

Trial Hearing
Witness: CAR-D04-PPPP-0021

(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, 12 April 2013
- 8 (The hearing starts in open session at 9.05 a.m.)
- 9 THE COURT USHER: All rise.
- 10 The International Criminal Court is now in session.
- 11 Please be seated.
- 12 PRESIDING JUDGE STEINER: Good morning.
- 13 Could, please, court officer call the case.
- 14 THE COURT OFFICER: Yes, Madam President. Situation in the Central African
- 15 Republic, in case of The Prosecutor versus Jean-Pierre Bemba Gombo, case reference
- 16 ICC-01/05-01/08.
- 17 PRESIDING JUDGE STEINER: Good morning. I welcome the Prosecution team,
- 18 legal representatives of victims; better saying Maître Douzima Lawson. I welcome
- 19 the Defence team, Mr Jean-Pierre Bemba Gombo. Good morning to our interpreters,
- 20 our court reporters. Good morning, Ms Toumaj.
- 21 THE COURT OFFICER (DRC): (Interpretation) Good morning, Madam President.
- 22 PRESIDING JUDGE STEINER: Good morning, Mr Witness.
- 23 WITNESS: CAR-D04-PPPP-0021 (On former oath)
- 24 (The witness speaks French)
- 25 (The witness gives evidence via video link)

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- 1 THE WITNESS: (Interpretation) Good morning, Madam President.
- 2 PRESIDING JUDGE STEINER: How are you feeling today?
- 3 THE WITNESS: (Interpretation) I feel very well, Madam President.
- 4 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony, sir?
- 5 THE WITNESS: (Interpretation) Yes, I am ready, Madam President.
- 6 PRESIDING JUDGE STEINER: So I will just remind you once again that you are still
- 7 under oath. You understand that, sir?
- 8 THE WITNESS: (Interpretation) Yes, Madam President, I do.
- 9 PRESIDING JUDGE STEINER: I'll give back the floor to Maître Badibanga.
- 10 MR BADIBANGA: (Interpretation) Thank you, Madam President. Good
- 11 morning, Madam President. Good morning, your Honours.
- 12 QUESTIONED BY MR BADIBANGA: (Interpretation) (Continuing)
- 13 Q. Good morning, Mr Witness.
- 14 A. Good morning, Counsel.
- 15 Q. Mr Witness, I hope that this has not been a very painful exercise for you, but in
- 16 any event the good news is that this morning we would conclude this examination by
- 17 the Prosecutor.
- 18 A. Counsel, so far things have been going well. I have no problem. There has
- 19 been civility and good faith demonstrated in our discussions and together we are
- 20 forging ahead as we seek to discover the truth.
- 21 MR BADIBANGA: (Interpretation) Yesterday, when we broke off, we were
- 22 talking about the (Redacted) stay in Sibut, or the stay in Sibut and the mission to Sibut.
- 23 For that purpose, your Honour, I would like us to move into private session.
- 24 PRESIDING JUDGE STEINER: Court officer, please.
- 25 *(Private session at 9.09 a.m.) Reclassified as Open session

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

2 MR BADIBANGA: (Interpretation)

3 Q. Mr Witness, when we watched the film that was played by the Defence and
4 when you looked at some of the excerpts that I showed you yesterday, we saw that,
5 even in your own words, those who had been interviewed were interviewed by
6 Congolese journalists who were part of that mission; is that correct?

7 A. Correct, to the extent that it relates to the excerpts of the videos we watched and
8 to the extent that I was able to recognise the voices of Congolese journalists.

9 Q. (Redacted)

10 (Redacted)

11 A. (Redacted)

12 (Redacted) but Mr Valentin Senga was part of that
13 delegation and he was a full-fledged minister, if I'm not mistaken.

14 Q. Full-fledged minister of what ministry, or for what portfolio?

15 A. I no longer recall clearly, Counsel.

16 Q. (Redacted)

17 (Redacted)

18 A. No, Counsel.

19 Q. Can you tell us who appointed him, or instructed that he be part of that
20 mission?

21 A. I believe that it was Mr Bemba.

22 Q. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 A. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. When the mayor was being interviewed by the Congolese journalists, as we saw
17 on the video yesterday, there were some soldiers behind him, armed soldiers.

18 (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 MR BADIBANGA: (Interpretation) (Redacted) I would like to

25 ask that another excerpt be played for your attention, document 15 of Defence

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1 CAR-DEF-0001-0832. I would like us to start playing from time-stamp 11.45 and it
2 would last about ten seconds and I will point out where to stop.

3 (Viewing of the video excerpt CAR-DEF-0001-0832)

4 MR BADIBANGA: (Interpretation) I would like the video to play a little further
5 and I will point out where to stop so that the witness may watch. We'll stop in a few
6 seconds.

7 (Viewing of the video excerpt CAR-DEF-0001-0832)

8 MR BADIBANGA: (Interpretation) We can stop there.

9 Q. Well, maybe we did not quite see what I wanted to point out because of the
10 interruption, but the question for you, Witness, was whether one could see that to the
11 right of the mayor there was a bench - a long bench - and a series of chairs on which
12 representatives of the MLC were seated. Did you see the same thing that I saw, or
13 would you like the tape to be played again?

14 A. Please play the excerpt again and stop at the right position.

15 MR BADIBANGA: (Interpretation) I would like to ask the court officer whether it
16 is possible to replay that excerpt again?

17 It would appear that there is a little stop here, I don't know why. Maybe we could
18 start at time-stamp 11.40 and let the whole thing flow.

19 (Viewing of the video excerpt CAR-DEF-0001-0832)

20 MR BADIBANGA: (Interpretation) Stop there, please.

21 Q. Witness, I do not know what the quality of the images you are looking at is, but
22 I would like to ask you whether we were both watching the same thing, and can you
23 please confirm what I'm saying? We can see on the screen the mayor being
24 interviewed and to his immediate left is Mr Lionel Gan-Befio, President Patassé's
25 representative. Is that what you saw as well, Mr Witness?

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1 A. Yes, I saw the same thing as you did.

2 Q. Then right next to Mr Gan-Befio we see Mr Valentin Senga. Is that the same
3 thing you saw?

4 A. Yes, that is correct. I saw the same thing.

5 Q. And next to Mr Valentin Senga we see Major Kamisi, the commander of the
6 troops on the ground, the officer in charge of the troops on the ground. Did you see
7 the same thing as I did?

8 A. Yes, Counsel, I saw the same thing.

9 Q. Then on the other side, to the mayor's left, we can recognise the lady who was
10 also interviewed at some point and who told us that the children of the Central
11 African Republic, or at the very least the children of Sibut, were thankful to
12 Jean-Pierre Bemba. Did you see the same thing as I did?

13 A. Yes, Counsel, I did see the same thing.

14 Q. Then we see other people seated on the benches, including particularly one of
15 the witnesses who said he was a Muslim and who had also made a statement to the
16 journalists. Is that what you also saw, Mr Witness?

17 A. Yes, I think I saw him.

18 Q. Witness, all those people were able to hear what the mayor was saying at the
19 same time; is that not the case?

20 A. From the distances where they were, I think they must have been able to.

21 Q. You have seen all those who were seated, (Redacted)

22 (Redacted)

23 (Redacted)

24 A. (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. Because we are in private session let me avail myself of this opportunity to deal
4 with another issue, but I'm done with the document that is now being displayed. It
5 can be taken off the screen. Witness, I would like to explore with you the nature of
6 the contacts that you had with the Defence team prior to your testimony. When they
7 contacted you, or rather when he examined you on the very first day and introduced
8 himself, Mr Kilolo said, "We had already had some contact before today." Could
9 you please provide us with some context to that reference to a previous meeting with
10 you and -- between you and Mr Kilolo? How many times did you meet with
11 Mr Kilolo prior to your testimony of this week?

12 A. I met Mr Kilolo once when he came to my home.

13 Q. Before Monday, 8 April 2013, you met Mr Kilolo only once?

14 A. As far as I can remember I met him once and he came along with a female
15 colleague, someone from his team.

16 Q. Do you remember when that meeting took place?

17 A. I don't have an exact date in mind, but it must have been last year.

18 Q. And how long did that meeting last?

19 A. Two to three hours I think, if I'm not mistaken.

20 Q. Did you have any discussions about your testimony during that meeting?

21 A. Yes, they asked me a number of questions to which I provided some answers.

22 Q. Did you or anyone else who was in attendance at that meeting take down any
23 notes?

24 A. I think that my interlocutors were taking down some notes.

25 Q. During that meeting, were you given any assistance in relation to preparing for

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1 your testimony; the testimony that was to be given in court?

2 A. Not at all, Counsel.

3 Q. Did you receive, be it at that meeting or at any other time, any documents to
4 read in order to prepare for your testimony?

5 A. None whatsoever, Counsel.

6 Q. Before you came to testify, Witness, before this Court, what did you know about
7 this trial? Did you have any information about what was happening here, what
8 witnesses were saying and the stakes of the matter before this Court?

9 A. No, Counsel. The little I knew, like all ordinary men would know, is that
10 Jean-Pierre Bemba was being prosecuted at The Hague because of acts of violence
11 committed by soldiers in the Central African Republic. I had no further knowledge
12 than that.

13 Q. It would appear to me that yesterday you were able to provide a lot more detail,
14 and the President yesterday reminded you that it was the duty of the Judges to assess
15 the testimony of witnesses who had appeared before this Court, but yesterday you
16 seemed to be assessing and criticising some of the testimony that has been given in
17 this trial?

18 A. Yes, Counsel, this is information that I gleaned from the press, or the media.

19 Q. Were you informed, Mr Witness, that the Office of the Prosecutor had expressed
20 a desire to meet you before the beginning of your testimony?

21 A. Yes, that is correct, Counsel.

22 Q. It would appear that when that invitation was extended to you, you turned it
23 down and that you did not wish to meet the OTP; is that correct?

24 A. Yes, that is correct, because at the time of the request I had some personal issues,
25 some personal concerns relating to the health of my wife.

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1 Q. Apart from your meeting with Maître Kilolo and one of his female colleagues
2 last year, did you have any telephone contacts, for example, with Mr Kilolo or with
3 any other member of the Defence team?

4 A. Yes, I had some contact with Mr Kilolo and it is on that occasion that he told me
5 about the request from the OTP to meet with me.

6 Q. And apart from that telephone discussion, did you have any other contacts with
7 Maître Kilolo or with any other member of the Defence team?

8 A. I do not think so, Counsel. Apart from Maître Kilolo, I do not remember that
9 I know any other member of the Defence team.

10 Q. Apart from that physical meeting with Mr Kilolo last year and the telephone
11 conversation with him a few weeks ago, did you have any email contacts or any
12 contacts by mail with Mr Kilolo or with any other member of the Defence team?

13 A. None whatsoever, Counsel.

14 Q. Did you discuss this case and your trial before this Court with anyone else?

15 A. I had a discussion with (Redacted)

16 Q. Did you have opportunity to talk with anyone else who may be a witness in this
17 trial, or who may have told you that they were witnesses in this case?

18 A. No, Counsel.

19 Q. During your meeting with the Defence, or your meetings with the Defence, did
20 you receive any reimbursements for costs incurred, such as transportation costs or
21 any other expenditure that you may have incurred in relation to this case?

22 A. The meeting took place at my home and there were no transport costs to be
23 reimbursed.

24 Q. Did you receive any payment whatsoever within the context of this trial;
25 payments from the Defence team or any representative of the Defence team?

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1 A. No, Counsel. All I can say is that the services, and I really don't know how to
2 refer to them, the services that manage this matter here, on the first day, offered some
3 communication equipment or some communication facilities to me so that I could get
4 the necessary air time, so to speak, to be able to talk to (Redacted) and I turned
5 down the offer.

6 Q. You said on the first day, in answer to a question from Maître Kilolo, that you
7 did not have any friendly ties with Jean-Pierre Bemba; is that correct?

8 A. That is indeed the case, Counsel.

9 Q. (Redacted)
10 (Redacted), you don't have any form of
11 friendship with him?

12 A. No, Counsel. (Redacted)
13 (Redacted)

14 Q. Are you in contact with Mr Bemba at the moment?

15 A. Since the beginning of these hearings I have not been in contact with Mr Bemba,
16 (Redacted)

17 Q. To clarify this somewhat - my question was somewhat broadly framed - since
18 Mr Bemba was arrested and has been in detention in The Hague, have you been in
19 regular contact with him?

20 A. (Redacted)

21 Q. Have you sworn any form of oath of loyalty to Mr Bemba or the MLC?

22 A. No, Counsel.

23 Q. What was your motivation for coming here to testify, Mr Witness?

24 A. The primary motivation was manifestation of truth, looking for truth in any
25 case.

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1 Q. (Redacted)

2 (Redacted)

3 (Redacted)

4 A. No, not at all, Counsel, because I think we need to look at the difference
5 between the MLC political party and Mr Jean-Pierre Bemba.

6 Q. But, Mr Witness, at the same time, the MLC political party is a party created by
7 Jean-Pierre Bemba and he is still the president of the party today. (Redacted)
8 (Redacted) Would that be
9 usual?

10 A. Counsel, yes, but perhaps the people who have been following us for the past
11 week should be in a position to judge the objectivity of my answers.

12 Q. On the first day when you explained your political background, it seemed that
13 the first party you were a member of, I think, was the RCD? (Redacted)
14 (Redacted)

15 A. That's indeed the case, Counsel.

16 Q. (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. (Redacted)

23 (Redacted)

24 A. (Redacted)

25 Q. Is there any particular reason that you chose not to mention this party when you

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1 were explaining your curriculum to Maître Kilolo?

2 A. No particular reason. It was perhaps because I didn't want to give too many
3 details, to waste the Court's time listening to the details of my personal political
4 background. I thought it would take far too much time.

5 Q. When was (Redacted) created? In which year?

6 A. If I am not mistaken, it must have been in (Redacted).

7 Q. So, Mr Witness, in order to spare the Court's time, I will give a summary of your
8 political background and you will correct me if I make any errors. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Have I given a correct summary of your career?

15 A. You have explained the background, but perhaps I could add some extra
16 information? (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted) This is

21 what I would like to add to the summary you gave.

22 Q. In the case of the MLC, what military rank did you have?

23 A. When I arrived in the MLC, there were no ranks and we were all referred to as
24 "commandant."

25 Q. Was this a title for the officers, because I think there were some people that were

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1 also referred to as "soldiers"; is that correct?

2 A. Yes, indeed, Counsel.

3 Q. Were you already an officer at that stage then?

4 A. I think you could say that I was.

5 Q. Would you remind me when you undertook the three-month military training
6 you referred to a few days ago?

7 A. That was in 1999.

8 Q. And when you left that training you were a soldier second class, or did you
9 have some form of officer rank?

10 A. When I left the military school, I left the school as (Redacted). That's
11 the -- what they call it in English.

12 Q. Do we agree, Mr Witness, that when the MLC joined the government
13 in -- joined the government in Kinshasa in July 2013 you were a (Redacted)

14 A. Yes, that is correct, Counsel.

15 Q. What I wanted to hear now from you is what is your progression through the
16 ranks of the army? What ranks did you hold at what time? You finished your
17 training in 1999. Could you please give us some indication of your career
18 progression within the army from that rank up to (Redacted)

19 PRESIDING JUDGE STEINER: In your question you referred to the movement
20 joined the government in Kinshasa in July 2013. I think probably there is a mistake
21 there.

22 MR BADIBANGA: (Interpretation) Madam President, thank you very much for
23 the close attention you're giving to my words. It was indeed 2003.

24 Q. Are you able to answer my question, Mr Witness?

25 A. I can indeed, Counsel. The answer is very simple. I said there were no

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1 particular ranks within the rebellion until at the end of the rebellion I was awarded
2 the rank of (Redacted).

3 MR BADIBANGA: (Interpretation) Yes, we can return to public session. Thank
4 you.

5 PRESIDING JUDGE STEINER: Court officer, please.
6 (Open session at 9.48 a.m.)

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

8 MR BADIBANGA: (Interpretation)

9 Q. I think, Mr Witness, I think you are familiar with the practice now. We are
10 back in public session and we will say nothing to identify you and I would counsel
11 you not to say anything yourself that would allow persons outside the Court to
12 identify you.

13 Can you recall, Mr Witness, a question from Mr Kilolo about the flagrancy provision
14 in Congolese law?

15 A. Yes, I do, Counsel.

16 Q. This question was raised because I think Defence was trying to indicate that
17 people during the course of a trial could be notified at very short notice in the event of
18 a judgment. Do you recall the situation?

19 A. Yes, indeed I do, Counsel.

20 Q. Could you please explain to us what you understand by "flagrancy"?

21 A. I believe that this is the case when the crime has just been committed or only
22 very shortly beforehand when one is caught in the act, perhaps.

23 Q. I'm going to try and speed things up a bit, but please interrupt me if you have
24 any concerns, and I'm now going to put the documents up on the screen for your
25 examination, but if I give you the following case: An individual is arrested on

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1 30 October 2002. I think you've noted that?

2 A. Yes, indeed I did.

3 Q. This person is invited to appear before the court on 5 December 2002. Would
4 this time span, a month-and-a-half roughly, fit into the definition of a flagrant act,
5 being caught in the act, as you explained it to us?

6 A. Counsel, unless I am mistaken, it's related to the date of the -- the date the crime
7 was committed and that you haven't given to me.

8 Q. I didn't give this date because in the acts we received from the Defence there is
9 no exact date. The crimes allegedly took place between 26 October and 30 October,
10 the individual having been arrested on 30 October for crimes committed in the
11 previous few days. He was called to court on 5 December. He was told at 6 a.m.
12 that he should appear in court at 9 o'clock the same day. Does that correspond to the
13 definition of *in flagrante delicto*?

14 A. I don't believe that would.

15 Q. Thank you. And, Mr Witness, I can re-present you the text Mr Kilolo showed
16 you -- showed a decree relating to the organisation and creation of the court martial.
17 Do you recall this?

18 A. Yes, I do remember this.

19 Q. I know this is becoming slightly technical, so please do not hesitate to tell me if
20 you can't answer and we'll move on to the next question, but if you could help us
21 I think this would be very useful for us. Did -- is the war council the equivalent of a
22 court martial in Congolese law, or is this a different jurisdiction?

23 A. I have no reply to this question, Counsel.

24 Q. Do you know the difference between the *conseil de guerre de garnison* and the
25 *conseil de guerre supérieur*?

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1 A. No, Counsel.

2 Q. And final question on this topic: Do you know whether a defender can speak
3 before a conseil de guerre de garnison, a conseil de guerre supérieur and court
4 martial?

5 A. No, Counsel.

6 Q. It's been pointed out to me that one could interpret your answer in different
7 ways. Do you mean that, no, you don't know the answer, or, no, a legal defence
8 counsel cannot speak before these instances?

9 A. No, I don't know the answer.

10 Q. I took the liberty of asking these questions, which I do agree are very technical,
11 because you seem to have a fairly clear knowledge of the situation when you were
12 answering Defence questions on the subject. Is this a particular area of expertise for
13 you, military justice, without in any case revealing anything that might lead to you
14 being identified? Is this a particular area of expertise for you?

15 A. No, Counsel. Having spent time with the military and military legal
16 representatives means that I do have some knowledge of this sector.

17 Q. You also spoke to -- spoke with the Defence counsel about the Lusaka
18 agreements. Do you recall that?

19 A. Yes, indeed, Counsel.

20 Q. Mr Witness, could you explain to us what you understand by a ceasefire
21 agreement?

22 A. A ceasefire agreement is an agreement which halts finally or temporarily
23 hostilities.

24 Q. Could one call the Lusaka agreements ceasefire agreements?

25 A. They are qualified as such, but I do believe they go beyond being purely

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1 ceasefire agreements.

2 MR BADIBANGA: (Interpretation) Madam President, I would like the witness to
3 be shown document 3 on the Defence list, the Lusaka agreement, CAR-0004 -- sorry,
4 0003-0527. CAR-D04-0003-0527.

5 THE COURT OFFICER (DRC): (Interpretation) The document is being shown to
6 the witness.

7 MR BADIBANGA: (Interpretation) This has no impact on the case, but it's Maître
8 Badibanga who is questioning and not Maître Kilolo. This is a minor human error in
9 the transcript.

10 Q. Witness, would you like me to give you a few moments to examine this
11 document so that you can answer my questions, or do you know whether there is a
12 statute -- a State status given to the RCD and the MLC in this document? Do you
13 know that? If you know the answer, of course you may answer directly. Do you
14 need to examine the document in order to answer my question, or do you know the
15 answer already?

16 A. I need to have a look at the document, but the three warfaring parties are
17 treated equally and that's why I used the expression "quasi-State status" last time.

18 Q. Well, we need to be very precise, Witness. You have been quite precise thus
19 far in your deposition. Do you mean to say that the parties are equal in terms of the
20 negotiation, which is understandable, in other words the parties are seated around
21 the table on an equal footing, or that their status is equal and the fact of negotiating
22 around the table means that the RCD and the MLC have quasi-State status? I think
23 that's not quite the same thing. In fact, it's something quite different.

24 A. Counsel, I really think I need to have a look at the document before I answer
25 your question.

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1 Q. Yes, of course. You may do that, of course. That's -- I was trying to help you
2 because you had given a partial answer, but if you need a few moments to examine
3 the document, please go ahead and do so.

4 It would appear you have finished reading the text, Witness. Am I correct?

5 A. Yes, I have glanced through the document. It's a document that I haven't read
6 for several years, but if you look at Article 18, it states that at the end of negotiations
7 the administrative authority shall be re-established throughout the national territory.
8 I think that this enables us to deduct that each warfaring party had power over its
9 particular zone and that that power, that they would then reunite after the
10 negotiations.

11 Q. You are seated next to the court reporter (sic), who has gone through the
12 document with you. If you have it before you, could the court officer give us the
13 ERN number of that particular page so that we all have it on the screen, the Judges
14 included, and then I would ask you to read it out afterwards?

15 THE COURT OFFICER (DRC): (Interpretation) Yes, the page that the witness has
16 before him is as follows. It's CAR-D04-0003-0533.

17 MR BADIBANGA: (Interpretation) We heard "0533"; is that correct?

18 THE COURT OFFICER (DRC): (Interpretation) Yes, that's correct.

19 MR BADIBANGA: (Interpretation) Could we have that page on the screen, please?

20 Q. Would you be so kind as to read out the article that you have referred to?

21 A. Paragraph 18: "Under the terms of the present agreement and following the
22 inter-Congolese political negotiations, the administrative authority of the State shall
23 be re-established throughout the national territory of the Democratic Republic of the
24 Congo."

25 Q. Could you explain what is referred to here as "inter-Congolese political

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1 negotiations"?

2 A. The inter-Congolese political negotiations dealt with major issues regarding
3 domestic policy to which all of the various political bodies were associated; for
4 example, peace, reconciliation, restoring the authority of the State, setting up a
5 national republican army, et cetera.

6 Q. When did the inter-Congolese political negotiations finish, Witness?

7 A. If I'm not mistaken, Counsel, it was in April of 2003.

8 Q. Witness, if we consider that we agree with your reading, your interpretation of
9 Article 18, this Article says "upon completion" or "after the inter-Congolese political
10 negotiations" and you have stated that this corresponds to April 2003. This means
11 therefore that it was only as of April 2003 that the MLC and the RCD would have
12 been recognised as having quasi-State status, as you termed it?

13 A. No. No, in fact, it's the other way round. It would be the contrary, after the
14 end of the negotiations. So April 2003 is when the administrative authority was to
15 be re-established throughout the national territory; in other words, the reunification
16 of the authority of the State.

17 Q. Witness, let me read out what you said a few moments ago. This is the
18 transcript in French, your Honour, at the end of page 21 and it continues at the top of
19 page 22.

20 "Counsel, I believe I have the right to examine the document fist," and I answered,

21 "Yes, of course, you have that right. If you need a few moments, please go ahead."

22 And then, when you finished reading, you said the following, and I quote, "I looked
23 through this document rapidly. This is a document that I haven't read for many
24 years, but based on Article 18, at the end of the negotiations, authority was to be
25 re-established throughout the national territory. One can therefore deduct from that

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1 that each warfaring party had authority over each area and that they would be
2 reunited after these negotiations."

3 We can go over what Article 18 actually says, but if we were to accept your
4 hypothesis in fact this article uses the words in French "au terme de," in other words,
5 after the adoption of this agreement and you said that was in March 2003; in other
6 words, when this agreement was signed, and my question is or I'm submitting to you
7 the following hypothesis, at the point in time when this agreement was signed there's
8 no State authority granted to the MLC and the RCD simply because they were
9 participating in the ceasefire negotiations?

10 A. Well, it seems there is a disagreement between us as to how to interpret this text.
11 You did quote what I said a few moments ago and I would like to repeat how I
12 understand this text. After, or at the point of time of signature of this agreement
13 until the end of the Inter-Congolese negotiations, State authority had not been
14 reunited. That is how I understand Article 18, but as of the signature in Lusaka and
15 the negotiations in South Africa, during that period, until that period, there were
16 three administrative entities and the document states that after the inter-Congolese
17 negotiations the administrative authority of the State was to be
18 re-established - re-established - throughout the three parts of the country; that is the
19 three parts of the RDC -- of the DRC at the time. That is how I understand the text.
20 That's what I said a few moments ago and I've repeated it again. Perhaps you have a
21 different manner of understanding, a different interpretation of this text, which could
22 very well be legitimate?

23 Q. Yes, indeed. Let's move on. It is an important point, because you said that
24 you referred to there when you said as -- when you referred to whether or not the
25 intervention of the MLC was legitimate or not.

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1 Now, let me ask you the following: I'm sure you know as well as I do what the
2 meaning of "national sovereignty" is?

3 A. Yes, indeed, Counsel.

4 Q. For a State to abandon national sovereignty, in law must it be implicit or must it
5 be -- rather must it be explicit, or can it be implicit?

6 A. Counsel, you're leading me down a pathway that I don't master fully, this is a
7 matter of international law, but I'm assuming it must be explicit.

8 Q. Yes, indeed. In keeping with what you've said I don't think that a State gives
9 up its national sovereignty implicitly. It must be stated explicitly. Whether it be in
10 this agreement, in the Lusaka agreement, or any other agreement signed later on by
11 the MLC and by Congolese authorities, is there any provision whereby the Congolese
12 government in Kinshasa at the time gives up one of its areas of national sovereignty,
13 in particular international relations, foreign affairs, and hands it over to the MLC?

14 A. No, Counsel.

15 Q. Is there a provision in the Lusaka agreement, or any other agreements signed
16 later on between the MLC and the Congolese government at the time, whereby the
17 government abandons any other element of national sovereignty such as the defence?

18 A. No, Counsel, but if I may? Can you give me a moment?

19 Q. Yes, yes, I can give you as much time as you need.

20 A. Well, before we continue having this theoretical discussion on sovereignty and
21 legitimacy, I would like to recall the context. In 1998, when the war began, in
22 Kinshasa there was a government which in fact fomented a rebellion in 1996 and
23 came into power violently. It was a rebellion which took over power in Kinshasa.
24 Now, there were other rebellions, other rebel movements contested the power two
25 years later. This was called the FIDL and they controlled more than half of the

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1 national territory. So there were three entities: The RCD, which was a rebel
2 movement, the MLC which was also a rebel movement, and you had the AFDL,
3 AFDL, which was also a former rebel movement which had come into power two
4 years later. So, you see, it's important to remember that before we discuss these
5 matters related to legitimacy.

6 Q. Witness, this is not theory here. We're talking about reality, concrete matters.
7 Is there a provision somewhere whereby the Democratic Republic of the Congo
8 handed over its power, its power to intervene in a foreign country? For example,
9 did the Congo give up that power to a rebel movement, be it the RCD or the MLC?

10 A. No.

11 Q. Were there regional bodies, regional agreements rather, that provided that
12 countries could help each other out in case of regional conflicts?

13 A. Yes, I believe so, Counsel.

14 Q. Was there a provision whereby the Government of the DRC ceded its role
15 within the framework of one of these regional agreements, is there a provision
16 somewhere whereby the DRC handed over its prerogatives to one of the rebel
17 movements, be it the RCD or the MLC?

18 A. I don't believe so, Counsel.

19 MR BADIBANGA: (Interpretation) Madam President, I'd like to ask the court
20 officer to present document 68, which is CAR-OTP-0071 -- 0071, as I was saying, 0019.
21 0071-0019.

22 THE COURT OFFICER (DRC): (Interpretation) The document
23 CAR-OTP-0071-0019 has now been presented to the witness.

24 MR BADIBANGA: (Interpretation)

25 Q. Witness, I don't know if you are familiar with this document? Perhaps you

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1 would like a few moments to take a look at it to familiarise yourself with its content?

2 You don't need to read it in full, I will guide you to the passage that I am interested in,

3 but perhaps you would like to take a moment to look through it to see what's inside it?

4 Please go ahead and do so.

5 A. Counsel, I see the title, "Protocol relating to the Peace and Security Council for

6 Central Africa, COPAX."

7 Q. Witness, is this a protocol that you are familiar with?

8 A. No, Counsel.

9 Q. Do you see that this is a document -- do you see that it's a document from

10 CEMAC?

11 A. Yes.

12 MR BADIBANGA: (Interpretation) Court officer, would you please present to the

13 witness page 0037?

14 THE COURT OFFICER (DRC): (Interpretation) The witness has page 0037.

15 MR BADIBANGA: (Interpretation)

16 Q. Can you see on this page the third paragraph of Article 31? It states "Done in

17 Malabo February 24, 2000," and if you look at the paragraph just above it states, "In

18 faith of which we, the Heads of State and Government of the Member States of the

19 Economic Community of West African States have signed the present protocol." Do

20 you see that paragraph? And then you can see that the signature for Angola, the

21 Republic of Angola, Minister of Justice has signed, and if the court officer would be so

22 kind as to show us the next page, which is 0037?

23 THE INTERPRETER: Interpreter corrects: The acronym is ECCAS for the

24 organisation.

25 MR BADIBANGA: (Interpretation)

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1 Q. You will see therefore on the next page that you have a signature for the
2 Republic of Burundi, Paul Biya, for the Central African Republic, Félix Patassé,
3 Republic of Congo, Mr Sassou Nguesso, this is Congo-Brazzaville, and then you have
4 the Minister of Culture and Arts representing the Democratic Republic of the Congo,
5 and then President El Hadj Omar Bongo signed for Gabon, and President Teodoro
6 Obiang Nguema Mbasogo for Equatorial Guinea.
7 Next page, on the next page, which is 0039, you can see the signature of Mr Miguel
8 Trovoada as -- for the Democratic Republic of São Tomé and Príncipe, and for the
9 Republic of Chad Mr Idriss Déby. The Republic of Rwanda did not sign this
10 document. Before we examine the content of this document, as you can see, this is a
11 protocol that was signed by a number of Heads of State or representatives of various
12 States in Central Africa and it was signed in February of the year 2000. This
13 document is part of the set of regional agreements that were adopted in order to deal
14 with the various conflict situations.
15 Had you at least heard of its existence, or the various mechanisms that were provided
16 for in this protocol?

17 A. Yes, I had heard of the existence of this document.

18 Q. Do you know what were the objectives of that protocol, or for what purpose
19 was it adopted?

20 A. No.

21 Q. As you have seen, there are 31 articles. We will not read all of them, but I will
22 ask that page 0024 be shown to you, at the bottom of the page, Article 4.
23 I'm sorry, court officer?

24 THE COURT OFFICER (DRC): (Interpretation) Page 0024 is now being shown to
25 the witness.

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1 MR BADIBANGA: (Interpretation)

2 Q. Can you read the objective that is at the bottom of the page, Mr Witness?

3 A. "Objectives: Without prejudice to the attributions of the Security Council of the
4 UNO and that of the central organ of the mechanism of the OAU for the prevention,
5 management and settlement of conflicts in Africa, COPAX shall have as objectives:

6 (a) prevent, manage and settle conflicts;

7 (b) carry out actions for the promotion, maintenance and consolidation of peace and
8 security in the subregion."

9 Q. Mr Witness, we will stop you there. On that page, that is page 0025, please
10 also read point (a); that is Article 5(a).

11 A. "For the purposes below, COPAX shall deploy military and civilian observation
12 and verification missions of adequate strength to maintain or restore peace in all the
13 regions whenever the need arises."

14 Q. The next page, 0026, I will ask you to read point (b) which is at the very top of
15 the page.

16 A. "It may also initiate prevention, or rather civilian or military actions for the
17 prevention, management and settlement of conflicts."

18 Q. Let us now move on to Article 20 on page 0032, because mention is made of the
19 implementation of the protocol. So please read out that Article 20, which is made up
20 of four lines.

21 A. "Article 20: The following instruments shall be set up to assist COPAX
22 institutions: Early warning mechanism for Central Africa, MARAC, the
23 multinational force for Central Africa, FOMAC, the organisation and functioning of
24 MARAC and FOMAC shall be organised by internal rules and regulations."

25 MR BADIBANGA: (Interpretation) Could the court officer please show the

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1 witness the next page, 0033, and specifically Article 32 -- or rather Article 23, at the
2 very bottom, which talks about FOMAC.

3 THE WITNESS: (Interpretation) "Article 23: FOMAC shall be a force made up of
4 national joint contingents as well as police and civilian units of Member States of the
5 community for the purpose of accomplishing peace, security and humanitarian
6 assistance missions."

7 MR BADIBANGA: (Interpretation)

8 Q. Mr Witness, before we continue reading the text, I would like to have your
9 opinion, your observation. Now, when the ALC troops deployed in the CAR in 2002,
10 did they go there as a force that was part of FOMAC?

11 A. To my understanding, the MLC deployed in the CAR at the request of the
12 established authorities; that is who were democratically elected. They were
13 members of FOMAC, of course, but they called on the MLC to come and assist them.
14 I do not believe that this agreement, some of the articles -- we have read some of the
15 articles. I do not think that this agreement forbids the authorities from calling on the
16 forces that it needs.

17 Q. My question, Mr Witness, is did the ALC intervene as a part of the framework
18 that was set up by this protocol?

19 A. During my examination by the Defence counsel, I never mentioned this
20 agreement and I never mentioned FOMAC, so I really do not see why you are asking
21 me that question, Counsel.

22 Q. This question is put to you because, as you have said, during your examination
23 by the Defence counsel you placed the ALC intervention within the framework of the
24 Lusaka agreement, but there is not a single word in the Lusaka agreement that
25 mentions military intervention. I have a protocol here that mentions armed

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1 intervention, so I wanted to ask you whether the action of the MLC came within the
2 framework of this agreement, which in fact provides for armed intervention?

3 A. No, Counsel, during my examination by the Defence I never said that the
4 Lusaka agreement granted us authorisation to intervene in the CAR. I said that the
5 intervention was based on the regional agreement. That is what I said.

6 Q. Thank you. To conclude with this document, I would like to ask you to read
7 out Article 25, which is on page 0034 and spills over to page 0035, and the article deals
8 with the implementation or the putting in place of the force.

9 A. "FOMAC will be called in any one of the following circumstances, (a) in the case
10 of aggression or conflict in any Member State or a threat against any Member State; (b)
11 in case of conflict between two or more Member States; and (c) in the case of internal
12 conflict which threatens humanitarian catastrophe or which constitutes a serious
13 threat for peace and security in the subregion; (d) in the case of overthrow or
14 attempted overthrow of the constitutional institutions of a Member State; and (e) any
15 other situation deemed to be of concern by the conference."

16 Q. Article 26, page 0035. That is the next article that I would ask you to look at.

17 A. "Article 26, power of engagement. FOMAC shall be engaged upon a decision
18 of the conference at the request of a Member State or at the request of the OAU or the
19 UNO."

20 Q. Mr Witness, even if one had to consider, that is which the OTP challenges
21 strongly, even if one had to consider that the intervention of the MLC was legitimate
22 because it was invited by legitimate authorities, now would that invitation also
23 constitute an authorisation for the soldiers to perpetrate abuses against the population
24 of the CAR?

25 A. No, Counsel.

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1 Q. Since we are now talking about agreements and regional protocols, that is the
2 legal framework for the intervention, if I'm not mistaken, on Tuesday you mentioned
3 an oral agreement between the CAR authorities and the MLC; that is about the
4 intervention. Am I correct?

5 A. Yes, indeed, Counsel.

6 Q. Mr Witness, is this a usual practice; that is for a military intervention in a
7 foreign country to be carried out based on an oral or verbal agreement without any
8 written document?

9 A. I have never been a member of a government in a crisis situation, so I cannot tell
10 you what is the usual practice and what is not.

11 Q. You were able to summarise the substance of that agreement from memory
12 12 years later, and this is transcript 302, page 8, on the French -- in the French version
13 and in the English version. Now, who told you about the substance of that
14 agreement, because there is no written document, but someone told you about it such
15 that you were able to remember it so long afterwards?

16 PRESIDING JUDGE STEINER: Maître Badibanga, maybe this kind of question
17 should better be put in private session.

18 MR BADIBANGA: (Interpretation) I thought this was -- we're dealing about an
19 official of the MLC and the names of the MLC officials are known by everyone, but
20 we can go into private session.

21 PRESIDING JUDGE STEINER: Court officer, please.

22 *(Private session at 10.45 a.m.) Reclassified as Open session

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

24 PRESIDING JUDGE STEINER: Maître Badibanga, although many names of officials
25 of the MLC are known, your question is about someone told him, the Witness, about

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1 the agreement. This information could identify the witness, so it's better if we
2 proceed in private session.

3 You can repeat the question, please.

4 MR BADIBANGA: (Interpretation) Thank you, your Honour.

5 Q. Mr Witness, we are now in private session. Can you tell us who told you
6 about the content of that agreement?

7 A. I would first of all like to thank the Presiding Judge, who has tried to protect my
8 identity.

9 Now, in answer to Mr Badibanga's question, if I remember correctly two people
10 talked to me about that agreement. (Redacted)

11 (Redacted)

12 Q. Did you yourself participate in any one of the discussions that centred on the
13 launching of that operation?

14 A. No, Counsel. (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. Since we are in private session, Mr Witness, let us conclude on this issue.

18 What do you know about the operation in the CAR? Were you involved in any way
19 in the discussions, planning or follow up of those operations? Were you ever
20 involved at any one stage of the operation?

21 A. I was never directly involved, Counsel, (Redacted)

22 (Redacted).

23 Q. (Redacted)

24 (Redacted)

25 A. It is quite normal when the (Redacted) is assigned to another very important

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1 (Redacted).

2 Q. (Redacted)

3 between 25 October 2002 and 15 March 2003. Now, during the times you were in

4 Gbadolite, were you involved in any way in the operations?

5 A. No, Counsel.

6 Q. This, therefore, means that the political wing was not involved at all in that

7 military operation?

8 A. To my understanding, since the troops were placed at the disposal of the CAR

9 authorities, it was those authorities who were responsible for our troops. (Redacted)

10 (Redacted)

11 because it was not the MLC which was responsible for that operation. That was my

12 understanding.

13 Q. (Redacted)

14 (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Mr Witness, the Defence disclosed to us two log-books relating to

20 communications by the -- using the phonie. Were you aware of the existence of

21 these log-books?

22 A. Yes, I was aware of that.

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 (Redacted)

8 A. (Redacted)

9 (Redacted)

10 Q. Is it possible that, depending on the circumstances, you will choose (Redacted)

11 (Redacted)

12 A. No, Counsel. Maybe it depends on the periods. Let me explain. Fortunately,

13 I know that you know the history of our country. As from 1972, the President of the

14 Republic prohibited all Congolese from bearing Christian names; Christian first

15 names. It was forbidden. That is why in some of the documents the first name

16 (Redacted) does not appear, particularly in academic documents. It does not appear

17 on the official documents, but at another time you will realise that that name

18 (Redacted) reappeared because the dictator was no longer there. There was a period

19 of liberalisation, so it depends on the period you refer to. You will see "(Redacted)

20 (Redacted)," you will see (Redacted) or (Redacted) That is what

21 (Redacted). I do not know whether I have been clear enough?

22 Q. You have been clear, Mr Witness. I had a concern relating to what happened

23 when (Redacted) because it seems that a problem of

24 (Redacted) arose at that time. That is why I raised this issue. (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 Q. To come back to the issue of expertise, Mr Kilolo asked you several questions on
3 the Penal Code and the Military Justice Code. Do they refer to military justice; that is
4 an area that you are supposed to have a certain degree of expertise?

5 A. Counsel, I believe that I have already answered that question. I do not have
6 any special expertise in military jurisdictions.

7 MR BADIBANGA: (Interpretation) Your Honour, I believe it is break time. I will
8 stop now, but I think I will conclude with the Witness in the next session.

9 PRESIDING JUDGE STEINER: Court officer, please turn into open session.
10 (Open session at 10.58 a.m.)

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

12 PRESIDING JUDGE STEINER: Thank you very much.

13 Mr Witness, it's almost 11 o'clock. You are entitled to a break, as well as our
14 interpreters that need that break.

15 We will resume at 11.30, and I would like to remind parties and participants - and, of
16 course, Mr Witness - that we still have a legal representative of victims, Maître
17 Douzima, to question the witness and she was authorised to represent as well the
18 victims represented - legally represented - by Maître Zarambaud, and therefore if
19 need be the Chamber will sit in the afternoon as from 3 o'clock because in any case the
20 testimony of the current witness will have to be concluded today.

21 So this hearing is suspended. We will resume at 11.30.

22 THE COURT USHER: All rise.

23 (Recess taken at 10.59 a.m.)

24 (Upon resuming in open session at 11.35 a.m.)

25 THE COURT USHER: All rise.

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1 Please be seated.

2 PRESIDING JUDGE STEINER: Welcome back. Mr Witness, welcome back.

3 THE WITNESS: (Interpretation) Hello again, Madam President.

4 PRESIDING JUDGE STEINER: We will give back the floor to Maître Badibanga, to
5 conclude with his questioning of the witness. Maître Badibanga.

6 MR BADIBANGA: (Interpretation) Thank you, Madam President. I understood
7 what you are saying.

8 Could we start with a short private session, please?

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

10 *(Private session at 11.37 a.m.) Reclassified as Open session

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

12 MR BADIBANGA: (Interpretation) Mr Witness, before the break I asked you a
13 number of questions relating to (Redacted)

14 (Redacted). Without giving the identity away, I would like to say that

15 Defence witness, a witness called like you have been by the Defence, gave testimony,
16 transcript 210, 270, and that was at page 51, line 12 in English, and goes to 52, line 13,
17 and the French, it's still 270, from 56, line 25 to 57, line 16, and that's the French
18 version. Witness 49.

19 Mr Witness, this witness talked about the preparation of the operation and he said
20 there were a number of meetings held to prepare the operations in CAR. He
21 mentioned one that took place on 27 October 2002 and he said (Redacted)

22 (Redacted)

23 (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. So, Mr Witness, we're going to return to open session and I'd like to agree with
7 you how we intend to proceed. I'm going to ask for a certain number of press
8 articles or public statements to be distributed. They were made on behalf of the
9 MLC or by representatives of the MLC, (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 MR BADIBANGA: (Interpretation) Madam President, we can return to open
20 session.

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

22 (Open session at 11.42 a.m.)

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

24 MR BADIBANGA: (Interpretation) Madam President, I would like document 23 to
25 be presented to the witness, or rather that the audio fragment be played. It's

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1 Prosecutor document, it's CAR-OTP-0031 -- sorry, I'll repeat this:

2 CAR-OTP-0031-0099. The portion to be shown to the witness or played to the
3 witness is from minute 15 time-stamp, and I will indicate when the video should be
4 stopped.

5 PRESIDING JUDGE STEINER: Mr Badibanga, the transcripts are the ones related as,
6 or referred to as documents 24 and 25?

7 MR BADIBANGA: (Interpretation) Yes, Madam President, you have -- you are
8 quite correct. This is document 23, it's transcripts 24 and 25. I can give the
9 references. The reference of the French transcript is CAR-OTP-0036-0041. And in
10 the English version, 25 on our list, CAR-OTP-0056-0287.

11 PRESIDING JUDGE STEINER: Maître Badibanga, I think you heard what court
12 officer informed, that all these documents are still classified as confidential.

13 MR BADIBANGA: (Interpretation) And here again this is like the
14 document -- public documents I was using yesterday. We suggest that these be
15 reclassified. These documents were originally recorded as confidential but, since
16 these are extracts from RFI broadcasts, we ask them to be reclassified as public
17 documents. They are on our list, and if you are happy to authorise this?

18 PRESIDING JUDGE STEINER: Any comment from Defence in that respect?

19 MR KILOLO: (Interpretation) We accept your wise suggestion, Madam President.

20 PRESIDING JUDGE STEINER: So then documents 23, 24, 25 of Defence list of
21 documents, whose ERN numbers were mentioned already, are reclassified as public
22 and can be broadcast in public session.

23 (Audio extract CAR-OTP-0031-0099 played)

24 MR BADIBANGA: (Interpretation) We can stop the transmission.

25 Q. Mr Witness, you've just heard a spokesman for the CAR government. He does

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1 not seem to share your opinion, because when asked he said, "It's up to the Central
2 African authorities to deal with perpetrators of crimes." Does this lead you to revise
3 your opinion?

4 A. No, Counsel. I don't want to revise my statement, or review my statement,
5 because this is the way I understood it.

6 Q. But does your understanding correspond to reality? Was it just a theoretical
7 understanding, or did it comply with reality?

8 A. My understanding was that, since the forces were at the disposal of the CAR
9 authorities, the CAR authorities should take all necessary measures in the event of
10 abuses being committed by members of the Congolese contingent.

11 Q. Mr Witness, please reply if you can, but I'd like to make a parallel here. You
12 talked about United Nations troops on the Congolese territory. I'd like to take a
13 current example. You know that there is a French intervention in Mali at the present
14 time?

15 A. Yes, I do.

16 Q. In your understanding, if unfortunately -- and I hope it does not occur. If
17 unfortunately a French soldier were to commit abuse, should he be dealt with by the
18 Mali authorities? Is that the way you would understand the situation?

19 A. No, Counsel, I don't think we're in the same context here. The French army
20 has intervened in Mali, supporting a State which has failed. The French troops who
21 are leading this operation, well, as far as I know the French contingent is not at the
22 disposal of the Mali authorities, so in such a case it would be French jurisdiction, or
23 French army, or French hierarchy that should deal with any contraventions or any
24 problems with their troops. I don't think it's the same context.

25 Q. Mr Witness, was the CAR army not failed since it had lost its head? It had

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1 gone with the rebellion? Was that not the reason why the CAR government had to
2 call on foreign troops? Is this not a parallel situation?

3 A. This is not a parallel situation. We intervened as a support group at the
4 request of local authorities in their resistance to the rebellion. I don't think one can
5 compare the two situations, Counsel, and the relations between the forces are not the
6 same.

7 MR BADIBANGA: (Interpretation) Thank you, Mr Witness. I think that in the
8 Mali situation it is Mali authorities who invited the French troops and the Mali
9 authorities are in charge, but let's get back to our case. We have very little time
10 available.

11 I would like, Madam President, for the witness to be shown document 6 on the
12 Prosecution list, CAR-DEF-0001-0152.

13 THE COURT OFFICER (DRC): (Interpretation) The document
14 CAR-DEF-0001-0152 is being shown to the witness.

15 MR BADIBANGA: (Interpretation)

16 Q. Mr Witness, to save time I'm going to read some extracts of this document and I
17 would like your response to this. This is a letter dated 20 February 2003. I think
18 that this date has come up frequently. It's a letter from the President of the MLC,
19 Mr Jean-Pierre Bemba, sent to the President of the International Federation of Human
20 Rights in Paris, the FIDH. In the second paragraph, "For your government, I would
21 like to inform you that as soon as I was made aware of the presumed
22 involvement -- alleged involvement of certain elements of the Congo Liberation Army,
23 ALC, in human rights violations, I immediately tasked an inquiry commission
24 responsible for checking the truth of the facts to identify the elements of the ALC
25 implied -- employed -- sorry, involved in these violations and to make them available

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1 for military justice."

2 In the next paragraph, "On 30 October 2002, under the leadership of
3 Lieutenant-Colonel Mondonga and Captain Augustin Gbendo, a team consisting of
4 five ALC officers went to Bangui. On 28 November 2002, the inquiry report setting
5 out the involvement of numerous ALC soldiers in looting was submitted to the
6 General Staff of the ALC. The results of the inquiry led to the conviction by the
7 military court of eight soldiers accused of looting."

8 So, Mr Witness, Mr Bemba seems to have understood this in the same way as the
9 spokesman of the Central African Republic, because as soon as he was made aware of
10 the situation he immediately tasked an inquiry commission, as he set out here, and
11 this commission was to check the facts and to identify those involved and to bring
12 them to military justice. Does this not contradict your opinion as to who was
13 responsible for dealing with soldiers accused of such offences, which in your view
14 was the CAR authorities?

15 A. Yes, Counsel. It would seem that this statement by Mr Bemba does not reflect
16 my understanding of the agreement that we had with the CAR authorities.

17 Q. I would like to raise a point which I consider to be quite important. When
18 Maître Kilolo asked you whether there had been any inquiries in the location by the
19 Congolese authorities you said, "No, but there was an inquiry commission set up by
20 the Central African Republic which had one MLC representative." Are you talking
21 about the same commission as mentioned in the letter from Mr Bemba; the
22 commission which has five ALC officers according to Mr Bemba's letter?

23 A. No, the information that I had was that there was a Central African inquiry
24 commission and that Lieutenant Colonel Mondonga was to be part of this
25 commission. That was the information that I had.

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1 MR BADIBANGA: (Interpretation) Madam President, if I may, I would like the
2 witness to be shown the document 57 on the Prosecution list, which is
3 CAR-OTP-0069-0303.

4 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, the document
5 has been made available to the witness.

6 MR BADIBANGA: (Interpretation)

7 Q. Witness, I see that the -- they are zooming in to the document. Do you
8 recognise this document, Mr Witness?

9 A. Yes, Counsel.

10 Q. Could you briefly describe that document on the screen and explain what it is
11 all about?

12 A. What we see on the screen refers to a document which states it to be the official
13 site of the MLC. There's a picture of Mr Bemba, captioned "Jean-Pierre Bemba, our
14 president," and below that there's a message to the Congolese people.

15 Q. Mr Witness, it is that message that is of interest to us. Can you see the message?
16 Do you know what it is about? Or do you want to take a few minutes to read
17 through the message?

18 A. I don't need time, Counsel. I know what this is about, more or less.

19 MR BADIBANGA: (Interpretation) Would the court officer please move to the
20 next page, 0304, and I would like the signature on that document to be shown to the
21 witness.

22 Q. Witness, can you tell us the date of this document?

23 A. 12 November 2012 is the date of the document.

24 Q. Can you tell us the author of this document?

25 A. Clearly, the signature is that of Mr Jean-Pierre Bemba.

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1 Q. Can you tell us where Jean-Pierre Bemba was on 12 November 2012, if you
2 know?

3 A. He was in The Hague.

4 Q. Would I be mistaken if I said that this letter was read out to the Congolese
5 media on behalf of Mr Jean-Pierre Bemba by the Secretary-General of the MLC?

6 A. I do recall that the letter was read out, or the document was read out by the
7 secretary-general.

8 Q. Was the Secretary-General of the MLC, or the -- or did the Secretary-General of
9 the MLC receive communications from Mr Bemba for the purposes of dissemination
10 across the national territory ever since Mr Bemba has been in detention at The Hague?

11 A. Yes, Counsel.

12 Q. Does Mr Bemba lead the party from The Hague?

13 A. As far as I know, no. What actually happens is that the organs of the party are
14 set up in the country, constitute the leadership of the party, but I do understand that
15 there are some contacts and some exchanges between some members of the political
16 leadership, specifically the secretary-general, who has telephone conversations and
17 discussions with Mr Bemba when it comes to dealing with matters of significance
18 regarding the country. So those consultations do take place but, for the most part,
19 the party is managed from Kinshasa.

20 MR BADIBANGA: (Interpretation) Madam President, I would like the document
21 number 70 on the OTP list to be shown to the witness; reference CAR-OTP-0071-0043.

22 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, the document
23 has been shown to the witness.

24 MR BADIBANGA: (Interpretation)

25 Q. Witness, do you know this document, or do you need a few minutes to look

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1 through it?

2 A. Counsel, I will need a few minutes to read through the document.

3 Counsel, I now have an idea what this is all about.

4 Q. Can you explain this to us, Witness?

5 A. This is a letter from Mr Bemba to the elected officials of the MLC. But let me
6 help you to understand how things unfolded, and as I was saying a short while ago,
7 according to information available to me, Mr Bemba is in contact with the
8 secretary-general of his party. They do have discussions among themselves. And
9 then the secretary-general and other senior staff of the party suggest statements to
10 him, and when agreement is reached, when Mr Bemba approves, then the document
11 being discussed is published under his name.

12 Q. Witness, I would like the next page to be displayed to you, 0044. And when
13 you would have read through it, I would like you to read out the second paragraph of
14 that page for the Court, starting with the words "À l'approche des élections ..."

15 A. "As the elections are about to happen, according to the national party, this party
16 should be ready to fight. For that reason there is need for a good organisation in
17 order to ensure that relevance and specificity are highlighted, within the framework
18 of revamping the activities of the party across the national territory as a whole, and
19 specifically in the east of the DRC, he has instructed the general secretary of the party
20 to create a commission which, with the support of the elected representatives
21 of -- from that part of the party will be assigned to work for the visibility and ensure
22 mobilisation of the masses in support of our cause, without forgetting to set up.
23 After the passing of the electoral law and the publishing of the electoral calendar, a
24 committee to prepare the MLC committee, as well as a committee to prepare
25 candidates -- candidacies of MLC members who should be presented in an exhaustive

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1 manner, at all levels, and in all electoral constituencies. That should be done prior to
2 calling for unity among all with a view of upholding the general interest which will
3 be the only approach that can guarantee victory in the upcoming elections."

4 Q. Have I understood your reading of that paragraph that -- have I understood
5 from your reading of that paragraph that Mr Bemba has instructed the general
6 secretary of the party to set up a commission and a preparatory committee for the
7 MLC congress, as well as to prepare candidacies or nominations for the elections?
8 Will all of these not be qualified as acts amounting to the management of the party, so
9 to speak?

10 A. Now, Counsel, no, but indeed that is the difficulty that we have, and that will be
11 a difficulty for the Court as well. You see, when you rely on statements made by a
12 journalist who uses his or her own words to summarise a press release, then you
13 encounter such problems. It might have been more interesting, Counsel, to read the
14 original message because, you see, off-the-cuff, what I can say is that the original
15 message never included the word "instruction." What you are reading now is a
16 summary of another document that has been provided by a journalist. That is why I
17 do not believe that it is necessary for the Court to draw any conclusions by relying on
18 this kind of summary.

19 In any event, according to what I learned from the general secretary of the party,
20 there is consultation between the national president and the senior staff of the party,
21 but Mr Bemba does not manage or administer the MLC. It will be quite difficult for
22 him to do so under the circumstances in which he is, some 6,000 kilometres away.

23 Q. For the record, Witness, you do agree with me that this document is dated
24 Tuesday, 3 May 2011; is that the case?

25 A. Yes, the document is dated Tuesday, 3 May 2011. But I don't know from which

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1 media source this document was culled.

2 Q. If you look at page 1, page 0043, this is what the document states, "In an open
3 letter addressed to them on 13 April 2011, from The Hague, he informed -- where he
4 is detained, rather, and published on Saturday, 2 April 2011 at the national
5 headquarters of this party in Gombe commune by the new General-Secretary of the
6 MLC, Thomas Luhaka Losendjola, and it was at the occasion of the official installation
7 of the new Secretary-General in that capacity as co-ordinator of the activities of the
8 party."

9 Now, Mr Witness, is the journalist right when he makes the assertion that it was on
10 30 April that the new Secretary-General of the MLC was introduced to the people and
11 installed; and we're referring here to Mr Luhaka?

12 A. Yes, I believe the date is correct.

13 MR BADIBANGA: (Interpretation) Madam President, I would like the witness to
14 be shown document number 64 on the Prosecutor's list. It is a video footage, and the
15 reference of the document is CAR-OTP-0070-0096. 96.

16 PRESIDING JUDGE STEINER: The level of confidentiality, Mr Badibanga?

17 MR BADIBANGA: (Interpretation) Madam President, this is a recent recording
18 and we were cautious enough to maintain it as a confidential document, although it is
19 accessible on the internet. Transcript number 65, 66 and 67. So there is a
20 translation which is available, number 65, reference CAR-OTP-0071 - 71 - 0003. I
21 think that is the English version of the document, your Honour. Then there is the
22 French version of the document, reference CAR-OTP-0071-007 (sic), and that is the
23 translation into French of the document. Then we have the transcript proper. It
24 contains excerpts in Lingala, and that will be number 67 on the Prosecution list,
25 document CAR-OTP-0071 -- 671-0013.

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1 The excerpt we would like to play starts at time-stamp 5.52 and runs to time-stamp
2 8.22.

3 (Viewing of the video excerpt CAR-OTP-0070-0096)

4 MR BADIBANGA: (Interpretation)

5 Q. Mr Witness, let me quote from what we've just heard, "Now, what we expect.

6 There are guidelines and the President has told us that he was maturing his own

7 thinking because, as a matter of fact, people must not forget that there is only one

8 President of the MLC. He is not a figurehead. That must continually be present in

9 our minds. He is an active President who monitors the activities of the party on a

10 daily basis at the same time now, as well as he continues to find energy to specifically

11 deal with his case and the specificities of the party.

12 Let me insist again: What we have here is an active President who leads our party.

13 He is a man of rigour and purpose." Witness, after listening to this, do you stand

14 by -- do you still stand by your statement of a few minutes ago, whereby you stated

15 that Mr Bemba did not manage the party as such, and if you do wish we can again

16 broadcast or play back this excerpt of your statement at 0735?

17 A. No, after listening to that I do not revise or review my position; the previous

18 position. I stand by my testimony for two reasons: (1) you first of all need to

19 situate the context in which what you have just played was made so that the Court

20 may understand that context properly. As you can see, there is Honourable

21 Germain Kambinga, an MLC national member of parliament, talking to the wife of

22 Jean-Pierre Bemba and apparently this is taking place in Mr Bemba's residence. I

23 therefore think that Mr Germain Kambinga felt that it was necessary to pay homage

24 to the husband of the person he was talking to.

25 Secondly, as far as I know, it is the Secretary-General of the MLC who is in contact

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1 with Mr Bemba on a regular basis. According to information available to me, he is
2 not in touch with him on a daily basis. Now, in the difficult circumstances in which
3 Mr Bemba is, it would not be possible for him to monitor the activities of the party on
4 a daily basis.

5 These are the types of answers that I can provide to your question for now, Counsel.

6 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

7 MR KILOLO: (Interpretation) Madam President, your Honours, I think

8 Mr Badibanga told us this morning that he intended to conclude his
9 cross-examination before noon. I say this, because for a few minutes now we have
10 been wondering -- and in any event I let the witness answer the questions that have
11 been put to him, but for a few minutes now we have been wondering what the
12 relevance of the questions being raised by Mr Badibanga is for three reasons: (1) we
13 must know that the MLC is an institutional political party currently active in the DRC
14 and that as an institution it is in no way connected to the politico-military
15 organisation, MLC, which existed in the past, whether it be in terms of its functions,
16 its duties or even in terms of its corporate entity status. That is one.

17 Second: This trial, as far as I am concerned, is not a trial about current politics or
18 policies within the DRC. For that reason, I would like to submit that we should be
19 mindful of the possibility of supporting those who feel that the only purpose of
20 bringing Mr Bemba to trial was to bring -- or to distance him from the political scene.
21 Let us be careful not to go down that road, because he has the right to continue his
22 political activities.

23 Let me further state that he is a sitting senator in the Democratic Republic of the
24 Congo, and in that capacity he is entirely within his rights to be informed of the
25 political situation within the DRC.

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1 Point number 3, which is my last point: We believe that this line of questioning is
2 not at all relevant, because as a matter of fact we do not see the link between this line
3 of questioning and the Document Containing the Charges. For that reason, we invite
4 Mr Badibanga to refocus his questioning on the charges as appear in the Document
5 Containing the Charges.

6 Thank you.

7 PRESIDING JUDGE STEINER: Maître Kilolo, the first part of your presentation was
8 almost a testimony, but in any case in relation to relevance of this line of questioning
9 maybe Maître Badibanga could say something?

10 MR BADIBANGA: (Interpretation) Madam President, these are extremely
11 important questions because they will be useful to the Chamber when it determines
12 the state of relations (Redacted)
13 (Redacted). It also speaks to the credibility of the witness. If there is information that
14 he provides which contradicts other evidence, why should he be given credit for
15 anything that he says which is at variance with that evidence?

16 And in any event, it is clear that Mr Bemba is still the leader of the MLC. And so
17 these things will help us to understand, and although Defence may not fully grasp
18 our thrust, they will understand when we come to the end of our cross-examination
19 and when we make our final submissions.

20 That is all I can say for now, Madam President.

21 PRESIDING JUDGE STEINER: You can proceed, Maître Badibanga, trying to be as
22 more objective and precise, and short as possible, since it is true that we are almost at
23 the end of this morning's hearing, and you were supposed to have just a few
24 questions left, as you announced in the beginning of this second session.

25 MR BADIBANGA: (Interpretation) Madam President, that is correct, I have three

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1 audio excerpts which I want to deal with, and that should be all.

2 Now, can we then move on to time-stamp 29.30 seconds. 29 minutes, 30 seconds.

3 (Viewing of the video excerpt CAR-OTP-0070-0096)

4 MR BADIBANGA: (Interpretation)

5 Q. It was in Lingala. Perhaps you understood what was said. The Judges and
6 the various parties have a translation. This was communication between Jean-Pierre
7 Bemba and the Secretary-General of the MLC, represented at national level, but here
8 is an individual who states, and I read out the French translation, "It is true that we
9 are very pleased today because the president called us here, today. He spoke with
10 all of the representatives of our party who were present. He gave us messages.
11 However, everyone was not able to speak to him. Those who were to speak to him
12 did so, but in any case, it's a good thing for us."

13 Do you have any comments before I go to the next document?

14 A. No. Since I myself was not present at that meeting, I cannot confirm or infer
15 what was said by the gentleman we just heard a moment ago.

16 MR BADIBANGA: (Interpretation) Madam President, I would like to present
17 document 72 in the list, it's CAR-OTP-0071-0049. This is a public document.

18 THE COURT OFFICER (DRC): (Interpretation) The document has been presented
19 to the witness.

20 MR BADIBANGA: (Interpretation)

21 Q. Witness, again, this is an extract from an article in the press, and I'm going to
22 read out the fourth paragraph: "Bemba is resuming on Tuesday. Thomas Luhaka
23 took the floor, that is secretary-general of the party, under ovations from many
24 militants, in order to inform them on the advance of the Igwe trial, that is their leader
25 without any contestation who has been detained since 2008 in The Hague.

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1 Jean-Pierre Bemba's file is still empty. To this day I say this loud and clearly, the
2 former ICC Prosecutor has never provided any evidence to prove the guilt of
3 Jean-Pierre Bemba, confirms Thomas Luhaka, before adding that the trial is to resume
4 on Tuesday, August 14, 2012. On this occasion he said the MLC will be organising a
5 mass to give thanks in order to pray for the justice of God in this trial, which he
6 qualifies as a political trial."

7 Were you aware of this statement of the Secretary-General of the MLC?

8 A. Yes, I believe yes.

9 MR BADIBANGA: (Interpretation) Madam President, I would now like to show
10 document 86 on the OTP list, which is CAR-OTP-0071-0063. Again, this is a public
11 document.

12 THE COURT OFFICER (DRC): (Interpretation) The document has been put before
13 the witness.

14 MR BADIBANGA: (Interpretation)

15 Q. Witness, this document refers to a visit of the Secretary-General, Thomas
16 Luhaka, of the MLC, in Brussels. I am going to read out part of this article:
17 "Profiting from the -- his trip to Brussels of -- the trip to Brussels of Mr Thomas
18 Luhaka, that is the new secretary-general of the party, the MLC Benelux has
19 organised an information meeting for its leaders on Wednesday, May 11, 2011 at the
20 headquarters of this party on Avenue Louise in Brussels. In its -- in his presentation,
21 Mr Thomas Luhaka dealt with three issues: The situation of Senator Bemba, the
22 President of the MLC; the situation of the party and the situation of the country.
23 Mr Luhaka gave three reasons for being optimistic as regards the outcome of Senator
24 Jean-Pierre Bemba's trial, statements made by Witness number 73 who, in spite of
25 being a witness for the OTP, this deposition was in fact something that was

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1 pre-prepared by a representative of Prosecutor Moreno. The deposition of the
2 Central African Prosecutor-General, who was the supreme commander of the army in
3 the -- of the late Ange Patassé, and the deposition of an investigating magistrate from
4 the Central African Republic who dismissed a report regarding the responsibility of
5 Bemba in the events -- in the crimes that took place in the CAR.

6 In the opinion of Mr Luhaka, 2011 will no doubt -- will not end without Jean-Pierre
7 Bemba being judged innocent. For the new Secretary-General of the MLC, the trial is
8 a political trial in which the Kabila regime is playing with the strings in the country.

9 The MLC is going through a period of turbulence and François Mwamba, the
10 secretary-general, is losing support and states that he will go before the courts."

11 And I go a bit further down, regarding the trial that's taking place in The Hague.

12 Unfortunately, that last sentence is not visible on the screen.

13 Witness, do you remember -- yes, the last sentence was "During his European trip
14 Thomas Luhaka will meet Senator Bemba in The Hague."

15 Witness, do you remember this?

16 A. Yes, although the details may not be exactly what I had learned at the time, but I
17 do remember that meeting.

18 Q. Witness, can we conclude from this article that the MLC were discussing, the
19 leaders of the MLC were discussing the trial under way, they were discussing the
20 various witnesses and the witness depositions?

21 A. No. What we can say is that the bodies of the party were discussing the
22 situation of the national president and were exchanging information that they may
23 have had or may have read about in the media.

24 MR BADIBANGA: (Interpretation) Madam President, I have one last document to
25 show the witness. It is reference CAR-OTP-0071-0051. This is document 73 on the

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1 list.

2 THE COURT OFFICER (DRC): (Interpretation) The document has now been
3 shown to the witness.

4 MR BADIBANGA: (Interpretation)

5 Q. Now, this time I would like to ask you to read through this article. Would you
6 be so kind as to begin with the third paragraph, because the first two are in fact an
7 introduction? So could you read starting with the third paragraph, which start in
8 the French words "La thèse centrale de la défense ..."?

9 A. "The main theory of the Defence is that the former rebel leader could not have
10 controlled his men from his headquarters in Gbadolite in the DRC, that is control the
11 men sent to the CAR. 'At the level of the direction of the party we are confident that
12 Jean-Pierre Bemba will be freed and will come back as soon as possible', declared
13 Radio Okapi -- declared to Radio Okapi the secretary -- the Deputy Secretary-General
14 of the MLC, Jean-Lucien Busa. The MLC includes amongst the main opposition
15 forces of the DRC and stated 'All of the Congolese know that the MLC troops at the
16 time did not just go like that to Central African Republic, that they went because they
17 were invited by a democratically elected government,' explains Mr Busa,
18 summarising his main line of defence.

19 The MLC fighters wore the uniform of the Central African Republic and were -- had
20 weapons and communication equipment. The tone of this line of defence was
21 already clear last month and was given by the first witness for Bemba, the French
22 general - the retired French general - Jacques Seara. 'This witness, a French military
23 expert, is of extreme importance,' stated Mr Busa, 'denouncing again a totally political
24 and arbitrary arrest,' to quote his words, of the official president of the party.
25 He explained that the MLC at the time had, on the portion of Congolese territory

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1 under its control, the powers of a full-fledged State under the Lusaka agreements.

2 As such Bemba could therefore, according to him, legitimately sign an agreement

3 with the Central African neighbour, Mr Ange-Félix Patassé, who was at the time

4 having to deal with the rebellion led by François Bozizé, who is now in power.

5 Questioned about the context of the party with the accused, the

6 secretary-general -- the deputy secretary-general stated that those in charge of the

7 MLC had made frequent visits, 'almost daily visits, to President Bemba' and 'that the

8 MLC supported President Bemba 100 per cent,' he stated.

9 And lastly he declared that the other party leaders had succeeded in keeping them 'in

10 marching order,' even if 'the absence of a leader of the importance of Bemba

11 represented a great loss.' The Congolese senator, who is now hearing the second

12 witness, an expert witness as was the case of the first, has eight months to present his

13 defence."

14 Q. Thank you, Witness. This article was published on September 4, 2012, and in

15 the first paragraphs that I did not ask you to read out it was stated that it was the

16 party of Mr Jean-Pierre Bemba that began his defence, and this was indeed an

17 interview with Radio Okapi. Is it your opinion that the -- what is stated in this

18 article reflects your own opinion?

19 A. Well, there are some points in this statement which I do not believe are in

20 keeping with reality.

21 MR BADIBANGA: (Interpretation) Madam President, I'd like to thank you for

22 your patience. I have no further questions.

23 PRESIDING JUDGE STEINER: Thank you, Maître Badibanga.

24 I would like to put a follow-up question. The witness just said that there are some

25 points in this statement which he does not believe are in keeping with reality. What

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1 would be those points, Mr Witness?

2 THE WITNESS: (Interpretation) Madam President, could I have the document
3 back on the screen before I answer? For example, in the third paragraph from the
4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE STEINER: Thank you for this clarification.

8 Mr Witness, the legal representatives of victims were authorised to put some
9 questions to you, Maître Douzima Lawson and Maître Zarambaud. Maître
10 Zarambaud was not able to attend the hearings this week and, therefore, Maître
11 Douzima Lawson was authorised to question you also on behalf of Maître
12 Zarambaud.

13 For that purpose, I will give the floor to Maître Douzima and remind Maître Douzima
14 that legal representatives have about two hours to complete their questioning of the
15 witness.

16 You have the floor, Maître.

17 MS DOUZIMA LAWSON: (Interpretation) Thank you, Madam President.

18 QUESTIONED BY MS DOUZIMA LAWSON: (Interpretation)

19 Q. Witness, good morning.

20 A. Good morning, Maître Douzima.

21 Q. Let me introduce myself. My name is Maître Douzima Lawson. I am the
22 legal representative of a number of victims in the present case where you are
23 testifying. I have been authorised, as you've just heard, to ask you questions on
24 behalf of the victims that I represent.

25 Therefore, I would like to begin with my first question regarding one of the answers

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1 you gave on April 9, 2013. This is transcript 302, line 11 to 18. Witness, you stated
2 that, "The important event that comes to mind at this point in time was the
3 intervention of the troops of the ALC at the beginning of 2002/2003." "In your
4 opinion, what was the goal of the -- why were the troops of the ALC sent to the
5 CAR?" And you answered, "To my knowledge the goal was to defend and protect a
6 democratically-elected government put in place by the citizens of the country, which
7 was at risk because of a rebellion coming from the north of that country."

8 Witness, you also mentioned an oral agreement. According to that agreement, how
9 was the ALC to proceed in order to defend and protect that democratically-elected
10 government; that is elected by the Central African people?

11 A. Thank you. In practical terms from what I was told about that agreement, that
12 is the way the ALC was made available to the Central African authorities, all of this
13 was to be defined with the Central African authorities. So the technical means of
14 how the troops were to be deployed, how to fight against the rebels, this was to be
15 decided with the Central African Republic authorities. I don't know if I've answered
16 your question?

17 PRESIDING JUDGE STEINER: I understand the difficulties that sometimes legal
18 representatives face because of the very limited resources, but the Chamber would
19 appreciate when you mention a transcript that you just inform whether you are
20 mentioning the French version and, if possible, to give the equivalent of the English
21 version. If it's not possible, at least to make it clear for the record that you are talking
22 about the French version of the transcript.

23 Thank you.

24 MS DOUZIMA LAWSON: (Interpretation) Thank you, Madam President. First
25 of all, let me say that I will always be quoting the French transcript. Thank you.

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1 Q. Witness, couldn't the Central African Republic Army defend the government?

2 Wasn't it able to defend this democratically-elected government?

3 A. Well, if the supreme commander of the Central African Army at the time, that is
4 President Ange-Félix Patassé, felt the need to call for help from the MLC, I believe
5 that that means that he felt that the Central African Army alone could not deal with
6 the rebellion.

7 Q. Thank you for that answer. Again, French transcript April 9, 2013, on page 8,
8 line 19, "Do you know why the MLC was to provide logistics according to this
9 agreement?" Your answer was -- or "... was not supposed to provide logistics?" "I
10 believe there were two reasons," you said. "We did not have enough logistics
11 ourselves. We -- our movement was an insurrectional movement. Our means were
12 limited. We were not able to be organised enough," end of quote.

13 Witness, given that your movement was an insurrectional movement and that your
14 means were limited, how can -- can you go and defend another government that runs
15 the risk of being overturned? Is that a normal situation, in your opinion?

16 A. Yes, I think it was normal that we go and help the Central Africans because we
17 had experienced fighting units and the elected president, Ange-Félix Patassé, had
18 committed to providing these means for that operation.

19 Q. Well, I didn't intend to make a comment. I'm not myself a military expert, but
20 I would have thought that when you call upon forces it's because you don't have the
21 means available.

22 Well, Witness, you stated, again on 9 April, French transcript, page 11, you stated that,
23 "the ALC unit Commander Moustapha." Well, first of all the question that was put
24 to you, "Did you know who gave orders to the ALC commander, Moustapha?" And
25 you answered as follows: "In my opinion he received those orders from the Central

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1 African Republic, as I explained earlier, for practical reasons, and also for reasons of
2 co-ordination. Also because of knowledge of the terrain. He could only -- he could
3 only have depended on the Central African Republic authorities." Well, you
4 expressed yourself in the conditional, so to speak. Do you have any real knowledge
5 of what actually took place?

6 A. Yes, Counsel, based on the information that I had at the time, operational orders
7 were issued from the CAR authorities and they were transmitted to the ALC
8 commander in the Central African Republic.

9 Q. Very well. On page 12, you also stated, Mr Witness, that "The ALC
10 co-operated with the Central African authorities to deploy troops on the ground. I
11 also think that the MLC negotiated the withdrawal of those troops with the
12 authorities." How was this collaboration or co-operation conducted between the
13 MLC and the authorities on the ground?

14 A. At the political level, there were contacts between, I believe, the President of the
15 Republic, late Ange-Félix Patassé, and the President of the MLC, Mr Jean-Pierre
16 Bemba. In the field at the military level, I believe that the CAR authorities had set up
17 an operational General Staff that the MLC commander on the ground contacted in
18 case of necessity.

19 Q. Specifically at the military level, Mr Witness, do you know whether there were
20 any incidents between the FACA, that is the Central African Armed Forces, and the
21 ALC in the field?

22 A. Yes. I stated a while ago that I was not aware of any such thing, but
23 because I -- but I do remember now that there was indeed one incident then between
24 the ALC contingent and FACA soldiers.

25 Q. Can you elaborate on that incident?

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1 A. I'm sorry, Counsel, I do not have any further details about the nature of that
2 incident. I heard that there was a skirmish between the FACA soldiers and some
3 ALC soldiers. I believe this problem was settled immediately. There was a
4 problem of co-ordination.

5 Q. Apart from that incident, you did not hear about any other incidents between
6 the FACA soldiers and the ALC?

7 A. No, Counsel, I never heard about any other incidents.

8 Q. Mr Witness, let me begin by reminding you that both of us should be careful not
9 to reveal any identifying information. Now, Mr Witness, still during the hearing of
10 9 April 2013, and this time it is page 22, Mr Kilolo asked you this question:

11 "Mr Witness, do you have any information on the rumours of crimes attributed to
12 MLC soldiers in Sibut? Does the name of that town ring any bell with you?" And
13 your answer was, "Yes, Counsel, we heard the rumours circulating in that locality and
14 in fact Sibut reminds me of something. (Redacted)
15 (Redacted)

16 PRESIDING JUDGE STEINER: Before we continue, could please, court officer, turn
17 into private session.

18 *(Private session at 1.06 p.m.) Reclassified as Open session

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

20 PRESIDING JUDGE STEINER: (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 *(Closed session at 1.07 p.m.) Reclassified as Open session

3 PRESIDING JUDGE STEINER: Mr Witness, you can answer the question.

4 THE WITNESS: (Interpretation) No, Madam President, I think the question had
5 not yet been asked.

6 MS DOUZIMA LAWSON: (Interpretation) Yes, your Honour, the witness is quite
7 correct: I had not yet asked my question.

8 Q. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MS DOUZIMA LAWSON: (Interpretation) Your Honour, I have heeded your
16 advice and I hope I will be very careful. Can we now move back to open session?

17 PRESIDING JUDGE STEINER: Court officer, please turn back into open session.
18 (Open session at 1.10 p.m.)

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

20 MS DOUZIMA LAWSON: (Interpretation)

21 Q. Mr Witness, still on page 22 of the transcript of 9 April, a question was put to
22 you as follows: "The ambassador travelled to Sibut but was it possible for the
23 ambassador to say what he went to do there and under what circumstances?" And
24 this is the answer: "Yes, following the rumours that we heard in Gbadolite relating
25 to conduct that could have been attributed to ALC soldiers."

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1 Where did these rumours come from?

2 A. Those rumours were mainly circulated by the media, Counsel.

3 Q. Did those rumours include the complaints of members of the population of
4 Sibut, that is in relation to abuses perpetrated by ALC soldiers?

5 A. I think that at the time the information that we received concerned abuses
6 against some members of the population, but there were no locations really specified.
7 At that time I do not believe that I heard any specific information about Sibut.

8 Q. Mr Witness, still during the hearing of 9 April, on page 26 you stated, in answer
9 to the question about the information sought by the MLC delegation to Sibut, your
10 answer was that, "The delegation wanted to inquire about the truthfulness of the
11 rumours circulating about abuses perpetrated by FACA and ALC soldiers in the CAR.
12 That was the purpose of the mission, inquire about the situation in the field. Did the
13 delegation try to obtain information about rumours of looting in Sibut?" And the
14 answer was, "Yes, that would have been part of the abuses."

15 And then the next question was this: "As far as you know, how did that delegation
16 carry out its work; that is to seek, to gather, information?"

17 A. As I have already said, Counsel, based on what the members of the commission
18 told me, they had discussions with the local authorities and inhabitants of Sibut.
19 They had meetings with individuals so as to have a very good idea of the relations
20 between the population of Sibut and the FACA and ALC soldiers there.

21 Q. Mr Witness, apart from those authorities who were contacted by the delegation
22 and that we saw on the video, including the mayor, the President of the CAR
23 Women's Organisations, the civil servant and two religious leaders, did the
24 delegation meet with other local authorities, as far as you know?

25 A. Yes, Counsel, it is possible that over time people were no longer able to

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1 remember the positions of the individuals that they met, but I believe the delegation
2 met with a broad sample of members of the population of Sibut.

3 Q. To your knowledge, did the mission meet with members of the population in
4 the various neighbourhoods?

5 A. No, Counsel, the members of the population actually came to meet with the
6 delegation where they were. I do not believe that the members of the delegation
7 actually went into the various neighbourhoods of Sibut.

8 Q. With regard to the information gathered by that mission, as far as you
9 know -- at least you stated, and that is on page 28 of the transcript of 9 April as from
10 line 23, "According to the ambassador, I think that the delegation brought the media
11 with them, so the images exist. They had discussions with local authorities who said
12 that, contrary to the rumours that reached us in Gbadolite, the few abuses perpetrated
13 in Sibut were attributable to the forces of the rebel, General Bozizé, which at the time
14 was fighting against the regime in power, so according to them the abuses were
15 perpetrated by Bozizé's soldiers."

16 "Mr Witness, you said that the mission that travelled to Sibut was not able to visit the
17 residential neighbourhoods to gather information from witnesses. Before I talk
18 about a testimony given in relation to the events in Sibut, there was a lady who said
19 that the relations between the ALC and the population were very good. She also
20 asked for her thanks to be conveyed to Mr Bemba," and this is French transcript
21 number 223 of 4 May 2012, page 30.

22 A question was put to that witness: "You have said that there was not much
23 ammunition. I'm referring to the rebels who did not have a war arsenal and they
24 were waiting for reinforcements from the hierarchy. Is it when they were in Sibut
25 that they did not have ammunition?", and this is the answer from the witness: "I told

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1 you that they were just passing by. They spent very little time in Sibut. They went
2 and settled in Begoua and Kaga-Bandoro, so it was there that they ran short of
3 ammunition."

4 On page 31 of the same transcript, line 2, the witness stated as follows: "I did not say
5 that Bozizé's rebels committed abuses in Sibut."

6 Now, on page 42 of the same transcript there is a statement from a lady that he is
7 supposed to know well. At line 23 the question was: "What do you think of that
8 testimony?" And the answer of the witness: "I do not recognise that scenario,
9 which frightens me a little bit. I do not understand her story. When the rebels were
10 there, they did not maltreat anyone. They did not mistreat anyone."

11 Page 43, same transcript, lines 1 to 3: "When Bemba's men arrived, she was with
12 them on board their vehicle. I doubt the truthfulness of what she's saying."

13 Lines 18 to 21, "Given that the population lost all their property, how is it possible for
14 her to actually send a motion of thanks to Bemba? I think that this is just something
15 that is being acted up."

16 Page 46: "I can see that this lady lied. These people came and plundered the town,
17 but certain people are denying the facts and stating the contrary. They were looking
18 for money."

19 And lastly, talking about the troops, he stated that: "The criminals were mainly the
20 Banyamulengue."

21 These are comments. Do you have any comment on these testimonies, Mr Witness?

22 A. Yes, Counsel. After listening to you very attentively, what you have just said
23 makes me think that in the Central African Republic currently there are three
24 categories of witnesses. You have those who are testifying in favour of Patassé
25 because Patassé is in power, those who testify in favour of Bozizé because Bozizé was

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1 in power and I believe that, if you go right now and you ask the same questions, you
2 will have new versions in relation to the new president who has just taken over
3 power in the CAR.

4 I think one needs to be very tactful and wise to really make any sense of all those
5 testimonies, which can sometimes be testimonies that are given for a specific purpose.

6 PRESIDING JUDGE STEINER: Maître Douzima, I will ask your permission to
7 suspend five minutes earlier your questioning - you will be compensated - because
8 before the break the Chamber needs to issue an oral decision. We will continue in
9 the afternoon, with your permission of course.

10 MS DOUZIMA LAWSON: (Interpretation) With your leave, your Honour,
11 following the witness's answer I just want to ask a very brief follow-up question?
12 Thank you very much.

13 Q. Mr Witness, was President Patassé still in power when this mission travelled to
14 Sibut; that is on 20 February 2013?

15 A. Yes, Counsel. On 20 February 2003, Ange-Félix Patassé was still President of
16 the CAR.

17 MS DOUZIMA LAWSON: (Interpretation) Thank you, your Honour.

18 THE INTERPRETER: Correction: The date was 2003.

19 PRESIDING JUDGE STEINER: Thank you, Maître Douzima.

20 It's almost 1.30. We will very soon suspend for the lunch break, but before that the
21 Chamber needs to issue an oral decision on the proposed order of witnesses to appear
22 after the testimony of Witness 21.

23 By oral decision of 10 April 2013, transcript 304, in order to ensure the efficient
24 presentation of evidence by the Defence and the expeditiousness of the trial
25 proceedings the Chamber, pursuant to Article 64(2) of the Rome Statute and

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1 Regulation 43 of the Regulations of the Court, instructed the Defence, in co-ordination
2 with the VWU, to submit by 4 o'clock on 11 April 2013 a new proposed order of
3 witnesses to be heard after the completion of the testimony of Witness D04-21.

4 In compliance with this instruction, by email sent on 11 April the Defence circulated a
5 proposed order of witnesses. The schedule proposes to hear the next witnesses in
6 the following order: Witness D04-39; Witness D04-56; Witness D04-18; Witness
7 D04-17; Witness D04-12; Witness D04-13; and Witness D04-40.

8 The Chamber notes that, compared to the previous schedule proposed by Defence,
9 Witness D04-46 does not appear on the Defence's list of witnesses any more.

10 The Chamber approves the new proposed order and instructs the Defence to circulate
11 an amended monthly witness schedule setting out the expected dates of testimony of
12 the relevant witnesses by Monday, 15 April 2013.

13 Mr Witness, we will have now our lunch break. We will resume at 3 o'clock in the
14 afternoon. We hope we have time enough to take some rest before we resume at
15 3 o'clock.

16 The hearing is suspended.

17 THE COURT USHER: All rise.

18 (Recess taken at 1.28 p.m.)

19 (Upon resuming in open session at 3.05 p.m.)

20 THE COURT USHER: All rise.

21 Please be seated.

22 PRESIDING JUDGE STEINER: Welcome back.

23 For the record, I notice that Mr Bemba is not present. He had requested authorisation to
24 be absent and authorisation was granted.

25 Mr Witness, good afternoon.

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1 THE WITNESS: (Interpretation) Good afternoon, Madam President.

2 PRESIDING JUDGE STEINER: Did you have the opportunity to take some rest?

3 THE WITNESS: (Interpretation) Yes, that's fine. Thank you.

4 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony, sir?

5 THE WITNESS: (Interpretation) Yes, indeed. Thank you, Madam President.

6 PRESIDING JUDGE STEINER: Then I'll give back the floor to Maître Douzima. Just for
7 your information, the Outlook system is not working, which means that the procedure for
8 ordering redactions that may be needed is not working, so I would ask Maître Douzima
9 and Mr Witness to be more careful than ever in not releasing any information that could
10 lead to the witness's identification.

11 Maître Douzima, you have the floor.

12 MS DOUZIMA LAWSON: (Interpretation) Thank you, Madam President.

13 Q. Witness, just before the lunch-break I asked you one last question, on page 77, lines
14 1 to 10, in the French transcript: "You stated that President Patassé was still in power on
15 February 20, 2003 when the mission went to Sibut." You know that President Patassé
16 called the MLC to intervene into the CAR?

17 A. Yes, Counsel.

18 Q. You also know that the local authorities, at least the administrative authorities, were
19 appointed by the Patassé government?

20 A. I don't have any details as regards the administrative set-up at the time, Counsel.

21 Q. Thank you. Then I'll go on. As regards the religious authorities in the local parish
22 in Sibut, you stated, and here I'm on transcript 302, dated April 9 of this year, page 33,
23 lines 17 to 20, "According to that video, the religious authorities recognised," this is line 17
24 to 20, "that in the ALC troops there were four or five individuals who were not under
25 control and who looted and stole, but that the major, the commander of the ALC unit,

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1 took the necessary measures to put an end to that type of behaviour." Do you recall
2 having said that?

3 A. Yes, that was the summary of the extract that we saw. I think they were images
4 that we were shown.

5 Q. Do you know whether or not the mission checked that information provided by the
6 religious leader?

7 A. No, madam.

8 Q. To your knowledge, what measures were taken by the commander to put an end to
9 that type of behaviour, that is regarding those uncontrolled individuals within the ALC?

10 A. Counsel, I believe I've already answered that question, in saying that what
11 happened after us, I -- I don't know.

12 Q. Witness, aside from the town of Sibut, and to be precise, to your knowledge, did you
13 hear about Mongoumba, where the MLC troops were involved?

14 A. No.

15 Q. Do you know whether they received monthly salaries?

16 A. To my knowledge, no.

17 Q. Do you know how they obtained food to eat?

18 A. It was the MLC movement that took care of them while they were in the Congo.

19 Q. The MLC also took care of their families?

20 A. Yes, Counsel.

21 Q. Do you know how the Central Africans called the ALC soldiers?

22 A. Yes.

23 Q. Can you tell us, please?

24 A. The Banyamulengue. Banyamulengue.

25 Q. Witness, I'd like to touch briefly again on something that I missed regarding the

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1 mission that went to Sibut. Now, I'm referring to transcript 304, dated April 10, 2013, in
2 the French version page 54 to 55, regarding individuals who put questions to witnesses
3 during that mission and those questions were recorded?

4 A. If I may, Counsel?

5 Q. Yes, I'm listening.

6 A. I thought you would have wanted to know the origin of the word "Banyamulengue,"
7 because that would be very helpful to enable us to understand a number of things.

8 Q. My role is to ask you questions and your role is to respond to these questions. If I
9 didn't ask the origin of the word "Banyamulengue" I know why and if I asked you the
10 question I just put to you I also have my reasons, and therefore I don't need to ask you the
11 origin of the word "Banyamulengue." So would you be so kind as to answer the question
12 regarding the mission in Sibut?

13 A. Well, there's a relationship with the command in the Central African Republic. It's
14 directly related to this very matter but, if you like, we can go on to something else.

15 Q. Well, fine. I was referring to journalists who put questions to individuals during
16 the mission in Bossembélé and that questioning was recorded. A question was asked as
17 to what journalists they were and the answer was, "I believe they were local journalists,"
18 and another question was, "When you say 'local,' do you mean local from the Congo or
19 local from the CAR?", and you responded that, "They were Congolese."

20 So my question is: Why were Central African journalists not invited, why were they not
21 involved in this mission, whereas foreign journalists were involved? Can you explain
22 that?

23 A. I believe that, if it was necessary to inform the Central African Republic, the relevant
24 authorities could have taken the necessary measures. The mission that we had organised
25 was for the information of the MLC and that is why we went with Congolese journalists

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1 as well as the foreign journalists who were there, and as to why the Central African
2 Republic journalists were not involved I have no answer to that question.

3 Q. Well, I would have thought that given that the operations were taking place in the
4 CAR it would have been logical that the Central African Republic journalists be there, but
5 I take note of your answer.

6 A. It did occur as well that the American press investigate in Iraq without necessarily
7 involving the Iraqi press, for example, or the same thing in Afghanistan.

8 Q. Yes, indeed, that may be the case. We talked about the court martial in Gbadolite.
9 What were the crimes that were dealt with by this cour martiale, or court martial?

10 A. I believe it was looting.

11 Q. What were the fears of the soldiers who were tried by this -- sorry, correction, what
12 were the ranks of the soldiers who were tried by this military tribunal?

13 A. I don't recall.

14 Q. And what about the procedure that led up to the trial, do you know anything about
15 that?

16 A. No.

17 Q. Do you know whether during the proceedings in Gbadolite before the court martial,
18 were there any complainants?

19 A. No, I don't know.

20 Q. Do you know whether the sentences were actually executed, those handed down by
21 the military tribunal?

22 A. I believe so, yes, Counsel.

23 Q. You think so, or are you certain that those sentences were actually carried out?

24 A. I'm very sorry, madam. I was not responsible for carrying out the sentences that
25 were handed down to those convicted, so at this point in time I cannot tell you who

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1 served what sentence, for how long a period, and that's why I answered that I believe that
2 the sentences were indeed enforced.

3 Q. In other words, you don't know?

4 A. That's your conclusion.

5 Q. Witness, I'd like to ask you the following question: Since 8 April, that is from 8
6 April until today, when you've answered questions either on the part of the Defence, or
7 the OTP, or questions put to you by the legal representatives, you have often used the
8 following words, "In my opinion ...", "I think ...", "My understanding ...", "In my humble
9 opinion ...", "According to what I understand ...", "To my knowledge ..." Are you not
10 certain of the answers that you're giving?

11 A. No, I simply would not lead the Court into error, because the task is to find the truth
12 and we're talking about events that took place more than 12 years ago and therefore I
13 thought that I had the right to express myself with a bit of nuance. I don't want to be too
14 categorical. I don't have a perfect memory like an elephant.

15 Q. Thank you very much for answering my questions. As you were told by the
16 Chamber this morning, I am authorised to put to you a series of questions on behalf of my
17 colleague; that is, as authorised by the Chamber, questions to be put to you on behalf of
18 Maître Assingambi Zarambaud.

19 Now, Witness, (Redacted)

20 (Redacted)

21 A. No.

22 Q. Why?

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

24 *(Private session at 3.26 p.m.) Reclassified as Open session

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

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- 1 PRESIDING JUDGE STEINER: (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 Is that fine with you, madam -- Maître?
- 7 MS DOUZIMA LAWSON: (No interpretation)
- 8 PRESIDING JUDGE STEINER: Let's turn back into open session, please.
- 9 (Open session at 3.27 p.m.)
- 10 THE COURT OFFICER: We are in open session, Madam President.
- 11 MS DOUZIMA LAWSON: (Interpretation) I've understood --
- 12 PRESIDING JUDGE STEINER: Maître Douzima, sorry just to complete, and of course
- 13 whenever you want to be more direct we can also go into private session.
- 14 MS DOUZIMA LAWSON: (Interpretation) I've understood, Madam President.
- 15 Q. Witness, why is it that the ambassador was not associated with, or involved in, the
- 16 decision to send the ALC troops to the CAR?
- 17 A. Obviously, because he wasn't there. He wasn't on-site.
- 18 Q. Did the Central African Republic National Assembly give its go-ahead? Did it give
- 19 authorisation, to your knowledge?
- 20 A. I don't remember.
- 21 Q. As regards the command of the ALC troops, that is on the ground, to your
- 22 knowledge was there any specific convention or agreement signed with the Central
- 23 African authorities?
- 24 A. That is part of the agreement that I spoke about earlier.
- 25 Q. But over and beyond that agreement, was there an international convention on that

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1 topic?

2 A. Could you perhaps make your question more specific? I'm afraid I'm having
3 trouble understanding.

4 Q. I will repeat my question. You referred to an agreement, an oral agreement, which
5 made it possible for the ALC to intervene in the CAR, but the question is: Over and
6 beyond that oral agreement between the MLC and the CAR, was there an international
7 convention or a regional or subregional convention which authorised the ALC to
8 intervene in the CAR?

9 A. I am not aware of that.

10 Q. Do you know whether Mr Bemba went to Zongo and whether he pronounced a
11 speech? Well, from what we have learned, he pronounced a speech to the soldiers before
12 they went over into the CAR, and if you were aware of that, what was the content of that
13 speech?

14 A. No, Counsel, I am not aware of Mr Bemba's visit to Zongo or the substance of any
15 speech he might have given to the troops before they crossed over.

16 Q. Thank you. It is said that there were about 1,500 men from the ALC who crossed
17 over. Did this group include women, children or minors?

18 A. I never heard that amongst the MLC contingent that crossed over to the CAR, there
19 were any women, babies or minors.

20 Q. My question related to women, not minors. I didn't mention minors. In other
21 words, were there any women who did not have babies, who did not have children?

22 A. I'm sorry, I have difficulty following you. I thought you mentioned women with
23 babies and minor children. Now you are talking about -- you are saying that you didn't
24 mention minors, and then you specified that there were women, you were referring to
25 women without children. Can you be more specific? I think it will help us to save time.

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1 Q. Mr Witness, I asked whether there were any women with children, or with babies,
2 and you said, "No," but my question now is: Were there women in that group, women
3 who did not have babies with them?

4 A. I know that there has never been any discrimination between men and women in
5 the ALC, so it is highly likely that there were women soldiers in the contingent that
6 crossed over.

7 Q. Do you know whether Colonel Moustapha, who was the commander of ALC troops
8 in the CAR, at any point requested additional weapons?

9 A. I heard that General Moustapha had informed Gbadolite of the logistic -- logistics
10 need of his unit.

11 Q. Did he obtain those needs?

12 A. I do not know, Counsel, but I think yes, because the agreement indicated that it was
13 the CAR that provided logistics, so Gbadolite must have contacted Bangui to resolve the
14 problem.

15 Q. Can you tell us how the ALC troops were dressed, what they were wearing on their
16 heads and feet?

17 A. I know that they were wearing military uniforms, camouflage uniforms. I believe
18 everyone saw some pictures of ALC soldiers yesterday, some images.

19 Q. What were the relations between the ambassador and his Central African Republic
20 counterpart at that time?

21 A. I believe there were no relations at that time. The only political contact that existed
22 was contact at the summit.

23 Q. Do you know whether Colonel Moustapha and other officers of the ALC forcibly
24 occupied houses belonging to private citizens?

25 A. I do not know, Counsel.

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1 Q. Do you know that looted property, and particularly vehicles, were taken across into
2 the Congo?

3 A. No, Counsel, you are the one telling me that.

4 Q. We learned that on one of the vehicles Moustapha had painted over the following:
5 "Moustapha pe azali moto" and the translation we have for that is "Moustapha is also a
6 human being." Are you aware of this?

7 A. No, Counsel, you are the one telling me that the commander who would have had
8 that need to write this, to paint this on the vehicle.

9 Q. A short while ago, in answer to my question on the crimes referred to, the Gbadolite
10 court martial, you told me that the crimes concerned looting. Do you know whether the
11 looted property was returned to their owners?

12 A. I am not in a position to tell you that, Counsel.

13 Q. You know that those involved were convicted?

14 A. Yes, Counsel.

15 MS DOUZIMA LAWSON: (Interpretation) Thank you, Mr Witness. I have now
16 concluded with my colleague's questions.

17 Thank you, Madam President.

18 PRESIDING JUDGE STEINER: Thank you, Maître Douzima.

19 Judge Aluoch has two follow-up questions to put.

20 JUDGE ALUOCH: Yes, I have two follow-up questions.

21 Mr Witness, I want to go back to the record of 9 April, that's Tuesday this week. It's
22 transcript 302, and I will start at the bottom of line 25 on page 14. These were questions
23 asked to you by Mr Kilolo. This was his question, and I quote: "Mr Witness, my
24 question was whether, to your knowledge, Mr Bemba had the capacity to give operational
25 orders to Moustapha in the Central African Republic?" And your answer was as follows,

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1 Mr Witness, and I quote you: "I thank you for the question, Counsel. As I said at an
2 earlier stage, Mr Bemba was the commander-in-chief of the ALC, and even in this capacity
3 one should not take it for granted that he was the supreme commander as political person
4 in charge of the army. He had power over the ALC as President of the ALC and
5 Commander-in-Chief, but when a unit was placed at the disposal of another entity, I
6 believe that he lost control over this unit, the effective control, that is, and acting in
7 another manner would have been calling into question this agreement on commitment of
8 troops which would have been -- which would have given rise to the catastrophic results,
9 to my mind."

10 Mr Witness, I know that this morning you gave a lot of information about agreements.
11 Now, what I want you to clarify is specifically, in this answer, which agreement were you
12 referring to, in this particular answer? If you want it -- if you want, I can read it again
13 but I want to be sure which agreement you are referring to, please.

14 THE WITNESS: (Interpretation) Thank you, your Honour. I believe I have
15 understood your question.

16 In order for the MLC troops to cross over into the Central African Republic, there were
17 discussions at the political level between the late President Patassé and Mr Jean-Pierre
18 Bemba. Mr Jean-Pierre Bemba held a meeting with a few officials of the party, and the
19 decision was taken to give a positive response to the request of the CAR authorities, so the
20 agreement was the request of the CAR authorities and the acceptance of the MLC. So
21 that is the agreement that I was referring to, and it was on the basis of this that the ALC
22 troops were placed at the disposal of the Central African authorities under certain
23 conditions, including (1) the Central African authorities would provide the logistical
24 resources; (2) the operational command would be the responsibility of the Central African
25 Republic officers; (3) the management of the discipline of the troops would be the

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1 responsibility of the Central African authorities and officers.

2 So that was the substance of the agreement that I came to know about, your Honour.

3 JUDGE ALUOCH: Is this the agreement that you have subsequently said was oral? I
4 just want to make sure that we are clear on this.

5 THE WITNESS: (Interpretation) Yes, your Honour, this was the oral agreement that I
6 was referring to.

7 JUDGE ALUOCH: And, again, is this the agreement that you yourself heard about from
8 other people?

9 THE WITNESS: (Interpretation) I'm sorry, your Honour? I didn't quite catch your
10 last question.

11 JUDGE ALUOCH: Well, it was you have said the agreement was oral, it was not written,
12 so you cannot refer to it - you could not read it anywhere, it was oral - and so how did you
13 come to know about it? Basically, that's what I'm asking.

14 THE WITNESS: (Interpretation) You are quite correct, your Honour. A short while
15 ago in private session I mentioned the names of two people who attended the meeting
16 and who told me about the meeting, the agreement and the conditions of the agreement.

17 JUDGE ALUOCH: All right, thank you.

18 PRESIDING JUDGE STEINER: I also have one or two questions - follow-up
19 questions - to put to the witness, and I would like -- I would like to go into private session
20 for that purpose, please.

21 *(Private session at 3.47 p.m.) Reclassified as Open session

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

23 PRESIDING JUDGE STEINER: Thank you very much.

24 Mr Witness, first, when this meeting that you just referred in answering to Judge Aluoch
25 took place?

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1 THE WITNESS: (Interpretation) I believe it was a few days before or on the eve of the
2 day that the troops crossed over. In any case, it was before they crossed over. The
3 information at my disposal mentioned 27 October.

4 PRESIDING JUDGE STEINER: (Redacted)
5 (Redacted)

6 THE WITNESS: (Interpretation) Yes, indeed, your Honour.

7 PRESIDING JUDGE STEINER: How many members there were in this -- in the MLC
8 delegation to Pretoria?

9 THE WITNESS: (Interpretation) I think there must have been seven or eight (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)

14 PRESIDING JUDGE STEINER: And how was the communication, or the exchange,
15 between the delegation and Mr Bemba during these meetings in Pretoria?

16 THE WITNESS: (Interpretation) Communication was conducted over the telephone,
17 your Honour.

18 PRESIDING JUDGE STEINER: How often?

19 THE WITNESS: (Interpretation) I believe that communication was on a daily basis.

20 PRESIDING JUDGE STEINER: With whom?

21 THE WITNESS: (Interpretation) It depended on the day and the topic of the
22 discussions, but I think the person who was in contact every day was the head of the
23 delegation, Mr Olivier Kamitatu, but sometimes Mr Bemba would speak to another
24 member of the delegation.

25 PRESIDING JUDGE STEINER: Would you say that Mr Bemba was following very

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1 closely the negotiations?

2 THE WITNESS: (Interpretation) Yes, your Honour, I can say that.

3 PRESIDING JUDGE STEINER: Could any decisions be taken without previous
4 consultation with Mr Bemba?

5 THE WITNESS: (Interpretation) There was consultation when it came to major issues,
6 at least with the head of the delegation, Olivier Kamitatu, as I said a short while ago.

7 PRESIDING JUDGE STEINER: In relation to this agreement that you mentioned that
8 you heard about, and you described some of the conditions imposed by the MLC to send
9 troops, if I well-understood, you can correct me if I misunderstood, that Central Africans
10 would take care of the logistics of feeding the troops and dressing the MLC troops. What
11 would MLC receive in return for that?

12 THE WITNESS: (Interpretation) To my knowledge, nothing at all.

13 PRESIDING JUDGE STEINER: So Mr Bemba sent almost 2,000 men to Central African
14 Republic to help President Patassé and receiving nothing in exchange; is that correct?

15 THE WITNESS: (Interpretation) Yes, your Honour. This may seem to you to be
16 surprising but, if you put yourself in the context of the period, at that time we had also
17 received support - about 5,000 people - from the Ugandan army, which had come to
18 support us, and we did not pay them a single dollar for that support. They came and
19 supported us, trained our soldiers and assisted in MLC operations.

20 PRESIDING JUDGE STEINER: It's a very interesting point of view, Mr Witness.
21 Court officer, please turn back into open session.

22 (Open session at 3.54 p.m.)

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

24 PRESIDING JUDGE STEINER: Mr Witness, I just asked you whether Mr Bemba or the
25 MLC received anything in exchange of the sending of the troops to CAR and you said that

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1 to your knowledge nothing at all; is that correct?

2 THE WITNESS: (Interpretation) Yes, that is correct, your Honour.

3 PRESIDING JUDGE STEINER: Mr Witness, I will just read you a question and an

4 answer contained in transcript 205, page 44, and of course no information that could lead

5 to the identification of the person who was testifying. The question that was put was:

6 "Why did Mr Bemba send his MLC troops to the Central African Republic in

7 October 2002?" And the answer was: "Madam Prosecutor, I think only Mr Bemba can

8 answer that question. What I said is -- what I say is that, because I know him, I think that

9 his ego -- he felt somewhat flattered, because he has an ego, and he must have felt

10 flattered that a Head of State was calling upon him for help and that sort of put him and

11 the Head of State at more or less the same level. However, unfortunately, because of his

12 ego he made the fatal mistake that he made and that is what I can say."

13 Would you agree with this evaluation, Mr Witness, or you have another one?

14 THE WITNESS: (Interpretation) I have two brief comments: First of all, that

15 statement sort of supports the information according to which the MLC, when it sent

16 troops to the CAR, did not have any financial compensation.

17 Secondly, the statement uses a psychological analysis of Mr Bemba and that is only

18 binding on the person who made that statement. I do not share that opinion.

19 PRESIDING JUDGE STEINER: So in your view, not mentioning the psychological issue,

20 do you agree that the sending of troops - MLC troops - to Central African Republic in the

21 middle of the Pretoria negotiations was a fatal mistake, or not?

22 THE WITNESS: (Interpretation) When you take into account the present situation in

23 which we find ourselves, I believe this was an error.

24 PRESIDING JUDGE STEINER: Have you received from anyone any information about

25 problems or embarrassments created within the Pretoria -- the Sun City conferences

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1 because of the fact that Mr Bemba sent his troops to CAR? Have you received
2 some -- this sort of information?

3 THE WITNESS: (Interpretation) I do not know whether the Presiding Judge wants to
4 know whether the fact that the MLC sent troops to the CAR had an effect on the Pretoria
5 negotiations; is that the question?

6 PRESIDING JUDGE STEINER: That was indeed the question.

7 THE WITNESS: (Interpretation) Thank you very much, your Honour, I appreciate
8 your effort to speak French.

9 In my opinion, no. While we were in Pretoria, the issue of MLC troops in the CAR was
10 not raised during the discussions, at least in the military commission where the person
11 who told me about it was a member.

12 PRESIDING JUDGE STEINER: Thank you very much, Mr Witness. I am informed that
13 Defence would like to put some final questions, and for that purpose I give back the floor
14 to Maître Kilolo.

15 MR KILOLO: (Interpretation) Thank you, your Honour. Could we please go into
16 private session?

17 PRESIDING JUDGE STEINER: Court officer, please.

18 *(Private session at 4.01 p.m.) Reclassified as Open session

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

20 QUESTIONED BY MR KILOLO: (Interpretation)

21 Q. Good-day, good afternoon, Mr Witness.

22 A. Good afternoon, Counsel.

23 Q. The Prosecutor has put a number of questions to you regarding the MLC delegation
24 which went to Sibut. I'm referring to transcript 304, confidential, French version, page 51
25 and following pages; English version, T-304 confidential, page 49 and following pages.

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1 Do you recall this part of your testimony, dealing with a series of questions from the OTP
2 on the MLC delegation or mission to Sibut?

3 A. Yes, I do remember Counsel.

4 Q. What was the composition of the said MLC delegation to Sibut?

5 A. (Redacted)

6 (Redacted) think those were the two senior members of that
7 delegation.

8 Q. I would like to ask the court officer to display document 39 of the Defence list of
9 documents, one of the very recently authorised documents which Defence can use;

10 (Redacted)

11 THE COURT OFFICER (DRC): (Interpretation) Maître Kilolo, document
12 (Redacted) is being displayed to the witness.

13 MR KILOLO: (Interpretation)

14 Q. Witness, can you tell us who can be seen on this photograph?

15 A. (Redacted)

16 (Redacted)

17 Q. Do you know where this photograph was shot?

18 A. (Redacted)

19 Q. What was Mr Valentin Senga's role or duty in Sibut?

20 A. (Redacted) namely, gather information and find out about
21 relations between the ALC troops on the ground and the civilian population.

22 Q. Is he the one to the extreme right of the photograph in conversation with Major
23 Kamisi?

24 A. That is correct, Counsel.

25 MR KILOLO: (Interpretation) Defence would like to refer to transcript T-201,

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- 1 confidential, French version, page 68 and following pages, and the Chamber will
2 understand why we make this connection. Can we now revert to open session, please?
3 PRESIDING JUDGE STEINER: Court officer, please turn into open session.
4 (Open session at 4.06 p.m.)
5 THE COURT OFFICER: We are in open session, Madam President.
6 MR KILOLO: (Interpretation)
7 Q. Witness, the OTP asked you this specific question: "Following what you have just
8 seen," and that was referring to the video footage on Sibut, "Witness, can it be said that
9 those people, as far as you know or according to you, felt free enough to speak out and
10 that, if they had any complaints against the MLC, they would have felt free enough to
11 raise them?" That was a question from the OTP to you about those people who were
12 interviewed in Sibut. Do you recall that question?
13 A. Yes, I do, Counsel.
14 Q. I would now want to refer to transcript T-305, confidential, French version, page 53,
15 line 23 onward, and also to the transcript T-305, confidential, English version, page 48, line
16 17 onwards. This is the answer you provided to the question, and I quote, "Yes, Counsel,
17 because some of them denounced, among other things, the priest whom the delegation
18 had seen decrying some of the acts of violence by the MLC." The OTP then went on to
19 put another question to you, in a bid to find out from you whether the presence of armed
20 ALC soldiers in Sibut could have influenced statements made by the witnesses or other
21 persons who may have been interviewed at that location. Your answer was provided as
22 follows: "Maybe, Counsel, probably, yes, Counsel." That was your answer. Transcript
23 305, confidential, French version, page 66, line 5; transcript T-305, confidential, English
24 version, page 59, line 19.
25 Do you recall those two questions and the answers you provided?

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1 A. Yes, I do Counsel.

2 Q. Could you please clarify this apparent contradiction, if I may say so, regarding the
3 matter of a similar question that was couched in different ways?

4 A. Yes, Counsel, the explanation is quite simple: To one of the questions there was a
5 suggestion or a hypothesis that was made, whereas the other question appeared to deal
6 with a real situation as it was experienced. That is -- that was my understanding. Now,
7 can -- "could the presence of soldiers have," that was in the conditional, "could it have had
8 any influence?" So that is a question in the conditional, and I said, "Yes, it could."

9 Now, the other question was a direct question; namely, "Did such a presence directly
10 influence," and my answer was "No, because some of the participants at the meeting did
11 actually criticise the conduct of some of the troops in the location." And I don't know if
12 this explains that apparent contradiction, Counsel.

13 Q. Very well, Mr Witness, let us conclude with this matter by dealing with the
14 following. When the MLC delegation arrives in Sibut, was the local population
15 intimidated?

16 A. Not, not at all --

17 PRESIDING JUDGE STEINER: Mr Witness. Mr Witness, sorry to interrupt you. I
18 think Maître Badibanga needs to raise some issue or --

19 MR BADIBANGA: (Interpretation) Thank you, Madam President.

20 I object, to the extent that we were patient enough to understand where the Defence
21 counsel was headed, but once again, this is not a re-direct or additional examination.
22 None of the questions raised here relate to new elements that the Defence did not deal
23 with in their examination-in-chief. So I think that the video in Sibut was, to a very large
24 extent, part of the initial examination.

25 Now here, he's returning to find out who were the members of the team, and what have

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1 you. So my point is maybe the Defence has identified some new elements that were
2 raised in cross-examination -- which would now be raised in cross-examination, rather
3 than reopen the entire examination-in-chief on issues that have already been exhausted by
4 the witness. Thank you.

5 PRESIDING JUDGE STEINER: I give the floor to Maître Kilolo, but for me it appears
6 that he was trying to obtain a clarification in relation to an apparent contradiction between
7 two answers given to the Prosecution. But in any case, Maître Kilolo, what do you have
8 to say?

9 MR KILOLO: (Interpretation) Madam President, I think that you are in the best
10 position to understand the true purpose of my re-direct, and I agree entirely with you,
11 your Honour.

12 PRESIDING JUDGE STEINER: You can proceed.

13 MR KILOLO: (Interpretation)

14 Q. Mr Witness, let me repeat the last question I put to you: When the MLC delegation
15 arrived in Sibut, was the local population intimidated by the presence of the soldiers,
16 going by the information that you were able to obtain -- to obtain, rather, particularly
17 from the ambassador?

18 A. The information provided to me by the ambassador was to the effect that the
19 situation was normal. You see, I am tempted to believe what he said, because as we have
20 all followed here, on viewing the video excerpts, we could hear children playing and
21 making noises around the delegation. I don't think that there was a funeral or anything
22 of that sort in Sibut on that day.

23 Q. The journalists who came along or who were present with the MLC delegation in
24 Sibut, did you notice that they may have reported on any incidents relating to the
25 intimidation of the local civilian population during your contacts, or the contacts between

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1 the MLC and the international media?

2 A. No, Counsel. As far as I'm aware, I did not learn of any media organ having been
3 present which made any report along those lines.

4 Q. The OTP had you listen to an RFI report on rumours about ALC acts of violence in
5 Sibut. That report is said to have been made on 18 February 2003. I'm referring to
6 document CAR-OTP-0031-0120, and that would be from 0 minute, 1 second onwards.
7 Do you remember that footage?

8 A. Yes, Counsel, I do. I do remember.

9 Q. When the MLC delegation arrived in Sibut, accompanied by RFI journalists, as it is
10 said on 20 February 2003, that is some 48 hours after the infamous report, were those
11 rumours cross-checked on site?

12 A. No, Counsel, the rumours were not cross-checked on site, and they were not
13 confirmed because you yourself must have noticed the difference in the tone between the
14 RFI reports of the 18th and the report by an RFI journalist who was on the ground on the
15 20th. That is why I believe that the RFI report of the 18th was properly done, in a
16 professional manner, with the use of the conditional. It would appear that -- it would
17 seem that, and going by information available to us, such-and-such a thing may have
18 happened, so the journalist must have received information while in Paris from other
19 sources, but the other journalist who was on the ground, on the 20th, provided a report
20 which we all listened to, which is of -- which is of an entirely different register.

21 Q. Now, if necessary, I would be asking that the excerpt be played to you again, but let
22 me ask you, in any event, whether you were able to listen to the report that was played in
23 this court hall, alleging some cannibalism on the parts of MLC soldiers in the Ituri. Did
24 you hear that part of the report?

25 A. Yes, Counsel, I also heard that part of the report, but if you want my reaction on that

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1 point, I would like to ask the Presiding Judge to authorise that we go into private session.

2 PRESIDING JUDGE STEINER: Court officer, please turn into closed session. Private
3 session, sorry.

4 *(Private session at 4.20 p.m.) Reclassified as Open session

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

6 PRESIDING JUDGE STEINER: Yes, Mr Witness, what do you want to say?

7 THE WITNESS: (Interpretation) Thank you, Madam President. I would like to
8 provide some information to the Court which may enable us to understand these issues of
9 credibility when we deal with some information that is carried in the media.

10 We have all heard these reports on the media accusing some MLC soldiers of
11 cannibalism. (Redacted)

12 (Redacted)

13 (Redacted) So today, it is

14 common public knowledge in our country that the so-called allegations of cannibalism
15 were fabrications, lies designed for political reasons, and that they are completely baseless.

16 So those Pygmies who are alleged to have been eaten or who claimed that some members
17 of their families had been eaten up were identified following, and thanks to the support of
18 the United Nations Mission in the Congo, logistical support.

19 So, Madam President, this is the issue that I wanted to raise because sometimes the press
20 may carry rumours that are difficult to cross-check and to determine whether they are
21 true or not and whether there may be political manipulation or not. And I'll stop at that,
22 your Honour.

23 PRESIDING JUDGE STEINER: Mr Kilolo, can we go back into open session? Court
24 officer, please.

25 (Open session at 4.22 p.m.)

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

2 MR KILOLO: (Interpretation)

3 Q. Witness, the Prosecutor also put a question to you with a view to determining who,
4 within the MLC, had the power to order the withdrawal of the ALC troops from the
5 Central African Republic. I'm referring here to transcript T-304, confidential, French
6 version, page 17, lines 14 onwards; and English version, transcript T-304, confidential,
7 English, page 68, line 10 onward.

8 This is the answer you provided to the question: "At the political level, it was
9 Mr Bemba." Then the Prosecutor followed up with another question: "And who at the
10 military level had that power?" Your answer: "As far as I know, the decision was taken
11 at the political level, but when it came to implementation at the military level, power
12 reverted to the General Staff."

13 Now, at this level, do you recall this question and do you remember the answer you
14 provided to it?

15 A. Yes, Counsel, I do remember.

16 Q. Do you also remember that upon examination by the Defence you had testified that,
17 following the agreement to commit troops, to commit ALC troops in the CAR, that is the
18 agreement between the Central African authorities and the MLC, the ALC contingent was
19 placed under the authority of the Central African authorities? Transcript T-304,
20 confidential, French version, page 7, lines 28 onwards; transcript T-304, English version,
21 confidential, page 7, lines 23 onwards.

22 Do you remember the answer and the question relating to this point when you were being
23 examined by the Defence?

24 A. Yes, Counsel.

25 Q. To be abundantly clear on this issue, could you clarify the matter for the Court and

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1 state clearly who had military or operational power to order MLC troops in the Central
2 African Republic to withdraw from the theatre of operations in the Central African
3 Republic and return to the Congo?

4 A. Counsel, let me be more explicit by providing you with a diagram of sorts. Initially,
5 the MLC took a political decision to make available to the Central African authorities an
6 ALC contingent. It handed over operational command of the contingent to the CAR.
7 Initially, the MLC, through its president, Mr Jean-Pierre Bemba, decided to request the
8 withdrawal or return of the contingent of the -- ALC contingent from the Central African
9 Republic. The decision was taken in Gbadolite and communicated to the Central African
10 authorities, requesting that they order the Central African General Staff to authorise the
11 return of the Congolese troops to the DRC. I don't know if that is clear enough, Counsel?

12 Q. Thank you, Mr Witness. Today the Prosecutor also put a number of questions to
13 you today about the status, the legal status, of the MLC and in that connection the
14 Prosecutor put it to you that he was challenging the idea that the MLC was a quasi-State
15 structure, and this happened during today's examination. Do you recall that exchange
16 with the -- with Mr Badibanga during his cross-examination today?

17 A. Yes, Counsel. I remember.

18 Q. I would like to ask the court officer to display document number 40, the very last of
19 the recently authorised documents which Defence was granted leave to use. Document
20 number 40 will be document CAR-DEF-0002-0343.

21 THE COURT OFFICER (DRC): (Interpretation) Maître Kilolo, document
22 CAR-DEF-0002-0343 is being shown to the witness.

23 MR KILOLO: (Interpretation)

24 Q. Witness, can you read what appears on the cover page of this document?

25 A. "Democratic Republic of the Congo. General Secretariat of the Government.

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1 Collection of the decisions of the transitional government. Meeting of the first quarter,
2 beginning 30 June 2003."

3 Q. Witness, can you tell the Court what the transitional government, as at June 2003,
4 represented?

5 A. As at 30 June 2003, the transitional government is made up of a President of the
6 Republic, known as Joseph Kabila, two -- four, rather, vice-presidents, two vice-presidents
7 being former belligerents, that is President of the RCD, Mr Belwa (phon), President of
8 the MLC, Mr Jean-Pierre Bemba. There was also a vice-president from the government
9 camp and one vice-president from the unarmed opposition. That is the government that
10 was referred to as the one-plus-four government.

11 Then the rest of the government also included members from various components: the
12 RCD, the MLC and others, as well as the Kinshasa based government. Each of the
13 components was entitled to seven ministers and four vice-ministers. The MLC had seven
14 plus four. The former Kinshasa government, seven plus four. The RCD also had seven
15 plus four; seven ministers and four vice-ministers.

16 That government had a general secretariat which clearly is the author of this report. I
17 don't know if I have answered your question, Counsel.

18 Q. Given that it is a collection of decisions taken by the transitional government of the
19 RDC, I would like to examine CAR-DEF-0002-0349.

20 PRESIDING JUDGE STEINER: Maître Kilolo, in the mean time, could you please
21 explain what is the relation of this document and the reference you made to the question
22 put by the Prosecution, which was related to the status of the MLC at the time of the
23 events? Is there any connection?

24 MR KILOLO: (Interpretation) I'm afraid that if I answer your question, I will be
25 answering in lieu of the witness. There's going to be a direct link because that's exactly

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1 what we are talking about here.

2 THE COURT OFFICER (DRC): (Interpretation) Maître Kilolo, the document, the page
3 of the document has been presented to the witness.

4 MR KILOLO: (Interpretation)

5 Q. Witness, could you please read a portion, a passage of the decisions taken by the
6 transitional government of the RDC on August 8, 2003, in particular item 10? Just please
7 read paragraph 10, if you would, to save time.

8 A. "The Commission for Policy, Defence and Security, was asked to examine in depth,
9 taking account of the comments made by the members of the council the following points
10 dealing with reference decision number GVT/08/08/03/10. First bullet point. The
11 recognition of the legal decisions taken during the war in the national territory. Point 2.
12 Study and examination of the rulings and judgments handed down against physical
13 persons and legal entities who were not able to defend themselves during the war. 3.
14 The recognition of decisions and legal acts adopted or taken by the political and
15 administrative authorities throughout the national territory in keeping with the
16 resolutions of the inter-Congolese dialogue."

17 Q. Witness, would you be so kind as to explain what this commission is, mentioned in
18 the first line, the Policy, Defence and Security Commission?

19 A. The transition government was divided into four commissions, and so the ministers
20 were regrouped into four commissions. There was the commission for the economy and
21 finance; the commission for social affairs and another one and then there was this
22 commission, that is Policy, Defence and Security, or Defence and Security Policy, and the
23 task of that commission was to manage these various aspects related to defence and
24 security policy on behalf of the government.

25 Q. What exactly are we referring to here in this item 10 of the document?

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1 A. Counsel, as I tried to explain earlier, the separation, or the division, the de facto
2 division, if you will, of the republic into three independent entities, had the effect of
3 granting power to each entity and, in keeping with the Lusaka agreement, each entity
4 managed its own area of jurisdiction. There was the Kinshasa area in the west and south;
5 the RCD in the eastern part and the MLC in the north. When the reunification took place,
6 in keeping with the inclusive global agreement, it was necessary, I'm looking for the right
7 word, it was necessary for the new government to validate, both legally and politically,
8 the various decisions that had been adopted by those different entities that had managed
9 the various parts of the republic. That was the background, if you will. The three
10 entities were reunified and the legal texts, the legal decisions, had been taken and the
11 transitional government decided to validate those decisions that had been taken by the
12 various entities.

13 Q. I am trying to understand here in this document, in particular the last page, the last
14 paragraph of this page, there's a reference, "Recognition of the rulings and legal decisions
15 taken by the political and administrative authorities throughout the national territory."
16 What exactly are these political and administrative authorities that made legal decisions
17 and handed down rulings that needed to be recognised here?

18 A. In my understanding, the political/administrative authorities are as follows: As
19 regards the RCD entity, at the top it was the RCD rebellion movement, rebel movement,
20 and then you have the provincial governors, because they had appointed governors in the
21 different provinces and you had the district commissioners and you had territory leaders
22 right down to the bottom of the administrative scale, if you will, and then in the MLC
23 entity, at the top you had the MLC, being the political authority, and underneath you had
24 the various persons in charge, the district commissioners, the territory leaders, et cetera,
25 who were in position at the time. Those are the political and administrative authorities

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1 that this text, this decision, refers to.

2 Q. Why is it that in 2003 that the political and administrative entity as such of the MLC
3 did not exist? Why is it that the transitional government felt that the MLC, as well as the
4 RCD movement, represented political and administrative authorities or entities in the
5 DRC?

6 A. Because the authorities in Kinshasa, in signing the Lusaka agreement, had
7 recognised de facto that status, that is of the MLC and the RCD, and we saw that when we
8 examined the Lusaka agreement with the signature of the international bodies that signed
9 alongside those in charge of the two bodies; that is signed the Lusaka agreements. Given
10 that the former governments, in Kinshasa, had recognised that agreement de facto in 2003,
11 in order not to leave the country in a situation of legal uncertainty, which would be
12 uncomfortable for all, the transitional government made what I consider a wise decision
13 to validate the decisions, the rulings that had been taken by the former belligerents.

14 Q. I'd like to ask the court officer to provide to the witness document number 3. This
15 is the Lusaka agreement, and I'm interested in the page CAR-D04-0003-0538.

16 THE COURT OFFICER (DRC): (Interpretation) Maître Kilolo, the document page 0538
17 has been put to the witness.

18 MR KILOLO: (Interpretation)

19 Q. Witness, to save time, would you be so kind as to read Chapter 6, the title in
20 particular, of Chapter 6, and this is the appendix of the agreement, and then would you be
21 so kind as to read paragraph 6(2).

22 PRESIDING JUDGE STEINER: Yes, Mr Badibanga.

23 MR BADIBANGA: (Interpretation) Your Honour, I beg your pardon. I don't know
24 what we're doing here but really, this is not in keeping with our procedure. Article 6 has
25 already been read out by the witness, upon request of Maître Kilolo, as well as Article 6(2),

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1 so perhaps there's need to clarify a point but I really don't understand what's being done
2 here. It seems to me that it's totally not in keeping with our procedure.

3 PRESIDING JUDGE STEINER: Maître Kilolo, I'm you are taking the re-direct too far, so
4 try to get straight to the point and within the limits of re-directing.

5 MR KILOLO: (Interpretation)

6 Q. Well, this relates to a question put to you by the OTP regarding a provision in the
7 Lusaka agreement, recognising the administrative authority of the MLC, and I would like
8 to ask you either to read out loud, or perhaps to save time just to read through Article 6(2)
9 silently to yourself, of the appendix A, and tell us why we're talking here about the
10 competence or jurisdiction of the parties to the Lusaka agreement? That is, regarding
11 their jurisdiction in relation to decisions concerning general interest in the RDC. Why is
12 it, if you know, why is it that such a power is recognised in the MLC, that is to represent
13 general interest, what does that mean, exactly?

14 A. Counsel, paragraph 6(2) recognises that there are three entities within the RDC; that
15 is the Congolese parties, in the plural, that is the RDC, the MLC and the ALC. So they
16 are recognising these three parties.

17 Secondly, this provision here recognises jurisdiction or competence in those three parties
18 in certain areas. We are talking here about -- we're talking here about certain powers of
19 the state and thirdly, for certain operations relating to the general interests, that
20 they -- there would need to be a consultation mechanism because each of these entities
21 may need to take certain decisions that could have an impact over and beyond their own
22 area of jurisdiction, in which case there needed to be consultation, and this agreement
23 therefore puts in place a system to provide for consultation amongst these administrative
24 and political bodies.

25 Q. To your knowledge, what does this provision mean in terms of the legal nature of

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1 the MLC, vis-à-vis the Lusaka agreement?

2 A. I believe I've already answered that question, Counsel. The Lusaka agreement
3 recognises quasi state status to the three belligerent parties that had been involved in the
4 rebellion and I am all the more so convinced that that's the case because the document we
5 just examined a moment ago, that is the decision taken by the transitional government,
6 which validates the political and administrative decisions taken by the three belligerent
7 parties.

8 Q. Well, we have less than ten minutes left and this is my last question?

9 PRESIDING JUDGE STEINER: You have five minutes, not ten.

10 MR KILOLO: (Interpretation) Thank you, Madam President.

11 Q. In the real-time transcript, in the French version, today's transcript, on page 31, lines
12 28 and following, you answered a question put to you by the OTP and you said the
13 following, and I quote: "According to my understanding the MLC went to the CAR
14 upon the request of democratically elected officials who were members of the FOMAC of
15 course but who had called on the MLC to help them."

16 Now, I would like to submit to you a theory on the part of the Defence to see whether you
17 feel that it's in keeping with what you stated to the OTP. I would like to refer to a decree,
18 that is a legal decision which was handed down on December 19, 2005. This can be
19 found in the collection of rulings of the International Court of Justice of the ICJ, regarding
20 armed groups in the Republic of the Congo. In fact it's the case of RDC versus Uganda.
21 In paragraphs 126 and 128 of this ruling of the international court, the ICJ stated that a
22 state was founded in calling upon another state in order to provide assistance in the
23 exercise of its right to self-defence. The International Court of Justice stated that in
24 addition a state that has been aggressed may even call upon a rebel group for said
25 assistance and therefore, and I will close my comments with this, and ask you what your

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1 reaction is, in that ruling, in particular in paragraph 128, it states that Article 51 of the UN
2 Charter refers to the right of individual or collective self-defence, legitimate self-defence,
3 and it states that the court, when it uses force in its own legitimate defence, may call upon
4 another state to help it. And the court adds in saying, "Uganda informed the Court that
5 Sudan, in August of 1998, transported by air insurgents of the LRA, that is the rebel forces,
6 in order for them to fight alongside of the Congolese forces, that is the armed forces of the
7 RDC, who were dealing with an internal rebellion, a domestic rebellion against the RCD,"
8 and the Court continued in saying that even if it had been proven, the RDC had the right
9 to act in that way.

10 My question to you is as follows: Is that ruling on the part of the ICJ, is that in keeping
11 with what you were saying this morning in your responses to the OTP, that is, that it is
12 not forbidden that a democratically elected government of the Central African Republic
13 call upon the MLC? And that is my last question.

14 PRESIDING JUDGE STEINER: Maître Badibanga.

15 MR BADIBANGA: (Interpretation) I'm very sorry, but I must intervene once again. I
16 think that this is not the time for final arguments. They should be kept for concluding
17 arguments and I think that if Maître Kilolo is going to be quoting such wide, such major
18 legal decisions, we would like to have the text of those rulings and, in addition, this
19 witness is not a legal expert in such matters.

20 MR KILOLO: (Interpretation) I do have a reference if you would like.

21 PRESIDING JUDGE STEINER: Maître Kilolo, the objection of Maître Badibanga is
22 sustained. This question is totally inappropriate.

23 You have any further question to put to the witness?

24 MR KILOLO: (Interpretation) Well, the only thing if you would like me to give you the
25 reference of the text that I read out. Otherwise, I don't have anything to add.

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1 I mentioned, I quoted, this is document 409 confidential, dated April 24, 2009, page 14,
2 paragraph 74.

3 Witness, I have no further questions and in keeping with the ruling just handed down by
4 the President of the Chamber, you need not answer that question, so it will remain a
5 theoretical question.

6 PRESIDING JUDGE STEINER: Thank you very much, Maître Kilolo.

7 Mr Witness, that concludes your evidence and before you leave the transmission room
8 that is an extension of this Court, the Chamber wants, as with all other witnesses in the
9 case, to express the thanks of the Judges for the time you have taken to give evidence in
10 this trial.

11 Mr Witness, in order for the Judges to find the truth, it is critical that witnesses such as
12 yourself are prepared to give evidence and to assist us on the relevant issues of the case.

13 We are aware that this may have been inconvenient for you. It took for you one week far
14 from your office, of your duties, probably of far from your family, and you therefore leave
15 us with our thanks.

16 Before you leave us, Mr Witness, the Chamber would like to ask you whether there is
17 anything that you would like to address the Bench? If you so wish, this is the
18 opportunity for you to take the floor.

19 THE WITNESS: (Interpretation) Thank you, Madam President. For me, it was a very
20 pleasant duty to come here to testify before the respected Court. I would like to thank
21 you for the quality of the work that is being done, and for the mission carried out by the
22 ICC, that is to contribute to our being able to live on a planet where war and conflicts be a
23 thing of the past, because there will no longer be impunity.

24 I sincerely hope that the Lord God give to you enough wisdom to determine the three
25 truths that you are seeking after. The first being: What crimes, what crimes exactly

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1 were committed in the DRC? Two. The second truth, who are the perpetrators of those
2 crimes? And thirdly, who are the people responsible?

3 I know it's an extremely difficult task, but from the bottom of my heart I hope that you,
4 that the Court, be like the scales behind me, where you are really weighing the crimes and
5 the perpetrators, and finding the responsibility of those who carried out those crimes, and
6 I think that the respect that we have is not the question.

7 My task here was to provide my insight into what occurred in the DRC, over and beyond
8 the statements that may have been made by one or the other, each with their own
9 motivations. I do sincerely hope that the Court will find the, not only the absolute truth,
10 the judiciary truth, and that we will indeed be very close to the real truth.

11 Thank you, madam.

12 PRESIDING JUDGE STEINER: We thank you very much, Mr Witness. I would like to
13 thank very much the Prosecution team, Maître Douzima, with our respect to -- transmit
14 our respect to Maître Zarambaud, and that we hope he can be here as from next week.
15 I thank very much the Defence team. I thank very much our interpreters, our court
16 reporters. Thank you very much, Ms Toumaj.

17 THE COURT OFFICER (DRC): (Interpretation) Thank you, Madam President.

18 PRESIDING JUDGE STEINER: Thank you very much, Mr Witness. We will adjourn
19 and resume on Monday morning at 9 o'clock, when we will start with the questioning of
20 Defence Witness 39.

21 This hearing is adjourned.

22 THE COURT USHER: All rise.

23 (The hearing ends in open session at 5.01 p.m.)

24 RECLASSIFICATION REPORT

25 Pursuant to Trial Chamber III 's Orders, ICC-01/05-01/08-2223 and ICC-01/05-01/08-3038,

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- 1 the version of the transcript with its redactions becomes Public.