

Trial Hearing
Witness: CAR-D04-PPPP-0053

(Open Session)

ICC-01/05-01/08

- 1 International Criminal Court
- 2 Trial Chamber III - Courtroom 1
- 3 Situation: Central African Republic
- 4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
- 5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki
- 6 Trial Hearing
- 7 Friday, 17 August 2012
- 8 (The hearing starts in open session at 9.37 a.m.)
- 9 THE COURT USHER: All rise. The International Criminal Court is now in session.
- 10 Please be seated.
- 11 PRESIDING JUDGE STEINER: Good morning.
- 12 Could, please, court officer call the case.
- 13 THE COURT OFFICER: Thank you, Madam President.
- 14 Situation in the Central African Republic, in the case of The Prosecutor versus
- 15 Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
- 16 PRESIDING JUDGE STEINER: Thank you very much.
- 17 Good morning, welcome, the Prosecution team, legal representatives of victims,
- 18 Defence team, Mr Jean-Pierre Bemba Gombo. Good morning interpreters, court
- 19 reporters.
- 20 We will continue today with questioning of Witness 53, expert witness for the
- 21 Defence, starting with its questioning by Prosecution.
- 22 I ask, please, court usher to bring the witness in.
- 23 (The witness enters the courtroom)
- 24 WITNESS: CAR-D04-PPPP-0053 (On former oath)
- 25 (The witness speaks French)

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- 1 PRESIDING JUDGE STEINER: Good morning, General Seara.
- 2 THE WITNESS: (Interpretation) Good morning, your Honour.
- 3 PRESIDING JUDGE STEINER: We hope you had a restful night and that you are
- 4 ready to continue with your testimony?
- 5 THE WITNESS: (Interpretation) I'm ready.
- 6 PRESIDING JUDGE STEINER: General, I need to remind you that you are still
- 7 under oath. Do you understand that, sir?
- 8 THE WITNESS: (Interpretation) Absolutely.
- 9 PRESIDING JUDGE STEINER: And once again remind you to speak slower than
- 10 normal and to give the five seconds after a question before you start answering to it in
- 11 order to allow our interpreters to do their job. Is that fine with you, sir?
- 12 THE WITNESS: (Interpretation) I shall try to be disciplined.
- 13 PRESIDING JUDGE STEINER: You are very disciplined, General. We have no
- 14 doubt about that.
- 15 Today we will start with your questioning by the Prosecution, and for that purpose I
- 16 give the floor to Mr Iverson.
- 17 You have the floor, Mr Iverson.
- 18 MR IVERSON: Thank you, Madam President, your Honours.
- 19 QUESTIONED BY MR IVERSON:
- 20 Q. Sir, my name is Eric Iverson and I am a trial lawyer representing the Office of
- 21 the Prosecutor and I will be questioning you today and probably into next week.
- 22 The questioning will take some time, so I ask you to please listen to the questions
- 23 carefully and try to answer precisely and concisely. Sir, do you think you'll be able
- 24 to do that?
- 25 A. I think so, yes.

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1 Q. Sir, many times during your testimony so far you've stated that you know X, Y
2 and Z, or Mr Kilolo asked you if you know X, Y and Z. Just to be clear, your
3 knowledge comes from reading statements, documents and interviewing ten
4 witnesses; is that an accurate assessment?

5 A. Yes, that's right. I did not have other sources of information, nothing other
6 than the documents that were provided to me and the few witnesses that I was able to
7 interview.

8 Q. So when you say that you know something, you're really saying, "Based on the
9 documents and the evidence I reviewed I think"; is that correct?

10 A. Yes, that's right. I would point out to you that my role as a military expert,
11 certified by the Court, is to provide an opinion. I did not experience the conflict, I
12 was not on-site, so I can only base myself on the documents that were provided to me
13 and the interviews that I carried out and so I have issued a number of opinions.
14 That is what is expected of an expert.

15 Q. Would it be fair to say that your conclusions, or your opinions as you put it,
16 would only be valid if the information you review is accurate?

17 A. All the documents that I reviewed are official documents, with the reference
18 numbers, and so I think that when you -- when I read those documents no one was
19 trying to mislead me. They are official documents of the Court known to everyone.
20 I think you'll have to trust me. I gave my oath and I also interviewed a number of
21 witnesses in Kinshasa and in Brazzaville. This is what -- and --

22 Q. So by you saying that they're official documents, does that mean that you
23 considered all of the evidence that you reviewed as being accurate?

24 A. Those are the documents that you yourself use, so I suppose that they are
25 accurate. That is my reply.

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1 Q. Did you at any time during your analysis question the accuracy of any
2 document or evidence that you reviewed?

3 A. No, absolutely not. Some of them were somewhat of a surprise, but the
4 documents contained the information that they did. I did not assess the validity of
5 the documents that were provided to me, because they were official documents. So
6 I had my opinion of each document and I would like to specify that I am able to read
7 the French and English documents and I saw a number of nuances in the translations,
8 but I took the documents as they were.

9 Q. But hypothetically, if any of the information in the evidence that you reviewed
10 is false, that would necessarily make your conclusions false, would it not?

11 A. I think that could happen to anyone. If you are given false documents, you
12 will follow a false line of reasoning. That's -- that holds true for everyone.

13 Q. And in general, when asked to do a task of this nature, if the information you
14 receive is incomplete, could that also invalidate your conclusions?

15 A. That would not invalidate my conclusions insofar as my conclusions make
16 reference to the documents that were provided to me, so my conclusions are valid
17 subsequent to the review of the documents that were provided to me.

18 Q. Sir, and during your analysis did you have to make some assumptions?

19 A. No, I did not make any assumptions. I merely drew a number of conclusions,
20 personal conclusions, after reading the documents. I did not make any assumptions
21 other than, well, anything out of the framework of this study I was conducting.

22 Q. Now, you say you didn't make any assumptions. If you had made
23 assumptions, those assumptions would have to be correct in order for your
24 conclusions to be correct. Is that a fair statement?

25 A. No, I wouldn't say that because I didn't.

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1 Q. So you made absolutely no assumptions during your analysis at all?

2 A. I analysed the documents and I formed an opinion which I wrote in my report
3 and I assume full responsibility for that report.

4 Q. Sir, in order to discern what happened from the documents you read and the
5 evidence you reviewed, you also used your experience from the French army; is that
6 right?

7 A. Generally speaking, that is what is expected of an expert. He is asked to use
8 his experience in order to form an opinion on a particular matter.

9 Q. Sir, and I'd like to ask you a few questions about your experience. Is that all
10 right?

11 A. Certainly.

12 Q. Sir, have you ever testified in court as an expert witness before this experience?

13 A. No, this is the first time.

14 Q. And I noticed on your CV that it did not indicate that you have experience as a
15 military officer in Africa; is that correct?

16 A. That is correct.

17 Q. So would it be fair to say that your level of familiarity with that region's military
18 issues is limited?

19 A. Are you casting doubt on my experience and skills? I would remind you that
20 in the report that I drafted, in the chapter that had to do with the assessment of the
21 report drawn up by the Prosecution expert, at the head of the document I said that I
22 was in no way casting doubt on the experience and abilities of the Prosecution
23 military expert who had drafted that first report and I expect similar treatment.

24 Q. Sir, can you answer the question?

25 A. I do not have African experience. However, I did travel to a French speaking

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1 country, whereas your military expert had difficulties since he did -- because he did
2 not speak French. What are you trying to demonstrate right now?

3 Q. Sir, has all of your military experience been with professional French and
4 NATO soldiers?

5 A. Of course not, since I did study at the British Staff College, I served several
6 times in allied headquarters, I was the director of international relations at --

7 THE INTERPRETER: Inaudible.

8 THE WITNESS: (Interpretation) -- which allowed me to meet with soldiers from
9 nearly all countries of the world, and so my experience is not limited to the French
10 army. However, all my activities were within that framework; namely, within the
11 French army.

12 MR IVERSON:

13 Q. And in meeting with soldiers from other countries and in training with the
14 French army, would it be fair to say that these soldiers received approximately the
15 same types of training and doctoring in military practices as yourself?

16 A. One could make that statement, but you also have to realise that the countries
17 that send various officers for training in France, some of those countries do not
18 necessarily just send them for training to us. They may send them to the US, to
19 Great Britain, elsewhere. So perhaps French military training is somewhat special,
20 but one can't rule out that those officers would have received training in other
21 countries as well.

22 Q. Sir, do you have experience as a military officer in a combat environment?

23 A. No. Most fortunately I served my country to prepare for a war that did not
24 occur, namely a confrontation between the east and the west which would have been
25 the Third World War, but I would like to make one particular point in this regard:

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1 When a patient is ill and has a disease and goes to see his physician, does he ask the
2 physician to have the same illness as he has to make sure that he is being cared for
3 properly? Of course not. He trusts that physician. He relies on his training and
4 experience.

5 Q. And, sir, that's a fair point, but all of your experience has been training; is that
6 correct?

7 A. No, not at all. I have operational experience as well, because I took part in joint
8 exercises in the field several times. I took part in various exercises, I was the head of
9 various operations. I took part in operations where I was in charge of a French
10 division. So when one speaks of training, that -- to my mind that means being an
11 instructor in a school, and I've done that.

12 I also instructed subordinate officers who were preparing for exams. I also trained
13 various officers who were preparing their entrance exams to enter the superior school
14 of war, but I've -- other than that, I have served with the troops or at an operational
15 headquarters.

16 Q. Sir, I don't mean for you to take offence to these questions, but they are valid
17 questions and I'd like you to just answer the questions, if you would. Have you ever
18 been involved in a peacekeeping operation?

19 A. Not directly, but indirectly; that is within the framework of the operational
20 centre of the French army land forces.

21 Q. Sir, do you have any military experience outside of Europe?

22 A. Outside of Europe, no, but as part of my duties as a director of international
23 co-operation, I travelled throughout the world; United States, Middle East, South
24 America, the Indian subcontinent, Asia. So I have significant international exposure.

25 Q. Sir, when Mr Kilolo asked whether your experience -- in your experience it

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1 would have been normal, or it was normal, what the ALC did, and this is at English
2 transcript 231, page 53, lines 17 through 19, the French transcript I understand is not
3 prepared from yesterday, when he asked whether it was normal for what the ALC
4 did, would it be correct to say that your sense of what normal is has been developed
5 in peacetime Europe?

6 A. I'm sorry, but I did not quite understand your question.

7 Q. I'll move on from that question, sir. When you conducted these exercises, were
8 they to train you and other soldiers for combat, a combat situation? Was that the
9 purpose of those exercises that you participated in?

10 A. The purpose was not training; it was exercise.

11 Q. And you're calling it an exercise. I'm just asking you were these exercises
12 intended to prepare you for combat?

13 A. Certainly, yes, it was for preparing for combat.

14 Q. And in these exercises, did the -- the people who were controlling and
15 observing the exercises, did they often put variables into the exercises to throw off the
16 people participating in the exercises in order to create a bit of friction to help you
17 understand how a combat environment might work?

18 A. In all manoeuvres and exercises there is a plan and there is leadership, and
19 during the conduct of the exercises the leaders or commanders include serious
20 incidents that compel the participants to react to new situations. They inject new
21 situations, so that is the point of those exercises.

22 Q. And would it be fair to say that during these exercises, when the new scenarios
23 were brought in by the trainers, or the observers, controllers, that it created chaos at
24 times?

25 A. If the reaction to a new scenario is bad it can lead to chaos and it could lead to

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1 confusion, and so people would draw lessons from that.

2 Q. A few times in your testimony you've mentioned that it would have been chaos
3 had it happened a certain way. Would it be fair to say that combat is chaotic?

4 A. I believe you are familiar with Clausewitz and he is a master of military
5 philosophy. He said that war is a chameleon and by that he meant that no conflict is
6 identical to another and he said that each conflict is atypical, because it is different
7 even if it resembles a previous conflict. So for conflict to become chaotic, well, we
8 have several examples of that in history. It is possible that unfortunate decisions are
9 taken which would lead to one of the parties in a conflict becoming chaotic.

10 Q. Sir, and when Clausewitz talks about his concept of friction, he's talking about
11 the disparity that exists between the ideal performance of units and their actual
12 performance in real world scenarios; is that correct?

13 A. That is correct. There is a determining factor which would have great impact
14 on a conflict. It is the type and nature of the landscape and no landscape is similar to
15 another and you cannot change that. It is the same for both your allies and your
16 enemies and you have to use the landscape to the best of your knowledge to have the
17 greatest advantage, so the landscape is a determining factor in any conflict.

18 Q. And that is also to say that doctrine doesn't always -- isn't always reflected in
19 actual practice. What people train for doesn't always actually happen; is that fair to
20 say?

21 A. Circumstances always change, so you would never find yourself in the same
22 situation as previously, at no time.

23 Q. And that sometimes what should happen doesn't always happen; correct?

24 A. Yes, and vice-versa. Sometimes what should not happen does happen. Those
25 are the unpredictabilities of a conflict and that has always been the case ever since the

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1 beginning of time.

2 Q. Sir, what is your level of experience in dealing with military justice issues?

3 A. I do not have any experience in the area of military justice, and I would like to
4 point out that military tribunals no longer exist in France and any soldiers who have
5 to be prosecuted are prosecuted by civil jurisdictions. So I do not have any
6 experience in military justice, but I have experience in the exercise of disciplinary
7 principles.

8 Q. So, sir, I'd like to ask you your experience in France, in your own country. If
9 one of the -- a soldier under your command commits serious misconduct, you just
10 said that's referred to civilian authorities. What happens with the -- on the military
11 side? Is there anything that happens with the -- is there any kind of military justice,
12 military discipline, or is that entirely handled by civilian authorities?

13 A. There are two parallel procedures. There is a statutory military procedure,
14 because any soldier who breaches the rules of discipline is punished from a military
15 point of view by the penalties provided for in the rules and regulations, and if it is an
16 offence that calls for prosecution, for judicial proceedings, then those proceedings are
17 engaged, but that does not exclude the military procedure. So these are parallel
18 procedures that are conducted practically simultaneously, so you have the military
19 sanctions and then the civil prosecution of the offence committed.

20 Q. So as a general officer in the French army, you never had the opportunity to
21 refer charges to a court-martial; is that true?

22 A. No, never. On the other hand, I punished some of my subordinates who
23 breached some of the rules.

24 Q. Sir, would it be fair to say that your familiarity with systems that retain the
25 court-martial system, or military tribunals, that your familiarity is limited in that

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1 area?

2 A. Let me point out that military tribunals no longer exist in France, but in the
3 course of my career military justice actually existed, so during that entire period of
4 my career there was the possibility for a soldier who had committed a serious offence
5 to be prosecuted by military justice and would go through a military disciplinary
6 system, but currently the military justice is no longer available in France.

7 Q. Sir, do you have any experience in the field of criminology?

8 A. No, I have no experience there. I am a military expert.

9 Q. And no experience in forensic sciences, or criminal investigation?

10 A. No, those are not my areas of expertise.

11 Q. Sir, when did the Defence first contact you about this case?

12 A. The first telephone contact that I had was on 8 May.

13 Q. And what was the nature of that conversation on 8 May?

14 A. The purpose of that communication was to have me confirm that I was indeed a
15 military expert certified by the Court and included in their roster. I was also asked
16 whether I was available to carry out an expert analysis. That was the purpose of the
17 telephone contact.

18 Q. Sir, when did you receive the materials that you reviewed from the Defence?

19 A. The Defence sent the documents to me in early June.

20 Q. And when did you receive your instructions, what the Defence were asking you
21 to do?

22 A. I no longer remember the precise date. I have the document at home, but that
23 would have been at the same time that the documents were given to me, maybe a few
24 days before or after.

25 Q. And how many times have you spoken to the Defence about your report prior

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1 to your testimony here?

2 A. I met with the Defence, but the purpose was not to discuss my report. I met
3 with the Defence once to receive the documents that had to be handed over to me. I
4 saw him once again when it was proposed that I travel to the Democratic Republic of
5 Congo and to Congo-Brazzaville for the purpose of meeting with certain witnesses.
6 I met with the Defence once more. During that trip Mr Kilolo accompanied me to
7 Kinshasa and to Brazzaville, because they felt that somebody should accompany me
8 to these countries that I was not familiar with.

9 Q. Sir, did any member of the Defence explain this case to you?

10 A. Yes, at the time that the documents were given to me, an explanation was also
11 provided about the case. In fact, these were events that I knew absolutely nothing
12 about, particularly since they happened about ten years ago, so that is when I learned
13 about the situation itself and the information specifically relating to the case was
14 given to me so that I should be informed about the work that I was going to do.

15 Q. Sir, when the documents were given to you, what explanation was provided
16 about this case?

17 A. It was explained to me that these were events that had happened in the Central
18 African Republic between October 2002 and March 2003. I was told that these events
19 related to the deployment of an MLC unit in support of the Central African Republic
20 authorities who were fighting against a rebel force led by a former Central African
21 Army Chief of Staff. I was also told that in the course of the conflict acts of violence
22 were perpetrated by the MLC and this led to Mr Bemba being indicted in the
23 International Criminal Court and so his case was ongoing.

24 Q. Sir, is everything that you reviewed in this case written in the list at the
25 beginning of your report?

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1 A. The list which is included in the report is a list of the documents that were
2 provided to me by the Defence for analysis and also for the purpose of preparing my
3 report.

4 Q. Sir, is this list, is it a closed universe? And what I mean by that is this is all you
5 reviewed and nothing else, so all of your conclusions would have to be based on the
6 information on your list; is that right?

7 A. I was handed four voluminous files, including the list of documents, so I did not
8 have any documents other than those included in those four folders.

9 Q. And you said that you read both the English and the French versions of the
10 documents; is that right?

11 A. That is correct. There are many documents that are testimonies and sometimes
12 you have three versions, one version in Lingala, or Swahili, an English version and
13 then a French version, and whenever there were both French and English versions I
14 made a point of reading those two versions.

15 Q. And I assume you didn't read the Lingala and Swahili?

16 A. No, I was referring to the French and English versions. I do not speak local
17 African languages.

18 Q. Sir, how many times did you read through the documents?

19 A. At least four or five times. It took me a lot of time and that is why I remember
20 very well those of the documents that seemed to be very important to me.

21 Q. Would it be accurate to say that the total number of pages was around 2,000
22 pages?

23 A. To be frank with you, I did not count them. Maybe 2,000, or more. I think the
24 precise figure is even more than 2,000.

25 Q. And when did you start writing your report?

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1 A. I started writing the report in early July and I was able to wrap it up shortly
2 before leaving for Africa. I felt that the interviews I was going to have were likely to
3 confirm or not the content of my report, or that such interviews would provide new
4 information that I could have included in the report. Therefore, when I returned
5 from Africa, and having met those various persons, I then wrote the final conclusive
6 version of my document which I forwarded to the Defence for purposes of use in the
7 Court by 14 or 15 July, according to my understanding.

8 Q. Sir, when you were accompanied by Mr Kilolo to these locations in Africa, did
9 you provide him with the draft of your report?

10 A. No, I did not give him the first version of my report because it was not the final
11 version. I needed to meet those witnesses in order to finalise the report, which
12 would then include new information that I would have gathered from the witnesses.
13 Now, as for the witnesses, it is Maître Kilolo who introduced them to me, but I had
14 already drafted a working list outlining the positions and categories of persons whom
15 I would be interested in talking to, including for example people who were close to
16 Colonel Moustapha during the operations, those who lived with him at the time, and
17 so Maître Kilolo provided me with a list of names, indicating the positions that those
18 persons held at the time, and I proceeded to select from that list a number of persons
19 whom I wanted to interview.

20 Q. Sir, I understand from the Defence that you don't have notes. Did you take
21 notes?

22 A. I took notes during those interviews, but of those notes all what I mention in the
23 report is the list of the names of persons I talked to. The points that I jotted down, I
24 jotted them down because I was talking with people who did not have a mastery of
25 the French language and I had to use interpretation services and that's the context in

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1 which I jotted down a number of points and when I returned to France I then used
2 those notes to finalise my report, but from the moment those notes were included in
3 my report I therefore had no use for such notes and I therefore simply shredded them,
4 I destroyed them, and this is even further so because the people we interviewed were
5 not speaking under oath. We simply had open-ended discussions and whatever
6 they provided I took it on advisement and mindful of the files and documents in my
7 possession I was able to sieve through some of the information that I received
8 through those interviews.

9 You see, there were some points that were of no interest to me in this particular case
10 and that is why I only jotted down what appeared to be important to me for the
11 purposes of my report, either to the extent that it confirmed what I had already
12 drafted in my report, or to the extent that it provided new information which needed
13 to be introduced or to be included in the report.

14 Q. Sir, when did you destroy these notes by shredding them?

15 A. I destroyed them shortly after I had produced the final version of my report,
16 because those notes were no longer useful to me, as I have already explained, to the
17 extent that I had included the information thereon in my report, and it therefore was
18 no longer useful or necessary to keep the documents or the notes and the information
19 that was contained in those notes is already in the reports and there was no reason for
20 me to archive or keep those documents any longer.

21 Q. Well, sir, I noticed in your report you don't put any footnotes to sources, you
22 don't mention sources, so once you destroy your notes how do you keep the
23 information straight, who said what and how it forms the basis of your conclusions?

24 A. I drafted the report according to my assessment of the situation. I did not
25 provide any footnotes, or references to the effect that I had found such-and-such a

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1 thing in such-and-such a document, and I didn't mention that this information was
2 sourced here or there, but to the best of my knowledge the format for expert reports at
3 the Court is not standardised and so each expert witness is free to write their report
4 the way they choose to. This is what I understood the situation to be.

5 Q. Sir, did you take any notes while you were reviewing the over 2,000 pages of
6 documents?

7 A. Yes, of course. I took notes that I initially used to develop the framework of
8 my report and then I subsequently built on that framework to finalise my report.

9 Q. And did you retain any of those notes?

10 A. Maybe a page, a handwritten page in pencil. In any event, the notes that I took
11 was simply a retranscription of the content of the documents, so the notes were
12 indeed excerpts of the documents which you all are familiar with here in the Court.

13 Q. Sir, you were the intel or an intel -- excuse me, an intelligence officer in a
14 division; correct?

15 A. Yes, I held successive positions as operations officer and intelligence officer at
16 the level -- at the brigade level.

17 THE INTERPRETER: Correction: At the division level.

18 MR IVERSON:

19 Q. And in your role as intelligence officer, did you give intelligence estimates to
20 your Division Chief of Staff and your division commander?

21 A. An intelligence officer, even at the division level, must do everything not to
22 think that they are part of the national police, the national gendarmerie, or general
23 intelligence services. The intelligence officer is someone who works on the basis of
24 existing official documents to analyse the potential enemy in terms of its structure, its
25 build-up, its equipment, its manoeuvres and who then must bear in mind all those

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1 aspects and if they are not able to bear those aspects in mind they should be able to
2 promptly find them at a position or a place which they can easily access.

3 Now, in terms of manoeuvres, and mindful of the context and the terrain of the
4 manoeuvre, or the nature of the manoeuvre, whether it is offensive or defensive, there
5 are basic intelligence information that must be provided relating to the enemy and
6 this information enables the Chief of Staff to then proceed to potential assessment of
7 the situation of the enemy and the possible movements of the enemy and then go on
8 to provide summaries and suggestions to the commander-in-chief regarding the
9 manoeuvres of the enemy, and then that will be cross-checked with the operations
10 bureau to determine what strategy to adopt. That I understand is the role of an
11 intelligence officer.

12 Q. Sir, and if you did give intelligence estimates to your Division Chief Of Staff and
13 your division commander, would it be appropriate for either of those two individuals
14 to ask you, "General Seara, how did you conclude this in your intelligence estimate?
15 What are the facts underlying this intelligence estimate?"

16 A. Each of the assumptions about the enemy, or the analysis of the enemy, would
17 be forwarded to the commander based on principles relating to the action of the
18 enemy. Given then the nature, strength, logistical capacities and the terrain on
19 which the enemy is working, then the goals - the successive goals - of the enemy need
20 to be identified, the goals that the enemy seeks to achieve, and from that information
21 the summaries and suggestions are made to the division commander.

22 Those intelligence estimates and assessments rely on various planning methods and
23 then one of the assessments will be confirmed pertaining to the movements of the
24 enemy. So once an estimate becomes real on the ground, then we can then use our
25 own estimates to determine which of the estimates meets the situation on the ground

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1 as the enemy moves forward.

2 So there must be a specific manoeuvre from the friendly camp that speaks to a specific
3 assessment of the enemy situation, but again things do not always happen the way
4 they are planned and in those circumstances adjustments need to be made to reflect
5 the reality of enemy movement on the ground.

6 Q. Sir, would it be fair to say that this is a big case with a lot of information, so it
7 would be important to know how you made certain conclusions?

8 A. I based my conclusions on a very meticulous study of the entire set of
9 documents that I was provided and on my personal experience, as well as on some of
10 the information that I gathered from the witnesses whom I interviewed. That is
11 what is expected of an expert witness.

12 Q. Sir, and I'm not asking you to state what is expected of an expert witness. I'm
13 simply asking you is it important to know the facts underlying your conclusions?

14 A. What facts are you talking about?

15 Q. It's a general proposition, so if you're concluding X, Y and Z it's important to
16 know that the facts that enabled you to conclude that are found in A, B and C.
17 Would you agree with that proposition?

18 A. The facts that I am aware of and which informed my conclusion are the facts
19 that I read in the documents that were given to me. I was not at the site of the events.
20 I became aware of information through the documents I read and I analysed that
21 information using my experience, my skills and competencies and that informed the
22 conclusion which I made in the end. I therefore am not aware of any facts other than
23 the facts which I read in the documents which were provided to me.

24 Q. It's not -- it's a methodology question. Maybe I can try this another way.
25 Have you ever been to the website Wikipedia?

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1 A. Yes, from time to time.

2 Q. And do you know how in Wikipedia for many of the propositions, not all but
3 many of the propositions, they back up their conclusions with footnotes and facts?
4 Are you familiar with what I'm talking about?

5 A. Quite, quite honestly, when I go to that website I am looking more at the
6 substance than at format, so I think that there might be aspects relating to the
7 formatting of the web pages that I am not aware of because I'm looking at the
8 substance, rather than at the format.

9 Q. Sir, if I asked you -- when we go through your report, when I ask you, "How did
10 you conclude this?", will you be able to back it up with facts?

11 A. What facts again are you referring to here? The facts that I dealt with are the
12 testimonies, or the interviews. Within those testimonies and interviews, people have
13 made a number of assertions which I am not in a position to cross-check, obviously.
14 So if what you mean by "facts" is the statements of the witnesses, or the interviews, or
15 the documents, then my answer would be, yes, because I have present on my mind
16 the full picture of the documents that I read, but if you ask me about what happened
17 on the ground I will not know what to say because I relied on information that was
18 provided by people who gave their narration of the events and the situations who
19 said a number of things from various angles, and if you are saying that the
20 content - the entire content - of the documents I was provided can be referred to as
21 "facts" then my answer would be, yes, because my report is based on the documents
22 which I received which I read and which I analysed from the documents which were
23 given to me.

24 Q. Sir, you stated earlier that you didn't make any assumptions while doing this
25 task; is that correct?

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1 A. That is correct. I have already told you that I became aware of this case at the
2 time the documents were provided to me. You have pointed out my lack of
3 knowledge of the African should I say continent or territory. What I can say is that
4 I had a neutral, new view of the events, because, you know, that can be said, but it is
5 not exactly correct to the extent that my experience throughout my career also has a
6 bearing on the view that I may have of the events. That's the answer I can provide to
7 your question. I did not have any assumptions. I did not come to this assignment
8 with preset ideas. I was unaware of everything and I discovered the issues as I read
9 through the documents.

10 Q. Sir, you stated in testimony - and this is transcript 230, page 23, lines 15 through
11 25, and I will -- I'll get you the French transcript as soon as possible, your
12 Honours - that -- you conclude that, "In order to have a Thuraya connection the two
13 parties involved must each have a Thuraya telephone set." Where in the facts could I
14 find the basis for that conclusion?

15 A. In absolute terms, you see, if you buy a Thuraya handset today what I said then
16 would not be true, because the Thuraya sets of today can be used to call any phone
17 number. In 2002, however, there was no general Thuraya or no general network
18 over which the mobile phone could be used in Gbadolite. The only available means
19 then was the Thuraya and, therefore, at that time it was possible to communicate only
20 by way of the Thuraya telephone set from one set to another.

21 Now, if you had -- if you have a counterpart who has a mobile phone in an area with
22 mobile telephone coverage, you would be able to call such a person on the Thuraya
23 phone, but that was not the case in Gbadolite at the time.

24 PRESIDING JUDGE STEINER: Mr Iverson.

25 MR IVERSON: Absolutely. I think it's time. Thank you, Madam President.

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- 1 Sir, at this time it's time for the break, as Madam President as just reminded me.
- 2 Thank you.
- 3 PRESIDING JUDGE STEINER: General, we are going to our half-an-hour break.
- 4 It's 11 o'clock. We will resume at 11.30.
- 5 I ask, please, court usher to accompany the witness outside the courtroom. At the
- 6 same time, we will suspend and resume at 11.30.
- 7 (The witness stands down)
- 8 THE COURT OFFICER: All rise.
- 9 (Recess taken at 10.59 a.m.)
- 10 (Upon resuming in open session at 11.35 a.m.)
- 11 THE COURT USHER: All rise.
- 12 Please be seated.
- 13 PRESIDING JUDGE STEINER: Welcome back.
- 14 Could, please, court usher bring the witness in.
- 15 (The witness enters the courtroom)
- 16 PRESIDING JUDGE STEINER: General Seara, welcome back.
- 17 THE WITNESS: (Interpretation) Thank you.
- 18 PRESIDING JUDGE STEINER: Mr Iverson, you have the floor.
- 19 MR IVERSON: Thank you, Madam President. And, your Honours, I promised a
- 20 transcript number from the last session and I'll give that now. The reference to the
- 21 Thuraya subject, the French transcript is transcript 230, it's the edited transcript, page
- 22 pages -- forgive me, page 20, lines 1 through 19.
- 23 Q. Sir, welcome back. When we left off, we were talking about Thuraya
- 24 telephones. Now, I asked you what enabled you to conclude that Thuraya
- 25 telephones are only able to speak to Thuraya telephones, and I'd like to ask that same

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1 question again?

2 A. At the time in the field, and regarding the conflict that is of interest to us, the
3 Thuraya phones only spoke to other Thuraya telephones. That is my conviction.

4 Q. Sir, that is a conclusion. What fact or what evidence enabled you to conclude
5 that?

6 A. In his interview, General Moustapha specified that Mr Bemba could reach
7 him - could reach him - with a Thuraya. Now, since he had a Thuraya and he
8 specified that he had used it at PK12 and each one of his battalion commanders had
9 received a Thuraya phone as well, Mr Bemba could communicate with Colonel
10 Moustapha at the time by way of a Thuraya phone, so from one Thuraya phone to
11 another Thuraya phone.

12 Q. Sir, what I'm asking you is what enabled you to conclude that Thuraya
13 telephones only - the operative word being "only" - can communicate with each
14 other?

15 A. Because in the field it's not like when you're at home. At home, you can be
16 called on your land-line. When you're mobile, moving about in the field, you need a
17 mobile means of communication so that you can communicate with people outside.
18 So, in order to communicate in the field and be mobile in the field, Colonel
19 Moustapha received a Thuraya, as well as his commanders. So they could
20 communicate by radio, or by Thuraya, but from one Thuraya set to another one
21 because a Thuraya cannot reach a radio, a piece of radio equipment.

22 Q. Sir, with all due respect, you're not answering my question. What evidence
23 enabled you to conclude that Thuraya satellite phones are only able to speak to
24 Thuraya satellite phones?

25 A. I repeat: Thuraya sets only communicated with other Thuraya equipment

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1 during the conflict that is of interest to us.

2 Q. Sir, I'd like to read back your testimony, and this is from the same transcript that
3 I just cited. You stated, "In order to have a Thuraya connection, the two parties
4 involved must each have a Thuraya telephone set. So, so long as Moustapha did not
5 have a Thuraya telephone set, it was not possible for Colonel Moustapha and
6 Mr Bemba to communicate over the Thuraya." What enabled you to conclude that
7 they must - must - both have Thuraya handsets.

8 A. With a Thuraya telephone, you can't get on to a radio network. You can't
9 communicate with a walkie-talkie. One possibly could communicate with a mobile
10 phone if there is coverage and if you know the number of the person. So under the
11 circumstances, in this particular case, within this conflict during the period of time of
12 interest to us, I concluded that in order to use a Thuraya it was necessary for the other
13 person to also have a Thuraya set and you would have to know his subscription
14 number.

15 Q. So if that conclusion is incorrect, if Thuraya satellite phones are able to talk to
16 regular mobile phones, land-line phones, your conclusions would be incorrect; is that
17 right?

18 A. In the context that is of interest to us, with a land-line, Colonel Moustapha, in
19 the terrain, in the field, I didn't consider the possibility of him having a land-line
20 when he was in the field. In any event, the system is still wide open, if you use such
21 a network, because if things are not coded, well, then all the communication is out
22 there in an uncoded form.

23 Q. Sir, with all due respect, you're playing games. Please answer the question.
24 What facts or evidence allowed you to conclude that Thurayas could only speak to
25 Thurayas?

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1 PRESIDING JUDGE STEINER: Yes, Maître Kilolo.

2 MR KILOLO: (Interpretation) Your Honour, I fear that we are once again finding
3 ourselves with the same scenario. The same question is being put to him, four times
4 now, I think. This is coming very close to harassment. I think it's time to move on
5 to another question.

6 PRESIDING JUDGE STEINER: Mr Iverson, I think we can see your point, and
7 maybe you could go forward.

8 MR IVERSON: I would like to move forward, Madam President, but I would also
9 like an answer to the question and he has not answered the question. I've asked it
10 several times, but he has not answered the question and so I would like to ask one
11 more time.

12 Q. Sir, what information or facts that you reviewed enabled you to conclude that
13 Thurayas could only speak to each other?

14 A. Well, if you're speaking in absolute terms, from a technical point of view,
15 regarding the use of Thuraya, my reasoning is not valid. I am looking at this
16 from -- within context, within this particular case. I don't have the technical
17 specifications for Thuraya sets right here. That's not the issue. The technical
18 specifications are not really all that important.
19 What's important to me is to determine how, with Thuraya equipment, you can
20 communicate with someone else when the other party, you see, is mobile and moving
21 about within the field. Everyone knows that Mr Bemba had a Thuraya set, so
22 Thuraya communications were possible between the two.

23 Q. Sir, you stated earlier that you destroyed your notes by shredding them, and
24 you didn't provide footnotes or sources to your report. So would it be fair to
25 conclude that the only place left where we can establish what facts you relied on are

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1 in your head?

2 A. No, it's not my memories. I said that the news that I learned through the
3 witnesses, everything that only confirmed what I had already read in the documents,
4 was not of interest to me because I'd already included that in my report. What I
5 learned, the new things that I learned, that I thought were useful, that should be
6 included in my report I included in my report. That's all there is to it. So it's not a
7 matter of my memory. What I was told was included in my report and you can read
8 it, and, yes, I do remember it and I put it in the report. You can read the report.

9 Q. Sir, your report is filled with conclusions and what I'm asking about is how you
10 came to those conclusions? That is what I'm interested in and the reason I'm
11 interested in that is because this Honourable Chamber has to consider how you came
12 to your conclusions in order to weigh your testimony; do you understand that
13 concept, sir?

14 A. Every person has his or her own methodology. I read all the documents in
15 their entirety, and then I did a second reading, much more analytical in nature of each
16 document, and when, for instance, I found myself with two documents that were
17 contradictory, I would ask myself, well, in light of the experience that I have gained
18 over the course of my career, of these two versions, or two people ask questions about
19 the same thing, which version seems to be the most probable in light of my own
20 experience? Would you like an example?

21 Q. I'll be asking questions about that concept and I can give you an opportunity
22 then, sir.

23 Sir, would you agree that when asked to provide an opinion as an expert witness or
24 as an expert, that it's important to carefully review all the facts in the materials to
25 answer the questions asked of you?

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1 A. That's exactly what I did.

2 Q. And I understand that you didn't review any testimony under oath, except that
3 of General Opande; am I accurate in saying that?

4 A. I haven't heard -- I haven't understood your question. Could you rephrase it?

5 Q. My understanding, based on your list of documents that I reviewed, is that you
6 did not review any testimony under oath, given in Court, just like you are today,
7 testimony, except for that of General Opande; is that accurate?

8 A. In the list of documents that were provided to me, I had the report prepared by
9 General Opande, which I read and re-read, and I prepared some comments regarding
10 that particular report.

11 Q. Sir, do you understand that there's a difference between statements taken in the
12 context of an investigation, reports and testimony given under oath in a court of law?
13 Do you understand the distinction between those concepts?

14 A. Yes, I certainly understand.

15 Q. Sir, I'll try to help you out here. My understanding is that you only reviewed
16 statements and not testimony under oath; is that your understanding?

17 A. Within the documents that I looked at I couldn't provide you with that specific
18 point. There seems to have been some parts of testimony from General Opande, but
19 I focused on the report - the written report - that he had provided to the Court.

20 Q. There seems to have been some parts of testimony from General Opande. Did
21 you thoroughly read through all of his testimony?

22 A. I can't guarantee that I read his entire testimony, but I can guarantee you that I
23 carefully read several times the entire report that he prepared for the Court.

24 Q. Sir, you've come here, and you've critiqued or criticised General Opande's
25 conclusions. Is it fair to criticise somebody's conclusions when you haven't even

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1 read their testimony?

2 A. I think there's some misunderstanding here. In my report I had a chapter that
3 had to do with the report from the military expert of the Defence, not his testimony,
4 so remarks are not criticisms or a critique. They are remarks.

5 Amongst people who have had the same sort of military training, one can have
6 diverging view-points on a certain number of issues, so they were not criticisms. I
7 wrote -- I never wrote the word "criticism" or "critique." It was an assessment of the
8 report, and I began my report saying that the military expert's report requires me to
9 make certain remarks, but not his testimony. That's not what I wrote in my report.

10 Q. Sir, but if you are going to review what General Opande did in his report and
11 you are provided with his testimony and you are expected to make comments,
12 wouldn't it be appropriate for you to read through his testimony?

13 PRESIDING JUDGE STEINER: Maître Kilolo?

14 MR KILOLO: (Interpretation) Your Honour, I think that this question as it has
15 been put to General Seara is not very fair to him, insofar as he had an opportunity to
16 specify that he was not familiar with all the subtle differences in terminology between
17 a statement, or a statement or a deposition. So I think it would be fairer on the part
18 of my learned friends opposite to show him the part of the report, and I believe it's
19 page 9, *paragraph 57, in which he stated that he reviewed all the transcripts of the
20 general's testimony before the Court and then he could ask whether he read them in
21 their entirety.

22 PRESIDING JUDGE STEINER: Maître Kilolo, I will again address the parties - and
23 in this case mainly the Defence - in order to restrict as much as possible the
24 interruptions on the questioning of the witness, only to what is strictly necessary.

25 As I can see from page 33, lines 12 onwards, the witness said, in the English transcript

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1 of course, that he certainly understands the difference between statements, reports
2 and testimony given under oath in a court of law, so the question put by Mr Iverson is
3 not misleading the witness.

4 Mr Iverson.

5 MR IVERSON:

6 Q. Sir, if you feel that I am misleading you at any time, please tell me. I want to
7 be clear. My role is to get to the truth. Do you understand that, sir?

8 A. Yes, I understand, but from my point of view - and I am not a jurist - this is a
9 procedural issue. In my report, and based on the terms of reference given to me in
10 writing by the Defence, I was asked to provide an assessment of the report produced
11 by the military expert and not an analysis of his testimony. So I read that report in
12 detail and I made observations about it, and this is consistent with the terms of
13 reference given to me by the Defence.

14 Q. Sir, did you receive all of General Opende's report, or are you able to say
15 whether or not you received all of it?

16 A. It is possible. Amongst the many documents that I received, it is possible that I
17 received it.

18 Q. Did you have an opportunity to see which documents General Opende
19 reviewed?

20 A. In his report, there is a list of documents that he referred to and on the basis of
21 which he prepared his report. I went through that list of documents, so in a manner
22 of speaking I had knowledge of the documents that were provided to him for the
23 purpose of preparing his report.

24 Q. Sir, would it surprise you to know that General Opende reviewed seven
25 documents that you did not review and those documents total in the hundreds of

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1 pages?

2 A. Personally, I can tell you that I only analysed the documents that were given to
3 me. I was not aware of the existence of other documents. I know that the record of
4 this case is much more voluminous than the four binders that were given to me. I
5 worked on those documents that were given to me, and what I remember is that in
6 the report submitted by the military expert of the Prosecution it is stated that he had
7 intended, but before he wrote that report he did not have to -- the opportunity to go
8 on-site to interview some of the witnesses that he had intended to interview, but I do
9 not know whether he was finally able to do that or not.

10 Q. Sir, when you haven't reviewed the same evidence that General Opande
11 reviewed, the same information, the same dataset, the same facts, whatever you want
12 to call it, is it fair to criticise or critique or assess his expert opinion?

13 A. If the documents that are analysed by the various parties on one side and the
14 other are not the same, it is possible that there would be varying opinions. Maybe it
15 would be necessary to draw up a single list of documents that would be analysed by
16 the experts of both sides. That would make it possible to determine whether
17 analysing the same documents would enable them to arrive at the same conclusions
18 after looking at the same documents, and I'm proposing in all humility that maybe
19 something should be done in that area. If you are using an expert certified by the
20 Court, and this is my personal opinion, there should be a list of documents to be
21 given to those experts so that they should arrive at conclusions on the basis of the
22 same documents. If their conclusions are the same, or different, each of those
23 experts would then be able to explain how they interpreted the documents and how
24 they arrived at their own conclusions.

25 In my particular case, I examined the documents that were given to me. If the other

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1 expert received different documents, or other documents, it is possible that he might
2 arrive at different conclusions. Nevertheless, after reading certain documents, such
3 as the other military expert report, in addition to the other documents that I read, one
4 could still make observations. For example, I was able to make observations after
5 reading those documents.

6 Q. And, sir, this would go back to the general proposition that your conclusions
7 can only be as good as the information supplied to you; is that fair to say?

8 A. If that is the case, then the conclusions of the Prosecution expert would not be
9 any more valid than mine because the documents that were given to him are not the
10 same documents that I read. This means that each expert received documents
11 according to what the party requesting the expertise wanted; that is the Prosecution
12 and the Defence. That is why I raised the issue of whether it would be more
13 appropriate to give the same list of documents to the various experts, that is by the
14 Prosecution and the Defence, so that each person should read the same documents.
15 Therefore, if you think that my opinion was influenced by the documents that were
16 given to me, I believe that the same thing applies to the Prosecution expert, who
17 would also have been influenced by the documents provided to him.

18 Q. Sir, is it true that the Defence selected the documents that came to you? Is that
19 your understanding?

20 A. To be frank, I have no idea about that. I do not know the procedure that was
21 followed. When I met with the Defence representative to receive the documents, I
22 was not worried about finding out precisely which documents they were, because I
23 did not know about all the details, so I simply received the documents that were
24 given to me and I analysed them and arrived at my conclusions. That is all.

25 Q. And do you know whether the Defence could have chosen to give you the same

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1 documents as General Opande?

2 A. I cannot give you an answer to that. This is a procedural issue that I am not
3 familiar with and which is possibly an internal matter for the Court.

4 Q. Sir, did you have the opportunity to review two log-books which would have
5 contained situation reports, sitreps?

6 A. Yes, I looked at one binder and a half, or two binders, and these contained a
7 series of messages that were received by the command centre in Gbadolite.

8 Q. And did you thoroughly review those log-books? Did you read every
9 message?

10 A. I read every message, and most of those messages were addressed to the ALC
11 General Staff headquarters. These were routine messages or reports.

12 Q. Sir, did you notice the dates of the messages and the dates of the log-book while
13 you were reviewing it?

14 A. Certainly I did, but I no longer remember the dates. There were so many
15 messages, so I do not remember those dates. I read them, but I cannot remember the
16 dates.

17 Q. And fair enough, there's a lot of information in this case. Would it have been
18 in your notes?

19 A. No, they are not contained in my notes. What I tried to do was to look at those
20 messages and try to determine the general idea behind the messages. They were
21 detailed messages and, as I have said, many were routine messages and reports.
22 Some of them reported about specific events but the vast majority were just routine
23 and report messages.

24 Q. And, sir, are you aware that there are several testimonies given under oath that
25 you did not review in this case of several insider MLC witnesses?

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1 A. I'm not aware of the existence of any documents other than those that were
2 given to me. You have a list of the documents that were provided to me, but I'm not
3 aware of any other documents. I certainly know that there are many more in
4 existence but I did not have the opportunity to consult them.

5 Q. Then I assume you also wouldn't be aware that there's evidence of cellphone
6 records, flight logs, testimonies of victims, things of that nature?

7 A. I performed my duties as military expert, starting only from two months ago. I
8 cannot be aware of all the documents or materials on record in this case which started
9 as early as 2010 and even before, I am not certain about that, so from the time in June,
10 when I received the documents, up 'til today, this was the time period that I was
11 given to familiarise myself with the case. This was the time frame given to me by the
12 Defence to analyse the documents and to prepare my report. So I'm not aware of
13 everything that happened prior to their giving me those documents, nor do I know
14 what is going to happen after my testimony here.

15 MR IVERSON: Madam President, I'd like to ask a question about testimony that was
16 given in closed session so I'd like to ask for a private session.

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

18 (Private session at 12.21 p.m.)* Reclassified as Open session

19 THE COURT OFFICER: We're in private session, your Honours.

20 MR IVERSON: The transcript references for this question is -- excuse me, are

21 (Redacted)

22 (Redacted)

23 Q. Sir, if a Prosecution witness, Witness 169, testified that he had first-hand
24 knowledge that Colonel Mukiza and then General Bemba had regular daily radio and
25 satellite phone contact to discuss operations in CAR, it would be important for your

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1 consideration, wouldn't it?

2 A. I am not calling into question what this witness said. He could have
3 communicated in order to keep abreast of the situation. That does not seem unusual
4 to me.

5 Q. But I'm just asking, would it be important to factor into your analysis if you
6 were asked about who controlled operations?

7 A. If I have understood what you read out, the idea was to receive information
8 about the situation, and receiving information about the situation is not the same
9 thing as controlling that situation. So if someone is informed about a situation, they
10 do not necessarily have control over that situation; that is if those were the words
11 used by the witness.

12 Q. Fair enough. So if this witness is close to the action, and not hearing it from or
13 doesn't have second-hand knowledge, he knows it from his own personal experience
14 from actually witnessing the events, that would probably be more powerful
15 testimony; would that be fair to say?

16 A. I do not know that witness, so I cannot say whether he was involved in the
17 action, or he was an outsider in what was happening, so I cannot give you an answer
18 to that question.

19 MR IVERSON: I see.

20 Madam President, I'd like to ask for public session again. Thank you.

21 PRESIDING JUDGE STEINER: Mr Haynes.

22 MR HAYNES: It can wait until we're in public session, but just so that it doesn't
23 interrupt the flow I'll be ready when we are to make an observation.

24 PRESIDING JUDGE STEINER: Court officer, please turn into public session.

25 (Open session at 12.25 p.m.)

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1 THE COURT OFFICER: We are in open session, your Honours.

2 MR HAYNES: It's just page 40, lines 21 to 22, if Mr Iverson could, at his leisure,
3 provide references for the evidence of cellphone records and flight logs.

4 MR IVERSON: Madam President, that evidence is on our Bar table motion. I mean,
5 I can certainly provide those references to the Chamber but I'm not asking specific
6 questions about that evidence and I don't intend to, other than to elicit from the
7 expert witness that those issues are important to an analysis of this nature.

8 PRESIDING JUDGE STEINER: Yes, Mr Haynes.

9 MR HAYNES: Well, perhaps if it's not evidence the question shouldn't be put to the
10 witness in a form that suggests that it is.

11 PRESIDING JUDGE STEINER: It was tendered as evidence, pending the decision of
12 the Chamber. We are not going now to entertain a procedural discussion. The
13 Chamber will consider Mr Haynes' observations, if need be. You continue,
14 Mr Iverson.

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

16 Q. Sir, if there is evidence of cellphone records, with hundreds of calls made
17 between Colonel Mukiza, and Mr Bemba and others in the Central African Republic,
18 that could be helpful to your analysis; correct?

19 PRESIDING JUDGE STEINER: Yes, Maître Kilolo.

20 MR KILOLO: (Interpretation) I would like reassure you immediately, Madam
21 President, that it is obviously not my intention to frequently interrupt the
22 cross-examination but I'm wondering about the fairness of the proceedings which
23 involve putting a certain number of questions to the expert witness of the Defence on
24 documents that were never given to the Prosecution military expert for analysis.
25 Now, when they are talking about telephone logs, and flight logs, those documents

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1 were never given to General Opande for his analysis. So I do not believe that it is
2 fair for the Prosecutor to ask these questions to General Seara.

3 PRESIDING JUDGE STEINER: Mr Iverson, any observations?

4 MR IVERSON: I'm sure that the Defence will make arguments in their closing
5 submissions to that effect but I don't see how it prohibits me from asking questions of
6 this military expert on those areas.

7 PRESIDING JUDGE STEINER: It is my understanding, and mainly in relation to the
8 last question put by Mr Iverson, that it's just questioning. If there is evidence on this
9 or that, would that, could that be helpful to the analysis, if there is? It's not referring
10 to any specific evidence that was not given to the expert.

11 I must -- I must say that my main concern here is that it appears that both parties are
12 referring to expert of the Prosecution and expert of the Defence. I may be wrong, but
13 an expert prepares a report for the Court, so it's not the property of the parties and so
14 that's why we ask in the beginning of the testimony whether the expert ensures that
15 his or her report is impartial.

16 I think Mr Iverson is putting questions in theory. "If?", "If?", "In case it had access to
17 some other documents, if his opinion could have changed?" I don't see the prejudice
18 that this kind of question can bring to the Defence, so I will authorise Mr Iverson to
19 proceed.

20 MR IVERSON: Thank you, Madam President.

21 Q. Sir, another hypothetical question for you. If flight logs indicate that there
22 were over 70 MLC flights in and out of Bangui during the operation and the operation
23 lasted between 100 -- about 140 days, would that be significant to your analysis?

24 A. I was not aware of that fact. If I had been aware of it, I would have taken it
25 into consideration and I would have tried to look up the relevant documents and find

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1 out what the purpose of the flights were. That's it. That's it, isn't it? I was not
2 aware of the existence of such flight logs, and I therefore did not take that information
3 into consideration in the drafting of my report.

4 Q. Sir, and that might be important for your analysis of the logistical situation, for
5 example. If roads are closed from the north and supplies can't come in by land, then
6 any flights landing in Bangui would be important to logistics; is that fair to say?

7 A. It is not as simple as that. You see, in order to draw any conclusions in these
8 matters, it might not only be a matter of logistics, or transport for logistics purposes.
9 It might be staff transportation, and it could also be in relation to matters of security
10 at the Bangui airport.

11 Now you have raised a flight log and a number of flights, one must delve a little
12 deeper to find out what the purpose of those flights were and understand why those
13 flights took place at all. It may have a bearing on logistics, but it could also be a
14 matter touching on reinforcements, and just the raw fact that there were 70 flights
15 does not in itself provide any substantive material. We must find out why those
16 flights were organised. And so if I am told that there were 70 flights, as such it
17 doesn't mean anything to me. I must analyse further to find out why those flights
18 took place, what the reasons for the flights were, what the purpose for the flights were
19 and so on and so forth.

20 So it might have been possible to find that information in other documents. In any
21 event, I was not aware of the existence of the flight logs and therefore that material
22 was not considered in the drafting of my report.

23 Q. And that's fair, right? I mean, that a flight takes off and lands doesn't tell you
24 what's on that flight. You would have to combine that with other information;
25 correct? I mean, you wouldn't know if there were soccer balls on it or weapons,

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1 unless you had other information indicating that; is that fair?

2 A. I don't think that there were soccer balls on those flights. However, we need to
3 know or to determine whether there were ammunitions or weapons on those flights,
4 and I don't even know what type of aircraft you are referring to. Maybe it is aircraft
5 that can even ship vehicles or not, and if any of such crafts were able to ship vehicles
6 they might have been used to transport vehicles. The simple fact that there were 70
7 flights is an interesting piece of data, but it only becomes relevant when we know
8 why those flights took place and what was transported, so I would doubt that they
9 had any soccer balls on such flights.

10 Q. Sir, I'd like to refer to some testimony that you gave on your first day of
11 testimony, transcript 229, page 43, lines 3 to 10. I apologise, but I will come back
12 with the French transcript number, Madam President. You state -- the question from
13 Mr Kilolo was, "When you were conducting your analysis, did you observe any cases
14 of pillaging, of looting, amongst or by the ALC owing to a lack of food?" And your
15 answer is, "No, on the contrary. The witnesses that I interviewed in Kinshasa were
16 entirely satisfied with the way they had been fed. Other than a few isolated cases,
17 there really were no problems having to do with feeding the troops, or providing
18 meals to the troops, when they were in the Central African Republic."
19 Now, in speaking with these witnesses in Kinshasa, did you find anywhere else in the
20 evidence that you reviewed that confirms or doesn't confirm what these witnesses
21 told you, sir?

22 A. Did I find in the documents that I received any confirmation that regarding food
23 the ALC forces did not have any problems? Well, this is corroborated or confirmed
24 by several testimonies and interviews, and in the documents that I reviewed this is
25 confirmed by a commander whose name I forget, but who was the (Redacted)

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1 (Redacted) who confirmed, as did
2 (Redacted), that the food allowance was regularly paid out to the ALC
3 representative. It was paid out on a regular basis. Other testimonies also dealt
4 with the issue of feeding of the ALC forces by the Central African forces.
5 So that general food allowance was always regularly paid out to the ALC forces.
6 Therefore, what I was told by those persons I met, who testified that they had no
7 feeding problems, no food problems, is thus confirmed. There might have been
8 problems of discipline, but these issues have been confirmed in the various
9 documents which I received.

10 Q. When you say "various documents," can you specify, sir?

11 A. There is a testimony of the (Redacted)

12 (Redacted) also confirmed that
13 the food allowance was paid by the Central African authorities. So we have those
14 two confirmations, and then there is a third confirmation which I do not remember
15 off-the-cuff, but which is contained in the documents which I received.

16 MR IVERSON: Madam President, could I ask that we briefly go into - I am sorry, it
17 won't be briefly, it probably will be until the end of this session - private session?

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

19 (Private session at 12.41 p.m.) * Reclassified as Open session

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

21 MR IVERSON: Madam President, would you prefer that I make recommendations
22 for redactions on the record, or would you prefer that to happen through a separate
23 procedure?

24 PRESIDING JUDGE STEINER: Usually, Mr Iverson, we ask someone from the
25 Prosecution or the Defence team to send an email requesting the redactions, because

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1 saying it for the record some time is more prejudicial for the purpose of the redaction
2 itself.

3 MR IVERSON: I understand completely. Thank you, Madam President.

4 Q. Sir, how long were you in Kinshasa?

5 A. Four days, five days counting the arrival and departure days.

6 Q. And how many witnesses did you meet there, sir?

7 A. In Kinshasa? I think the list is in my report. About ten, I think.

8 Q. Now, I understand that you interviewed ten witnesses in total. Did you
9 interview ten witnesses in Kinshasa, sir?

10 A. The question you put to me was, "How many witnesses did you interview in
11 Kinshasa?" I answered not mentioning the witnesses I met in Brazzaville. As for
12 the witnesses in Kinshasa, yes, I did interview them in Kinshasa.

13 Q. And maybe it was a bad question on my part, maybe there was some
14 miscommunication. Sir, how many witnesses did you interview in Kinshasa?

15 A. I met ten witnesses in Kinshasa, I think ten or maybe nine, but in any event you
16 have the list in my report.

17 Q. Ten, maybe nine. How many witnesses did you meet in Brazzaville, sir?

18 A. Four witnesses in Brazzaville. Four.

19 Q. And how long were you in Brazzaville, sir?

20 A. I was in Brazzaville for one day only. One full day. I spent the night in
21 Brazzaville and returned to Kinshasa the next day, in the morning.

22 Q. So did you go to both cities in the same trip to Africa or did you make two
23 separate trips to Africa from France, sir?

24 A. I travelled to Africa only on one trip, and it was during that trip that I went to
25 those two cities.

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1 Q. And the witnesses that you spoke to in Kinshasa, did they know each other?

2 A. I am not in a position to provide an answer to that question, because I met them
3 individually. They did not come in a group and I did not decide the order in which
4 they would be received. I'm not in a position to tell you whether those people knew
5 themselves or did not. In any event, they were all former members of the ALC who
6 had participated in the events in the Central African Republic. Maybe they knew
7 themselves, maybe they did not. I do not know.

8 Q. Sir, and you testified earlier that you do not have any training in forensic
9 sciences or criminal investigations. Did you think that it would be prudent to know
10 whether or not these witnesses knew each other?

11 A. No, it was not possible for me to determine whether they knew themselves or
12 not. I was not auditioning witnesses, as such. You see, I am -- I am not a lawyer. I
13 was a soldier reaching out to meet other soldiers and we talked in the language of
14 soldiers.

15 What I wanted to find out from them was in relation to what had happened on the
16 ground on specific matters, so it was simply a conversation not an examination on
17 interview as such. It was a discussion amongst soldiers using words that we all
18 understood as soldiers. I am therefore not in a position to tell you whether they
19 knew each other or not, so I cannot provide any other answer to you.

20 Q. Sir, how much time did you spend preparing for I want to call them
21 "interviews," but you say they were just informal discussions, would that be a fair
22 characterisation? How much time did it take you to prepare for the informal
23 discussions?

24 A. The preparation for these informal discussions depended on the person whom I
25 would be talking to, their role or their position at the time of the events, their position

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1 and role in the ALC. What I was more interested in was the list that was suggested
2 to me but looking closely at the functions, duties and position of the persons rather
3 than their names.

4 I was looking more at their position and their duties, and for each of those positions
5 and duties I prepared the questions or the conversation or the interview mindful of
6 that person's position. For more ordinary positions, I didn't spend a lot of time, but
7 where the position came with a lot more responsibility I spent a lot more time in the
8 discussion in order to be able to identify the strong points on which I wanted to dwell,
9 and then to gather all the information that was also available from the person I was
10 interviewing, as the case may have been.

11 Q. Sir, did you ever consider the extent to which the people you interviewed may
12 themselves have felt they were involved with, or alleged to be involved with, criminal
13 activity during this conflict period?

14 A. That was not my feeling. The greater majority of those whom I interviewed in
15 Kinshasa were (Redacted)
16 (Redacted) so I wasn't
17 under the impression that I was talking to people who had been involved in serious
18 crimes.

19 Q. Did you use any specific methods while speaking to these witnesses, any
20 interview techniques, anything like that?

21 A. The technique used depended on the level of the person, and the people were at
22 different levels. I always started from defining or determining the position or the job
23 of the person at the time of the conflict. From that start point, I would then ask them
24 to tell me what they did, how they did it, and under whose orders they acted.
25 I found that in most of the interviews the people were very, very open, and they

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1 provided some interesting details which most often I could cross-check, to the extent
2 that they explained to me how they carried out their work and also because I was
3 aware of how work normally is carried out.

4 Now, if they had told me blatant false things, I would have been aware of it. So, as I
5 told you, we had open conversations and we spoke in a language that soldiers would
6 ordinarily understand; that is all soldiers of the world would ordinarily understand.

7 Q. Sir, if somebody lies to you, how do you know that they're lying?

8 A. Except there was a contradiction with the documents which I had studied and
9 analysed, you see, I only met these people after a comprehensive review of the
10 documents and a first draft to my report. Now, if there was a blatant discrepancy, a
11 blatant contradiction, between what I was being told and what I was aware of from
12 the documents, that would have raised some doubt and I would have been able to
13 detect whether what I was being told was the truth or not, but as I already said I was
14 not in a position to know ahead of time whether they would tell me the truth or not.
15 Furthermore, I couldn't ask them to take an oath or anything of that nature. We
16 were having a conversation as soldier to soldier. However, what I was able to detect
17 was their sincerity and the spontaneity with which they provided the answers and
18 sometimes the rather should I say awkward way in which they told me a number of
19 things because they did not have the proper French vocabulary with which to convey
20 their ideas.

21 So I cannot say that there were any lies as such. I could not ask them to make an
22 oath. This was a conversation between soldiers. I wanted them to just talk to me
23 about their participation in the fighting during the period that we are all interested in
24 here.

25 MR IVERSON: Sir, I see that it's about time for the lunch-break, but I would just

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1 like to take this opportunity to correct something that I misstated with regard to a
2 transcript.

3 I had referenced transcript 229, and it was my last transcript reference. The actual
4 English and French transcripts are 230, page 43 is the English, line 3 through 10, and
5 the French is page 43, line 1 through 8. Thank you very much, sir.

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

7 (Open session at 12.59 p.m.)

8 THE COURT OFFICER: We are in open session, your Honours.

9 PRESIDING JUDGE STEINER: Thank you.

10 General Seara, we are going now into our lunch-break. It's 1 o'clock. We'll be back
11 at 2.30.

12 I ask, please, court usher to accompany the witness outside the courtroom and in the
13 meantime we will suspend to resume at 2.30.

14 (The witness stands down)

15 THE COURT OFFICER: All rise.

16 (Recess taken at 12.59 p.m.)

17 (Upon resuming in open session at 2.34 p.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE STEINER: Good afternoon and welcome back. Before we
21 bring the witness in, the Chamber has two oral decisions to be issued.

22 The first one is the oral decision on the Defence's request for amended sitting hours.

23 On 7 August 2012, the Defence sent an email to the Court Management Section asking

24 CMS to consider its preference that the Chamber sits from 9 to 11 and from 11.30 to

25 1.30.

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1 As the determination of sitting hours falls under the responsibilities of the
2 Chamber under Article 64(6)(f) of the Statute and Rule 134(3) of the Rules, the
3 Chamber arranged for the necessary consultations.
4 The Prosecution opposed the Defence's proposal in an email sent on 9 August 2012,
5 alleging that any such a change would impact on the length of the Defence's
6 presentation of evidence.
7 The Registry, in an email of 10 August, expressed a preference for the current
8 schedule due to the possible budgetary constraints and the convenience for the
9 witnesses.
10 By email of 14 August, the Defence replied that the proposed revised sitting schedule
11 would expedite their questioning of the witnesses and, therefore, would not impact
12 on the estimated time for presenting its evidence.
13 After reviewing its previous position the Registry, again by email sent on
14 16 August 2012, communicated to the Chamber that the proposed change in sitting
15 hours would not have any major budgetary impact.
16 In deciding on the request, the Chamber needs to comply with its duty under Article
17 64(2) to ensure that the trial is conducted expeditiously. It further needs to
18 guarantee the accused's right under Article 67(1)(b) to have adequate time and
19 facilities for the preparation of his defence. Finally, the Chamber needs to comply
20 with its obligations under Article 68(1) to ensure the safety and physical and
21 psychological well-being of witnesses.
22 In the present circumstances, the Chamber agrees with the Defence's argument that
23 amended sitting hours may assist them in the better management of its case. In
24 particular, the Chamber notes that amended sitting hours would facilitate meetings
25 with the accused for the preparation of the questioning during the whole afternoon at

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1 the Detention Centre.

2 The Chamber further notes the Defence's argument that amended sitting hours would
3 enable the Defence to question their witnesses in a more efficient manner and thereby
4 expedite proceedings. This would also lessen the impact on the witnesses, since the
5 time of their stay in The Hague might be reduced, rather than extended. In addition,
6 if the specific individual circumstances of a witness so require, the Chamber can
7 always amend the sitting time on a case-by-case basis.

8 Furthermore, the Chamber notes the Registry's latest submission that the proposed
9 amendment would not have any major budgetary impact.

10 Therefore, the Chamber is of the view that the proposed amended sitting hours
11 would be beneficial for all parties and participants, as well as for the Chamber, and
12 will not bring any foreseeable prejudice to the witnesses.

13 In light of the above, the Chamber concludes that the Defence's request for amended
14 sitting hours should be granted.

15 The Chamber therefore decides that as from Monday, 3 September 2012, and during
16 the whole presentation of evidence by the Defence, unless otherwise decided by the
17 Chamber, the Chamber will sit daily from 9 to 11 and from 11.30 to 1.30 in the
18 afternoon.

19 The second decision is the oral decision on the Defence's objection to the use by the
20 Prosecution of nine documents.

21 On 14 August 2012, by way of an email sent at 4.59 p.m., the Prosecution notified its
22 list of documents for the purpose of questioning Witness D04-53. The list contains
23 41 items. The Prosecution specified that the list was sent, and here I quote, "... with a
24 slight delay caused by technical difficulties to upload into eCourt," end of quotation,
25 of ten documents that were disclosed by the Prosecution to the Defence on the

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1 morning of 14 August 2012. The list of documents was corrected on the same day.

2 A disclosure note was filed with the Chamber, it's document 2262, wherein the

3 Prosecution specifies that it intends to use the documents for the purpose of

4 questioning Witness D-53, but does not intend to tender them into evidence.

5 For the record, the documents at stake are: CAR-OTP-0031-0118; CAR-OTP-0066-0304;

6 CAR-OTP-0066-0309; CAR-OTP-0066-0318; CAR-OTP-0066-0321;

7 CAR-OTP-0066-0327; CAR-OTP-0066-0336; CAR-OTP-0066-0340;

8 CAR-OTP-0066-0344; and CAR-OTP-0068-0002.

9 The Chamber notes firstly that document CAR-OTP-0066-0321 was not included in

10 the Prosecution's list and, therefore, the Chamber will not consider this document in

11 the present ruling.

12 On 16 August 2012, by way of an email sent at 12.02, the Defence objected to the use

13 by the Prosecution of nine documents contained in the corrected list; namely

14 documents 23, 24, 25, 29, 30, 31, 32, 38 and 39.

15 The Defence submits that it was informed that these documents will be used by the

16 Prosecution on the morning of the commencement of Witness D-53's testimony on

17 14 August 2012 and that they were available to the Defence in the eCourt system only

18 in the afternoon, after the expert's testimony had started.

19 The Defence submitted that this late disclosure denied it, inter alia, the opportunity to

20 review these materials to determine their potential relevance to their questioning of

21 Witness D-53. In addition, the Defence claimed that it had no opportunity to check

22 the accuracy of the transcript or transcription of the material.

23 Finally, the Defence argued that it had no time to seek instructions from Mr Bemba on

24 the disclosed material.

25 On 16 August 2012, at the end of the hearing, the Defence was given the opportunity

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1 to orally elaborate on its objection. The Defence first explained that the documents
2 are audio or video recordings and related transcripts, translated in French or English.
3 The Defence contended, inter alia, that the Prosecution was in possession of these
4 documents since 2008 and that timely disclosure could have taken place. Instead,
5 the Defence further submitted that the late disclosure is prejudicial and contrary to
6 the Rules of Procedure and Evidence and practice prescribed by the Chamber for trial.
7 The Defence added that it was prevented from introducing these materials through
8 the witness himself.

9 This summary comes from transcript 231-Conf, edited English page 63, line 22 to
10 page 65, line 6.

11 In response, the Prosecution acknowledge that the material has been in its possession
12 since 2008 but that it was impossible for it, and I quote here, "to foresee if this material
13 would be relevant," prior to the expert's testimony.

14 The Prosecution argues that the Defence would suffer no prejudice as the material
15 will not be used before next week, giving time for the Defence to review the material
16 and to seek guidance from their client.

17 The Prosecution also addressed the issue of accuracy of the transcriptions of the
18 contested audio and video materials. The summary of Prosecution allegations are in
19 transcript 231-Conf, edited version English, page 65, line 13 to page 67, line 8.

20 The Chamber, in accordance with Article 21(1) of the Statute, relies for the purpose of
21 its ruling on Rule 140 of the Rules of Procedure and Evidence as well as in its decision
22 on directions for the conduct of the proceedings, this is decision 1023, paragraph 16;
23 its decision on the procedure relating to the submission of evidence, is filing 1470,
24 paragraph 7(a); and its decision on Defence disclosure and related issues, its filing
25 2141, paragraphs 21(b) and 31.

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1 The Chamber recalls that it established a system whereby a party wishing to question
2 a witness called by the other party should provide the Chamber, the participants and
3 the opposing party, with a list of documents it intends to use at least three working
4 days before questioning the witness.

5 Furthermore, at paragraph 31 of decision 2141, the Chamber first specified the
6 disclosure and inspection under Article 67(2) and Rule 77 is an ongoing obligation for
7 the Prosecution and, second, instructed the Prosecution to disclose any such items
8 that are identified for disclosure or inspection during the Defence presentation of
9 evidence promptly upon their identification.

10 In the present case, the Prosecution's questioning of Witness D-53 is scheduled to
11 start on 17 August 2012. The metadata in the eCourt system provide that the nine
12 contested materials were disclosed as Rule 77 material as part of the disclosure batch
13 61 on Monday, 13 August 2012.

14 The list of documents and the contested items were however communicated to the
15 Defence in the morning of 14 August and were only available to the Defence in the
16 afternoon of the same day. It appears that due to technical difficulties mentioned by
17 the Prosecution, the materials marked as "uploaded" on 13 August were eventually
18 available only on the 14th late afternoon.

19 The Chamber regrets these technical difficulties encountered by the Prosecution in
20 uploading documents in the eCourt system and urges that all efforts should be made
21 to avoid such a problem in the future.

22 The Chamber also notes that in any event, the material at stake will be used not
23 before Tuesday next week in accordance with the Prosecution in the very same
24 transcript 231-Conf, edited English, page 66, line 1.

25 In these specific circumstances, the Chamber's therefore not persuaded that the

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1 Defence suffered an unfair prejudice as the Defence has at least three working days to
2 prepare, as specifically established by the Chamber's decision 2141 at paragraph 21(b)
3 and therefore should be able to take instructions from the accused.

4 In addition, the expert witness will be available for further questioning by the
5 Defence on the contested items since the Defence will be given the opportunity to
6 speak last.

7 Therefore, the Chamber finds the Defence has not been unfairly prejudiced by the
8 delayed disclosure of the nine documents.

9 Finally, the Chamber clarifies that the translation of the transcriptions of the
10 audio/video material will be made by the court interpreters based on the
11 transcriptions prepared by the Prosecution. Therefore, any dispute as to the
12 accuracy of these transcriptions will not be dealt with at this stage as this relates to
13 admissibility issues which may only occur if and when the admission into evidence of
14 the nine documents is sought by the Defence as the Prosecution already stated that it
15 does not intend to request their admission into evidence.

16 The Chamber therefore decides that the nine contested documents may be used by
17 the Prosecution for the purpose of the questioning of Witness 53 and rejects the
18 Defence's objection.

19 Now I ask, please, court usher to bring the witness in.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE STEINER: Good afternoon, General Seara, and welcome back.

22 THE WITNESS: (Interpretation) Thank you.

23 PRESIDING JUDGE STEINER: The Chamber apologises for make you waiting, but
24 the Chamber had two oral decisions to be issued before we continue with your
25 testimony.

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1 Mr Iverson, you have the floor. Sorry, Mr Haynes?

2 MR HAYNES: Yes, sorry, your Honour, but I just wanted to revisit briefly, and
3 quite purposefully in the presence of the witness, a discussion we had this morning
4 about evidence of the usage of cellphones and in particular Mr Iverson's remarks at
5 page 40, lines 20 to 22, and his hypothetical question put at page 44, lines 1 to 4.

6 I've had the opportunity of looking at the Prosecution's Bar table motion which, if you
7 haven't got it in front of you, is ICC-01/05-01/08-2147-Conf-AnxA, and particularly
8 item 97 on that list and the underlying material. And your Honour will be
9 interested to note how it's described by the Prosecution in the penultimate column.

10 Now, we all know there is an important and significant distinction between a
11 cellphone and a Thuraya, so important and significant is the distinction between a
12 cellphone and a Thuraya that Mr Iverson put a question to the witness five times
13 about whether he -- or how he knew that a Thuraya could only speak to a Thuraya.
14 And I thought that the witness ought to know that there is no evidence of cellphone
15 usage in this case, and that the hypothesis that there was or might have been evidence
16 of Mr Bemba making hundreds of cellphones calls to Moustapha and other people in
17 the Central African Republic was a false one based on nothing.

18 And I do invite you to keep a weather eye on these hypotheses which are not in fact
19 based on any proper evidence in the future.

20 PRESIDING JUDGE STEINER: Thank you, Mr Haynes. Mr Iverson.

21 MR IVERSON: Madam President, I don't think now is the proper time to get into
22 closing arguments, and I'm sure that the Chamber would not prefer that I get into a
23 closing argument, so I will not go there, but I will say this: The Prosecution looks
24 forward to the time that we can present to your Honours the evidence of cellphone
25 records and flight logs and how all the evidence ties together and how it proved

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1 beyond a reasonable doubt that Jean-Pierre Bemba is guilty of the crimes that we
2 have alleged.

3 PRESIDING JUDGE STEINER: Mr Haynes.

4 MR HAYNES: I wasn't making a closing argument, I was inviting you to protect the
5 witness from misleading questions.

6 PRESIDING JUDGE STEINER: Mr Iverson, when you referred to the log-books that
7 have not already been admitted into evidence, since they are pending a decision from
8 the Chamber, Mr Haynes made an objection but we decided that the reference to the
9 log-books could be made since these documents have already been submitted as
10 evidence before the Chamber and commented by the parties.

11 You are now saying that you are looking forward to the time that you can present to
12 us evidence on the cellphone records and flight logs. So my question is: Is these
13 documents or materials already been tendered, at least tendered into evidence, or
14 they exist only in the Prosecution's office?

15 MR IVERSON: Madam President, these items have been tendered into evidence
16 awaiting a decision on admissibility, and they have been tendered in the Bar table
17 motion. I'm sorry, I'd like -- I should be more specific when I say "Bar table motion,"
18 so if you want me to give you the date of the Bar table motion I can certainly do that.
19 It will just take a few moments to get that.

20 PRESIDING JUDGE STEINER: You don't have to right now. What we need is to
21 be sure that these documents have already been submitted. If they have been
22 already submitted, you are authorised to make a reference to them as we did with the
23 log-book references. Mr Haynes.

24 MR HAYNES: But lastly item 97 is not a record of a cellphone, it's a record of a
25 Thuraya, and Mr Iverson knows very well that they are two different things. The

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1 purpose of his questioning of this witness was to allow for the underlying possibility
2 that either Mr Bemba or his subordinates in the Central African Republic had the use
3 of cellphones, and that's why he has characterised the item on the Bar table motion as
4 being cellphone records. They are not, and he continues to characterise them as
5 cellphone records. They are Thuraya records and, for the record, they are not
6 attributable to anybody.

7 PRESIDING JUDGE STEINER: This last part of your comment, Mr Haynes, will be
8 analysed by the Chamber at the moment on deciding on admissibility. What I
9 wouldn't like to have here is information that could mislead the witness, so it's
10 important that the Prosecution clarifies whether he was talking about cellphone calls,
11 or Thuraya calls. This is the point in which the Chamber thinks that Mr Haynes is
12 correct in his observations.

13 MR IVERSON: Madam President, the records actually show both. They show
14 Thuraya calls to cellphones and Thuraya phone calls to Thuraya phones. If I was
15 not specific enough in saying "Thuraya" and "cellphone," fair enough, I could have
16 been more accurate, but I think I was just referring to phone records in general. I
17 didn't see the need to be very specific to the point that we're talking about Thuraya
18 records, listing cellphone calls and Thuraya calls, especially when this witness - this
19 expert witness - hasn't actually reviewed that evidence.

20 And, again, to a certain extent Mr Haynes' comments require me to get into what
21 I would essentially argue or what the Prosecution will argue in closing arguments,
22 and so I can't imagine that the Chamber would entertain those arguments now
23 already in my sense of the situation, Madam President.

24 PRESIDING JUDGE STEINER: You can proceed, Mr Iverson, but the
25 Chamber would appreciate the more accurate as possible, or more accuracy as

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1 possible, in your questioning in order for the Chamber to be sure to what the answer
2 of the witness is referring to.

3 You can proceed, please.

4 MR IVERSON: I'll ask the same exact question with the accuracy that you wish,
5 Madam President.

6 Q. If there is evidence of phone records from a Thuraya phone that indicate that
7 hundreds of Thuraya phone calls to a Thuraya and hundreds of other phone calls to
8 mobile phones or land-lines exist, that would be relevant to your analysis of the
9 situation, would it not, sir?

10 A. The fact that there is a phone log confirms what I said yesterday; that is the lack
11 of total confidentiality for such equipment in the transmission of information during
12 that conflict. Whether there were telephone exchanges or conversations using
13 Thuraya or other means, the important thing from my point of view is not the
14 number of phone communications, but the content of those communications. What
15 were they discussing during those communications? I have no idea.

16 MR IVERSON: And, sir, that's absolutely a fair point, that you don't know what
17 they were discussing, for what it's worth.

18 Madam President, could I request a private session, please?

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

20 (Private session at 3.05 p.m.) * Reclassified as Open session

21 THE COURT OFFICER: We are in private session, your Honours.

22 MR IVERSON:

23 Q. Sir, when we stopped for lunch, I was asking you a series of questions about
24 your meetings in Kinshasa and in Brazzaville and I'd just like to continue asking you
25 those questions. What language, or languages, did you use during the informal

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1 meetings?

2 A. I did not quite catch the end of the translation. We spoke French. Some of
3 the people that I interviewed had difficulties, so there was an interpreter who spoke
4 French who assisted me in those interviews.

5 Q. And, sir, was a member of the Defence team present?

6 A. Are you referring to the interpreter?

7 Q. Well, yes, I suppose if the interpreter was a member of the Defence team. Who
8 was the interpreter?

9 A. As far as I know, the interpreter was not a member of the Defence team. It was
10 someone who lives in Kinshasa and who speaks French. I do not know that person's
11 name. He works in computers, and he was called upon to serve as an interpreter for
12 me. He in fact spoke excellent French.

13 Regarding whether or not the Defence was represented during those interviews, there
14 were no members of the Defence team with me. If the person I was interviewing
15 spoke French I was alone with him, but if I had difficulty the interpreter would
16 intervene, but I would like to point out that Maître Kilolo, who accompanied me to
17 Kinshasa, did not take part in the interviews.

18 Q. Could I start with (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. (Redacted) tell you anything related to the 2002/2003 conflict?

3 A. Not really. His analysis was much more at a political rather than a military
4 level, so this was somewhat outside of my terms of reference. However he
5 personally felt that, during that period that is of concern to us, Mr Bemba had more
6 important concerns inside the Democratic Republic of Congo than the issue of
7 monitoring what was happening in the Central African Republic, so that is what I
8 retained from his political analysis of the situation at the time in the DRC and in the
9 CAR.

10 Q. (Redacted) referred to the more important concerns of
11 Mr Bemba, what were those more important concerns?

12 A. This was outside of my terms of reference, but these were concerns of a political
13 nature and not of a military nature.

14 Q. Do you know what the concerns were specifically?

15 A. I am a military expert, I'm not a political expert, so I really do not know what
16 really happened in 2002 at the political level in the DRC, so I cannot give you an
17 answer to that question.

18 Q. Sir, do you think knowing what happened at the political level would be
19 important to determining who has command and control?

20 A. Political concerns or activities at the internal level could possibly or potentially
21 have an impact on operations outside of the country, but it is said that it is very
22 difficult to pursue two objectives at the same time, and when you have political
23 concerns and military concerns you normally have to make a choice regarding where
24 to place your priorities, and my idea, the idea that I got from the person I discussed
25 with, indicated that the priority had been given to the political level rather than the

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- 1 military level.
- 2 PRESIDING JUDGE STEINER: (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Prosecution counsel confer)

10 MR IVERSON: I'd like to request an open session, Madam President, or public
11 session.

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

13 (Open session at 3.23 p.m.)

14 THE COURT OFFICER: We are in open session, your Honours.

15 MR IVERSON:

16 Q. Sir, what did Tango tell you about his experiences during 2002 and 2003?

17 A. He did not tell me anything really new, that is when compared to what I had
18 read in the documents. However, he confirmed some of the information that I had
19 read in the documents, (Redacted)

20 (Redacted) and he

21 said that in the configuration of the large operations room there was a place that he
22 was confined to so as not to be too close to the various officers discussing the
23 operations.

24 (Redacted)

25 particularly to PK12 and from PK12 to Damara and back to PK12, because the three

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1 battalions under the command of Colonel Moustapha had gone in three different
2 directions; one to Damara; one towards the direction of Bossembélé and the third one
3 in the direction of Bozoum. So his priority was to go with the battalion that was
4 going to Damara, and once Damara was captured he set up a base at PK12 so as to be
5 at the centre of all the battalions. So he would go to the various battalions
6 depending on the needs.

7 So Mr Moustapha's command post was in PK12, and he would go to Damara, and
8 once Damara was taken he came back to PK12 where he stayed with his small
9 command team, and he would move about with his radio technicians and members
10 of his General Staff. He would move about to the other battalions depending on the
11 situation, (Redacted)

12 Q. Sir, was your meeting with him designed to confirm what you had already learned
13 in the documents?

14 A. That meeting confirmed some of the information that I had already read in the
15 documents, but more particularly it confirmed one element that I had not learned
16 about and that is that the command post of Colonel Moustapha had moved to
17 Damara before returning to PK12 in a more -- on a more permanent basis to enable
18 the general to go left, right or centre to any of the battalions as quickly as possible
19 whenever needed. That is the information he provided to me.

20 Q. What questions, if any, did you have of him regarding the responsibility of
21 Central African authorities?

22 A. This is not something that I discussed with him. He is a man who was
23 occupying an important position, (Redacted) it
24 had to be someone trustworthy. But regarding relations with the Central Africans
25 that was not his responsibility, but during meetings at the Operational Command

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- 1 Centre he could observe that Mr Moustapha did not only take part, but was involved
- 2 in the preparation of orders. (Redacted)
- 3 (Redacted)
- 4 PRESIDING JUDGE STEINER: Maître?
- 5 MR KILOLO: (Interpretation) Could we please move briefly into private session?
- 6 PRESIDING JUDGE STEINER: Court officer, please.
- 7 (Private session at 3.30 p.m.) * Reclassified as Open session
- 8 THE COURT OFFICER: We are in private session, your Honours.
- 9 PRESIDING JUDGE STEINER: Yes, Maître?
- 10 MR KILOLO: (Interpretation) (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 PRESIDING JUDGE STEINER: (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
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- 25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted) For my own convenience, therefore, it might be best to remain in private
- 5 session and discuss the matters freely, because if we go to open session then we
- 6 would need to have several codes and then agree on all of them.
- 7 PRESIDING JUDGE STEINER: I understand that it's a very difficult exercise,
- 8 General, but we have done it before with many witnesses because it's a statutory duty
- 9 that we conduct the hearing as much as possible in public sessions, so the private
- 10 sessions should be an exception and not a rule.
- 11 In this case, I just would like to give you an example. (Redacted)
- 12 (Redacted)
- 13 (Redacted) So it is
- 14 this kind of information that with a little bit of practice, and you will stay still for
- 15 some days here with us, you will see that it's not such a difficult exercise, but I
- 16 understand that in the beginning it appears to be impossible to overcome these
- 17 difficulties, but I'm sure that we'll be able to do that. We will try again to go back into
- 18 a public session. Court officer, please. (Open session at 3.35 p.m)
- 19 MR IVERSON: Madam President, I'm sorry, but I just have one thing to say that
- 20 I would like to say in private session before we go into public, if we could stay in
- 21 private session just for one moment? (Private session at 3.35 p.m) * Reclassified as Open session
- 22 THE COURT OFFICER: We're still in private session.
- 23 MR IVERSON: Okay.
- 24 Q. Sir, just one suggestion. It may work for you. (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted) So if you could try to do that, I think we can minimise the risk to an
3 acceptable level.

4 That's all I had to say, Madam President. Thank you.

5 PRESIDING JUDGE STEINER: Court officer, please let's go into public session.

6 (Open session at 3.36 p.m.)

7 THE COURT OFFICER: We are in open session, your Honours.

8 MR IVERSON:

9 Q. Sir, what if any questions did you ask of Tango regarding the role of Mr Bemba?

10 A. He did not talk to me about Mr Bemba's role. He talked to me about (Redacted)
11 (Redacted) and that gave me the
12 opportunity to cross-check whether or not Colonel Moustapha attended the meetings
13 at the Operational Command Centre, that he was able to go to that command post
14 and that he moved about to visit his battalions and that he was able to exercise his
15 duties as brigade commander fully. That person did not at any time whatsoever
16 mention Mr Bemba's name.

17 Q. Sir, what if anything did Tango tell you about communications?

18 A. That matter was not raised in our discussions. He didn't bring it up, I didn't
19 bring it up, because I had met other persons who were more qualified than he was to
20 deal or discuss that issue -- deal with or discuss that issue.

21 MR IVERSON: Sir, I'd like to move on to the next person and for that purpose I
22 need to go briefly into private session.

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

24 (Private session at 3.39 p.m.) * Reclassified as Open session

25 THE COURT OFFICER: We're in private session, your Honours.

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1 MR IVERSON:

2 Q. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 MR IVERSON: Okay.

23 PRESIDING JUDGE STEINER: We can go back into public session, please.

24 (Open session at 3.43 p.m.)

25 THE COURT OFFICER: Your Honours, we are in open session.

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1 MR IVERSON:

2 Q. Sir, could you please tell the Court about what Echo told you about the
3 2002/2003 conflict?

4 A. Most of what he said confirmed the permanent link between Colonel
5 Moustapha and the operational centre through radio links. He also confirmed that
6 orders -- an order of conduct, so to speak, is an operational order, a written
7 operational order. And, again, things might not always happen the way they are
8 planned, and that is why every now and then there is an update, and such updates
9 are referred to as order of conduct or in French "ordre de conduite," and Moustapha
10 would, in the course of any given day, receive such orders of conduct which would
11 then be reviewed at his level and issued to the battalion commanders as an order
12 from him.

13 He also confirmed that the sit-reports, the periodic situation reports as need be, were
14 also provided by radio between Colonel Moustapha and the Operational Command
15 Centre. This in fact did confirm the fact that Colonel Moustapha obeyed instructions
16 from the Central African Operational Command Centre and that it was to that centre
17 that Moustapha reported on developments on the ground.

18 This was a very important information relating to the prosecution of the operations to
19 the extent that it detailed who Colonel Moustapha received his orders from and to
20 whom he reported.

21 Q. Sir, when you spoke with Echo, did you have the log-books with you? Was he
22 able to look at them? The log-books you were asked to review, did he have those?
23 Did you have those during the interview?

24 A. What do you mean by "log-books"? Are you talking about log sheets in French,
25 in English, rather?

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1 Q. I'm going to regret this, but I believe the French is cahier de communication.

2 And I regret it because my French is poor, that's why.

3 A. No, he did not talk to me about any messages that were recorded in a book or

4 anything of that nature. You see, when we talk about these orders of conduct, so to

5 speak, or additional instructions are not written down in that manner. They are to

6 be executed immediately and therefore there is no time to register them as such. So

7 there might be circumstances where urgent orders are issued and need to be

8 implemented promptly, and there is no time to write that down, so these can be done

9 by radio in very brief and very rapid succession leading up to a specific situation.

10 In such circumstances, those types of messages are not necessarily recorded. The

11 messages that are recorded are those sent from one transmission centre to another

12 transmission or signalling centre and entered into a log, a book, mentioning the time,

13 the addressor and the addressee with a hard copy being kept thereof, that is a hard

14 copy of the message that has been signalled.

15 This can happen where possible, but if one is in a war zone it might not always be

16 possible to do so. However, it was also confirmed to me by Echo that some of these

17 communications were done in a coded manner using certain code words indicating

18 various areas or various activities that needed to be undertaken, or to identify

19 neighbours and what have you.

20 So they had a number of code words to ensure that were a message to be intercepted,

21 because someone had logged into that frequency, then they might be able to simply

22 understand what was said openly but would not be able to interpret because of the

23 use of such code words within those transmitted messages.

24 Q. And, sir, with your background in intelligence, the fact that codes were used to

25 transmit messages, does that indicate to you that the radio transmissions were done

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1 in the open, unencrypted?

2 A. The radio network was unencrypted, and that is why they used the code word
3 system, rather, to camouflage or to disguise the messages. However, code words
4 can be easily cracked, and that is why it was necessary to change those code words at
5 least once every 24 hours, and those who work in the signalling systems usually have
6 a book, and each of those books had about a hundred code words which would be
7 used once a page of that document is referred to for use on a particular day.

8 So from that moment VI will be Kokliko (phon), and what have you, and so the next
9 day they can change from page 3 to the last page, or to another page, and that is why
10 the use of code words was changed on a daily basis, and that made it possible for the
11 camouflage to remain in place.

12 MR IVERSON: Madam President, I'd like to ask briefly for a private session.

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

14 (Private session at 3.53 p.m.) * Reclassified as Open session

15 THE COURT OFFICER: We are in private session, your Honours.

16 MR IVERSON:

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted) The radio system

25 covered the battle-zone but could not be used for long distance communication.

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1 Q. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 MR IVERSON: Madam President, I'm finished with my questions about Echo, and
10 I think it's probably late in the day to start with the next witness I'd like to ask a
11 question about, so I would ask that -- to just finish for the day. Thank you. Thank
12 you, sir.

13 PRESIDING JUDGE STEINER: Thank you, Mr Iverson. Can we go back public
14 session, please.

15 (Open session at 3.57 p.m.)

16 THE COURT OFFICER: We are in open session, your Honours.

17 PRESIDING JUDGE STEINER: General Seara, we will adjourn today. You are
18 entitled now to a long weekend. As you may know, we don't have hearings on
19 Monday, Monday is an official holiday of the Court. That means that we will
20 resume on Tuesday morning at 9.30 in the morning. And of course VWU will give
21 you whatever assistance you need for whatever arrangements you have for this long
22 weekend. We hope it's restful and peaceful and that we can be back here on
23 Tuesday morning at 9.30. Thank you very much.

24 I thank very much the Prosecution team, the legal representatives of victims,
25 Defence team, Mr Jean-Pierre Bemba Gombo. I thank very much our interpreters

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1 and our court reporters.

2 We will adjourn for today and resume on Tuesday and the Chamber wishes to

3 everyone a very restful, long weekend.

4 I ask, please, court usher to accompany the witness outside the courtroom and in the

5 meantime we will adjourn.

6 (The witness stands down)

7 THE COURT OFFICER: All rise.

8 (The hearing ends in open session at 3.59 p.m.)

9 CORRECTION REPORT:

10 The Court Interpretation and Translation Section has made the following correction

11 in the transcript:

12 *Page 27 line 19

13 "paragraph 54" Is corrected by "paragraph 57"

14 RECLASSIFICATION REPORT

15 Pursuant to Trial Chamber III 's Orders, ICC-01/05-01/08-2223 and

16 ICC-01/05-01/08-3038, the version of the transcript with its redactions becomes Public.