offence? If an
4 ALC soldier committed murder or rape, could that soldier be prosecuted in the civilian
5 system of justice?

6 A. No. Because of the organisation of the Congolese system of justice, there are two
7 separate systems: Civilian justice and military justice. Military judges, the ones from
8 the military system, refer to the common law along with strictly military law. How can I
9 put this? There is a code -- correction, there is an ordinary criminal code and beside that
10 code there is a code of military justice, because in actual fact when a soldier commits a
11 murder, as the case you mentioned, he is breaking both civil law and also military law
12 because, if someone leaves his position and commits a murder two or three metres away
13 from that place, he has not only committed murder. He has also broken the instructions,
14 or he has violated orders. So within the Congolese system soldiers are put on trial within
15 the military system, which is made up of their peers, their -- other soldiers who can easily
16 interpret the behaviour of soldiers who have committed an offence, thereby
17 compromising themselves.

18 Q. And, sir, what in your opinion was the quality of military justice within the
19 MLC/ALC?

20 A. At the beginning I said, when I came at the beginning, there was a court martial and
21 it was a court that operated in a speedy manner and the rights of the defence were not
22 always upheld, and we wanted to get away from that system and opt for a garrison court
23 or a superior war council. The terminology was very difficult to introduce within the
24 setting amongst the people who had to render justice at the time, but we had to ensure
25 that in the future there would not be any justice without defence, because in the case of

1 the court martial it was possible that there might not be a defender to help the accused,
2 but with the war council we wanted to ensure that the defence rights were protected.
3 We had a great deal of difficulty, but we made efforts to ensure that the rule of law would
4 prevail.

5 We wanted everyone to be put on trial within the courts that had been set up would
6 benefit from the assistance of a lawyer and we did not have many. There was just one
7 judicial advocate or defender. So we wrote to a number of Bar Associations and we said,
8 "Each time we need someone, we shall write to you and ask for someone to assist the
9 accused." So that is how the system operated. It was difficult to exchange permanent
10 members of these various war councils, or court-martials.

11 Please note that the one -- the person who was the President of the Gbadolite District
12 Court had been designated as permanent judge and it was not possible to change. Even
13 if someone said -- even if -- even if someone said, "Oh, I don't want that particular person
14 in the Bench," it was not possible to make any substitutions.

15 So I am not saying it was completely perfect, because -- well, if we had had -- if we had
16 enough judges we could have changed or switched judges, but the circumstances did not
17 allow for that, but indeed we did want to ensure that no crime would go unpunished, that
18 a proper defence would be provided and that we would remain within the resources that
19 had been made available to the system and, you see, the system was in keeping with
20 various codes. I wouldn't say it was absolute heaven, but I would say that efforts were
21 made to ensure that justice was administered in an independent fashion.

22 Q. So would it be fair to say then that the military system of justice was also fair and
23 transparent, or capable of being fair and transparent?

24 A. Yes. All the parties who assisted with a normal trial were brought together, except
25 for defence, because truly let's say we had ten or 20 accused and there was only one

1 defence attorney, so you can imagine the difficulties that that person had defending all
2 those people. So perhaps the defence side of things was not very well organised, but the
3 setting up of Benches designated to try, that was provided for. We had judges. As I
4 said, there were three for criminal matters, there was also someone from the Department
5 of Public Prosecutions and then the defence was handled by this judicial advocate, who
6 was present there. So I think that in the case this was done without breaking the
7 legislation relating to the organisation of the judiciary within the Congo.

8 Q. So if both systems of justice were capable of rendering justice, if a case wasn't
9 brought it wasn't due to capability. It was due to willingness to prosecute. Would that
10 be fair to say?

11 A. No, let's say -- I'm saying that in the case of the organisation of courts that there
12 were difficulties, and I mentioned them yesterday. It is possible that investigations were
13 not concluded, or that investigations might have been botched, because we did not have
14 resources to go to a particular place. I would say it's not like this system, with the
15 resources here. We had very -- we had limited resources to ensure that crimes would not
16 go unpunished in the territory. We did the best we could. We did all we could.

17 Q. As concerns military justice, Mr Bemba, as the commander-in-chief and to ensure
18 good order and discipline within the ALC, he had the authority to convene courts martial,
19 did he not?

20 A. Well, let's say Mr Bemba was the president, but he did not have responsibility for
21 rendering justice. He was not the one to render justice. I learned here - right
22 here - about decisions taken by the judges. I myself, I discovered that right here. I said
23 yesterday that this had to do with the independence. When those people are put in place,
24 they were free to conduct inquiries and to hand down rulings. I could not intervene.
25 The prosecutor, who also worked as the military auditor, each time something was

1 brought before him he could investigate and it could also be postponed or referred to
2 court martials. He could in the case of people he suspected or people for whom there
3 were charges and for whom he had gathered evidence, so he could also bring such
4 matters before the war councils, the court martials.

5 MR IVERSON: Could I ask the court officer to please display Defence document 47,
6 ERN number CAR-DEF-0002-0580, and it's a public document?

7 Q. Sir, now this is a little bit difficult to read, but I'd like you to read this silently to
8 yourself and when you're finished just please look up at me.

9 A. The first part. I have read the first part.

10 MR IVERSON: And I'd ask the court officer if he could display the second page at the
11 bottom of the page, please, all the way down at the bottom please?

12 Q. Sir, do you recognise that signature at the bottom of the page?

13 A. Yes, I do.

14 Q. This is a court martial convening order, isn't it, signed by Mr Bemba?

15 A. Yes. This is a decision to establish a court, yes.

16 Q. So when I asked you if Mr Bemba had the authority to convene court martials the
17 answer is "Yes", it's not "No"; correct?

18 A. I think that I didn't express myself --

19 PRESIDING JUDGE STEINER: Mr Witness, just one moment.

20 Maître Kilolo?

21 MR KILOLO: (Interpretation) Your Honour, I'd just like to draw your attention to the
22 fact that I see that this line of questioning is not very fair to the witness, because each time
23 there seems to be a series of leading questions being put to him, in particular, "Is it
24 Mr Bemba who was the one?", rather than asking an open-ended question of the witness.
25 I think it would be fairer to the witness to proceed in that manner.

1 PRESIDING JUDGE STEINER: I give the floor to Mr Iverson, but first I don't see that the
2 question is leading, Maître Kilolo, and second I would like to remind that this Chamber
3 has been quite flexible when it's the other party, not the calling party, is questioning the
4 witness, not allowing of course 100 per cent leading question but being quite flexible on
5 that.

6 Mr Iverson, do you have anything to say about that?

7 MR IVERSON: I don't really have anything to add, Madam President. I don't think any
8 of my questions are unfair, and I do believe that this Chamber has shown itself fully
9 capable of shutting down questioning that they believe is unfair.

10 PRESIDING JUDGE STEINER: You can proceed, Mr Iverson.

11 Q. So would it be fair to say that, in the system of military justice, Mr Bemba had
12 overall authority over the entire system of military justice considering his power to
13 convene the courts martial?

14 A. Let me say this: You have to distinguish between two things. We are speaking
15 here of the year 2002, after the Lusaka Agreement which recognised three administrations
16 in Congo with the same powers. I do not think I fully understood your question, but
17 what I said is that Mr Bemba could not organise the court. He had the powers to set up
18 the government and appoint the members of his government. In fact, he acted as a head
19 of state, but when it came to prosecuting suspects, it was not Mr Bemba who decided
20 when someone would be prosecuted. He had the powers to set up jurisdictions.

21 When I said that we set up a court of appeal, I did not personally do that. It is a decision
22 that I took after consultation, leading to the decision to create an appellate court. So,
23 creating or setting up a jurisdiction can be within his powers but to organise a jurisdiction
24 and to determine how it should function is not in his powers, so he's not the one who
25 would say, "Prosecute this person" or not. So, pursuant to the law, he could set up the

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1 court but he could not decide who would do what, who should be guilty or not, so he
2 established the jurisdiction as all other jurisdictions, just like all other heads of state would
3 do. So he took general decisions without personally himself having to organise the
4 structure. So I did not say that he did not have any powers. He had the powers. He
5 was considered as the Head of State of that territory, so he could take decisions.
6 But regarding the functioning of the court and how the court should operate, he was not
7 responsible for that.

8 PRESIDING JUDGE STEINER: Mr Iverson, sorry to intervene.

9 The interpreters are asking you, please, to speak a little bit slower. They are having
10 difficulties in following you.

11 THE WITNESS: (Interpretation) Thank you very much, your Honour.

12 MR IVERSON: Could I ask the court officer to please display Defence document 41,
13 CAR-DEF-0002-0001 at page 37, please. 0037, please.

14 THE COURT OFFICER: The document is available on the screens, at page
15 CAR-DEF-0002-0037, and it's a public document.

16 MR IVERSON:

17 Q. Sir, could I just ask you to just read to yourself the section that is stating the
18 governing law of the court martial, and just look up at me when you've finished, if you
19 would.

20 A. Yes. I believe we saw this document yesterday.

21 Q. You're correct, sir. And in looking at the third document down from the top, that's
22 decree number 2 of 25 March 2002, that's part of the governing law, so the document we
23 just saw, the convening order for the court martial, is part of the governing law of the
24 court martial system; is that right?

25 A. No. That is the decision that actually sets up the court martial.

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1 Q. Okay. And I don't -- and maybe I should be more specific here. It's not the
2 governing law, the substantive law, but it is the jurisdictional part of the court martial?
3 That's what provides the jurisdiction; is that right?

4 A. Yes. That is what creates the jurisdiction in that territory.

5 MR IVERSON: Could I ask the court officer to please display 0041 of this same
6 document, please.

7 Q. Sir, at the top you see the names of the, I'll call them the panel members or judges of
8 the court martial. (Redacted)
9 (Redacted)

10 PRESIDING JUDGE STEINER: Court officer, please could be turn into private session.
11 (Private session at 9.38 a.m.)

12 (Redacted)

13 (Redacted)

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8 (Open session at 9.44 a.m.)

9 THE COURT OFFICER: We are in open session, Madam President.

10 PRESIDING JUDGE STEINER: I ask, please, court officer to display document 40 on the
11 Defence list. It's document CAR-DEF-0001-0155, starting by the first page and then
12 going to the second page, 0156.

13 THE COURT OFFICER: Madam President, the document CAR-DEF-0001-0155, it's
14 available on the screens and it's a public document.

15 PRESIDING JUDGE STEINER: Mr Witness, you don't need to say anything about this
16 first page of the document. I just wanted this document to be displayed for you to
17 confirm that you recognise this document. You don't need to give details because we are
18 in public session. You recognise this document?

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

20 PRESIDING JUDGE STEINER: So, court officer, if we go to the next page, which is the
21 report prepared by the commission in relation to the investigation on crimes of pillaging
22 occurred or alleged to have occurred in Bangui. Could you please read the first
23 paragraph?

24 THE WITNESS: (Interpretation) "In implementation of the order of the national
25 president of the MLC, a commission of inquiry travelled to Zongo to verify the allegations

1 of looting attributed to ALC soldiers in the CAR."

2 PRESIDING JUDGE STEINER: In accordance with this document, that means that
3 president -- the president national of the MLC, which is Mr Bemba, he had the power to
4 create an investigation commission to investigate some facts within the military justice?

5 THE WITNESS: (Interpretation) Let me say that he could set up a commission of
6 inquiry in any domain.

7 PRESIDING JUDGE STEINER: And in this case, just for me to understand the Congolese
8 system, because sometimes it's different than other systems, when the president creates a
9 commission, or determines the creation of a commission of investigation, are the judiciary
10 or the members of the party under the obligation to follow the orders of the president?

11 THE WITNESS: (Interpretation) When the president sets up a commission, are the
12 members of the prosecution department compelled to follow the orders of the president?
13 The truth is the president facilitates their task because when crimes are perpetrated it is
14 automatically their responsibility to go and investigate. So when the president asked
15 them to carry out an investigation, they are actually simply doing their job. Now, when
16 it comes to the outcome of the investigation it is their conscience and the law that guides
17 them; that is, the prosecution department and the court.

18 PRESIDING JUDGE STEINER: And when creating a commission to investigate
19 something, let's say in this case to investigate the accusations of pillages occurred in
20 Bangui, is the commission bound, or the material competence of the commission is to
21 investigate only what the president asked for, or could the commission broaden the
22 investigation?

23 THE WITNESS: (Interpretation) The commission can broaden the investigation
24 because, as I said, it is an opportunity given to the judges to investigate. The order does
25 not limit what they can do. So they can go beyond the scope.

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1 PRESIDING JUDGE STEINER: I understand. Thank you very much for the
2 clarification.

3 THE WITNESS: (Interpretation) Thank you.

4 PRESIDING JUDGE STEINER: Mr Iverson.

5 MR IVERSON: And since that segues into my next line of questions, I just ask that the
6 court officer to keep the document on the screen. And for my next few questions it will
7 require a private session, Madam President.

8 PRESIDING JUDGE STEINER: Court officer, please turn into private session.

9 (Private session at 9.50 a.m.)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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- 7 (Redacted)
- 8 (Open session at 10.29 a.m.)
- 9 THE COURT OFFICER: We are in open session, Madam President.
- 10 PRESIDING JUDGE STEINER: Thank you.
- 11 Mr Witness, we have now a short break, half-an-hour. It's time for you to take some rest,
- 12 have a coffee or tea. It's 10.30. We will resume at 11 o'clock.
- 13 I ask please, court usher, to turn into closed session for the witness to be taken outside the
- 14 courtroom.
- 15 In the meantime, we will suspend and resume at 11 o'clock.
- 16 (Closed session at 10.31 a.m.)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Recess taken at 10.31 a.m.)
- 21 (Upon resuming in closed session at 11.05 a.m.)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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2 (Redacted)

3 (Open session at 11.07 a.m.)

4 THE COURT OFFICER: We are in open session, Madam President.

5 PRESIDING JUDGE STEINER: Thank you. Mr Witness, welcome back.

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

7 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?

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

9 PRESIDING JUDGE STEINER: Mr Iverson, you have the floor, reminding you that we
10 are in open session.

11 MR IVERSON: Thank you, Madam President. And I would request to stay in open
12 session, at least for a while. I think it will be safe to do so.

13 Q. Sir, could you tell the Court when you first heard about crimes allegedly committed
14 by the ALC in the CAR?

15 A. I no longer remember the precise date. This was information that was broadcast
16 round the clock by RFI.

17 Q. Do you remember if there were any other media sources besides RFI?

18 A. No. In our area we listened only to RFI.

19 Q. Do you know if you were able to pick up Voice of America on the radio?

20 A. I beg your pardon?

21 Q. I think from your response it will probably be a "no," But do you know if you were
22 able to pick up a radio station called Voice of America in the area where you were
23 located?

24 A. I really do not know. I never listened to that station, but I cannot say for sure that
25 no one else did.

1 Q. And could you tell the Court what did you hear on RFI about the allegations of
2 crimes committed by ALC in CAR?

3 A. I do not remember the exact words, but I heard that Banyamulengue troops
4 committed pillaging, rapes and murders in the Central African Republic. That is it.

5 Q. And you think that the RFI reports provided vague information; is that right?

6 A. I believe so because there were no details, as far as I am concerned.

7 MR IVERSON: I'd like to listen to one of those RFI reports from 3 November 2002, and
8 it's document 36 on the Prosecution's list of documents, ERN number CAR-OTP-0031-0093.
9 It's a public document, it's a radio broadcast, and it starts at minute mark 01.22 and it ends
10 at 03.29.

11 For those following along in French, we provided a transcription, and that is document 37
12 on the Prosecution's list of documents, CAR-OTP-0036-0039, and for those following in
13 English, we have an English translation, document 38, CAR-OTP-0056-0278.

14 I would ask, please, if the court officer could play the radio broadcast from
15 3 November 2002.

16 THE COURT OFFICER: Mr Iverson, would it be possible to precise what is the track
17 number of the file that needs to be played? Currently track 2 was being played, because
18 it corresponded to CD 2, but maybe it's another track that needs to be played.

19 MR IVERSON: It's track 5. Sorry, I omitted that. It's not your fault. It's my fault.
20 (Audio excerpt played)

21 MR IVERSON:

22 Q. Sir, I know it's been a long time, but do you specifically remember listening to this
23 radio broadcast?

24 A. No, I cannot remember precisely whether I heard this specific allegation. I heard
25 two accusations just like that, but I do not remember hearing this particular one.

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 Q. Okay, but you heard RFI radio broadcasts like this one; correct?

2 A. That is correct, yes.

3 Q. Now, in this particular broadcast, what information were you able to take from the
4 broadcast?

5 A. Can you repeat, please?

6 Q. Well, what -- based on the RFI broadcast, what were the allegations made? What
7 were the -- could you repeat to the Chamber some of the factual allegations made by RFI
8 in this broadcast?

9 A. I have just heard, like you, that there were allegations of looting and also rapes.

10 Q. And was there anything specific, or was it vague in your opinion?

11 A. I heard about the allegations of crimes committed by LMC (sic) soldiers: Pillaging
12 and particularly rapes. That is what I heard.

13 Q. And we also heard the story of a mother who says her daughter was raped; right?

14 A. Yes, that mother was not identified, but we heard that her daughter had been raped;
15 her daughter named Patricia.

16 Q. Right. And would you say that there's any other information from this broadcast
17 that could be used as potential leads?

18 A. Leads to what?

19 MR IVERSON: I'd like to request a private session, Madam President.

20 PRESIDING JUDGE STEINER: Court officer, please turn into private session.

21 (Private session at 11.22 a.m.)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
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- 6 (Redacted)
- 7 (Redacted)
- 8 (Open session at 12.30 p.m.)
- 9 THE COURT OFFICER: We are in open session, Madam President.
- 10 PRESIDING JUDGE STEINER: Mr Witness, we have now our lunch-break. It's 12.30.
- 11 We will resume at 2 o'clock.
- 12 I ask, please, the court officer to turned into closed session for the witness to be taken
- 13 outside the courtroom. In the meantime, we will suspend and resume at 2 o'clock.
- 14 (Closed session at 12.31 p.m.)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Recess taken at 12.32 p.m.)
- 19 (Upon resuming in closed session at 2.12 p.m.)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
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(Private Session)

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1 (Redacted)

2 (Open session at 2.14 p.m.)

3 THE COURT OFFICER: We are in open session, Madam President.

4 PRESIDING JUDGE STEINER: Thank you very much.

5 Mr Witness, welcome back.

6 THE WITNESS: (Interpretation) Good afternoon, madam.

7 PRESIDING JUDGE STEINER: We apologise for making you wait. We will
8 immediately continue with Prosecution questioning.

9 Mr Iverson, you have the floor.

10 MR IVERSON: Thank you, Madam President.

11 Q. Sir, we have roughly an hour and 45 minutes left today. I would like to finish
12 my questioning today so we can move the proceedings along. You know, I'm not
13 sure that it's going to be possible, but if it is to be possible it will require a little bit of
14 co-operation from you. So, you know, I understand that not every one of my
15 questions is going to lend itself to a "yes" or "no" answer, but if you could just keep
16 your answers to answering my questions and not going on too much in terms of your
17 testimony, I think we might be able to conclude the Prosecution's questioning today.
18 Would that be an acceptable way to proceed for you, sir?

19 A. I have no problem with that.

20 MR IVERSON: Madam President, could I ask for private session, please?

21 PRESIDING JUDGE STEINER: Court officer, please turn into private session.

22 (Private session at 2.16 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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(Open Session)

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1 (Redacted)

2 (Open session at 3.18 p.m.)

3 THE COURT OFFICER: We are in open session, Madam President.

4 PRESIDING JUDGE STEINER: If you allow me, Mr Iverson, just another follow-up
5 question here?

6 MR IVERSON: Certainly, Madam President.

7 PRESIDING JUDGE STEINER: Before we -- the witness started being asked about
8 the problem of the lack of defence counsel, Mr Iverson was asking you about the
9 judgment can be reached quite expeditiously in a very short period. I've found it.
10 This is your answer on page 93, as from line 6, "Well, in the DRC you can be quickly
11 brought before the judge in case of flagrante delicto and then judgment can be
12 reached quite expeditiously in a very short period. That can happen."

13 In relation to the inquiry involved Mr Bomengo and others, I can see that the suspects
14 were brought before the judge, the judge -- no, not the judge, I'm sorry, the official of
15 the ministère publique, so the prosecutor I suppose, on 27 November at
16 20-to-midnight, the other at midnight, the other at 10-to-1 in the morning and the
17 other two ones we don't have the hour, but because it repeats 27 November and the
18 numbering is in the sequence we suppose that we're after midnight, and I'm talking
19 about documents CAR-DEF-0002-0029, 0031, 0032, 0033 and 0034, and my question is:
20 Is that common in DRC, that accused or suspects are brought before the prosecutor in
21 the middle of the night, at midnight/1 in the morning?

22 THE WITNESS: (Interpretation) Madam President, when we are dealing with
23 flagrante delicto offences, that is where someone is caught red-handed, then things
24 can proceed at any time, even at night, but it is not the ordinary procedure because
25 these types of offences do not occur or offences deemed to be flagrante delicto do not

1 occur frequently, so this can be processed so expeditiously even up to the level of the
2 war council, by the way.

3 PRESIDING JUDGE STEINER: Thank you.

4 Mr Iverson.

5 MR IVERSON:

6 Q. Sir, were you aware that the Prosecution requested to meet with you prior to
7 your testimony?

8 A. Well, what I can say is that the Court had contacted me inviting me to come
9 here earlier, but I lost my mother and I was not able to come in time to meet with the
10 Prosecution. I -- my mother died and that is why I said that I couldn't travel before
11 Sunday.

12 Q. And I think we may be talking about two different things. Did Mr Kilolo or
13 anyone from the Defence contact you and let you know that the Prosecution was
14 requesting to meet with you a few weeks ago?

15 A. I have said that I had been asked to come earlier to meet with people from the
16 Office of the Prosecutor and I said that it was not possible because I did not have the
17 time to do that. I would have loved to, but it was not possible for me to come at the
18 time.

19 Q. So you were told that you would be -- it would be necessary for you to come
20 earlier for you to meet with the Prosecution? Am I understanding that correctly, sir?

21 A. No, that's not what I said. What I said is that I was not able to come earlier.
22 My mother was unwell and she died in the end, so when I was contacted and asked
23 whether I could see you it was not possible for me to come to meet you at that time
24 since my mother had died and it happened on the day on which I was asked to come.
25 I think I was asked to do so by some official from this Court and I told them I was not

Trial Hearing
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(Open Session)

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1 able to come on that day because I had to deal with my mother's funeral before
2 coming.

3 Q. Sir, were you aware that there were members of the Prosecution who travelled
4 to Kinshasa hoping to meet with you in Kinshasa? Were you aware of that?

5 A. Members from the Prosecution, what? All who came here to -- came to meet
6 me met me. (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Were you aware that the Prosecution wanted to sit down with you and ask you
10 some substantive questions about your knowledge of the case, so not just any meeting
11 but a meeting where we asked questions? Were you aware that that is what we
12 requested of the Defence?

13 A. Well, I have just told you that I was told that I wanted to -- that they wanted to
14 meet me. I received an SMS indicating that it was necessary for me to come earlier
15 to meet with the Prosecution and my reply was that unfortunately the
16 circumstances -- my circumstances do not allow me to come earlier. The SMS was
17 sent from a foreign number and I don't quite remember who sent it, but in my reply
18 to the SMS I indicated that it was not possible for me to come at that time. That is
19 what I said.

20 Q. So just an SMS? No phone call, no email, just an SMS; is that right?

21 A. No. Well, I think it was an email on my phone. It was an email on my phone.
22 That's what it was.

23 Q. And what did it -- what did the Defence state in the email?

24 A. The -- I think they asked whether I had time to come and meet with the
25 Prosecution and I said I didn't have the time because my state of mind did not enable

1 me to travel at that time. My mother was very ill. I was the only one taking care of
2 her and it was therefore impossible for me to travel at that time.

3 Q. I mean, in the email did the Defence explain the purpose of the meeting?

4 A. Well, I no longer recall, but I have my phone with me. I could open up that
5 email again and see. My state of mind really did not allow me to focus on that issue.
6 I know that I had been asked to come and meet with members of the OTP and in my
7 reply I said that it was not possible to come because my mother was seriously ill and
8 it was not possible for me to abandon her in those circumstances.

9 Q. I understand, sir. How many meetings did you have with the Defence? So a
10 different question. How many meetings or conversations did you have with the
11 Defence team, or anyone on the team?

12 A. I think I met with two lawyers. I was not in Kinshasa, because every now and
13 then I work also in Lubumbashi. I was there. I had a discussion with them over the
14 phone. They told me they were going come on a certain date and at that date I had
15 returned from Lubumbashi and we met in Kinshasa. There were two of them. I do
16 not remember their names. We had a discussion. They were taking down some
17 notes. They put all the questions that they wanted to me and I gave them the
18 answers that I was aware of. What I didn't know I didn't answer to.

19 So they left and I went back to Lubumbashi. And then when my mother took
20 seriously ill and went into a coma, (Redacted)
21 (Redacted)

22 Q. Well, there are only two Defence attorneys that I'm aware of in this case. Did
23 you talk to Mr Haynes and Mr Kilolo?

24 A. I talked to two persons. There were two persons to whom I talked. There
25 were two of them together when they questioned me.

1 Q. Was it the two gentlemen sitting across from me right now?

2 A. Yes, I think it was the two of them. Yes, I met with those two.

3 Q. Okay. I'm sorry. Your response just struck me as a bit bizarre, so thank you
4 for clarifying that. And how long was this meeting when you met with Mr Haynes
5 and Mr Kilolo?

6 A. Well, I don't know. We spent a lot of time together. It was a lot of time. I
7 cannot give you the number of hours and number of minutes. I don't know.

8 Q. And did they show you documents during the time you spent with them?

9 A. What type of documents?

10 Q. Well, let's just start with documents, period. Did they show you any
11 documents during your time with them?

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. And was that the only time that you ever meant -- met with any member of the
19 Defence team, sir?

20 A. I think so. That was the only time that they came to the Congo, I think,
21 because they -- I don't know if they came another time, but I saw them that time.

22 Q. Sir, were there any witness expenses that you incurred that needed to be
23 reimbursed by the Defence team? Did they pay you any money for witness
24 expenses?

25 A. No, what witness expenses? I didn't have expenses, so what were they going

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1 to reimburse?

2 Q. I don't know. We've never met, so I don't know the answer to these questions.

3 That's why some of these questions, I just don't know what you know. Were you

4 offered any money or made any promises in return for your testimony, sir?

5 A. No, absolutely not. I didn't ask to be reimbursed and I had no promises from

6 anyone. At my age, how could I make a statement or give testimony on the basis of

7 promises? It's not honourable, as far as I'm concerned. I couldn't accept to give

8 testimony. What could -- what could people pay me for providing testimony? I do

9 it out of a concern that justice be done. That's it, as I said yesterday here, that the

10 double objective of any system of justice is to convict those who are guilty and to let

11 free those who are innocent, and that's the point. I can't accept any proposal to make

12 testimony.

13 MR IVERSON: Madam President, I'd like to ask for private session for the next

14 portion of my questioning.

15 PRESIDING JUDGE STEINER: Court officer, please.

16 (Private session at 3.35 p.m.)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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24 (Redacted)

25 (Redacted)

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9 (Redacted)
10 (Open session at 4.04 p.m.)
11 THE COURT OFFICER: We're in open session, Madam President.
12 PRESIDING JUDGE STEINER: Mr Witness, thank you very much. One more day.
13 We are sure that tomorrow you will be released of your functions as a witness before
14 this Court. We wish you have a very restful night and come tomorrow morning
15 prepared for your last day in front of this Chamber.
16 I thank very much the Prosecution team, legal representatives of victims, the Defence
17 team, Mr Jean-Pierre Bemba Gombo. I thank very much our interpreters and court
18 reporters. Once again, the thanks of the Chamber for allowing us the extended
19 sitting hours.
20 I will ask court officer to turn into closed session for the witness to be taken outside
21 the courtroom. In the meantime, we will adjourn and resume tomorrow morning at
22 9.
23 (Closed session at 4.06 p.m.)
24 (Redacted)
25 (Redacted)

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1 (Redacted)

2 (The hearing ends in closed session at 4.06 p.m.)

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