

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(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 Tuesday, 6 December 2011
9 (The hearing starts in open session at 9.35 a.m.)
10 THE COURT USHER: All rise. The International Criminal Court is now in session.
11 Please be seated.
12 THE COURT OFFICER: Good morning, your Honours, Madam President. We are
13 in 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: Thank you.
19 Good morning and welcome, Prosecution team. Mr Iverson, could please you
20 introduce the team that is going to be present during the questioning of the current
21 witness?
22 MR IVERSON: Good morning, Madam President. Good morning, your Honours.
23 With me in court today are Jean-Jacques Badibanga, Petra Kneuer, Sylvie Vidinha and
24 myself, Eric Iverson.
25 PRESIDING JUDGE STEINER: Thank you very much. Good morning,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

- 1 Maître Douzima, Maître Zarambaud. Good morning the Defence team,
2 Mr Jean-Pierre Bemba Gombo. Good morning to our interpreters and court
3 reporters.
4 We will start today with the questioning of Witness 219. Before I bring the witness
5 in, the Chamber has a short oral decision to be issued. It is the oral decision on the
6 applications to question Witness 219 submitted by legal representatives of victims.
7 On 7 November 2011, the Chamber received an application from Maître Zarambaud
8 on behalf of the victims he represents to question Witness 219. It's filing 1890-Conf.
9 The application contains a set of three questions.
10 Similarly, on the same day the Chamber received an application from
11 Maître Douzima on behalf of the victims she represents. It's filing 1889-Conf. The
12 application contains a set of three questions as well.
13 Having considered the questions and the related reasons given by both
14 Maître Douzima and Maître Zarambaud as to why the personal interests of the
15 victims they represent are affected, the Chamber allows the respective applications to
16 question Witness 219.
17 I ask, please, court usher to bring Witness 219 in.
18 (The witness enters the courtroom)
19 WITNESS: CAR-OTP-PPPP-0219
20 PRESIDING JUDGE STEINER: Good morning.
21 THE WITNESS: Good morning, Madam.
22 PRESIDING JUDGE STEINER: May we call you General Opande?
23 THE WITNESS: Yes, your Honour.
24 PRESIDING JUDGE STEINER: You are welcome, General, and we would like to
25 thank you for taking your time to come to this Court and testify before this Chamber.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 You are most welcome.

2 Could, please, the court usher facilitate the witness taking the oath by showing the
3 witness the words printed on the card that should be in front of the witness.

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

6 PRESIDING JUDGE STEINER: Thank you, Mr Witness. Do you understand that
7 by taking the oath you are expected to give answers to the questions asked of you
8 that are true and accurate to the best of your knowledge and understanding?

9 THE WITNESS: I do understand, your Honour.

10 PRESIDING JUDGE STEINER: Mr Witness, General Opande, before the Prosecution
11 starts questioning you, I would like to explain to you a few procedural matters
12 related to your testimony.

13 Although you'll be testifying in open session, with your identity known to the public,
14 I want to inform you that there are certain individuals connected with this case whose
15 identities are not publicly known and who have been granted protective measures by
16 the Chamber.

17 I would, therefore, ask you to exercise caution in mentioning names of individuals
18 who may be considered vulnerable in the context of these proceedings. In particular,
19 some of the individuals whose statements you mention in your report have been
20 granted protective measures to protect their identities from the public.

21 When discussing these individuals, we'll need to use their pseudonyms, their
22 numbers as witnesses, instead of their names. The Chamber will rely on counsel to
23 conduct their questioning in order to help you in avoiding mentioning any
24 information that could not be revealed in open session.

25 If in order to give an answer to any question you need to mention any of these names,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 you just let us know and we can go into private session. In private session you can
2 speak freely, because what you say is not heard outside the courtroom.

3 And finally, Mr Witness, because some of us here speak different languages we have
4 interpretation, and for this reason it's important that you speak slower than normal in
5 order to allow our interpreters to do their job.

6 It's also important that after a question is put to you and before you start giving your
7 answer that you wait about five seconds in order to allow court reporters to finish to
8 type the -- to the transcripts the questions that were put. This is what we call the
9 "five-seconds golden rule."

10 Sometimes, Mr Witness, because it seems unnatural to speak so slow, it's possible that
11 you start speeding up. In that case, I will have to interrupt you. Don't take offence.
12 It's just for practical reasons I will have to interrupt you and ask you to please slow
13 down. Is that fine with you, sir?

14 THE WITNESS: That is fine with me, your Honour.

15 PRESIDING JUDGE STEINER: I have a few questions to put to you, Mr Witness.

16 You have provided the Court with two written reports. The first one is comprised of
17 13 pages and bears document identification number CAR-OTP-0064-0547; the second
18 report is comprised of 28 pages and bears document identification number
19 CAR-OTP-0066-0002. Am I right that there is no obstacle to these two reports being
20 discussed publicly?

21 THE WITNESS: There is no reason at all.

22 PRESIDING JUDGE STEINER: You have also provided the Court with your
23 curriculum vitae, your CV, which bears filing number

24 ICC-01/05-01/08-681-Conf-AnxA. This is the filing number. Given that your CV
25 contains no personal details, such as your phone number or address, information like

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 that, are you content for it to be made public as well?

2 THE WITNESS: I'm content. I have no reason to hide anything.

3 PRESIDING JUDGE STEINER: And finally, General Opande, am I correct that you
4 have no objection to your reports and CV being admitted into evidence in this case in
5 the event that the parties or the Chamber wish them to be admitted?

6 THE WITNESS: I have no objection at all, your Honour.

7 PRESIDING JUDGE STEINER: Thank you, sir. You have already been before this
8 Court at least once, so you know how we proceed. You will be questioned first by
9 the Prosecution, then by legal representatives of victims and finally by the
10 Defence team. And now I give then the floor to Mr Iverson that is going to question
11 you on behalf of the Prosecution. Mr Iverson, you have the floor.

12 MR IVERSON: Thank you very much, Madam President.

13 QUESTIONED BY MR IVERSON:

14 Q. Good morning, sir. How are you today?

15 A. I'm fine, Eric.

16 Q. We've already made introductions, of course, but for the record my name is Eric
17 Iverson, and I'm a trial lawyer with the Office of the Prosecutor and I will be
18 examining you today.

19 I just want to remind you and also remind myself, since we will be talking in English
20 today, just to do our best to keep a slow pace so that the interpreters can keep up with
21 everything that we're saying and also it's really important to have that five-second
22 delay in between question and answer and then again the next question so that
23 there's a little bit of lag time so that the interpreters can finish what we've just said.
24 If you don't understand a question I'm asking or if it's -- ends up being too complex,
25 or you don't know or you would need more information to answer a question, please

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 just let me know or let the Chamber know and we can address that.
2 During the course of the examination I may pose some hypothetical questions in
3 order to understand how you think about some of these military doctrines that you in
4 part expressed in your expert report, and also during the course of the examination
5 there may be times where I have to request to go into private session in order to
6 discuss matters that pertain to people's identities. I'm going to try to limit that, but it
7 may be necessary. And just as an initial matter, Madam President, I would like to
8 request to go into private session just to discuss a few matters so that we can clarify
9 things, because I think during the course of the examination some of the questions
10 may elicit matters which would bear on the identities of witnesses or witnesses to
11 come.

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

13 (Private session at 9.51 a.m.) * Reclassified as Open session

14 THE COURT OFFICER: We are in private session, Madam President.

15 MR IVERSON:

16 Q. Sir, now, as you know, most of the witness statements that you reviewed
17 involve witnesses who have protected identities. Not all of them, but most of them.
18 And so I think it would be easiest if you -- if you wished to say a name to ask for
19 private session and we can do that but there is one issue, and it comes to my mind as
20 (Redacted) and he has a witness code, Witness 36.
21 However -- and he also had a position, as you know, as (Redacted)
22 I think that if you not -- if you don't use his name but you simply use the name (Redacted)
23 (Redacted)" that would also potentially disclose his identity, if you understand what I
24 mean? And so what I propose is that instead of using the term (Redacted) did
25 this or said that," or "I looked at this," as far as what (Redacted) did, to use the

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Private Session)

ICC-01/05-01/08

- 1 word (Redacted) if that would be acceptable to the Chamber and to the parties
2 and participants, I think that that would facilitate the examination so we don't need to
3 go into private session every single time that you feel the need to mention something
4 that (Redacted) did and I will also endeavour to use the word (Redacted)
5 Now, I don't want that to stop you from asking for private session, but I just propose
6 that in order to facilitate the examination.
7 Madam President, with your leave, I'd like to request open session again.
8 PRESIDING JUDGE STEINER: Court officer, please turn into open session.
9 (Open session at 9.54 a.m.)
10 THE COURT OFFICER: We are in open session, Madam President.
11 MR IVERSON:
12 Q. Sir, could you please state your full name for the record?
13 A. My full name is Daniel Ishmael Opande.
14 Q. And what is your nationality?
15 A. I am a Kenyan by bap and nationality.
16 Q. And what is your current city and country of residence?
17 A. I actually live outside Nairobi in a small town called Eldoret in Kenya, western
18 Kenya.
19 Q. Sir, what languages do you speak?
20 A. I speak English, Swahili and Luo, which is my mother tongue.
21 Q. Sir, and you are currently a retired military officer; is that correct?
22 A. That is correct.
23 Q. And that military was the Kenyan Armed Forces, the KAF; is that correct?
24 A. Yes, it is the Kenyan Armed Forces that I belonged to.
25 Q. How long did you serve in the Kenyan Armed Forces?

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 A. I served for over 42 years' service, 42 years and about eight months.

2 Q. And what was the last rank that you attained in the Kenyan Armed Forces?

3 A. I retired as a lieutenant-general.

4 Q. And, sir, what was your last duty position?

5 A. My last duty position in the Kenyan Armed Forces, I was the Vice-Chief of
6 General Staff, but I was then seconded to the United Nations peacekeeping missions
7 in West Africa where actually I retired from as a force commander of the
8 peacekeeping mission in Liberia.

9 Q. How long did you hold the position of Vice-Chief of General Staff?

10 A. I held the position of Vice-Chief of General Staff for roughly two years and a bit;
11 over two years.

12 Q. Sir, could you tell the Chamber a bit about some of your functions as the
13 Vice-Chief of Staff in the Kenyan army?

14 A. As the Vice-Chief of General Staff you are actually number 2 to the Chief of
15 General Staff who is the overall commander of all the three services in the -- in Kenya.
16 Yours is to advise the chief, yours is to co-ordinate all the functions of the staff and
17 you actually sit in the position of the Chief of General Staff as and when the Chief of
18 General Staff is not available. In other words, if he's on duty somewhere else you're
19 in charge. If he's on holidays you are in charge.

20 Q. Sir, I don't intend to go through your entire military career because that would
21 take some time, but I do just want to ask a few questions about the course of your
22 career. What command positions have you held within the Kenyan Armed Forces?

23 A. I have held nearly every position from platoon commander, which is the lowest
24 command an officer - that is a commissioned officer - holds, to a company
25 commander, battalion commander, a brigade commander, a garrison commander,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 and of course when I was the Vice-Chief of General Staff, as and when my boss was
2 away, I commanded the entire armed forces of Kenya.

3 Also, as I stated earlier on, I also held two different commands in United Nations
4 peacekeeping forces: That is in Sierra Leone, force commander of the entire UN
5 peacekeeping forces; and also in Liberia a force commander of the entire UN
6 peacekeeping mission forces in Liberia; and also in Namibia I was the deputy force
7 commander of the UN peacekeeping forces a little earlier.

8 Q. Now, just to clarify, did you also hold positions that were not command
9 positions within the army and, if so, what were those positions?

10 A. Yes, I held other positions in the military which were not directly in command
11 and these positions was like a trainer. I was in the schools where we trained our
12 recruits, as well as our officers. I was the commandant of the armed forces staff
13 college, which is the highest school of learning in our own country.

14 Q. Sir, have you ever had the opportunity to work as a staff officer on another
15 person's command for another commander?

16 A. Yes, I was in the staff at army headquarters. I was in the staff at the
17 defence headquarters. I also held staff appointments in those organisations.

18 Q. And also, going way back in your career, have you worked on either a brigade
19 or battalion staff?

20 A. Yes, I was S02 operations, you know, officer at brigade level, and also at, you
21 know, the training school, you know, there are staff officers in training schools which
22 I held, yes.

23 Q. Sir, now within the Kenyan Armed Forces at the battalion and brigade level,
24 does the Kenyan Armed Forces -- do they refer to their staff as S staff, so S1, S2, et
25 cetera?

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 A. We basically follow, you know, the old British system where we look at, you
2 know, A staff and operational staff. We don't designate them as A2, 3, 4, 5, or
3 whatever, but we understand, you know, those because we send our officers to
4 different schools - we used to - other than purely British type and we have to learn
5 what, you know, 1 means, 2 means, 3 means and 4 means and this kind of thing, but
6 we know who -- you know, we call them operational staff, or administrative staff, or
7 logistic staff.

8 Q. And later on during the examination I'll ask you to clarify some of these staff
9 issues, but first I'd like to go through just some of the main points in your career. Sir,
10 could you tell the Court about any military training or education that you've gone
11 through?

12 A. My basic military training was done in Kenya many years ago, which was then
13 followed by cadet training, in other words to become an officer, which I did in the UK
14 also many years ago in a British military cadet -- officer cadet training school, and
15 then I also had several other trainings after that, like my grade 2 staff training I also
16 did in the UK in their -- the British military officer staff training, Camberley, and then
17 my postgraduate studies I did in the United States at the NDU, which is National
18 Defence University, in Washington DC. I also had one or two other training outside,
19 you know, Kenya, like I did also another course in the United States, administrative
20 course in the United States.

21 Q. Sir, did you ever specialise in a certain branch of the military and, if so, what
22 was your specialisation?

23 A. I specialised in airborne operations. I am a qualified, you know, paratrooper,
24 and one of the first paratroopers to be trained by Kenya and served in the paratroop
25 regiment right from a platoon commander and to command that specialised unit.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 Q. And was that airborne infantry and could you just describe what -- specifically
2 what airborne infantry is to the Chamber?

3 A. Yes, that was airborne infantry which has certain specialised qualities. This is
4 a well-trained infantry unit, capable of undertaking certain specialised and risky
5 operations behind the enemy line; that is if you are fighting, you know, an enemy,
6 going into areas where ordinary infantry might find it very difficult to get into unless
7 somebody aids them to get there and fighting to succeed or to win the battle without
8 much, you know, support from outside.

9 Q. You mentioned your experience briefly in Liberia. Have you deployed to
10 other areas in support of any operations?

11 A. As I mentioned a little earlier on, I served in Namibia. I also briefly served in
12 Angola while in Namibia, in Mozambique, in Sierra Leone and of course Liberia.
13 Also within my country I have been deployed in nearly every corner of our country,
14 including fighting insurgency in our north-eastern province which is very close to
15 Somalia. What is happening today is probably the beginning of what we did many
16 years ago, between Kenya and Somalia.

17 Q. In your report, which is CAR-OTP-0064-0555 -- during the course of your
18 examination I'll be calling out these numbers. They don't necessarily pertain to you,
19 but they are for the record just for your knowledge, sir. At paragraph 24, you
20 explain that you've had an opportunity to observe guerrilla forces during the course
21 of your career. Can you explain to the Chamber a bit about that?

22 A. In my peacekeeping operations, right from Namibia into Angola, Mozambique,
23 Sierra Leone and Liberia, I interacted at very close quarters with the forces that
24 were called, or -- it's called guerrilla forces. For example, in Namibia the SWAPO
25 forces, until the time that independence, you know -- you know, Namibia gained

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 independence, were considered by the South Africans as guerrilla forces. In other
2 words, they were anti-authority while, you know, the SWAPO organisation
3 considered them legitimate forces fighting for independence. Similarly, in
4 Mozambique the RENAMO forces, which were fighting the government forces, were
5 considered as irregular forces or guerrilla forces in Mozambique, and I interacted
6 with them to try and gain their confidence so that they could talk for peace.
7 And when I went to Liberia for the first time, which was 1993 up to '95, there were
8 several guerrilla forces in Liberia then. They used to split up and form groups, more
9 or less at their -- you know, at whims, and we interacted with those also as a
10 peacekeeper. As I was a peacekeeper and chief military observer, I interacted with
11 them.
12 And finally when I was in Sierra Leone, again I interacted with the other guerrilla
13 forces which were fighting, you know, the government in my capacity as the force
14 commander of the UN peacekeeping forces.

15 Q. In Sierra Leone, as the force commander of the UN peacekeeping forces, what
16 was your role? What did you specifically do as commander?

17 A. My role was to command the entire UN peacekeeping forces; in other words,
18 I was the overall commander of all the United Nations peacekeeping forces. I
19 deployed them, I ensured that they carried out their duties and, at the same time,
20 I was the adviser to the civilian head of the UN mission in Sierra Leone, the special
21 representative of the Secretary-General, I was his military adviser. I sometimes
22 would be called upon during his absence to stand in for him, and those were
23 instructions he would give me directly.

24 At the same time, I was the -- a person who ensured that security of the entire Sierra
25 Leone country, during the transition, was assured by ensuring that I deployed my

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 troops and dealt with any problems of security nature which would take place in any
2 part of the country until when elections, you know, took place. I also was called
3 upon to advise the government - that is the Government of Sierra Leone during that
4 transition period - on all security issues and matters. I was also called upon to help
5 the Sierra Leonean government begin thinking of how they would move from a state
6 of anarchy, where they had guerrilla forces all over the country, who were carrying
7 weapons, to be disarmed, take away the weapons and demobilise all those guerrilla
8 forces which were in the country. That was one of my responsibilities.

9 Q. Was the UN peacekeeping force in Sierra Leone at that time a multi-national
10 force?

11 A. Yes, the UN peacekeeping mission in Sierra Leone was a multi-national. It had
12 many countries represented. Men and women from those countries served under
13 me.

14 Q. What were some of the countries that contributed forces to the UN
15 peacekeeping mission in Sierra Leone?

16 A. The largest contingents came from in Africa, Liberia -- er, Nigeria. In Asia,
17 Pakistan and Bangladesh and other nations, you know, brought in smaller
18 contingents; Ghana, for example, Kenya, for example, about a thousand men and
19 women each, a little over a thousand. Countries like United States had specialised
20 staff under my command. The UK, I believe this country had some officers also; in
21 other words, The Netherlands had some officers, you know, under my command.
22 Russia, for example, I had a Russian contingent; Ukraine contingent. I had my
23 countries. There were well over 30 countries of the world were represented.

24 Q. Did you find it somewhat a challenge to command all of these multi-national
25 forces?

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 A. As a commander, you always think that soldiers are the same and officers are
2 the same, regardless of where they come from, but it was a big challenge, not only a
3 challenge because where they came from but also the languages, the way they do
4 things, the way they think. So you as a commander, you'll have to gain their
5 confidence and, at the same time, to ensure that they understand you and they do the
6 job that you want them to do. It was quite a challenge.

7 Q. During the course of your command, if you were to command another
8 country's armed forces - for instance Bangladesh, just to take an example - and ask
9 them to do something and they refused to do that, what was your recourse as
10 commander?

11 A. In the United Nations' memorandum of understanding with particular
12 countries which provide peacekeeping forces to United Nations, the responsibility of
13 following instructions and orders is really given to me as the force commander, but if
14 a serviceman or an officer of a particular contingent does not do that, straightaway I
15 have the responsibility to ensure that he is reported to his contingent commander.
16 There is a contingent commander from that particular country. In other words,
17 Bangladesh would have one individual, one officer, normally the highest-ranking
18 officer in the peacekeeping mission, whose responsibility will -- to ensure that all the
19 instructions and orders given by the force commander are carried out. And if they
20 are not carried out and somebody's responsible for, that somebody is being -- will be
21 disciplined by that contingent commander. If that contingent commander does not
22 have the requisite powers to deal with the charges that particular individual is
23 charged with then he refers it back to his home country, because there are certain
24 charges that even me, as a force commander, cannot deal with. I will have to refer
25 them back to my home country if that is a Kenyan officer or a serviceman, and that's

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 the way we ensure that discipline is maintained throughout. It is not a hindrance at
2 all, it is the way of dealing with things. In other words, the country sending the
3 individuals to another country ensures that their soldiers don't go there and mess
4 around and get away with it.

5 Q. So essentially, if I understand you correctly, your recourse as the force
6 commander was to refer matters to national authorities; is that right?

7 A. Exactly.

8 Q. Sir, what years were you in Sierra Leone as force commander?

9 A. The year 2000 to 2003. To be precise, I think it was December, December 2000
10 to October 2003.

11 Q. And after that period, is that when you were is the term also "force commander"
12 for the UN mission in Liberia; is that right?

13 A. That is correct. I actually handed in my command of Sierra Leone in the
14 morning of - I can't remember what date, but it was in October, in the morning - got
15 into a flight, a UN flight, flew across into Liberia and assumed command of another
16 peacekeeping force in Liberia within an hour-and-a-half. I was already a force
17 commander in another country.

18 Q. That is a pretty quick change-over. Sir, could you describe this process of
19 assuming command and what that term means in military terminology, to assume
20 command?

21 A. Assuming command means you are now available and taken over the
22 responsibility of command and control of the forces that you are going to command
23 in whichever mission it is. So when I say I assumed command in Liberia, it meant
24 I had moved from my command in Sierra Leone, which I handed over to somebody
25 else, my deputy then, and then moved, physically moved into Liberia and assumed

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 the command of all the United Nations peacekeeping forces in Liberia. And now
2 I was the commander-in-charge.

3 Q. When you handed off your command in Sierra Leone to the next commander,
4 were there any type of formalities, any ceremonies, anything like that?

5 A. Yes, there were. I had written hand-over notes to the person who was taking
6 over from me, who was -- had been my deputy all along and whenever I went on
7 leave he assumed command. He knew everything about the command in Sierra
8 Leone. But on handing over, then I had to sit down and go through every facet of
9 the command and responsibilities and anything that I thought would help him
10 succeed, or anything that I thought he needed to know and put it in writing to him
11 and say, "From now on I'm handing over the command of United Nations
12 peacekeeping mission in Sierra Leone to you. Sign on the dotted line," and he signs
13 over that he takes over command. And then there will be a ceremony, as you rightly
14 mentioned, whereby the baton, what we call the baton, the general's baton, because
15 generals always walk with sticks, you are supposed to literally, you know, hand over
16 that stick to him, but we don't do that any more, so there is a parade which the
17 soldiers' line up and the bugle is played, and then I inspect their guard of honour and
18 that means now I have inspected the last of the guard of honour of that particular
19 command and the new commander takes over and then off I go.

20 Q. When the new commander takes over, is it customary for him or her also to do
21 an inspection of the troops?

22 A. Exactly. When you take over the first thing you want to do is to get to know
23 your troops, where they are, inspect them and see for yourself the people you are
24 going to command, who they are, even if you had already known them, to show that
25 you are now in control and that is the way that commanders normally do.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 I remember when I took over that particular command you asked me, in Sierra Leone,
2 I arrived in Sierra Leone from Kenya on a Saturday late in the evening. On Sunday
3 morning I was off to the farthest corner of Sierra Leone, at the border of Sierra Leone
4 and Liberia, to go and inspect the Indian contingent which actually was surrounded
5 by rebels for the last three months and the only means by which they could be
6 supplied was by air. They were more or less marooned. So I had to go out there
7 and inspect them and see for myself where they are, what is their status, rather than
8 sit in my headquarters and hear stories from my staff officers or other commanders.
9 So that's what you do.

10 Q. When -- when you inspect troops, as you've just mentioned that you did, what
11 are the types of things that you may be looking for in terms of -- well, I'll leave it at
12 that. What might you be looking for?

13 A. You look at the status of the equipment that they have, they themselves. You
14 look at the men and women, are they trained well-enough for the mission that they
15 are undertaking? Are they provided for adequately, in other words logistics, food,
16 ammunition, transport? What is their state of readiness? Discipline, you want to
17 see for yourself, are they well-disciplined soldiers or just, you know, those who are
18 just sitting around? So you look all around so that you can have an impression on
19 who they are -- whether the command elements, in other words their commanders,
20 are up to the task and they are doing the right thing. That's what a commander, you
21 know, looks for when you inspect soldiers.

22 Q. And when you went and assumed command in Liberia under the UN mission
23 there, were you actually the first commander for that mission? Was there a
24 commander that preceded you?

25 A. When I took over there was ECOWAS, a small force within Liberia, which had

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 just been deployed. It was under the ECOWAS flag. The day that I arrived there,
2 this force was turned over to me to spearhead the formation of the UN peacekeeping
3 mission in Liberia. In other words, I arrived there and actually had a parade at the
4 airport and inspected this ECOWAS, you know, formation and handed them, the UN
5 peacekeeping, you know, badges and berets. They changed from whatever beret
6 they were wearing, their own national colours, now to the UN peacekeeping mission.
7 It's a very complicated sort of change-over, but there it was.

8 Q. And, sir, I just want to clarify one thing, one question that may be present:
9 When you say "inspect," I think people may commonly have in their minds soldiers
10 lined up, looking at them, and really just inspecting for wear of the uniform and
11 things like that. Does inspection refer to anything else besides the simple formality
12 of a parade inspection?

13 A. Inspection gives you, as a commander, it gives you the gist of the kind of people
14 who are going to be under your command. You can't -- apart from looking at their
15 uniform that they are, you know, well-dressed, smart, have weapons you know with
16 them, by looking at the soldier at close quarters you can deduce what type of a
17 command that is or what type of soldiers those are. If you are well-trained, and
18 I believe as I was, in every inspection I could pick things that either were good or bad
19 which I would want to follow up with, either with the commander, the particular
20 commander who is in charge of the troops I am inspecting, or a higher commander of
21 that particular contingent.

22 Q. Sir, would you also take the time to talk to individual soldiers?

23 A. Exactly. You just don't go and inspect the soldiers, they march in front of you
24 and disappear without talking to them. The soldiers want to hear from you. You
25 want to hear from them. You may not have a whole day dialogue with them, but

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 you will address them - we call it an address - and if there is more time you may even
2 ask questions. You may even ask the soldiers: Do you have anything particular
3 that you would like me, as the force commander or the commander, you know, to
4 answer them and you will see hands going up and the soldiers asking questions.

5 Q. During these inspections that you've described, did you ever speak to the
6 officers apart from all of the soldiers?

7 A. Yes. My way of doing things was I would go and inspect the soldiers first, I
8 always wanted to see the soldiers first, talk to them, and then I will create time for
9 myself to address the officers at a separate, you know, a sitting because there are
10 certain things that you want to address to the officer, the commanders themselves.
11 You want to hear from them certain things that maybe they will not be very keen,
12 comfortable, you know, to bring in front of, you know, their own soldiers not because
13 they fear the soldiers but that is the etiquette, and then I will discuss all this with
14 them directly and ensure that if I had any concerns myself I address them at that level,
15 the officer level. Sometimes there may be even a need, after discussing with all the
16 officers, then I have one-on-one with the overall commander before I leave.

17 Q. What were some of the topics that would be discussed with officers?

18 A. The topics would include discipline of the men and women under their
19 command which includes even other -- they themselves, officers. The operational
20 matters. Also their future plans, the plans. My own plans I laid on the table. If I
21 have plans which they were not in the picture, or as you are taking over as a new
22 commander you may have a different way of doing things, and you want to ensure
23 that your way of doing things takes precedence from the way that they used to
24 handle, you know, matters. So you have to be very clear to your officers, speak in a
25 language that they understand, and if they don't understand then you have to

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 redefine what you really want them to do so that when you leave you don't leave
2 them in doubt as to what are your intentions, what you want them to do. You don't
3 want your officers to guess, "But what does our commander wants us to do, or what
4 is our purpose in being where we are?" You have to be in sync if you want to
5 succeed.

6 Q. You say you don't want to leave them in doubt about your intentions. What
7 might be the dangers of being ambiguous, or not clear?

8 A. If you are ambiguous, the results could be a disaster because the people you
9 want to go and perform certain actions will do something different. And whose
10 mistake will it be? Yours, because you have not been clear to them what you want
11 them to do. That is the major outcome of being ambiguous, and that is why we
12 always insist that the commander must be absolutely clear to those under him, your
13 intentions and the way to do things. They are the ones who are going to carry out
14 your orders, but they can only carry out your orders explicitly, clearly, if they
15 understand what you meant.

16 Q. And if a commander makes a mistake and is not clear to his subordinates, how
17 might a commander correct the situation?

18 A. Once you realise that a mistake has been committed, maybe because you were
19 not clear, then you have to immediately correct that mistake and tell whoever "This is
20 not what I meant. What I meant is A, B, C, D. Do it right now." And you have to
21 follow and see to it that, yes, he has now understood or she has now understood and
22 she is now doing the right thing." It is still your responsibility to correct that
23 particular mistake, and not only to correct, but to make sure that it has been corrected
24 even with the people down below them, you know, the chain of command.

25 Q. And how would a commander go about doing that, to ensure that the

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 information was passed along and the situation was corrected?

2 A. A commander will issue instruction, written instructions, saying "Well, this is
3 what I probably said, was misunderstood, but this is wanted," and that instruction,
4 written instruction, will be you know sent down to the chain of command, the next
5 chain of command, asking the next commander in the next chain of command to
6 amplify it to the people who need to perform that matter, for example.

7 Sometimes the commander himself goes out; he will go out and address that
8 particular issue on the ground, rather than issue instructions you know which
9 sometimes might have a delayed effect or may not, again, be understood. He goes
10 out to ensure that that is done by visiting and correcting.

11 Q. Sir, I understand that you have previously testified in Court as an expert
12 witness. Could you please tell the Court what those occasions were?

13 A. Yes. I think I testified in probably this same Court - I can't remember - but,
14 you know, it could be this one, it could be another one, and I think it was in the case
15 about Darfur, it was a Darfurian case, and I testified as an expert witness.

16 Q. And did you also testify in the Special Court for Sierra Leone?

17 A. Yes, I testified in Sierra Leone, in Freetown, Sierra Leone, in the Sierra Leone
18 case of Issa Sesay, as a Defence witness for Issa Sesay, who was I think the chief rebel
19 commander of the Sierra Leonian, you know, forces.

20 Q. And I also understand that you -- you may be called as a character witness in
21 another case within the International Criminal Court; is that right?

22 A. Yes. I was approached by Defence lawyers of another case which is probably
23 pending, you know, before the International Criminal Court, also to testify in
24 defence of a particular accused on his -- what did you say, the word? What word
25 did you use? "Character." Character. Character over an individual who I know.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 Q. And does that have any impact at all on your testimony today?

2 A. Not at all, I don't see any impact either on the cases that I have testified for or if
3 ever I am called upon to testify again in the case that we have just been talking about.

4 Q. Sir, you spoke briefly about some of the contact that you've had with what you
5 refer to as guerilla forces. Could you just describe a little bit in more detail some of
6 the contacts you've had with the various guerilla forces in your work as a
7 high-ranking officer in the Kenyan Armed Forces?

8 A. In all the guerilla forces that I have interacted with, apart from the
9 Mozambiquean one, I interacted with them in my capacity as either deputy force
10 commander in Namibia or a force commander in Sierra Leone or Liberia, or the UN
11 peacekeeping missions, or a chief military observer. In other words, I was already
12 deployed working for the UN in those particular, you know, scenarios, countries, and
13 it was my responsibility to interact with those guerrilla forces.
14 I have also acted with other guerrilla forces not when I am deployed there, but I'll
15 give you an example: You know, for example, when I was in Liberia, Ivory Coast
16 itself was already reeling and they had already, you know, groupings of guerrilla
17 forces across the border which were detrimental to the security of Liberia, and as such
18 we had to ensure that we protected Liberia from the guerrilla forces coming across
19 borders, a cross-border from Ivory Coast or a cross-border from Guinea.
20 So we had to, you know, contain them and that also gave me the opportunity to
21 interact with those who were directly not within our area but they were a threat to
22 the security of the country which we were trying to ensure that remains peaceful and
23 turns back to normalcy.
24 Similarly, when I was in Namibia, I briefly went across into -- I was deployed, not I
25 went on my own, but with the authority of the UN -- in fact, the Secretary-General

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 himself asked for me to go into southern Angola, to go and meet with the SWAPO
2 leadership, right from the top, you know. President Sam Nujoma, during that time,
3 he was the guerrilla leader of that particular organisation. His various commanders,
4 which included the late Mushangwe (phon), and several of his, you know,
5 commanders, you know, out there in Angola to try and make contact with them and
6 ensure that the agreement signed between SWAPO and South Africa and the United
7 Nations was scrupulously, you know, followed because since SWAPO most of their
8 guerilla forces were not in Namibia where we were deployed. Somebody had to go
9 now in Angola and make contacts with them, and I was the one who was appointed
10 by the Secretary-General and my boss, who was then General Prenchan (phon), to go
11 and make those contacts, talk to them, inspect them, find out what type of weapons
12 they had, where they were, how many numbers and when the time came ensure that
13 there is an agreement between us and them that they will not hide those weapons or
14 keep them somewhere else, bring them back into Namibia and hand them over to us,
15 the UN, so that we could take all those weapons and ensure that there is security in
16 Namibia.

17 So those were the kind of interactions that I had. I had interactions with the
18 guerrilla forces from the chain of command, political and military leadership, you
19 know, all the way down. Even the fighters themselves, I would go and interact with
20 the fighters; not against their, you know, their commanders but to get to know them
21 because if you are going to ensure that those fighters are well-understood, or you
22 understand what their intentions are, you can be surprised what they do.

23 Q. Sir, in your interactions with guerrilla forces and their chains of command,
24 would you be able to say whether or not there are any common features that, in
25 general, all of the guerrilla forces you've seen have?

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 A. Most guerrilla forces tend to assimilate the military chain of command, training,
2 and they tend to act like soldiers. Most of them, sometimes you'll find that
3 ex-soldiers, policemen, people who have had some military training, and the
4 commanders are normally reasonably well-trained ex-military, or they have gone into
5 a military training before they joined that particular formation, the designations of
6 commands in most guerrilla forces is more or less the same like we have in regular
7 forces, in other words the military.

8 You'll find they have a division sometimes, they call them "division," they may use a
9 different, you know, name. They will call them battalions. We have battalions.

10 They will call them brigades. They will have brigades. They will have sectors.

11 They will have platoons, companies. They will have -- the rank structure may not be
12 exactly, you know, like you have in the military but are more or less, you know,
13 equivalent to the military, you know, rank structure.

14 For example, you'll find a general in a guerrilla force. You will find a brigadier or
15 brigadier-general. I did not find many colonels. They did not like, you know, the
16 rank of colonel for some reason. They called themselves commanders; right?

17 You'll have majors. You will not find many lieutenants. Again, they probably
18 don't like, you know, to be called lieutenant but they have more or less the same
19 military, you know, system of doing things.

20 Passing of information also more or less follows the chain of command, sometimes
21 not scrupulously as it would be in a military, or a well-established military, you know,
22 organisation. In other words, they may be bypassing, you know, certain commands
23 to pass information for whatever reason, you know, they have.

24 Q. If the guerrilla forces that you've seen generally follow known military doctrine,
25 what do they -- what do these guerrilla forces do with -- regarding staff, General Staff,

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 division staff, brigade staff and et cetera?

2 A. Again, they will borrow from the military and develop staff at the highest level
3 which either could be a division level, then the brigade level. Maybe at the battalion
4 level one or two staff members, officers, you know, there. So, in other words, they
5 have a staff which will be advising the commander, passing the information of the
6 commander up and downwards, you know, the established.

7 And in some guerrilla organisation, they have a very-well oiled, you know, staff
8 functions and staff officers. You know, I saw that in SWAPO, for example, in
9 Namibia, they had well-developed staff functions and staff officers, you know,
10 performing more or less the same duties like I would have staff in my own, you know,
11 my own army.

12 I also saw a bit of that with Liberia, the Liberian rebel forces, they had staff, you know,
13 who worked for the commander and advised the commander and did what normal
14 staff, you know, would do; provision of instructions and ensuring that the men and
15 women under command are well looked after, and these kind of things.

16 MR IVERSON: Sir, I notice it's 11 o'clock. I believe with your leave, Madam
17 President, it's time for a break.

18 PRESIDING JUDGE STEINER: Thank you, Mr Iverson. General Opande, it's
19 11 o'clock. We have now half-an-hour break for you to take a coffee, take some rest.
20 We will resume at 11.30.

21 I ask, please, court usher to take the witness outside the courtroom.

22 (The witness stands down)

23 PRESIDING JUDGE STEINER: The hearing is suspended.

24 THE COURT OFFICER: All rise.

25 (Recess taken at 11.01 a.m.)

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

- 1 (Upon resuming in open session at 11.37 a.m.)
- 2 THE COURT USHER: All rise. Please be seated.
- 3 PRESIDING JUDGE STEINER: Welcome back.
- 4 Could, please, court usher bring the witness in.
- 5 (The witness enters the courtroom)
- 6 PRESIDING JUDGE STEINER: General Opande, welcome back.
- 7 THE WITNESS: Thank you, ma'am.
- 8 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?
- 9 THE WITNESS: I'm ready, your Honour.
- 10 PRESIDING JUDGE STEINER: Mr Iverson, you have the floor.
- 11 MR IVERSON: Thank you very much, Madam President.
- 12 Q. Sir, I -- welcome back, sir.
- 13 A. Thank you, Eric.
- 14 Q. Sir, I would like to now turn to another topic and that is the expert report which
- 15 you drafted in this case and I'd like to just go back to the history or the genesis of the
- 16 report. So how did you -- how were you initially contacted by the Court?
- 17 A. I was contacted through an email, which had identified that I was acceptable to
- 18 the Court as an expert witness, and the Court asked for a meeting between me and
- 19 the organisation, not a Court, the organisation asked for a meeting between me and
- 20 two officers, I believe, who came to Nairobi and contacted me and presented, you
- 21 know, these -- the questions that, you know, I was supposed to address, or need to
- 22 address, and I did.
- 23 Q. When you say "organisation," I suppose you mean Office of the Prosecutor; is
- 24 that right?
- 25 A. Exactly, Office of the Prosecutor. Office of the Prosecutor.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 Q. And you stated in your report the information upon which you relied for the
2 report and I think that's, excuse me, clear enough. Could you briefly describe the
3 methodology that you used in going over the information and writing the expert
4 report?

5 A. I was provided with a lot of information, statements of various witnesses who
6 were supposed to be called by, I believe the Prosecution, for this particular case,
7 which I reviewed. I went through most of them. There was a stack of papers.
8 Some were in English, others were in French, and the ones in French I just discarded
9 them because I don't speak French and I had nobody to translate them to me, so I
10 never -- I never, you know, went through them, but the ones that were in English I
11 went meticulously through them, all of them.
12 That is one way. The second, you know, method that I used is of course my
13 experience about military organisations; how they, you know, perform their duties in
14 similar situations like it would be in this particular case. My training, my
15 background training as a soldier and as an officer. I also had some books which,
16 you know, I relied upon, which I read, because in books you can gather something
17 that maybe you already know, but it will galvanise, you know, your thinking on a
18 particular issue. I also read one or two, you know, rules of engagement in military,
19 you know, terms, which would, you know, clarify, you know, when and when not,
20 you know, to open fire. I also read about the UN and Geneva Conventions, you
21 know, documents dealing with the conduct of war, especially as it pertains to how
22 military people should treat civilians in terms of, you know, upheavals or war in any
23 particular situation, and with all that I was now able, you know, to reveal the various
24 questions that were posed to me by the Office of the Prosecutor and come up with
25 what, you know, was an objective, you know, assessment of, you know, the question,

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 you know, posed, without apportioning any, you know, blames on to whoever,
2 because that is not my job really to do.

3 MR IVERSON: Could I ask the court officer to please display the military expert's
4 report? And the ERN number is CAR-OTP-0064-0547, that's the first number, and
5 I'd like page 0551 displayed and this is a confidential document.

6 PRESIDING JUDGE STEINER: Therefore, not to be displayed outside the
7 courtroom.

8 THE COURT OFFICER: Document CAR-OTP-0064-0547, at page 0551, is available
9 on the screens by pressing the button "PC1" and it's a confidential document.

10 MR IVERSON:

11 Q. Sir, my intent here is just to try to clarify what you in fact reviewed. Now, if
12 you look at paragraph 16 with all of the letters, and it continues on to the next page
13 which I'll ask to be shown next, but can you verify that those are all the materials that
14 you reviewed for this report?

15 A. That is correct.

16 MR IVERSON: And could I ask, please, the court officer to display the next page,
17 0552?

18 Q. Sir, could I ask you to just read this document as well and the same question:
19 Can you verify that this is the information that you reviewed?

20 A. That is correct. I have reviewed those.

21 MR IVERSON: Thank you very much. I no longer need the document displayed.
22 Thank you.

23 Q. Sir, could I ask you to describe any limitations, if any, that were on you in
24 generating this expert report?

25 A. If you see my opening statement, I also wanted, you know, to interview certain

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 individuals in the CAR, or in the Central African Republic and the Congo, DRC. I
2 also would have wished to visit and see for myself the area of operation where the
3 troops were deployed; in other words, the MLC troops. It would give me a
4 first-hand information of the terrain, of the layout of the country. Those were not
5 done. I didn't interview certain individuals which I had requested I could, not
6 because I wanted to go and investigate afresh what had been investigated by others,
7 no, but it would give me -- as an expert it would give me probably more information
8 than, you know, I already had, but despite that not, not doing that, I think I was able,
9 you know, to get sufficient information from the documents that I had which helped
10 me to come up with a balanced, you know, assessment of the situation.

11 Q. Sir, and this next question bears on your previous experience as a military
12 officer. During the course of your career, did you have an opportunity to serve as an
13 investigating officer?

14 A. Yes, at various levels. I investigated even when I was a company commander.
15 I investigated when I was a battalion commander and I investigated when I was
16 actually a brigade commander. In the military, there will always be some either
17 investigation or boards of inquiry, something has happened, and they want a
18 particular officer, or an officer of a certain level, knowledge, training, background, to
19 go and investigate so that he can come up with the balanced information about what
20 happened and that will give the commander - the higher commander - the
21 opportunity to decide on the case.

22 For example, let me give you an example. When I was a brigade commander, there
23 was an attempted coup in my own country and I was, you know, one of the officers
24 who were, you know, appointed to go and investigate and find out really what
25 happened so that -- not that investigators did not know what happened, but then the

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 higher command, you know, wanted to know more information about what
2 happened, so I was one of them who went out and investigated and we came up with,
3 you know, a report which was eventually, you know, acceptable, or accepted, you
4 know, to -- by our military chain of command. So, yes. To answer your question,
5 yes, I did investigate.

6 Q. Sir, and I intend to ask a few questions about your own experiences as a
7 commander in investigations, but just in general, if you were to describe an
8 investigating officer how would you go about doing that to somebody who knows
9 nothing about what an investigating officer does in the military?

10 A. An investigating officer must be an officer who has wide knowledge about the
11 issues that are at stake. If it is a command problem, or occurrence, failure in
12 command for example, you would not send an officer who has not been in command
13 himself. You have to look for an officer who has a wide experience in command,
14 how to deal with soldiers, how to command. You want an officer who is reliable.
15 You won't send an officer who, you know, goes and, you know, comes back, you
16 know, with half-baked information, or somebody who would be bound to be swayed
17 by what he hears rather than what, you know, the truth is all about. You want
18 somebody who is honest, somebody who is upright, and somebody who would come
19 up with a balanced information which will then help the commander to determine
20 what really are the facts. That's the kind of a person that you need.

21 Q. Sir, and you mentioned that you were appointed as an investigating officer as
22 you were a commander so, I'd just like to clarify is this the investigating officer, is it a
23 permanent position, or is it a temporary position?

24 A. In my military, there are permanent investigators who are, you know, in a
25 certain unit, but there are officers like me who are not, you know, permanent

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 investigators, but because of their background, the wide knowledge of, you know,
2 certain things, they will be appointed for a particular investigation. They will be
3 supported sometimes with a permanent investigators so that they work
4 hand-in-hand.

5 Q. Now, you touched on this, but just for a full understanding is it possible then
6 for a commander with appointing authority to appoint an investigator to appoint any
7 officer under his or her command?

8 A. That is true. A commander will decide on who he or she appoints and that
9 officer may not be, you know, an investigator who is what you understand as an
10 investigator, but any officer he has confidence in, "You go and do that job" and in
11 most cases that is what really happens. In many cases, that happens.

12 Q. What types of events or issues are subject to investigation commonly?

13 A. Unusual death of, you know, military personnel, in very unusual circumstances,
14 killings, thefts, indiscipline and acts which, you know, one would call unbecoming of
15 a military person. Those will be investigated at all times.

16 Q. Would it also be possible to investigate non-criminal activity, things such as
17 accidents?

18 A. That's what probably I meant earlier on when I said "death," that, you know,
19 people will die in a road accident and you just don't say that it's a road accident.
20 Private so-and-so or Colonel so-and-so died in a road accident and send the body
21 home and forget about it. No, you will investigate those. If there is a loss of
22 equipment, for example, it may not be criminal. It's just loss of equipment, some
23 equipment. It will be investigated. An accident where a lorry, for example,
24 overturns and nobody's killed, maybe a few people are injured or not even injured,
25 but it created, you know, a big loss to the unit, or to the military, it will be

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 investigated under what circumstances did this happen? If a military vehicle for
2 example, you know, kills a civilian and especially if the civilian was a passenger and
3 he was not supposed to be a passenger because most military vehicles are not meant
4 for, you know, carrying civilian passengers, it will have to be investigated.

5 So, yes, there are cases which, you know, many cases will be investigated which may
6 not, you know, necessarily, you know, have any -- anything to do with military.

7 Q. And this is a more general question about investigations. Why would a
8 commander be interested in investigating in the first place?

9 A. A commander is held responsible for all the men and women under his
10 command and equipment, right? And he is expected to have information about
11 everything that happens in his command, and if the commander, you know,
12 something happens in his command, which is unusual, or something bad, he wants to
13 know exactly, you know, how that particular thing, you know, happened and what
14 he can do to arrest the situation, you know, like that, because sometimes it's not only
15 knowing that private so-and-so shot so-and-so and killed so-and-so.

16 You want to know under what circumstances did this particular soldier kill so-and-so?

17 Is there anything -- is there an offence committed? If so, what are you going to do
18 about it? Is this something that can be -- could have been avoided? How do you
19 take action to ensure that such -- such happening do not recur again in your
20 command? Because you don't want to be in command of a unit or an organisation
21 which is going to go outside the normal military code of conduct or discipline.

22 This is why we always investigate. This is why always the commander always
23 investigates. It is even in his instructions as a commander what type of offences or
24 happenings which you as a commander must always investigate. It's always -- it's
25 written there down for you. You are expected to do that. You don't have to think

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 about it, that "Should I go and investigate this?" It is there in your oath of command.

2 Q. If an incident happens, whether it be criminal or an accident, in say for instance
3 a battalion and the battalion commander does not initiate an investigation or do
4 anything at all, what might the brigade commander be able to do? What are the
5 options available to the brigade commander?

6 A. The brigade commander has every right to order the investigation to be carried
7 out. If he has information that something happened in a battalion and the battalion
8 commander has not investigated it, even if he has investigated it and is covering up, it
9 is the responsibility of the brigade commander to order fresh investigations because
10 the onus is not only on the battalion commander, but it is also on his next chain of
11 command, his boss.

12 His boss is responsible for that command, just as well as that particular commander is
13 responsible for that command, because if he has a reason not to investigate, for
14 example covering up, and the next higher commander does not investigate also, just
15 leaves it, then it goes all the way up and that is not acceptable in the military, you
16 know, hierarchy.

17 The commander on the ground is responsible, but the commander on top of him is
18 also just as responsible as the one down is responsible. You will be called upon for
19 not investigating the commander down whose -- who did something which you
20 should have known and you didn't -- you did nothing about it.

21 Q. Sir, do you know whether investigating officers are commonly appointed from
22 within the chain of command, or from outside of the chain of command of the event
23 being investigated?

24 A. There are investigating officers who may be appointed from the same command.
25 For example, I'll give you an example. In a battalion, something has happened. The

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 battalion commander has his officers who can investigate and he has confidence in
2 them that they can investigate something that has happened within that command.
3 He doesn't have to ask the brigade commander to give him some officer from another
4 battalion to go and investigate. He will appoint them.

5 But if he has good reasons to believe that this is a particular occurrence that may be
6 best investigated by officers outside that command, that battalion, he will go to his
7 brigade commander and ask the brigade commander, "Sir, I would like particular
8 officers to come and help me with this investigation." Sometimes he might only ask
9 for one, you know, in other words the boss of the investigation team, but he will still
10 have local officers, his own, who will form this team and go and investigate this
11 particular.

12 Sometimes you may want to carry out that investigation yourself, you are -- you
13 know, when I say you yourself, within your own command and you will be
14 overruled by the higher formation who will say, "We," for example the brigade
15 commander or the division commander, "We are sending an investigation team.
16 Such or such a thing has happened in your command. We are sending a team from
17 outside to come and investigate." That's the way it works.

18 Q. Sir, that is to say that the brigade commander, who's the commander of that
19 battalion commander, may pull the investigation to his level and also that a division
20 commander could also pull it to his level; is that right?

21 A. That is right.

22 Q. Sir, I'd like now to go over a number of military terms with you, a lexicon of
23 military terms, if you will, just to assist in your expert discussion of command and
24 control. Could you provide the Chamber with your definition of command and
25 control?

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 A. Command is exercised, let me put it this way, by one individual who is
2 designated to be the commander of an organisation, an organisation in the military it
3 could be, you know, a platoon, for example. A platoon is about 36/37 soldiers, very
4 small, well-trained, and they play a major role in fighting in certain area. That
5 commander of that, you know, particular platoon is called a platoon commander.
6 Now, he is the one who will be with this small organisation, command it in battle, or
7 in peacetime location train them, live with them. He will issue instructions to them.
8 He will inspect them. He's particularly, you know, responsible for their welfare, for
9 everything that they do. So he's in charge of them.
10 So we call the platoon a command, a small command, and the commander - the
11 platoon commander - is the commander. He's also in chain of command responsible
12 to somebody, a bigger commander, company commander, who is his boss, and then it
13 goes all the way to battalion, to brigade and to division. In other words, the chain of
14 command from a smaller organisation to another, to another, to another, to another.
15 Now, control, the word "control," when you command, you know, your organisation,
16 you are in charge of all the things I've said, their training, their welfare, you lead them
17 and you provide for them, not from your own pocket, but from what the government
18 gives you or your organisation gives you to provide for them, and you control them.
19 You control the resources that are given to you. You control the information that
20 you receive in that particular organisation; sieve, or you have a staff which sieves, the
21 information, pass the information to you, ask for your direction, advice. At the end
22 of the day, the commander is the person who makes the final decision depending on
23 what that organisation is doing.
24 So command and control is that you have a designated number of personnel under
25 one command, equipment, resources given to them, and there is one commander of

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 that particular organisation who controls all those things within that organisation and
2 he's responsible, you know, for those people, including their welfare, discipline, the
3 lot.

4 Sometimes a commander he does not control the families of those particular
5 individuals given under him, but he's responsible also to look at the welfare of the
6 families, for example, battalion commander, even a brigade commander, the families
7 you want to know, you know, what is happening about the welfare of these families.
8 If there are problems, they may not be problems that are directly in your command,
9 but you are responsible for all those.

10 Q. Sir, you mentioned a platoon and a company, and for the Chamber's knowledge
11 customarily what rank of officer leads a platoon? Who is a platoon commander?

12 A. A platoon commander is a lieutenant, normally at the rank of a lieutenant. In
13 specialised units sometimes you might even have a captain leading a platoon,
14 specialised unit. In a company, it's a major or a captain commanding, you know,
15 those -- that command. If you go a little higher, battalion, he's a colonel, half-colonel,
16 or what we call a lieutenant-colonel will command that particular unit. As you go
17 higher, the rank structure is higher also. The lower it is, the rank structure is lower.

18 Q. Now, I mean this in a general sense because I believe that sizes of platoons and
19 companies and battalions vary, but in your experience how large is a company
20 generally speaking?

21 A. In the regular military, a company is about 100 men, maybe 120, depending on
22 the particular mission of that, you know, battalion. A platoon is no more than, as I
23 said, 37. In my own military, for example, it is 37. In some militaries, you know,
24 you might find a little less or a little more, but you never get a platoon of 50, you
25 know, odd men. You could, in my own experience and you know with the irregular

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 forces, what we call the guerrilla forces, you know, they could have as low as 20 in a
2 platoon, as high as 60 sometimes in a platoon, but those are irregular forces.

3 Q. You mentioned platoon and company. In general again, how large is a
4 battalion of soldiers?

5 A. A battalion of soldiers, together with the organic units which go with it, you'll
6 find something like about 800. Maximum is a thousand. Maximum is a thousand.
7 I remember during our peacekeeping missions the United Nations, you know, came
8 up with a figure which was slightly over a thousand because they needed -- we
9 needed specialised people to be in -- within that, which are normally not there in our
10 own militaries, but we cater for that.

11 Q. And battalions are comprised of companies which in turn are comprised of
12 platoons; is that right?

13 A. That is correct. Several companies and several platoons, yes, make a battalion.

14 Q. What about staff officers? Where do staff officers come into play in the
15 military structure that you've discussed so far?

16 A. You will find that it starts at battalion level. The battalion is where, you know,
17 you start to find, you know, staff officers, and then you go to a brigade. A brigade
18 has a larger staff, you know, function. Hence, there is a larger, you know, staff
19 employed and deployed at brigade level, and then when you go to a division level it
20 is even much larger. In some militaries where you have armies, then you have
21 several components of staff. So battalion, brigade and then division.

22 Q. To what extent did you find some of these features in the information that you
23 reviewed regarding the MLC?

24 A. I found it in the information that I reviewed that at the -- what I would call, you
25 know, the MLC's headquarters, they had a staff organisation which was quite

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 synonymous with any military organisation at probably a division level and it was
2 well, you know, established from the information I reviewed, they had all the staff
3 that you would, you know, expect. In other words the logistic staff, the operational
4 staff, the intelligence staff and even I think they had information, information staff,
5 you know, at that level.

6 Going down on to the brigade level, for example the brigade that was deployed in the
7 Central African Republic, it had some - what I would call - rudimentary, you know,
8 staff, you know, at that headquarters. I didn't find, you know, that there was
9 evidence, from what I reviewed, that they had a well-established, you know, staff at
10 every, you know, level representing - representing - every level of command and
11 control that you would have of a force that is comparable to the one that was in the
12 CAR, but below that there was no information at all that I could find from the
13 documents that I reviewed that at the battalion level they had any staff.

14 Q. I'd like to just go over some of the functions that the division staff fulfils and
15 that the brigade staff fulfils. When -- when one says "Chief of Staff" for a division,
16 for example, what does one mean by that?

17 A. Chief of Staff is the key person who co-ordinates all the functions of that
18 particular, you know, division, makes his staff bring all the information that is
19 flowing either from below or from above, come up with, you know, a co-ordinated
20 way of sieving this information and then ensuring that where action is required either
21 by the commander, the commander at that level, in other words division commander,
22 or commanders at lower level, then that information is passed to the right component
23 or the right commander. He is the one who will advise the commander in whatever
24 way. The commander should -- you know, will ask for his advice. He will not
25 singularly advise the commander, but he will with his staff look at the issue at hand

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 and then say, "Well, this is what we will, you know, we find and this is what we're
2 going to advise the commander on how to do it," or whatever it is. So he is the
3 co-ordinator. The Chief of Staff is the key person to the commander-in-chief -- not
4 commander-in-chief, commander of that particular organisation, whether it is at the
5 brigade level or it is at the division level.

6 Q. And is a Chief of Staff a commander, or does the Chief of Staff have any
7 command authority?

8 A. The Chief of Staff is not a commander. He is a staff officer. He advises the
9 commander and the commander is the person who issues the orders, the instructions.
10 The Chief of Staff cannot command any troops. He doesn't. It's just as simple as
11 that. He helps to -- he helps the commander with information and actions that the
12 commander delegates, you know, to him. The commander will not delegate even
13 command functions to Chief of Staff. He would probably delegate -- not probably.
14 He would delegate the command to one of the brigade commanders, even if the Chief
15 of Staff is one click, two clicks, of rank above the brigade commander, because he's
16 not in the line of command. The brigade commander is.

17 Q. So you're saying that if the division commander were to leave they would
18 normally have a brigade commander assume command for that time period where
19 they're going? Is that fair to say?

20 A. That's exactly what will happen. It will not be the Chief of Staff. It would be
21 absolutely unusual for the division commander to give that command to his Chief of
22 Staff.

23 Q. Now, in a guerrilla force modified structure of a division, might that be a
24 possibility that the Chief of Staff assumes command for the division commander?

25 A. I don't know. I don't know. I don't want to guess.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 Q. Fair enough, sir. That's a fair answer. And I'd like to talk about the General
2 Staff, so when we refer to G1, G2, et cetera, what is meant by G1? Let's start there.

3 A. In my military, G1 is the operational staff. Maybe in your military it is
4 different, right? G1 is the chief operational officer. I don't know whether that
5 answers you?

6 Q. Do you know what the G staff designations, so G1, G2, meant within the MLC
7 structure?

8 A. I think in the document that I reviewed I think G1 was, wasn't it, intelligence
9 I think? You may refresh my memory.

10 Q. Yes, sir. G2 was intelligence.

11 A. Intelligence, yes.

12 Q. But maybe it would be helpful for you to have a copy --

13 A. Yes.

14 Q. -- of your report in front of you, perhaps even a paper copy?

15 A. Yes, that would be very kind.

16 MR IVERSON: Madam President, with your leave, I'd just like to ask for a brief
17 moment to ask the team if we have an extra paper copy, if that would be agreeable to
18 the Chamber?

19 (Pause in proceedings)

20 MR IVERSON: Could I please ask the court usher to take the military expert report
21 and the military organisation chart, it's annex CAR-OTP-0064-0547, and present it to
22 General Opande?

23 PRESIDING JUDGE STEINER: Mr Iverson, could you please for the record give the
24 ERN number of the chart, please?

25 MR IVERSON: Certainly, your Honour, Madam President. It is

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 CAR-OTP-0064-0759. Sorry for that omission.

2 THE WITNESS: Uh-huh.

3 MR IVERSON:

4 Q. Sir, again starting with the G1, more commonly called the adjutant in some
5 militaries, what is the function of the G1 or adjutant?

6 A. This is the person responsible for the commander discipline and things like that
7 in that particular organisation, and also he's a co-ordinator, co-ordinate, you know, all
8 the functions of, you know, that particular command, or staff, if you call him
9 adjutant.

10 Q. And what relation does that person, as the G1, have with the Chief of Staff?

11 A. That person works for the Chief of Staff in ensuring that the particular functions
12 that are given to him as a staff officer of the Chief of Staff is co-ordinated and acted
13 upon. He works for the Chief of Staff.

14 Q. And what are the functions of a division intelligence officer, or a G2? What
15 does that person do on the staff?

16 A. There is a lot of information which a division, you know, gathers, either
17 through human interaction, intelligence, fielding, you know, gathering intelligence
18 using various equipments available other than human, communication, gathering
19 information. He co-ordinates all that intelligence and passes it on, sieves it first of all,
20 sieves the information that they get, with his staff, he has got also a small staff, and
21 the information that will help the commander make decisions as to how they want to
22 react on any information found, he's the one who passes on to the Chief of Staff, and
23 then of course the Chief of Staff will ultimately pass that information to the
24 commander. As we said, the Chief of Staff is not a commander, but, you know, he
25 will pass it on to the commander, and vice-versa. Any information that may have

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 been gathered through other means other than in the division may come down to him.
2 they look at the information and then they pass it down to their brigades, or
3 whatever.

4 Q. And based on what his staff does, may the Chief of Staff then present different
5 courses of action for the commander's decision?

6 A. That's exactly what the Chief of Staff will do. The Chief of Staff will not give
7 the commander only one course of action. That's what he's expected to do. He
8 should look at all courses open. All courses of action. And once he has gathered
9 the most likely courses of action, he will give the commander two or three courses of
10 action and say "We have the following: We are recommending the following
11 courses of action: Course A probably the most viable, course 2 viable, course 3 is the
12 last resort." Then the commander will review all these courses and then he will
13 decide. It's not necessarily that the commander will take course 1. There are
14 commanders who are known to have even taken course 3 and they still succeed, or
15 they fail.

16 Q. In interacting -- the interaction between a commander and a Chief of Staff,
17 would a commander generally delegate certain types of authority to the Chief of Staff
18 to make decisions on certain types of things, or would a commander generally retain
19 all the decision-making authority?

20 A. In routine matters, or even in certain matters, the commander will -- can give
21 the Chief of Staff leeway or certain actions that he can make a decision, get that thing
22 done, but he as the commander would want to know what action, you know, the
23 Chief of Staff, you know, took, or he will be briefed. It is normal for that. Once the
24 Chief of Staff has taken that action, which he's allowed by his commander, he will
25 immediately inform the commander that "Sir, this is what happened, transpired.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 These are the -- you know, this is the decision I took. This is what we've done, or
2 this is what we're doing," and in most cases that, you know, moves the burden of
3 everything going to the commander in -- commander, you know, to decide upon,
4 even if it is a routine matter or something that the Chief of Staff, you know, can do,
5 because the Chief of Staff is just as well-trained, supposed to be, just as well-trained
6 as his boss. The only thing is that he's not in the line of command. He can make
7 the same decision probably, you know, just as good as his commander.

8 Q. And I'd like to ask you as well about the G3, or the operations officer on
9 the -- on a division staff. What -- what duties or functions does the operations
10 officer in a division staff normally fulfil?

11 A. The operations staff are the ones who deal with things like training of people,
12 operational matter, deployment of troops, conducting operations, coming up with the
13 instructions about a particular operation or any operations and oversee all operations
14 that are undertaken in a division. They even have a small team which goes and
15 inspects the troops in the field and see whether the standards are, you know, being
16 followed, in other words, good standards, so they are the key element of the
17 commander in all operational matters: Planning and deployment of troops.

18 Q. And then also the G4, or the division logistical officer, what functions does that
19 person fulfil?

20 A. That person co-ordinates all the logistical requirements of the division and
21 below; in other words, looks at those brigades, you know, whether what they need to
22 accomplish their missions, be it fuel, be it food, be it transport, you know, it's
23 provided for. They look at the finances of the division, so that the commander, you
24 know, does not deploy troops in the field who do not have transport, food,
25 ammunition, you name it. You know, things that make the soldier being able to do

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 his job, that is the logistics. If there is any shortages, requirements which emanates
2 from the units down there, they are all passed all the way to the divisional logistics,
3 you know, people, and they will find the means or request the divisional commander
4 to find the means so that his mission does not stall because people don't have food or
5 whatever, or uniform.

6 Q. Now, if a brigade commander is in need of any logistical items for his brigade,
7 who might that brigade commander be able to contact within the military
8 organisation to arrange logistical resupplies?

9 A. Naturally, this request will go to the Chief of Staff of the division direct and
10 then the Chief of Staff will, you know, call his logistics man and say "Brigade A, B, C,
11 D, requires the following. Find it, or advise me what needs to be done in ensuring
12 that that particular brigade commander gets what he needs." The request will go
13 straight to the Chief of Staff.

14 Q. Would it be prudent for that brigade commander to also notify his division
15 commander when he's contacting the Chief of Staff?

16 A. Absolutely. In the military system, you know where, you know, your needs
17 are going to be addressed, but you have to inform your commander even if the
18 commander is not the person who is going to get it. You will send him, you know,
19 what we call copy, copy to commander, so the commander knows that wherever you
20 are you need the follow things. It's not for the commander to do it. Maybe he's the
21 person who will eventually do it, but you have to keep him informed all the time, yes.

22 Q. Might that also be the case because the commander has the power to overrule
23 any request from a brigade?

24 A. In the way that is so. It is not just a matter of overruling. It's because he can
25 see things that might not be usual. Somebody's asking for, you know what, 20

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 trucks, when he actually only needs two. Some commanders do that. They ask a
2 little bit more and if the commander, the top commander, sees it, yes, he can overrule
3 it and say "No, don't give that particular brigade," because the commander up there is
4 not only looking at one brigade, he's looking at maybe three, four, five brigades, the
5 divisional commander. So if everything goes to one brigade and then he has
6 intentions of deploying the other brigades somewhere else, or he knows because of
7 his position that there may be a requirement coming for other brigades, then he can
8 overrule it. You are right.

9 Q. So in other words the division commander has a much broader scope, a much
10 broader responsibility, than a brigade commander?

11 A. Absolutely. He has more than one brigade to look after.

12 Q. If that division commander only has one brigade deployed in a theatre of
13 operations, say in active combat, would it make sense that that brigade would receive
14 the priority in terms of intelligence, supply, et cetera?

15 A. Exactly. The brigade that you deploy in combat for whatever period, that
16 becomes your first priority in nearly everything, information, you know, gathering,
17 keeping an eye on them that they are meeting the -- your command instructions and
18 ensuring that they get the means to do the job that you had sent them out there to do.
19 So they have the priority.

20 You will always keep an eye. You want to know on a daily basis what is happening
21 with that particular brigade, because it is the brigade that is currently involved in
22 something much bigger than the brigades that may be in what we call peacetime
23 location, because when they are back deployed in their own environment they're
24 supposed to be in peacetime location. They will be doing training, they will be
25 doing their normal duties, but the other one is in the front line, so you give it more, a

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 little bit more.

2 Q. Could you just describe the operational planning process? What goes into
3 creating an operation and making it successful for a division staff? What are the
4 things that have to happen.

5 A. A division commander first of all makes that very important decision of giving
6 his intent, what we call intent, what does he want that particular brigade to go and do?
7 That is what we call the division commander's intent, put in writing "You, brigadier
8 so-and-so," or "Colonel so-and-so, you are going to deploy your force of so many men
9 and women and equipment to this particular, you know, area with the intention of
10 doing A, B, C, D."

11 That is the division commander's intent. He gives it to his Chief of Staff, or to the
12 staff, and a copy to the brigade commander, or a brigade commander copied to the
13 Chief of Staff. Then the staff sits down, the division staff sits down now, and says
14 "Hey, one of our brigade is going to be deployed in such-and-such a place." They
15 look at the maps of where that is going to be done, even if it is within their own
16 country, the area of the deployment.

17 What does the commander want? He wants A, B, C. How are we going to ensure
18 that his intent - the commander's intent - is accomplished? We will require A, B, C,
19 D, intelligence information, right, logistics and we will have to sustain this force for
20 so many days, weeks, months and this line of communication, everything.

21 Is it going to be deployed with or side-by-side with another brigade or another force?
22 If so, what do we need -- what do we need to know about the other forces that are
23 going to operate side-by-side with our brigade? All that information is looked into,
24 into details.

25 Then the divisional staff will come up with what you call the commander's orders

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 now, finally written down, which will go down to the person being deployed, in
2 other words the brigade commander who is being deployed. He has been given the
3 intent of the higher commander, but now he's going to be given an order - written
4 order - which is going to be signed by the division commander himself.
5 In that order, it will be -- if there is a requirement for a logistics order, yes, a logistics
6 order will be produced. If there is intelligence, more intelligence, that you know
7 have been gathered during that time which he needs to, you know, to have, he will be
8 given, you know, that information in writing.
9 Then those orders will either be used -- you know issued verbally by the division
10 commander in his headquarters to their brigade commander before he embarks on
11 that mission. When I say "verbally," all the staff will be seated down there, the
12 division commander will be there with all the orders that had been written, the
13 brigade commander and his staff, key staff officers, will come for that order and the
14 division commander will issue his instruction and the written orders will be handed
15 over now to their brigade commander before the brigade commander can move from
16 his headquarters and go and deploy his troops on the ground.
17 That is the way, because that is the opportunity where the brigade commander can
18 ask very important questions. If he's not satisfied either with the orders or the
19 mission or whatever, he will then have an opportunity to talk to his boss who is
20 deploying him elsewhere one-on-one. He will have the opportunity to hear from the
21 boss's staff, Chief of Staff, logistics staff, intelligence staff, you know, there and there.
22 He can query the instructions being given to him. Not query because he doesn't like
23 them, but to clarify, you know, the instructions so that when he leaves he's quite
24 confident that he understands what the division commander, you know, wants him
25 to go and do and how he's going to do it.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 Q. Now, during this operational planning process that you have just described,
2 generally are communications spoken about? "How are we going to communicate
3 in the field?", that type of thing?

4 A. Yes, in that order there will be, you know, logistics and communication, you
5 know, instructions issued, written instructions. If, you know, you are going to be
6 deployed in -- further than where you normally are and the communication
7 equipment that you have as a brigade commander to the division may not be
8 sufficient, again that is when you have the opportunity to tell the commander "Sir,
9 you are deploying me in such-and-such a place. The communication guidance that I
10 have will not be sufficient for my area. I need better equipment or I need equipment
11 which will ..." and it will be resolved, you know, there and then.

12 Q. If you're using unsecure radio communications and you have a certain code,
13 code words and call signs, would that be the time to co-ordinate those issues during
14 the operational planning process?

15 A. Exactly. All those will be identified during that time and there will be
16 instructions also worked out and issued to you on the new call signs, or the codes,
17 that you are going to use or the type of, you know, ciphering that may be, you know,
18 put in place, so that when you go out there your information is not leaking to, you
19 know, other people. Yes, that is the time.

20 Q. And you briefly mentioned this, sir, about the operational planning process,
21 that that is also the time where you would talk about co-ordinating actions,
22 co-ordinating with other units that fall outside of your command. How would you
23 go about doing that, co-ordinating actions?

24 A. Clear instructions will be issued how you are going to co-ordinate with the
25 other forces that may be working side-by-side with you or will be on your flanks,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 clear instruction how you are going to do that, whether you are going to attach your
2 own officers to their headquarters so that you are all the time in touch with them, or
3 they are the ones who are going to attach officers to your headquarters so that they
4 are in touch with you.

5 Instructions will be issued there and then, and then you will be told even when this
6 co-ordination should begin, if it should begin, you know, even before you deploy, or
7 as and when you deploy, it will be clear -- made quite clear. You don't deploy
8 without, you know, having that co-ordination, because if you are going to work with
9 other forces, either you're supporting them or they're supporting you or they are
10 independently, you know, doing what they are supposed to do, but within your area
11 of responsibility, or close to your area of responsibility, it is absolutely important that
12 you co-ordinate with them because you could have friendly-fire casualties.

13 Q. What impact might it have on co-ordination if you haven't co-ordinated radio
14 frequencies, for example, if you're communicating by radio?

15 A. You will not be able to communicate to anybody, other than yourself. It will
16 be chaos. It's like the village of Babel, where everybody was speaking a different
17 language you don't understand. There you will just not be able to communicate
18 with the people you are supposed to communicate with, and that is a disaster.

19 MR IVERSON: Excuse me. Madam President, I propose at this point we break for
20 lunch. Thank you, sir.

21 THE WITNESS: Thank you.

22 PRESIDING JUDGE STEINER: Mr Witness -- no problem. Mr Witness, as the
23 Prosecution said, we are going to break now, our lunch-break. You can not only
24 have lunch, but take some rest. Our interpreters are entitled to a longer break as
25 well. It's 1 o'clock. We will resume at 2.30.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Private Session)

ICC-01/05-01/08

- 1 I ask, please, court usher to take the witness outside the courtroom.
- 2 (The witness stands down)
- 3 PRESIDING JUDGE STEINER: The hearing is suspended.
- 4 THE COURT OFFICER: All rise.
- 5 (Recess taken at 1.00 p.m.)
- 6 (Upon resuming in open session at 2.38 p.m.)
- 7 THE COURT USHER: All rise. Please be seated.
- 8 PRESIDING JUDGE STEINER: Good afternoon and welcome back.
- 9 I ask, please, court usher to bring the witness in.
- 10 (The witness enters the courtroom)
- 11 PRESIDING JUDGE STEINER: Good afternoon and welcome back, Mr Witness.
- 12 THE WITNESS: Good afternoon, madam.
- 13 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?
- 14 THE WITNESS: Ready.
- 15 PRESIDING JUDGE STEINER: Mr Iverson, you have the floor.
- 16 MR IVERSON: Thank you very much, Madam President. If I could just -- I believe he
- 17 is doing it right now, but if I could ask the court officer to lower the -- just the middle
- 18 blinds, and also, Madam President, if I could just request briefly to go into private session
- 19 once more?
- 20 PRESIDING JUDGE STEINER: Court officer, please let's go briefly into private session.
- 21 (Private session at 2.41 p.m.) * Reclassified as Open session
- 22 THE COURT OFFICER: We are in private session, Madam President.
- 23 MR IVERSON: Sir, the reason I asked for private session is that -- so no one outside the
- 24 courtroom can hear what we are saying right now is just to ask you, instead of using the
- 25 word (Redacted) for (Redacted) as we go into more questions about the report, I

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Private Session)

ICC-01/05-01/08

1 propose that we use the word "counsellor" and the reason is it's a little bit more neutral.

2 You've already said that a (Redacted) is a (Redacted) so it might be a dead give-away

3 if you say (Redacted) That might be too close to the actual words (Redacted)

4 So I propose that you just use the word "counsellor" when you wish to speak about

5 (Redacted) and again if you wish to say any other names we can always request to go

6 into private session.

7 Madam President, that's all I had for private session.

8 PRESIDING JUDGE STEINER: Court officer, we can turn back into open session, please.

9 (Open session at 2.42 p.m.)

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

11 MR IVERSON:

12 Q. Sir, if you look at your military expert's report -- and, again, this is

13 CAR-OTP-0064-0547. If you turn to the eleventh page, at paragraph 29, you state the

14 following, "In my opinion, the overall command of MLC forces borrowed

15 heavily ..." -- page 11, 29. Oh, I see you're there. Thank you, sir.

16 I'll start over, "In my opinion, the overall command of MLC forces borrowed heavily from

17 the conventional military structure and chain of command. This is normal practice by

18 rebel forces intent in overthrowing legitimate authority through armed rebellion. While

19 MLC portrayed a political organisation in a military leadership, the overall command

20 structure was vested in Jean-Pierre Bemba, who was both a political and supreme military

21 leader."

22 Sir, I'd like to ask how did you come to that conclusion?

23 A. Reading through the evidence and the documents that I was given, I was able to

24 gather the information that actually this is what happened. Mr Bemba was the overall

25 leader of the MLC organisation, at the political level and at the military level, and

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 whatever the military was doing would be done in accordance with his instructions; all of
2 these instructions.

3 Similarly, he was the political leader of the organisation, of the whole organisation. He
4 chaired, you know, various meetings, political meetings, with his political leadership.
5 He also chaired, you know, the military leadership meetings, issued instructions and they
6 were followed.

7 He was the overall, therefore, commander of the entire MLC, you know, organisation,
8 whether it was military or political. That is the way they, you know, reacted.

9 Whenever military commanders, you know, needed his advice, his concurrence, they
10 went all the way to him, you know, at the top. He was the top. There was no other
11 commander above the president, you know, as it were. He was the top
12 commander-in-chief.

13 Q. Sir, could you cite to specific information that was provided to you in order to
14 determine how you came to that conclusion?

15 A. Yes. There are two very high-ranking individuals, whose evidence I, you know,
16 had sight of. One was the counsellor and the other one was -- would you like me to go in
17 private session?

18 Q. I believe that the name you're about to state is the one exception to the rule we have
19 about identities.

20 A. Okay.

21 Q. And so I don't think it's necessary to go into private session.

22 A. Okay. Yeah, the other one was (Redacted)

23 MR IVERSON: Madam President, could I ask to continue just this portion of the
24 examination in private session?

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

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 (Private session at 2.48 p.m.) * Reclassified as Open session

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

3 MR IVERSON: I apologise to the Court. That was completely my fault. I anticipated a
4 different answer. It would have been more prudent to go immediately into private
5 session.

6 Q. Sir, not a problem for you. The person you did name happens to have a protected
7 identity. How -- based on the information you read from these two individuals, how
8 then did you come to this conclusion? What in their statements did you rely on?

9 A. The statement, for example, the statement of deployment of troops, outside the DRC
10 into another country, that is a major decision which any commander, whether he's a
11 political head of a military organisation, or a military commander cannot, you know,
12 sanction, right, without, you know, a proper evaluation by the staff, by, you know, other
13 commanders and then order that, you know, deployment singly.

14 I read in some of the documents that the decision to deploy was made by the
15 commander-in-chief, and the commander-in-chief alone, and there is no way he could
16 have made that decision if he was not -- he was not the top man, the top man, and that is
17 being given, you know, the information is being given by his very top-most advisers, both
18 political and as well as military leadership, who are not in the picture at all, or if they, you
19 know, were in the picture they were told at the time when the decision had already been
20 made and they're being told "Okay, we are deploying. Get on with it."

21 Q. Sir, is there anything particular about (Redacted) statement that you would like
22 to express to the Court while we're still in private session, because I do intend on asking
23 the Court to -- to go back into open session for these matters?

24 A. Yes. (Redacted) asserted in the -- the evidence that I read that the decision to
25 deploy troops, the appointment of senior officers, was the prerogative of the

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 commander-in-chief.

2 MR IVERSON: Madam President, could I request to go back into open session now?

3 PRESIDING JUDGE STEINER: Court officer, please turn back into open session.

4 (Open session at 2.53 p.m.)

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

6 MR IVERSON:

7 Q. Sir, what does it mean to have sustained command and control?

8 A. Sustained command and control means it's a command and control which can be
9 maintained throughout any phases of deployment or operation without things falling
10 apart. It is one that is always there so that the commanders at the highest level and
11 commanders at the lowest level are all the time in contact throughout the chain of
12 command without it breaking, you know, down. In other words, you losing control
13 because you are no longer in charge. That's what "sustained" means. It can be
14 sustained for a longer period; it can be sustained for a shorter period, depending on how,
15 how long that particular operation is, you know, planned for.

16 Q. Sir, you also mentioned in paragraph 29 of your report that Mr Bemba regularly
17 issued orders directly to commanders in the field and occasionally transmitted wire and
18 electronic messages through to his deployed subordinate commanders. Can you also say
19 how you came to this conclusion, keeping in mind we're in open session?

20 A. The evidence that I read, the documents that I read, clearly stated that the president
21 had assured means of communication from his headquarters to the brigade which was
22 deployed in the CAR. He was able to use those communication to be in touch with his
23 commanders in the field. Similarly, he had the means to communicate through the staff,
24 that is through the counsellor, through the staff, and his instructions would be sent all the
25 way down to the troops in the field, and vice-versa.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 Q. And what significance, if any, would that have on Mr Bemba's ability to have
2 sustained command and control, as you've just described it?

3 A. That puts him in a very good position to be in touch with his units, wherever they
4 were. On a daily basis he can pass information, he can monitor what they are doing and
5 have a clearer picture for what is happening in the field, by having those communication.

6 Q. I'd like to ask you a few questions about communications. Have you in your career
7 had the opportunity to receive training on radio communications used in the military?

8 A. Yes. The first thing any commander gets from the lowest command, platoon
9 commander, is how to communicate on the radio. If you are a company commander, the
10 same thing. If you are a commanding officer, the same thing. If you are a general like
11 me, the same thing.

12 You don't have to be taught all the way until when you become a general, because once
13 you already, you know, have the feel and the types of communication that are available to
14 you, the first thing you want to know is how they work. If you don't want to use the
15 communication, in other words you yourself, you have communicators available to you.
16 You have staff available to you.

17 So whatever information you want, even if you yourself, you are not on the radio to talk
18 to the other, you know, people wherever they are, you just ask for that information. If
19 you have information you want to pass to them, you have people around you; just tell
20 them "This is what I want: Instruction to be passed on to so-and-so." Either they will
21 type it, either they will do what and confirm to you that, yes, the information has been
22 passed, but as a commander you have all the gadgets around you. You cannot sit back
23 and say, "No, I can't communicate with my brigade commander, or battalion
24 commander," for whatever reason.

25 Q. If a brigade uses radios in a -- on one frequency to talk with their battalions and

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 there is one frequency in the network used, would anybody using that frequency be able
2 to hear the brigade's transmission then?

3 A. If it is one frequency, everybody will listen. If they have that frequency and they
4 have that type of radio that is similar, or which can communicate on that frequency, yes,
5 everybody will listen, those who have got that means, yes. In fact, in some instances
6 commanders would like to have that kind of communication available to them so that,
7 even if they themselves don't really use that means to communicate with people, but then
8 they will be listening in, into the communication of their other -- their other units, or
9 battalions, or whatever, just in case.

10 Q. In looking at command and control issues, were you aware that there's a legal
11 standard - legal definition - of "command and control"?

12 A. Yes, there is a legal standard and requirement for a commander, you know, to -- you
13 know, first of all to be in the command and to be in control of the troops and equipment
14 that are given to him, yes.

15 Q. I'm sorry, I probably miscommunicated that question a little bit, sir. When you
16 looked at command and control did you look at it from a military doctrinal point of view,
17 or a legal point of view?

18 A. I looked at it at the military doctrinal point of view, what a commander in a military
19 sense would be and what means he has for control of, you know, his organisation. Yes, I
20 didn't look at it on -- I'm not a lawyer, I'm sorry, so yes.

21 Q. No problem at all, sir. And you did mention in your expert report on page 2 that
22 you make no comment on the criminal responsibility of the accused?

23 A. Absolutely.

24 Q. Very well, sir. Sir, what significance, if any, did you attach to evidence of
25 Mr Bemba's presence in Central Africa at various times?

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 A. If I understand you correctly, his presence in Central African Republic, his troops'
2 presence in Central African Republic, was in the aid of or invited by the President of the
3 Central African Republic at that particular time to help them deal with a rebellion within
4 their own country. As a military man, that's the way I see it. He deployed his troops to
5 be in aid of another country, president, to help them deal with an insurrection in their
6 own country.

7 Q. Sir, I'm just going to read to you a transcript here, and this is from information that
8 you yourself did not review. This is from transcript 188, page 5, lines 10 to 13 in the
9 English, and on the French, page 5, lines 20 to 23, and the witness says, "From time to time,
10 he was on-site in the Central African Republic", "he" being Bemba. What significance do
11 you attach, if any, to Mr Bemba being present from time to time in Central Africa?

12 A. As a military commander, when you have your troops away from your immediate
13 command or location it behoves of you that you must visit them constantly to review the
14 progress of whatever they're doing, to inspect them, inspect them, and at close quarters be
15 in a position to pick up anything that you may not be able to get while you are far away
16 from, you know, the troops, look at their welfare, discipline, equipment, because as and
17 when you deploy troops outside equipment suffers wear and tear, morale suffers because
18 people -- soldiers are very far away from their families, discipline might even, you know,
19 be a major problem because they are in a very strange, you know, land. So that is the
20 responsibility of the command, or the commander, to be close to where your troops are,
21 see them and encourage them, for example. And especially if they are deployed in a
22 different country, it will also give you the opportunity to interact with the leaders of that
23 particular, you know, country.

24 Q. Sir, does that information that I just provided impact at all your opinion with regard
25 to who had command and control in this conflict?

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 A. That actually reaffirms my assertion that the commander-in-chief had every means
2 to gauge -- to engage with his troops, whether they were in DRC or outside DRC, and he
3 was a commander that does not only sit back and let the others do the job for him, but he's
4 the commander who leads all the time and is able even to be in the front line.

5 Q. And I'd like to ask you a similar question with regard to Mr Bemba's distance from
6 the Central African Republic when he was not in that country, so the distance from
7 Gbadolite to Bangui and other locations where the MLC were located. Does that factor
8 play a role in your analysis of command and control?

9 A. The distance is really immaterial if the commander has the means to be, you know,
10 in contact with his troops. It's better if you are close, you know, to your troops, but if
11 you have the means to monitor, figure out what they're doing, control them, the distance
12 does not matter. It doesn't matter at all. There are commanders who are thousands of
13 miles away from their front line troops and they are still in control even today, as we talk.

14 Q. You mentioned -- before the lunch-break you spoke quite a bit about staff in general,
15 and I'd like to ask what role, if any, does a division commander's staff play in the
16 commander's ability to assert command and control over units?

17 A. A division staff plays a major role, a major role in ensuring that all this we are
18 talking about, communication, gauging what is happening, advising the commander,
19 passing information, finding resources, is all done faultlessly. If the division staff is
20 doing its work properly, the commander, you know, finds that everything, you know,
21 moves as clockwise. The burden of him all the time having to deal with nitty-gritty, or
22 problems that can be very pressing on a commander, is lessened. That's the reason why
23 you have a staff. They do most of their work for you and you give the guidance. They
24 do most of the works for the troops that are below you, because they will answer some of
25 their questions without even having to come to you. They will ensure that the resources

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 that have been placed to ensure that the troops are well-catered for are actually given to
2 them.

3 Q. Sir, I'd like to ask you about a hypothetical situation that's not found in evidence in
4 this case, but if a brigade is detached from a division and then attached to a different
5 military unit under a different command structure and under a different commander,
6 what would the possible features of command and control -- what would the possible
7 features look like? What would you look to see to see if there's now command and
8 control under the new unit?

9 A. In such a situation, there could be two features: One, the brigade that is detached
10 to another command, another area, will be put under command of that particular force, if
11 that force is a bigger force. In other words, it cannot be put under another brigade. It
12 will be put under another division in that particular area, if there is an agreement between
13 the two countries or the three forces.

14 However, in such a situation, there will still be the home country's overall command over
15 that particular unit for obvious reasons. You cannot detach your men and women,
16 equipment, to go and be in command of another country completely so that you have no
17 control over them, because you are answerable to your own country. Those men are
18 answerable to their own country.

19 They have families back at home, they have a government back at home, and
20 governments don't just give their men and women to other countries and say "Well, we've
21 given them to you, you are in charge. Let them do what you want them to do," and you
22 forget about it. It's unheard of.

23 There are countries which do not, do not even do that. They would provide troops,
24 detach them into another country but they remain under the command, chain of
25 command of their own country.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 Now, the second scenario is the one I am saying: That they would go there, they will be
2 working closely with that particular organisation, country, you call it whatever, army, but
3 they still have their chain of command from the commander on the ground directly back
4 through their normal chain of command.

5 Q. Sir, is this precisely the situation you described to the Chamber earlier with regard
6 to the structure of the command in Sierra Leone for the UN peacekeeping mission?

7 A. Exactly, that's what it is.

8 Q. Now, the same scenario, if a brigade is detached and then attached to a new
9 commander, does the new commander staff now take care of that brigade's needs in terms
10 of personnel, intelligence, operations and logistics?

11 A. It is expected that that is what would happen. In other words, that division in
12 which this new brigade is being infused into would take over the responsibility of
13 co-ordinating all the requirements that that brigade, you know, needs. That is if they are
14 able to do that and if they have the means to do that. They have to have the means to do
15 that. They have to have an agreement signed which calls upon them to look after this
16 other brigade.

17 Q. I'd like to ask you about something said in Court. This was in open session,
18 transcript 109, English, and 109, French; pages 9 and 10 in English, and pages 10 and 11 in
19 French by Witness 63.

20 PRESIDING JUDGE STEINER: Yes, Mr Haynes.

21 MR HAYNES: Your Honour, we've had no notice that this aspect of the record of the
22 trial is going to be put to the witness and his opinion is going to be sought on it. It seems
23 to me that this practice is wholly inconsistent with your ruling of 2 December, ruling 1981,
24 paragraphs 10 to 14. It's wholly prejudicial to the Defence. We're entitled to 30-days'
25 notice of this.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 PRESIDING JUDGE STEINER: Mr Iverson.

2 MR IVERSON: Madam President, the Defence counsel asserts that they are not on notice.

3 Well, certainly they were in the courtroom when this happened. They were -- they knew
4 that this witness's statement was also reviewed by this expert, and the notice comes in the
5 form of actual testimony.

6 They themselves know that information that comes in the form of testimony may be
7 susceptible to analysis by an expert by their continued motion that this expert testify after
8 the close of all evidence. So it's a little bit counter-intuitive that they are now objecting to
9 testimony but at the same time arguing that testimony is what this expert needs to
10 analyse.

11 PRESIDING JUDGE STEINER: The written statement of this witness whose testimony
12 you are referring to was part of the documents analysed by the expert in its first report?

13 MR IVERSON: That's correct, Madam President.

14 (Trial Chamber confers)

15 PRESIDING JUDGE STEINER: Since the statement of the witness was part of the
16 materials that were given to the analysis of the expert, and for the preparation of his first
17 report, the Chamber allows the question. Mr Haynes.

18 MR HAYNES: But surely that can only be the statement. Your Honour, I don't wish to
19 read back paragraphs 10, 11 and 12 of your decision of Friday, but it seems to us that to
20 allow an expert witness at this stage, on no notice, to consider material - albeit from the
21 same source - which the Defence have had no advance notice he's going to consider in his
22 evidence, is wholly inconsistent with your decision of 2 December.

23 And we do observe that this witness has already been asked questions based upon the
24 testimony of Witness 213, whose statement nor testimony did he have at any stage. And
25 it seems to me that a practice is being developed in the course of the examination of this

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 witness that is not only inconsistent with your earlier decision, but it's actually
2 contemptuous of it.

3 PRESIDING JUDGE STEINER: Mr Haynes, the Chamber has already decided on the
4 interpretation to be given to paragraphs 10, 11 and 12 of the decision of Friday. The
5 question is allowed.

6 MR IVERSON: Thank you, Madam President. I won't dignify the last objection with a
7 response.

8 Q. Sir, Witness 63 testified that from PK12 the MLC were using kadogo - or
9 children - as scouts, to scout out potential enemy. What does this indicate to you in
10 terms of intelligence support?

11 A. What it meant, or what it means to me is that they were limited in developing
12 intelligence about the actions of the enemy, or positions of the so-called enemies, and they
13 had to resort to sending children to go and gather information and come back and give it
14 to them. They did not have any other means by which they could, you know, get
15 information.

16 MR IVERSON: I'm sorry, excuse me just for one moment, Madam President.
17 (Prosecution counsel confer)

18 MR IVERSON: Madam President, if I could, I'm just a little confused as to the
19 Chamber's ruling. Is it -- are you limiting questions on the transcripts just to the
20 statements that the expert has reviewed or -- because it seemed in your - I'm sorry, I don't
21 have the decision right in my hands - decision 1981 that the Prosecution would also be
22 allowed to ask questions regarding Witness 213's testimony, or am I incorrect in assuming
23 that?

24 PRESIDING JUDGE STEINER: Mr Iverson, the Chamber allowed -- or better saying, the
25 Chamber did not allow the Prosecution to base its questioning in any of the new

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 documents presented to the witness in order for the witness to compile its second report,
2 only the documents used by the witness to prepare its first -- his first report. This is the
3 Chamber's decision.

4 The Chamber is giving a broader interpretation, allowing the Prosecution to also put
5 questions from the transcript of the testimony of these very same statements, witnesses,
6 not new ones that Defence was not on notice that the expert would be called to give his
7 opinion on it.

8 MR IVERSON: Thank you very much for that clarification, Madam President.

9 Q. Sir, based on the information you reviewed, could you give an overview of the
10 logistical situation in the Central African Republic at the time?

11 A. In my view, the logistics was a grey area, how it was being provided for the brigade
12 that was deployed there. It appeared to me that on deployment the brigade came with a
13 fair amount of logistics that they needed to deploy and perhaps to begin the operation.
14 The resupply system was -- in my view, was lacking. In other words, there is no
15 information that I got that clearly stated the logistics chain of command and the means by
16 which it was going to be provided for.

17 For example, there was evidence that the brigade commander constantly was moving to
18 the Central African Republic leadership to ask for logistics: Logistics which included
19 money to buy, you know, whatever he wanted to; transport, to get transport from the
20 Central African Republic; radios, to get radios from African -- Central African Republic.
21 That means there was shortages. Here was a brigade deployed with inadequate means
22 of logistical supply, and it depended on the brigade commander taking an initiative
23 perhaps to go and look for what he needed to sustain his men in the field. There is
24 nowhere on the evidence that was given to me where I was able to pinpoint that it was the
25 responsibility of the Central African Republic to provide everything that the brigade

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 needed, or it was shared between the Central African Republic and the home country, in
2 other words the DRC or Gbadolite, because in a normal situation there would be an
3 administrative order, an administrative chain of command, regular resupply which would
4 sustain that operation for as long as it is there.

5 Q. Sir, in a -- to put to you another hypothetical situation, if the brigade commander
6 consistently requests items for resupply to, for example a Chief of Staff, what might that
7 indicate about the readiness of the brigade, but also the Chief of Staff's ability to resupply?

8 A. If a brigade commander is always asking for things, "Please give me this. Please
9 give me this," that means there is no system to sustain him in the field. It puts a lot of
10 burden on him, but at the same time it means whoever he's asking to provide him with
11 things is perhaps incapacitated. He's not able, you know, to provide, because you only
12 need to send one signal back and say, "I need ten tonnes of fuel to be supplied," and you
13 don't ask again because you will get a reply, "Fuel is on the way," or "It is provided for,"
14 but if you continue asking it means you're really under-supplied, or you are not able to
15 sustain your operations wherever you are because you don't have it.

16 Q. I'd like to talk to you, ask you questions, now about orders - military orders - and in
17 thinking about the orders process going from, for example, the division commander lower,
18 what is the importance in using the chain of command?

19 A. The importance of using chain of command infuses clarity and discipline in passing
20 instructions so that you don't get instructions from somewhere which your immediate
21 commander does not have, or the staff do not have that information, because at the end of
22 the day, if instructions are issued from the division and it bypasses the Chief of Staff for
23 example, although he's not a commander, then it means he's not in the picture of what the
24 division commander wants the brigade commander, you know, to do, and when the time
25 comes when the brigade commander wants to check back he gets to the Chief of Staff who

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 tells him, "I have no -- you know, no instruction or knowledge about why you are moving
2 troops from point A to point B, or whether we should have known to ensure that the
3 logistics that you need are available."

4 Q. Would it be the division commander's prerogative how he would exercise
5 authority -- chain of command orders?

6 A. There is only one way for, you know, a division commander, you know, to ensure
7 that his orders and the instructions are followed, you know, correctly, and that is to pass it
8 through the chain of command. He can go down to a lower commander, but ensures
9 that the chain of command is still informed of all the decisions or the instructions that he's
10 issuing to a lower command. In normal circumstances, one way of communication from
11 the top, through the chain of command, all the way down. In fact, it is better for the
12 lower commanders to get instructions from their next commander, rather than hear it
13 from maybe two steps ahead, or one step ahead, and then go back to their immediate
14 commander and ask, "Sir, do you know this is what we're supposed to do?" It
15 completely boggles down the military and the military doesn't do things like that and it
16 creates indiscipline. If there is a way of doing things like that whereby the higher
17 commander bypasses, you know, the normal chain of command, it creates a lot of
18 problem in the military.

19 Q. What type of indiscipline do you refer to when you talk about it could cause
20 indiscipline?

21 A. First of all, you want everybody in the chain of command to do as you do and, if it is
22 a known practice that orders are passed through a chain of command, you would be the
23 last person who is expected, you know, to bypass that same instruction because you are
24 the commander. You are the commander who wants a platoon commander to get his
25 instruction from his company commander, not from the commanding officer, the CO.

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 Now, if you are a brigade commander or a division commander then you go all the way
2 down, you know, to a company, or a battalion, it means probably you don't have
3 confidence in the -- your other commanders who should, you know, be in the know of
4 what you are trying to do and that creates a major military indiscipline.

5 Q. So it comes down to making sure that everyone in the chain of command is
6 operating in concert?

7 A. Exactly.

8 Q. What significance did you attach in your analysis to radio communication, its
9 reliability and the existence of satellite phones, the ability to communicate over satellite
10 phones?

11 A. You can communicate over satellite phones if you are able to communicate, but it is
12 an open means of communication which anybody else will be able to listen in to what you
13 are doing. That is one feature which satellite phones is known for, unless you can
14 scramble them. Scrambling them also costs a lot of money and not many people, you
15 know, are able to do that. The same with HF radio, for example, what we call HF radio,
16 high frequency radios. They will give you a longer -- a longer means to communicate.
17 In other words, you can communicate from here to -- on HF radio maybe from here all the
18 way to Central African Republic, but again it is also open -- more or less open channel if
19 people have your frequencies. The weather will interfere with them. Very high
20 frequency radios are very good, but limited in line of communication. If there is
21 building -- if there are buildings or hills, you may be having them, you can't communicate.
22 So they have limitations. Radios and satellite phones, they have their limitations. You
23 can use them, but they have their limitations.

24 Q. Could you analogise HF radio to AM radio, what's commonly known as AM radio,
25 and VHF to FM radio? Would that be a fair analogy?

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 A. Yes. That is a fair analogy, yes.

2 Q. And you mentioned this briefly this morning, but again on orders, what is the
3 importance of a commander to clarify his intent, as you put it, and to make orders clear to
4 the subordinates?

5 A. It is absolutely important that a commander issues his orders in a very clear
6 language that the troops, or his subordinates, understand so that they don't have any
7 doubts at all as to what their mission is all about; what the commander wants them to do;
8 how, when and with what?

9 If there are any limitations on the orders, they are all captured in that orders. For
10 example, you will operate in this area, you won't go beyond this particular line or feature.
11 You will be in that operation for how many days, this kind of thing. You may do this,
12 and not do this.

13 How you are going to react to -- for example, if you are in a place where there will be
14 movement of civilians, for example, what do you do about the movement of civilians?
15 Those civilians will move when they see troops being deployed. Even in their own
16 countries, in your own countries, if you are going to be deployed in support of civil power,
17 for example, civilians are there, they will be moving. Now, what is your responsibility to
18 the civilians?

19 All those are captured and they have to be very, very clear so that you avoid any future
20 complaints against the troops. You avoid any -- what you would call collateral damage
21 to buildings, or civilian, you know, private property, including killing civilians, you know,
22 through bombing or, you know, cross-fire or things like that. You have to be very clear.

23 Q. You mentioned it's necessary to have clear orders especially when dealing with
24 civilians on the battle-field. What types of training have you undergone and what types
25 of training have you conducted in order to address this issue of civilians on the battle-field

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 with other soldiers?

2 A. When soldiers are being inducted, being trained to become soldiers, one very
3 important thing that must be put into their head is that they are first and foremost good
4 citizens. They have to be good citizens, and they have to be careful, you know, when
5 they are engaged into any confrontation which brings them close to civilians.
6 They have to protect the civilians. That's why they're soldiers. They have to protect
7 their borders. That's why they're soldiers. And they are not only protecting the borders,
8 which is geographical borders, but they are protecting the people in their country. That's
9 why they are there.

10 So we try to instill into our servicemen and officers not only on the basic training, but
11 even in the other training, higher training, your responsibility towards the ordinary
12 citizens, you know, of the country. What you may do and what you may not do.
13 Offences against the civilians are always, you know, made -- soldiers are always made
14 aware of because there are offences that sometimes soldiers do commit against civilians
15 and that is why the military is very, very careful in ensuring that in their training all that
16 is inculcated.

17 They are also made to understand that if you did A, B, C, D against the civilians you will
18 not get scott-free just because there was war or because there was an invasion, there was
19 instability in your own country, you will be held responsible and not only you but also
20 your commanders. You as a commander, you are responsible for ensuring that those
21 soldiers behave in the manner that is called upon, or their training calls them upon.

22 Q. In inculcating, as you put it, soldiers with this value system, is it possible to just read
23 them a few rules and be done with the training or does it require something more than
24 that for soldiers to understand how to behave?

25 A. There will always be a code of conduct. A booklet, it can be in a small booklet form,

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 which every soldier should have, or in a place whereby he can, you know, constantly
2 remind himself by looking at the code of conduct. He -- it can also be in a form of
3 written instructions, when soldiers are moving from peacetime location, going into a
4 volatile area. Even when you go on peacekeeping mission, like I did, all my soldiers
5 from Kenya went for training prior -- in Kenya, prior to being deployed in peacekeeping
6 mission, and all that we are talking about was reinvigorately, you know, given to them.
7 "You are going into foreign land. You are going to find people with different
8 background, cultures, you must you must respect their cultures. You must make sure
9 that you do not do the following things." So to answer you, yes, there is a code of
10 conduct and that code of conduct is normally in a written form and the soldiers are
11 expected to live within those code of conduct.

12 Q. During training did you ever use simulations or role-playing with regard to civilians
13 on the battle-field?

14 A. Yes. The closest a soldier can learn to shoot at an enemy and kill, or he has to arrest,
15 you know, a civilian, is to play soldiers. Play civilians, sorry. You will get some
16 soldiers, not civilians, who will be dressed in civilian dresses, and pretend either that they
17 are the enemy, or they are the refugees or IDPs moving from point A to point B and the
18 soldiers who are being trained, who have got the weapons, will be checked on how they
19 deal with the civilians. Civilians who are supposed to be enemy, and civilians who are
20 supposed to be just normal IDPs or people who are in their homes, and things like that.

21 Q. And did you, as commander, actually supervise any such training?

22 A. I did. I did.

23 Q. Does that mean that you were actually on-site watching the training proceed?

24 A. Without watching it yourself, you'll never know whether it has been carried out
25 correctly, and I did. I made sure that the training that matters, I personally participated,

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 even if I was not the one training them but I would go and see and see to assure myself
2 that these soldiers I'm going to deploy, you know, somewhere, wherever it was, are
3 well-trained and they are with it. Otherwise I could probably leave it to my juniors to go
4 and train, to come and report back to me, "Sir, everybody is well-trained," and then a
5 disaster occurs, I will be responsible for that disaster because I did not supervise, because
6 I am the commander.

7 Q. Thank you very much, sir. Madam President, I propose that we break for the day.
8 I realise that there are a few more minutes but I would like to go into another section of
9 testimony tomorrow morning. Thank you.

10 PRESIDING JUDGE STEINER: Thank you, Mr Iverson. Mr Witness, I think it's enough
11 for today. We will adjourn and resume tomorrow morning at 9.30. Thank you very
12 much. I ask, please, court usher to take the witness outside the courtroom.

13 (The witness stands down)

14 PRESIDING JUDGE STEINER: Before we adjourn, I have two points to address. First,
15 Mr Haynes, please. On page 78, line 20, you stated the following: "We do observe that
16 this witness has already been asked questions based upon the testimony of Witness 213
17 whose statement nor testimony did he have at any stage and it seems to me that a practice
18 is being developed in the course of the examination of this witness that is not only
19 inconsistent with your earlier decision but is actually contemptuous of it." It's not
20 necessary to be done now, but I would very much appreciate if you inform the Chamber
21 in which part of the transcript you found that the Prosecution put questions based on the
22 testimony of Witness 213.

23 MR HAYNES: Certainly.

24 PRESIDING JUDGE STEINER: Thank you very much.

25 The second point, the Chamber has noted -- thank you, Mr Haynes. The second point is

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0219

1 that the Chamber has noted some material errors in the Prosecution filing 1946 of
2 28 November 2011. At paragraph 2, the so-called supplementary expert report -- record
3 can be found at CAR-OTP-0066-0002 and not as stated there CAR-OTP-0066-0017. At
4 paragraph 3, the third additional document can be found at CAR-OTP-0066-0063, and not
5 CAR-OTP-0066-0062, and then accordingly the Prosecution is instructed to file a
6 corrigendum.

7 Having said that, I would like to thank very much the Prosecution team, the legal
8 representatives of victims, the Defence team, Mr Jean-Pierre Bemba Gombo. Thank very
9 much to our interpreters, court reporters. We will adjourn for today and resume
10 tomorrow morning at 9.30 in the morning. The hearing is adjourned.

11 THE COURT USHER: All rise.

12 (The hearing ends in open session at 4.00 p.m.)

13 RECLASSIFICATION REPORT

14 Pursuant to Trial Chamber III 's Orders, ICC-01/05-01/08-2223 and
15 ICC-01/05-01/08-3038 and the instructions in the email dated 3 February 2014, the
16 version of the transcript with its redactions becomes Public