

Trial Hearing
Witness: CAR-D04-PPPP-0016

(Closed 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 Monday, 26 November 2012
8 (The hearing starts in open session at 9.07 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 THE COURT OFFICER: Good morning, your Honours, Madam President. We are
13 in open session.
14 PRESIDING JUDGE STEINER: Good morning.
15 Could, please, court officer call the case.
16 THE COURT OFFICER: Situation in the Central African Republic, in the case of The
17 Prosecutor versus Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.
18 PRESIDING JUDGE STEINER: Thank you very much.
19 Good morning. I welcome the Prosecution team - it appears to be a complete team
20 today - legal representatives of victims, Defence team. Good morning,
21 Mr Jean-Pierre Bemba Gombo. Good morning to our interpreters and court
22 reporters.
23 We will start today with the 14th witness called by Defence, Witness
24 CAR-D04-PPPP-0016. Before the witness is brought into the courtroom, the
25 Chamber has an oral decision to deliver on the request for in-court protective

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1 measures for the witness, and for that purpose I ask, please, court usher -- court

2 officer to go briefly into private session.

3 (Private session at 9.09 a.m.) * Reclassified as Open session

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

5 PRESIDING JUDGE STEINER: (Redacted)

6 (Redacted)

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7 Court officer, please, turn into closed session in order for the witness to be brought
8 into the courtroom.

9 (Closed session at 9.17 a.m.) * Reclassified as Open session

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

11 (The witness enters the courtroom)

12 WITNESS: CAR-D04-PPPP-0016

13 (The witness speaks French)

14 PRESIDING JUDGE STEINER: We can turn into open session, please.

15 (Open session at 9.18 a.m.)

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

17 PRESIDING JUDGE STEINER: Thank you.

18 Good morning, Mr Witness, and welcome.

19 THE WITNESS: (Interpretation) Good morning.

20 PRESIDING JUDGE STEINER: Mr Witness, somewhere in front of you there is a
21 card on which is printed a solemn undertaking. Could you please read out the
22 words on the card.

23 THE WITNESS: (Interpretation) I solemnly declare to speak the truth, the whole
24 truth, and nothing but the truth.

25 PRESIDING JUDGE STEINER: Mr Witness, now that you have taken the oath, can

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1 you confirm that you understand what the oath means?

2 THE WITNESS: (Interpretation) Yes, I do understand.

3 PRESIDING JUDGE STEINER: Do you understand it to mean that you must give
4 answers to questions asked of you that are true and accurate to the best of your
5 knowledge and belief?

6 THE WITNESS: (Interpretation) Yes, I have understood.

7 PRESIDING JUDGE STEINER: Mr Witness, as must have been explained to you by
8 VWU during your familiarisation process, you will be questioned first by Defence,
9 then by Prosecution, then by legal representatives of victims, and finally Defence will
10 be allowed to put some follow-up questions to you.

11 As you may know, the Chamber has put in place measures to protect your identity
12 from the public. You will therefore be referred to during your testimony as
13 "Mr Witness." Your voice and your image that are broadcast outside the courtroom
14 are being distorted. That means that the public outside the courtroom cannot
15 identify you by your image or by your voice.

16 In order to help us to keep your identity concealed from the public, it's important that
17 when we are in open session you don't reveal any information that could lead to your
18 identification. For instance, your current position or your previous position, the
19 position you occupied at the time of the events, names of family members or close
20 friends, if you were in meetings with a small number of persons, you should not
21 mention because that could lead as well to your identification. This kind of
22 information shall not be disclosed in public session. If need be, because any of the
23 questions put to you lead to an answer that could reveal your identity, we'll go into
24 private session. In private session you can feel free to speak because nobody outside
25 the courtroom can listen to you, can hear what is said inside the courtroom.

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1 The Defence, the Prosecution, the legal representatives and the Chamber will help
2 you in asking in advance whether we need to go into private session, but it is very
3 important that you yourself help us in identifying possible answers that should be
4 given only in private sessions.

5 Do you understand that, Mr Witness?

6 THE WITNESS: (Interpretation) Yes, I have understood.

7 PRESIDING JUDGE STEINER: Mr Witness, because we speak different languages
8 there is interpretation, and we have court reporters that allow us to have real-time
9 transcripts, both in English and in French. In order to allow our interpreters and
10 court reporters to do their job, it is very important that you speak slower than normal,
11 as I'm doing now.

12 It's also important that whenever a question is put to you, that before you start
13 answering to the question, that you give five seconds to allow the interpreters to
14 conclude the translation of the questions. We call that the five-seconds golden rule.
15 Because all of that may seem unnatural, Mr Witness, it's likely that you will start
16 speeding up or that you will forget the five-seconds rule. In that case, I will have to
17 interrupt you and ask you to slow down. Please don't take offence. That is just for
18 practical reasons.

19 Is that fine with you, sir?

20 THE WITNESS: (Interpretation) Indeed.

21 PRESIDING JUDGE STEINER: Court officer, can we go briefly into private session.

22 (Private session at 9.26 a.m.) * Reclassified as Open session

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

24 PRESIDING JUDGE STEINER: (Redacted)

25 (Redacted)

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- 17 THE WITNESS: (Interpretation) (Redacted)
- 18 PRESIDING JUDGE STEINER: (Redacted)
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- 3 THE WITNESS: (Interpretation) (Redacted)
- 4 PRESIDING JUDGE STEINER: (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 THE WITNESS: (Interpretation) (Redacted)
- 11 PRESIDING JUDGE STEINER: (Redacted)
- 12 (Redacted)
- 13 (Open session at 9.31 a.m.)
- 14 THE COURT OFFICER: We are in open session, Madam President.
- 15 PRESIDING JUDGE STEINER: Mr Witness, you will now start with your testimony
- 16 and you will first be questioned by Defence counsel.
- 17 I give, therefore, the floor to Mr Haynes.
- 18 MR HAYNES: Well, in the time-honoured fashion, good morning, your Honour.
- 19 Good morning to everybody in the courtroom.
- 20 QUESTIONED BY MR HAYNES:
- 21 Q. And good morning to you, sir.
- 22 A. Good morning.
- 23 Q. I intend to complete my questioning of you today. How long others take
- 24 remains to be seen, but I'm confident that your evidence will be concluded within the
- 25 week.

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1 I'm going to start by asking you some questions about who you are and your personal
2 history, and so I'm going to ask the President of the Court if we can go into closed
3 session, or private session, so that people outside the court can't hear those details.

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

5 (Private session at 9.32 a.m.) * Reclassified as Open session

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

7 MR HAYNES:

8 Q. It's been pointed out that I didn't introduce myself. My name's Peter Haynes,
9 but you know that because we met the other day, didn't we?

10 A. I confirm that.

11 Q. Can you start by telling us, please, your full name?

12 A. (Redacted)

13 Q. And when were you born, sir?

14 A. (Redacted)

15 Q. And where were you born?

16 A. (Redacted)

17 Q. And where is (Redacted)?

18 A. (Redacted)

19 (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 A. (Redacted)

23 (Redacted)

24 Q. Thank you. And what were your parents' names?

25 A. (Redacted)

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- 1 Q. (Redacted)
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- 3 Q. (Redacted)
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- 22 Q. (Redacted)
- 23 A. (Redacted)
- 24 Q. (Redacted)
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- 1 A. (Redacted)
- 2 Q. (Redacted)
- 3 A. (Redacted)
- 4 Q. (Redacted)
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- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 Q. Okay. Now, I'm going to try now to deal with the system of military justice in
- 16 the MLC in public session. (Redacted)
- 17 (Redacted) Do you
- 18 understand?
- 19 A. Yes.
- 20 Q. And if you feel the need to personalise any answer by talking about your own
- 21 experience, then please let us know and we can go back into private session so that
- 22 you don't say anything which might identify you publicly. Do you understand that?
- 23 A. Yes, I understand.
- 24 MR HAYNES: Then on that basis, Madam President, can we venture in public
- 25 session?

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1 PRESIDING JUDGE STEINER: Court officer, please, turn into private session -- into
2 open session.

3 (Open session at 9.58 a.m.)

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

5 MR HAYNES: Thank you. And can we commence, please, by putting on the
6 screen for the witness Defence document 47. That is CAR-DEF-0002-0580.

7 Q. Sir, are you able to read the document on the screen in front of you?

8 A. Yes.

9 Q. And do you want to read it all the way through before we move on? There's
10 only a portion of it on the screen at the moment. Would you like the officer to move
11 it down so you can see it all?

12 A. "Congolese Liberation Movement. The President. Decree number
13 002/President/MLC/2002 of 25 March 2002. To set up a court martial within the
14 Congolese Liberation Army.
15 The National President of the Congolese Liberation Movement and
16 commander-in-chief of the Congolese Liberation Army, mindful of the constitution of
17 the MLC, specifically Article 2, mindful of decree number 077/President/MLC/2001 of
18 7 December 2001, appointing the members of the MLC executive, mindful of the
19 amended order law number 72060 of 25 September 1972 setting up a Code of Military
20 Justice, mindful of the code of conduct of the ALC, mindful of the code of conduct of
21 MLC officials, considering that there is an utmost necessity to safeguard military
22 discipline within the ALC by appropriately punishing any criminal acts involving
23 vandalism, banditism and disobedience as well as treason within this corps, given the
24 urgency of the situation, decrees as follows: Article 1, a court martial within the
25 ALC is hereby set up with headquarters in Gbadolite; Article 2, the court martial shall

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1 have jurisdiction to try all offences committed by non-commissioned officers, as well
2 as general officers."

3 There is a part that is illegible. "However, it can be seized for any offence
4 perpetrated by an ALC combatant, as long as this is an offence of a complex nature."

5 Q. Thank you. Now, the court martial is said in that document to sit in Gbadolite.
6 Did it only sit in Gbadolite, or did it sit in other places?

7 A. Apart from Gbadolite, this court martial acted as a mobile court in Gemena, in
8 Équateur province; and also in Yakoma territory, in Équateur province; as well as in
9 Bumba, Équateur province also; then in Aketi, Bas-Uele district in the Orientale
10 Province; as well as it also held mobile hearings in Isiro, Mambasa, Epulu and Banalia.
11 This means that all these localities were inside the territory under MLC control.

12 Q. I'll come back to that in just a minute. But the personnel of the court martial,
13 were they always the same?

14 A. Yes. At the beginning, and incidentally, I should point out that in such
15 military jurisdictions there is a particular way of appointing the judges of the court
16 martial and this is done by the drawing of lots of the judges. And considering that at
17 that time the Congolese Liberation Army did not have any military judges, the MLC
18 executive, which included a National Secretary for Justice, commissioned other
19 professional judges, and this was the case of the permanent judge who had been
20 appointed by the government in place, and he who was the President of the Gbadolite
21 District Court.

22 The prosecutor was appointed by executive decision as military auditor, (Redacted)
23 (Redacted) senior officers appointed as judges through the drawing
24 of lots. The court martial was responsible for dealing with cases referred to it by the
25 military prosecutor until such cases were exhausted. This is how come, at the

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1 request of the military prosecutor, the court organised mobile hearings in the
2 localities that I have mentioned over a period of three months.

3 Q. And how did that work? Did the court go to a location where there was a case
4 to hear, or did it just move around and hear such cases as were ready at any given
5 time?

6 A. There were serious offences for which -- or, rather, which were reported to the
7 prosecutor. There were the cases in Gemena, Bumba, Aketi, as well as other cases,
8 and that is because Gbadolite was far from those areas in which those offences had
9 been committed, and the prosecutor felt that it was necessary to organise such
10 hearings in those locations to try those cases.

11 Q. Okay. Well, we'll get a little more detail of that. How many members of the
12 court were there?

13 A. There was the president, (Redacted), the permanent judges -- the permanent
14 judge who was a professional magistrate, President of the District Court, and there
15 were four other senior officers appointed as judges.

16 Then you had the military prosecutor, who in fact had been the professional
17 prosecutor of The Court of First Instance that had been appointed by the
18 administration and who was commissioned by the MLC.

19 PRESIDING JUDGE STEINER: Mr Haynes, if you allow me just one second. Court
20 officer, please, could we turn very briefly into private session.

21 (Private session at 10.12 a.m.) * Reclassified as Open session

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

23 PRESIDING JUDGE STEINER: (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Court officer, we can turn into open session, please.

4 (Open session at 10.13 a.m.)

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

6 MR HAYNES:

7 Q. The permanent judge, who was he? You can tell us his name.

8 A. That was more than ten years ago. I believe his name was Zanzu, but he is
9 deceased now.

10 Q. Okay. And how did he become to be the permanent judge in the court martial?

11 What were his qualifications? What previous experience did he have?

12 A. In order to set up the court martial, given that the MLA - that is the Congolese
13 Liberation Army - did not have any military judges, referred the situation to the
14 executive. Amongst the members of the executive there was a National Secretary for
15 Justice, and they solved the problem by appointing the permanent judge, who was a
16 career magistrate and who was actually a judge in Gbadolite at the time of the arrival
17 of the MLC; that is he had been appointed by the central government.

18 Similarly, the prosecutor of the Gbadolite court was appointed in that same manner
19 because the seat of that court was in Gbadolite.

20 Q. Okay, so that only leaves the four senior officers that made up the rest of the
21 court. Was it always the same four senior officers, or was it -- or did those
22 personalities change?

23 A. The four senior officers were there as well as the judges, but there were also
24 reserve officers who would fill in in case one of the judges was not available so that
25 the court could continue to function. I believe there was a senior officer who at one

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1 point was replaced by a reserve officer so that the court could continue to be
2 operational.

3 Q. And can you explain to us the process of drawing lots?

4 A. It is not possible for you -- for me to give you the details of how that happened,
5 because at that time I personally was not present in Gbadolite. I believe it would be
6 best to ask that question to the person within the General Staff who organised that
7 drawing of lots. He would be best placed to explain that, because I was not present
8 myself. I was simply informed, just like the others, so the drawing of lots would be
9 done and then each person concerned would be notified about his or her position
10 within that court martial.

11 Q. Okay, but did the drawing of lots take place for the role of president, or only for
12 the four senior officers who sat in the court?

13 A. I believe it could not have been otherwise, but the person who was responsible
14 for that process I believe would be best placed to explain concretely how that was
15 done.

16 Q. Do you know who that was?

17 A. The notifications were signed by the Chief of Staff of the ALC, so it is possible
18 that he was that person.

19 Q. Okay, thank you. So when for example the court went to Gemena, how many
20 of these people that you've been talking about would travel?

21 A. All the members of the court martial did indeed travel to Gemena by helicopter.
22 The helicopter had been requested to facilitate their transportation.

23 Q. And just so we're absolutely clear, does that include the prosecutor?

24 A. Apart from the president, there was the permanent judge and the military
25 judges, including the prosecutor who was the military prosecutor of that court.

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1 Q. Thank you very much. Now, can we come to the question of jurisdiction.

2 Over whom did the court martial have jurisdiction?

3 A. It is as stated in Article 2. The details were laid down clearly in Article 2 of the
4 text that I was asked to read a short while ago.

5 Q. Well, without getting you to read it again, (Redacted) jurisdiction over all of
6 the soldiers in the ALC, or just some of them?

7 A. (Redacted) jurisdiction over all ALC soldiers, irrespective of rank. Amongst the
8 judges there were members of various ranks in order to deal with such issues,
9 because one had to take into consideration the rank of the accused in constituting the
10 court so that that court should be in a position to deal with cases involving even the
11 most senior officers.

12 Q. Thank you very much. What about the offences over which you had
13 jurisdiction? What sort of offences did the court martial have jurisdiction over?

14 A. There is the Code of Military Justice that sets out military type offences. There
15 is also the ordinary criminal code, which would be used for certain common law
16 offences. Then there was the ALC code of conduct and the code of conduct for the
17 senior officials. So these were the official documents on which the court martial
18 proceedings were based, and they benefited from the knowledge - the technical
19 knowledge - of the presiding judge and the person who had been the president of the
20 Gbadolite court.

21 Q. Okay, let's cut this short. Did the court martial have jurisdiction over
22 disciplinary offences?

23 A. For cases involving discipline, you have the code of conduct which codifies
24 offences related to discipline. Furthermore, for some offences defined in the Code of
25 Military Justice, one has to make a distinction. When it comes to discipline the unit

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1 can take certain measures, but if the offences are severe then one can go beyond that;
2 that is disciplinary measures are taken and then at the criminal level the prosecutor
3 examines the case and characterises the offence and refers the case to the court.

4 Q. Okay. Can you give us some examples of the sort of offences that could be
5 dealt with within the unit?

6 A. Within the unit it would not be a crime as such, but a violation of discipline; for
7 example, a member of the MLC who is absent in the morning assembly, or roll-call, or
8 who does not take good care of his weapon. There's also the possible case of a
9 soldier who quarrels with his colleague, or is not obedient towards his superior. A
10 soldier may refuse to obey an administrative order. For example, your team may be
11 designated to do the chores and the soldiers do not obey. A soldier may also be on
12 guard duty and then he arrives at the guard post late. These are all cases involving
13 military discipline.

14 Now, if we are talking about offences or crimes, they refer to a soldier who has
15 violated the law.

16 Threatening a civilian, for example, or pointing his weapon at the civilian, threatening
17 to kill a civilian with a weapon of war, or actually killing such a civilian with a
18 weapon of war or a bladed or traditional weapon, in such cases, when it comes to
19 disciplinary control as provided for in the code of conduct, each unit had its own
20 disciplinary council, made up of the deputy commander and what was referred to as
21 the political commissioners who played a civilian-military role, responsible for
22 ensuring that the population was not maltreated.

23 You also had the officer responsible for administration, the senior ranking officers of
24 the unit, and also there could be a soldier, a simple soldier, to ensure that
25 opportunities were given to all the soldiers to explain themselves. And if a soldier

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1 was not able to convince the disciplinary council, the deputy commander wrote a
2 report to his commander and made proposals to say, for example, that the offence
3 committed by the soldier is an offence that is both a disciplinary violation and an
4 offence, and a criminal offence, because it violates a particular law.

5 Each unit in such cases would make a report to decide on the procedures to be used to
6 question the soldier before sending, or forwarding, the reports to the General Staff for
7 action.

8 At the level of the General Staff, the Chief of Staff has at his disposal personnel
9 responsible for investigations of such offences. There are also officers who have a
10 legal background and who are responsible for examining the records or reports, and
11 when that is done, the case file is then sent to the military prosecutor, who is a
12 professional legal officer, and who then analyses the facts, apportions responsibility
13 and then refers the matter to the court martial.

14 Q. Thank you. I just want to go back over that to summarise it and see if I have
15 understood it. In what way could the most minor disciplinary offence be dealt with
16 within the unit?

17 A. The minor offences, as I said, were dealt with in each unit within the
18 disciplinary council, as I said. The commander does not have the authority or
19 jurisdiction to punish. He makes a report, and when we're talking about
20 disciplinary matters within the corps, then he sends his report. There are certain
21 offences. The soldiers are then brought before their commanders and a report is
22 conducted and the offence is described within the report and allows the commander
23 to inflict upon the individual the disciplinary punishment as outlined in the code of
24 conduct of the Congolese Liberation Army at that moment in time.

25 Q. Thank you. Was that the only way that matters could be dealt with within the

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1 unit?

2 A. Yes, because the disciplinary council would then examine all the facts associated
3 with discipline. Disciplinary offences for the Congolese Liberation Army were
4 codified within the code of conduct and therefore one needed only to refer to this and
5 provide the soldiers with the opportunity to explain their acts. When it had been
6 established that this was a voluntary violation of discipline, then the individual
7 would be punished.

8 Q. How were soldiers in the ALC informed about the contents of the code of
9 conduct?

10 A. Once the code of conduct had been adopted, each unit and each commander for
11 each unit within the battalion and corps had a code of conduct at hand. They had
12 their own copy. And this was the same for the unit commander who, in addition to
13 this, had popularised the contents of the code during discussions or during civic
14 training sessions, or military training sessions.

15 Q. Can you expand a little bit upon what you mean by "civic training sessions" and
16 "military training sessions"?

17 A. Within the ALC soldiers there were young adults who had freely joined the
18 ALC as voluntary recruits. For those individuals, for this type of recruits, training
19 had to be organised in notably military training such as weapon handling, tactics,
20 rules and regulations, i.e. code of conduct, civic duty, notably, their behaviour
21 towards the civilian population during a given time frame, during a given intensive
22 military training. But there was another type of soldier within the ALC. This was a
23 former soldier from the FAZ, former FAZ soldier, who had given themselves in, with
24 or without weapon, and whom in their professional career had undergone training in
25 the past, amongst whom there were officers who had received training in military

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1 academies and who had good experience, and were the unit commander to organise
2 battle technique training within their unit or within a given period of three to six
3 months. So with a specific training programme, training sessions were organised
4 throughout the day from early morning. These were for units that were not actually
5 committed at the front. They were obviously operational, but those who were not at
6 the front could then undergo this training at a training centre set up for this purpose.

7 Q. Thank you. What were standards of discipline like in the ALC?

8 A. Could you please repeat the question?

9 Q. Yes. What were the standards of discipline in the ALC? Were they good or
10 bad?

11 A. Generally speaking, discipline was good, even very good, but in some isolated
12 cases individuals did not fail to not obey, and that is why this court martial was set up,
13 with a view to administering justice in these cases and also with a view to not leaving
14 these accused to fester in detention. So it was with a view to avoiding certain
15 violations on the part of certain individuals but this was not of course the case for
16 everybody.

17 Q. Thank you. How was indiscipline treated within the ALC in your experience?

18 A. Cases of discipline, well, there was certain punishment within the corps itself, as
19 I said, those in charge of units of combat, those who were in charge were very
20 experienced. They had experience. And as a result the -- in referring to the
21 Military Code of Justice, because within this Military Code of Justice there is
22 the -- there are the internal regulations, of course, and any offence that was codified as
23 a disciplinary fault was not outside of this because the military, one should not
24 confuse disciplinary offences with offences as such. So the punishment that was
25 on hand was the holding cell and, of course, for the various category of soldiers, as in

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1 all armies around the world, there is either the holding cell, and for the
2 non-commissioned officers and junior officers, there are holding cells that are
3 guarded and they can be held there for up to 15 to 21 days. He cannot leave this
4 place; he cannot go home until he has completed his term of punishment. And then,
5 once again, asked to resume his position within the unit.

6 If this was an individual who had a position of responsibility, then he might be
7 relieved of his position entirely because he would be deemed not to have the
8 competence or he might be deemed to not have completed his job properly.

9 Q. And what were Mr Bemba's attitudes to discipline amongst soldiers?

10 A. Senator Bemba was not in a position to give orders directly to soldiers. There
11 was a structure. The Chief of General Staff and the senior officer would compile
12 reports on discipline, were the case to arise, and would report back to measures that
13 had been taken in cases of indiscipline within the unit. So President Bemba did not
14 have the power to convene a disciplinary council as his level. This was at the unit
15 level as such, and it was up to the units to report back to the Chief of General Staff.

16 Q. Okay. One last thing on what you've said, and that is, what was the system for
17 serious offences before the creation of the court martial in February 2002?

18 A. Before the creation of the court martial, all cases of crime for those cases
19 examined within the unit throughout -- through the disciplinary council, in serious
20 cases the case file was then sent to the General Staff or to the Chief of General Staff,
21 surrounded by his staff, who would then send it to the relevant session. Proposals
22 were then made before any soldiers were accused of any facts or any offences and
23 who had been placed in preventive detention before being tried by the court martial.
24 So they were not free individuals at the time when -- within the unit itself, it was
25 established that such-and-such events had been committed, and then they could be

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1 remanded in custody.

2 Q. Okay, thank you. Now, let's come back to the court martial. How did a case
3 come to be before the court martial? What was the process?

4 A. The process was as follows: Once the case files had gone from the disciplinary
5 council to the General Staff, which then examined the situation and conducted the
6 necessary investigations, were the need to arise, the officers were then deemed to be
7 judicial police officers with the associated jurisdiction. They have expertise in the
8 field and some of them were former members of the police or of the gendarmerie who
9 had full training in investigating a criminal case.

10 And once the court martial had been established, they could then send this to the
11 prosecutor, who was no other but the public prosecutor with the district courts, for
12 him to then investigate at his level and ascertain whether the -- whether the accused
13 or the suspect needed to be interviewed and the court martial seized of the matter.
14 Then he would place at the disposal of the court martial the case file for the judges to
15 be able to read through them before the suspect is referred to the court and is referred
16 for a hearing.

17 Q. Thank you. Now, the judicial police, what unit are they within, or for whom
18 do they work?

19 A. The structure of the ALC within the General Staff, well, there is a directorate in
20 charge of administration, administering all of the soldiers within the ALC. There is
21 another section, the intelligence division, which also conducts investigations; and
22 there are further divisions in charge of operations, training; another division in charge
23 of logistics. And it was to the intelligence -- or within the intelligence division that
24 officers conducted investigations.

25 The prosecutor also could require assistance in conducting the case. He could seek

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1 the assistance of any judicial auxiliaries within the district court, and even in modern
2 armies this is how the case file makes its journey before it is formally handed over to
3 the prosecutor for further action.

4 Q. Thank you. When you said just now that the prosecutor could ask for
5 assistance, do you mean the prosecutor within the court martial could go back to the
6 judicial police and say, "I'd like you to do some more investigative work for me"?

7 A. It's not quite that. This prosecutor, or auditeur in French, has his post,
8 occupies a position within the district court, and he has other people working with
9 him. Maybe I didn't mention this. In addition to the prosecutor, there was also the
10 registrar or the chief clerk of the court, if you like, within the district court, who also
11 comprised -- was also part of those working for the court martial?

12 Q. Okay. Well, we may come back to that a little later on. But when the case file
13 arrives with the prosecutor, the military prosecutor at the court martial, what is his
14 function then?

15 A. The function of the military prosecutor, once the hearing date has been set, well,
16 it's mainly what we said earlier, with all the various stages mentioned. But he is
17 there representing the prosecution, and as such he conducts the prosecution from
18 beginning to end until the final arguments and until the defence comes into play.
19 And once the case has been heard, then the bench will retire, or the judge will retire,
20 with a view to ruling, without the presence either of the prosecutor or the clerk; there
21 is only the judge who is a military -- who is a professional lawyer. And once the
22 verdict is given, it is once again up to the prosecutor to follow the procedure with a
23 view to incarcerating the individual in line with rules and regulations.

24 Q. I'm going to take you through a case file in a minute, and I think it will make a
25 lot more sense now that you've told us all this, but do the judges have any role to play

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1 in deciding what charges the accused will face?

2 A. Each judge assumes his responsibility during the hearing because he or she has
3 read the case file previously and he will come along with a number of questions to
4 put to the accused. All judges have the right to do this. And once the hearing has
5 come to an end, once the final statements have been given and the judge or court
6 martial withdraws, then, according to the offences characterised, well, the judge or
7 presiding judge will then recall the laws characterising the offences under the
8 provisions of the law, and subsequently he will recall the minimal and maximum
9 sentences for such-and-such a crime, so that everybody is informed of this before
10 voting.

11 Upon withdrawing within the military system, the judges withdraw and cast their
12 votes in a secret ballot, each judge voting for the sentence to be imposed, between a
13 minimum and a maximum sentence for the specific crime.

14 PRESIDING JUDGE STEINER: Thank you very much, Mr Haynes.

15 Mr Witness, it's almost 11 o'clock. We have a half-an-hour break in order for you to
16 take some rest and our interpreters and court reporters as well.

17 We will suspend and resume at 11.30.

18 I ask, please, the court officer to turn into closed session for the witness to be taken
19 outside the courtroom. In the meantime, we will suspend and resume at 11.30.

20 (Closed session at 11.00 a.m.) * Reclassified as Open session

21 THE COURT OFFICER: We are in closed session, Madam President.

22 (The witness stands down)

23 THE COURT OFFICER: All rise.

24 (Recess taken at 11.01 a.m.)

25 (Upon resuming in closed session at 11.35 a.m.) * Reclassified as Open session

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- 1 THE COURT USHER: All rise.
- 2 Please be seated.
- 3 PRESIDING JUDGE STEINER: Welcome back.
- 4 Could, please, court usher bring the witness in.
- 5 (The witness enters the courtroom)
- 6 PRESIDING JUDGE STEINER: Can we turn into open session, please.
- 7 (Open session at 11.36 a.m.)
- 8 THE COURT OFFICER: We are in open session, Madam President.
- 9 PRESIDING JUDGE STEINER: Mr Witness, welcome back.
- 10 THE WITNESS: (Interpretation) Thank you, your Honour.
- 11 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?
- 12 THE WITNESS: (Interpretation) I am, your Honour.
- 13 PRESIDING JUDGE STEINER: Mr Haynes.
- 14 MR HAYNES: Your Honour, can we go very briefly into private session, please?
- 15 PRESIDING JUDGE STEINER: Court officer, please.
- 16 (Private session at 11.37 a.m.) * Reclassified as Open session
- 17 THE COURT OFFICER: We are in private session, Madam President.
- 18 MR HAYNES:
- 19 Q. (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 A. (Redacted)
- 25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 A. Okay, I've understood.

6 MR HAYNES: Then can we go back into open session?

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

8 (Open session at 11.39 a.m.)

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

10 MR HAYNES:

11 Q. Sir, do you recall that a court martial took place in December of 2002 involving
12 some accused who had been soldiers in the Central African Republic?

13 A. Yes.

14 Q. And so that it's clear on the record, those were MLC soldiers, weren't they?

15 A. They were, indeed.

16 Q. You've described in general terms how accused arrive before a court martial.
17 Can you describe how those accused arrived before that court martial?

18 A. The accused? They were brought before the court and they were -- that was
19 done by the prosecutor to the court martial. After he had been formally seized with
20 a dossier -- probably at the unit level this had been transmitted to the General Staff of
21 the ALC, the Chief of General Staff certainly had examined this and the section of the
22 staff concerned, and in the end the dossier was then sent to the prosecutor - the
23 prosecutor to the court - and the prosecutor seized the court during a hearing which
24 was set to deal with that matter.

25 Q. Do you know when the President of the Court Martial first became aware of this

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1 case?

2 A. The president, as well as the court, when the court started to be seized for the
3 first cases that were on record, thereafter this dossier also came at the time there were
4 other cases which were undergoing investigation, and that was how the prosecutor
5 also put it in with other cases in order to seize the court thereof.

6 Q. So did the president know of the case before the court was seized of it?

7 A. This case, well, the president could not know that before the case was seized
8 because the court during its first hearings there were very precise roles and there
9 were hearings which were held for long hours, and when they were suspended, of
10 course, the members of the court had the right to withdraw and rest in order to
11 prepare for a following hearing.

12 Q. Thank you very much. Now, I'm going to go through the file of this case with
13 you, okay? And I'm going to ask you to, if you can, explain some of the documents
14 to us, and this is CAR-D04-0021 -- sorry 002-001, which is Defence document 41.

15 THE COURT OFFICER: Document CAR-DEF-0002-0001 is available on the screens
16 and it's a public document.

17 MR HAYNES: Thank you.

18 Q. Can you just read through that document, please, sir?

19 A. Yes.

20 Q. Including the name at the bottom.

21 A. More than ten years ago, as we're talking about a case file concerning this
22 suspect, the court certainly read this case file before the hearings, and during the
23 hearings, then it would have been one of the exhibits of that case file.

24 Q. Thank you very much. Can I just ask you a couple of questions about that
25 front page? Does the name Lieutenant-Colonel Mondonga mean anything to you?

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1 A. Yes.

2 Q. Who was he?

3 A. This was one of the superior officers of the ALC, who had responsibilities but,
4 with regards to this particular dossier, you have to note that it is indicated that he was
5 the sector commander, the operational sector commander of South Bangui, who was
6 on mission.

7 Q. And what is he doing by this letter?

8 A. By this letter it's sure that on mission he had the terms of reference, and he
9 reported to that person who entrusted him with this mission. So he transmitted his
10 report to the General Chief of Staff, as indicated in this letter under his signature.

11 Q. Thank you. And what would you have expected the Chief of General Staff to
12 do once he received this letter?

13 A. I can't know what he would have done at this time, but the question should be
14 put to him, given that this case file, once he received it, it certainly had been
15 transmitted to the prosecutor, and this, with regards to this question of what precise
16 time, well, you have to ask these two figures, the General Chief of Staff and the
17 prosecutor, who can answer such a question as to what the General Chief of Staff did
18 with this case file.

19 Well, what I said here is that if it came to the court, then it was probably because the
20 crimes which they were accused of were serious and they constituted crimes with
21 regard to the military code and also the ordinary criminal code and the ALC code of
22 conduct.

23 Q. Thank you very much, sir. Can we go forward to the second page, please. Sir,
24 will you take the time to read this and tell me when you have?

25 A. Yes, I've followed it.

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1 Q. Can you tell us what this document is?

2 A. Well, this is a report, as the title indicates, and it's written by this police officer
3 from the judicial police in Zongo, against Willy Bomengo, Lieutenant. He was an IO,
4 an intelligence officer, of the 28th Battalion, as is mentioned in these identifying parts,
5 with a series of questions, and I can see to question 3.

6 Q. Okay. Let's forget about Willy Bomengo for a minute. Do any of the other
7 names we can see on that document mean anything to you?

8 A. Well, I haven't seen on the monitor. If you could make it possible for me to see
9 the names that are written there?

10 Q. Well, I'll read one to you, and I hope my pronunciation isn't too bad. If we go
11 back up the page, there's a name Tobanganga, Malaka Oscar; can you see that?

12 A. Yes.

13 Q. Do you recognise that name?

14 A. Yes, as written. Even in the case file it was him. He is a person who gave the
15 instruction with regards to this report, Lieutenant Willy Bomengo, on the date of 17
16 November, 2002, in Zongo; of course in the Democratic Republic of the Congo.

17 Q. Thank you. And just one other thing about this document: Can we tell where
18 Willy Bomengo was at the time he was asked the questions in this document?

19 A. Well, he, Willy Bomengo, he was in Zongo, and he was heard and that's why
20 you have this report which appeared in the monitor.

21 Q. And do you know whether he was in custody or on release at the time he was
22 asked these questions?

23 A. It's over ten years ago. I couldn't know that, because this officer who he heard,
24 well, he heard him say where exactly he would have heard him, so -- or interviewed
25 him. He specified that he was in front of him and he was on a mission, within the

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1 framework of operations. Now, was he in custody? That's something I couldn't
2 know because I wasn't there at that time, the days he was being interviewed and the
3 report thereof was drawn up. That's something I couldn't know.

4 MR HAYNES: That's fine. Thank you very much. Can we go forward, please, to
5 page 26 of the document.

6 Q. Sir, can you have a look at that document, and if you want to look further down,
7 please say so.

8 A. Yes.

9 Q. Do you want to see any more of it?

10 A. Yes.

11 Q. And then can we go down a little bit. Sir, just in general terms, what is that
12 document?

13 A. This is a report or a transcript which was drawn up by an officer who is better
14 identified, who had the function of legal adviser to the GD section of the General Staff,
15 and it gives a note of instruction with questions and answers to Willy Bomengo, and
16 what Willy Bomengo -- or what Willy Bomengo is said to have had in the hands of the
17 soldiers, what he seized from them - the soldiers - with regards to the pillaged goods
18 by these soldiers from the Central African population. And Bomengo, in his answer,
19 gives indications as well as the destination and the decision as to where they would
20 be put, doing (sic) Colonel Moustapha, who's named, in the presence of the battalion
21 commander, and who isn't named, and it says, "Colonel GD Central African," and it
22 states that these pillaged goods taken by soldiers working for the 28th Battalion.
23 And the instructing officer asked the question to Bomengo, he must have been an
24 intelligence officer, and he asked him why didn't he try to identify the destination of
25 this property, or these goods? And in answer to that question he says, "Where did

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1 you find the weapon BA or the GP type? The -- the disks, compact disks, and the
2 perfume, mobile telephones?" And I can't see the answer to that because part of it is
3 missing due to the position of the screen.

4 Q. Okay. Well, we're going through the process here. What I really want to
5 know is: What happened after this report was sent?

6 A. Well, after the report was sent, notably all that appears on the screen, well, after
7 the interview was conducted in Zongo, after -- the report did reach the Chief of
8 General Staff who then sent it to the judicial division who then looked further into
9 what is described herein, so notably the identification and destiny, and the
10 identification and place to which destination of these looted goods.

11 Then the General Staff sent the report and the entire case file via the prosecutor for
12 the court martial for further action, ad hoc further action. This is my understanding
13 of what I have this instruction note. I do not have any other answer to provide you
14 with.

15 Q. No. Thank you. And I know it's a long time ago, but I'm going to try and
16 help you by showing you some more documents. Can we have a look at page 37,
17 please. I'm not going to show you too much of the detail of this because it's really
18 the effect of the document I'm interested in. What is this document and what does it
19 do, and what process led to its creation?

20 A. This document -- after Mr Jean Tujibikile, the Prosecutor, referred the case, he
21 was then seized of the case file which had been investigated in Zongo and Gbadolite,
22 and to the best of his knowledge seized by this document and by the court martial
23 was seized of this document in a former manner in the instant case.

24 Q. Before I come on, let's -- can we hop over the page to page 38, please. And can
25 we --

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1 PRESIDING JUDGE STEINER: Yes, Mr Witness? Yes?

2 THE WITNESS: (Interpretation) I understand that we are talking about 38, page
3 38, or page 24?

4 MR HAYNES:

5 Q. It's 38 in our numbering, because you might see at the top of your screen in the
6 left-hand corner there's a computer number. And so that the gentleman who
7 controls the computer knows which page to put up, I give him that number, but it's
8 page 24 of the original document.

9 A. Thank you.

10 Q. I don't want too much detail here. We see at the top of the page the names of
11 some of the accused, don't we, and then if we go to the bottom of the page, what is it
12 we see there? And when you've read that, we can go over to the following page,
13 page 39. Thank you. Can we look at page 39. Can you characterise what it is we
14 see written at the bottom of the previous page and at the top of this page? In general
15 terms, what is being set out here?

16 A. Well, generally speaking, we are talking here about the charges that the
17 prosecutor has levelled against each accused individual, and the accused are named
18 in the document, and it is on the basis of these charges that he has formally seized the
19 court martial.

20 Q. Thank you very much. Can we go over to page 40, please. Well, we've seen
21 that name before. Who -- would that have been the man that drafted this document,
22 and can you explain to us what the significance of the date of 3 December is?

23 A. Well, the date of 3 December is the date at which the public prosecutor formally
24 seized the court in Gbadolite by sending the entire case file for use during the hearing.
25 And herein it contains the charges levelled against each of the accused.

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1 Q. Thank you very much, indeed. Just really so that we're clear, seizing the court
2 of the case file does not involve a public audience; it merely involves sending the
3 dossier, does it?

4 A. Yes, indeed. The case file is sent and then it is up to the court to examine the
5 situation and set a schedule for the hearing, to provide a date that does not overlap
6 with other ongoing case files.

7 Q. Just in terms of that, is it important that military justice is dealt with quickly?

8 A. Yes, of course.

9 Q. Thank you. Can we go over to page 41, please. Can you just help us, it's
10 probably obvious, but you might want to go down the page a little bit to have a good
11 look at this. Now, in general terms, what sort of document are we looking at here?

12 A. This is a document to set a date for the hearing, and it also comprises a
13 composition of the court and the individuals charged, associated with a guarantee
14 provided by the defence, a guarantee that was provided by -- that was provided
15 during the investigation procedure, in open session, and I would add as an aside that
16 one could certainly do with having at our disposal more defence teams
17 outside -- operating outside of the sector under MLC control, whether it be Mbandaka
18 or Kinshasa.

19 Unfortunately, those who could come and defend the cause were not able to come,
20 they did not receive authorisation to attend, but they were not provided with the
21 authorisation by those authorities under whom the competence of these areas fell.

22 Q. Who was Maître Kedinshiba?

23 A. He was -- he was a professional magistrate, who was a defence lawyer working
24 at the Mbandaka Bar, and at that moment in time he was in Gbadolite. He was, as I
25 say, a trained lawyer - a professional lawyer - and a very experienced defence lawyer,

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1 having defended cases in the judicial system.

2 MR HAYNES: Thank you very much. Can we go over to page 42, please.

3 Q. By all means ask to look at this page in full, if you want, but if you don't need to
4 all I want you to tell us is what we see recorded on this page of the document?

5 PRESIDING JUDGE STEINER: Yes, Maître Badibanga?

6 MR BADIBANGA: (Interpretation) I thank you, Madam President, and I'm sorry to
7 interrupt the proceedings, but there is a problem with the interpretation. I can see in
8 the transcript that the term "défenseur judiciaire" has been translated or interpreted as
9 "defence lawyer," but I know by experience that it is not at all the case, that it does not
10 have at all the same meaning, so it should not be translated as such. It should not be
11 translated as "defence lawyer." It's rather -- it is rather what we call a paralegal
12 person, so this is something -- this could be of importance when evaluating or
13 assessing the discussions.

14 MR HAYNES: Mr Badibanga should refrain from giving evidence and it just so
15 happens that the lawyers who are familiar with the same system as him on my team
16 absolutely disagree with what he just said. So that may be something we need to
17 debate in another forum, but certainly that was an inappropriate intervention, in my
18 submission.

19 PRESIDING JUDGE STEINER: We can wait, when Prosecution is going to question
20 the witness, to ask for clarification in relation to the meaning of the wording used by
21 the witness.

22 You can proceed, Mr Haynes.

23 MR HAYNES: Yes.

24 Q. You were about to tell us what we can see on this page, subject of course to you
25 needing to read a bit more of it?

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1 A. Yes, this is the statement on the part of the accused. (Redacted)

2 (Redacted) I believe that only the accused,

3 or in fact the battalion commander, would be in a position to provide us with

4 clarification with regard to this statement on the part of one of the accused.

5 PRESIDING JUDGE STEINER: Mr Haynes, if you allow me?

6 MR HAYNES: Absolutely.

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

8 (Private session at 12.19 p.m.) * Reclassified as Open session

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

10 PRESIDING JUDGE STEINER: (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 THE WITNESS: (Interpretation) (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE STEINER: So when one of the accused said that he received the

19 coup des feuilles, (Redacted)

20 THE WITNESS: (Interpretation) Yes, the president was presiding over the

21 hearing, as was the court.

22 PRESIDING JUDGE STEINER: Sorry to interrupt, Mr Haynes.

23 Court officer, please turn back into open session.

24 (Open session at 12.21 p.m.)

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

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1 MR HAYNES:

2 Q. Sir, we're looking at our page 41, your page 27. What are feuilles d'audience?

3 A. Could you please repeat the question?

4 Q. Yes. The document has the heading "Feuilles d' audience." What are they?

5 What is feuilles d' audience?

6 A. A feuilles d'audience? Well, on the days when the hearing is held it provides
7 information; notably those charged and the court hearing the case in open session.
8 The accused and also those defending them are listed.

9 Q. The proceedings before the court martial, are they recorded in some way?

10 A. Of course. We can see here by the numbering system "RP008/CM/GBADO,"
11 and the court clerk along with the prosecutor uses these references that are often kept
12 for each and every document by those conducting the work. So here we have a
13 reference number indicating very clearly what is meant to be taken as a reference.

14 Q. Okay. And by what means are they recorded?

15 A. With regard to the recording as such of the hearings, I think the prosecutor and
16 the court clerk could give you clarification on the matter. When the hearing is
17 planned they already provide a reference number, the case file is presented and at the
18 end of the hearing the court clerk managing this case will take the file and the
19 documents away with a view to processing them, probably in company with the
20 prosecutor, and then each and every person will complete their task according to their
21 role.

22 Q. But in the courtroom is a record made of what people say and, if so, how?

23 A. Yes. During the hearing the clerk, well, he's there for precisely that reason.
24 He's there to take a record of what's going on, and the prosecutor in preparation of his
25 final statement can take down any details which seem necessary to him to be

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1 incorporated into his final statement. The defence will do the same, in order to
2 submit their final statements. Everything is recorded. The court -- and everything
3 that is put, such as the questions put by the judge et cetera, everything is recorded via
4 the court clerk.

5 Q. Thank you very much. Do you recall now how long the trial of Bomengo and
6 others lasted for?

7 A. Well, this was more than ten years ago. I cannot remember.

8 Q. That's okay. Were the hearings in that court martial held in public, or in
9 private?

10 A. The hearings in Gbadolite and elsewhere were held during mobile hearings, or
11 part of a nomad court if you like, and they were all held in open session. There was
12 no closed session.

13 Q. And were the accused represented by a lawyer?

14 A. Yes.

15 Q. And did he participate in the proceedings before the court?

16 A. I can confirm the fact.

17 Q. Were the proceedings both before trial and during the trial in your view
18 regular?

19 A. Yes, they were.

20 Q. And after the evidence had been heard and the lawyers had made their
21 submissions, what did the court do?

22 A. After the evidence had been presented and after the lawyers had questioned the
23 individuals, the court would then suspend proceedings and would withdraw in order
24 to conduct deliberations in camera. The court clerk, nor the prosecutor, nor counsel,
25 would take part in this, and during this closed session of deliberation, the facts would

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1 be examined, the charges would be examined as presented during the submissions, or
2 final statement, on the part of the prosecutor.

3 Then the circumstances would be examined, any possible mitigating circumstances,
4 notably, and the permanent judge, who is a professional magistrate, would then recall
5 the legal texts associated with these charges, that is to say associated with the
6 minimum and maximum sentence to be imposed for these various acts and for the
7 various accused.

8 Once this was done, the judges would then vote via a secret ballot on the sentence to
9 be passed down for each suspect.

10 Once this was completed, the judge and president, or presiding judge, would prepare
11 the judgment that would then, after having read it, be handed over to the president,
12 after which the court would return to deliver the sentence which had been signed by
13 the members of the court, and the court would once again convene a hearing with a
14 view to handing down a verdict, and then the suspect was convicted, the accused was
15 convicted.

16 So it was up to the prosecutor to take the practical and legal measures in order for
17 them to be taken into custody, in a location that he would provide, and also all the
18 administrative matters to be undertaken for the individual to be taken into the prison.

19 Q. Thank you. Just a couple of things about what you've said: Do you
20 remember how long it took for the judges to deliberate in this particular case?

21 A. I no longer remember the time necessary, but I believed it would depend on the
22 particular case. If there is only one accused in a case and then you have one or
23 several counts, then each of those counts, or charges, would have to be carefully
24 examined in relation to the sentences, and if sentences have to be handed down, the
25 permanent judge would explain the procedure to be followed in case of concomitant

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1 sentences, so that if it were consecutive, or simultaneous sentences, then a decision
2 would be made regarding the longest sentence to the shortest sentence, so it would
3 also depend on whether there were several offences charged against one or several
4 suspects in the same case.

5 Q. Thank you. And the second question is about the prosecutor and his
6 responsibility to enforce the prison sentence. Who was the prosecutor in court in the
7 case of Bomengo and others; do you remember?

8 A. Yes. It was Mr Jean Kamba Tujibikile.

9 Q. Was there anybody else on his team?

10 A. I know that the other people who might have worked with him would have
11 been at the penitentiary level, that is workers that would be responsible for taking
12 care of the prisoners, once convicted, in the prison itself, because the state prisons
13 were organised in Gbadolite.

14 Q. Okay. Thank you. Can we move on now, please, to our page 49. It
15 probably suffices if you just read what you can see on the screen, and tell us what is
16 recorded in this document.

17 A. Yes. This was a judgment handed down in the area of -- regarding a crime of
18 the first degree and this was handed down on 7 December 2002, in Gbadolite, and
19 there you have the accused persons, Kpalakumu Metonga, Sergeant, Ngangu Gbede,
20 Corporal.

21 Q. Okay. And can we go forward now to page 52. And what do we see at this
22 section?

23 A. It is the judgment concerning those accused persons, Kpalakumu, Ngangu
24 Gbede and Ndonga Bofe. So, in a way, that was the application of the charges
25 drawn up by the prosecutor for those three soldiers.

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1 Q. Okay. Can we just quickly hop forward to page 53 and, in particular, towards
2 the bottom of the page. Is there anything you want to say about what we can see in
3 this section of the document?

4 A. These are the sentences that were handed down against the three accused:
5 Kpalakumu, 12 months; Ngangu, nine months; Ndonga, ten months' imprisonment;
6 and you have Mbokani Zabo, six months; Lingimba Faustin, three months of
7 imprisonment.

8 Q. And above them, Willy Bomengo?

9 A. Bomengo established -- it has been established in fact and in law the offence of
10 violations of instructions, and so on and so forth, 24 months of imprisonment. Then
11 there is the violation of instructions which have been established against the accused
12 Mbokani Zabo, Lingimba Faustin and Ikwa Tonton.

13 Q. Okay. Just so that I'm clear, who would have written this judgment?

14 A. I have stated that the court martial benefited from the presence among the
15 judges of a career magistrate, Mr Zanzu, who was the President of the District Court
16 of Gbadolite, and this is a career magistrate who had been appointed by the central
17 government. So during the in-camera deliberations, they would have examined the
18 case on a case-by-case basis for each accused, as well as mitigating circumstances,
19 then sentences, and then there would be a secret ballot regarding the sentences to be
20 imposed, and once the secret ballots would have been counted, then the procedure
21 would be to calculate the average of all the sentences proposed by the various judges,
22 and that is how they would arrive at the sentence proposed by majority.
23 It is to be pointed out that the presiding judge also participates in the vote, and that is
24 how that happened in all the military jurisdictions.

25 Q. Thank you. And just so we're absolutely clear, would this decision have been

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1 read out publicly and, if so, by whom?

2 A. Yes. The decision was read out publicly. Once they had finished their closed
3 session the judges would reconvene and all would stand up, and the presiding judge
4 in the presence of the accused and the defence would hand down the verdict. Lastly,
5 the suspect or the convicted accused would be given the floor and it would be
6 explained to them that they have the possibility of lodging an appeal within the stated
7 time limit to the prosecutor; that is if they are not satisfied with the verdict, their case
8 would be heard on appeal. This would be the end of the hearing. The court
9 withdraws and the prosecutor would be responsible for taking over the procedure,
10 that is for the accused, whether they are convicted or not, for the normal formalities.

11 Q. Thank you very much. We can take the document off the screen now so that it
12 doesn't distract you.

13 Now, you've told us a number of times, sir, that these events were more than ten
14 years ago. Do you have any recollection of the trial of Willy Bomengo and his
15 co-accused?

16 A. Yes, I do remember. Even though this was a long time ago, this trial took place
17 for all of them on the same day, that is from the first hearing right up 'til the verdict.
18 I believe everyone was present in the court, if I remember correctly.

19 Q. Was there, for you, anything unusual about the decision arrived at, or the
20 sentences passed?

21 A. The Military Criminal Code provides a minimum and maximum sentence for
22 each charge. It also defines aggravating or mitigating circumstances for each of the
23 charges. The court has a dual role, to examine the case file and to take into account
24 the applications of the prosecutor, because he may state that he believes that there are
25 mitigating circumstances based on his examination of the case file before referring it

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1 to the court.

2 Of course, he may sometimes find it difficult to adduce evidence, given that enough
3 evidence is required in order to incriminate an accused person, and this would be
4 evidence beyond doubt, and the role of the court is to convict those who are guilty
5 and to refrain, as much as possible, to convict innocent people.

6 So, in this particular case, the court martial found that there was this evidence that
7 was sent to the General Staff after having been examined by a counsel and then the
8 case file was sent to the military prosecutor. And in his arguments, the prosecutor
9 examined each case and proposed sentences for each particular case, so it was in light
10 of all this that the court decided, and as I have already stated, the military courts
11 would use a secret ballot to make its determinations.

12 Q. Thank you. (Redacted)

13 A. (Redacted) may not have a personal opinion, or be personally satisfied,
14 because this is work carried out by the court in accordance with the applicable
15 procedures. Everything is done confidentially, so it is not up to (Redacted) to
16 determine whether he is satisfied or not. The suspects or accused were before the
17 court, and they had the possibility of lodging an appeal against the verdict at the trial
18 phase, handed down by this court.

19 Q. Thank you. Did anybody from outside the panel of judges play a part in the
20 decision-making process?

21 A. During the trial there was no external influence requesting or recommending
22 anything to the judges. The court was completely independent and was not
23 answerable to anyone, not to the Chief of Staff and not even to the President of the
24 MLC, Mr Jean-Pierre Bemba. They were not answerable to even the members of the
25 executive who were responsible for justice, because the hearings were public and

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1 even broadcast over the radio, and everyone could follow the proceedings right up to
2 the verdict. So the hearings were totally public, and members of the media,
3 including foreign media, were authorised to be present, so there was no pressure and
4 no interference at all throughout those proceedings.

5 Q. Thank you. Now, I just want to go back to the general powers of judges in a
6 court martial. Do the judges have any power to initiate investigations?

7 A. Talking about initiating investigations, well, the court had a role to apply the
8 law in light of the charges made against the accused after being seized by the
9 prosecutor in accordance with the rules in force. The prosecutor -- given that there
10 were reports that came through the General Staff, if mobile courts travelled to the
11 field, this was for specific cases. The case file would be completed. And given that
12 the locations at which some of the crimes were committed were far away from the
13 seat of the court, the court would be requested to authorise mobile court hearings to
14 be organised at the locations that I mentioned. The court itself could not directly
15 ignore the prosecutor and initiate investigations anywhere in the territory under the
16 control of the MLC at that time.

17 MR HAYNES: Well, thank you for that very full answer, and by reason of that
18 very full answer I have no further questions to ask of you.

19 PRESIDING JUDGE STEINER: Thank you very much, Mr Haynes.

20 Before I give the floor to Defence (sic) or Prosecution to start with its questioning, I
21 would like to put a follow-up question, and it's just now on page 59, one of the last
22 questions given by Mr Witness, page 59, lines 2 to 7, in which the witness said, "...
23 the hearings were public and even broadcast over the radio, and everyone could
24 follow the proceedings right up to the verdict. So the hearings were totally public,
25 and members of the media, including foreign media, were authorised to be present,

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1 so there was no pressure and no interference at all throughout those proceedings."

2 So my first question, Mr Witness, is: In all hearings of the court martial there were
3 members of the media, TV, radio and foreign media present, or only in this one
4 specifically?

5 THE WITNESS: (Interpretation) Thank you for your question. I would like to
6 point out that this concerned the hearings that took place in Gbadolite. As to the
7 mobile court hearings, it was not possible most of the time to broadcast over the radio.
8 There was a radio in Gemena and in Aketi, but -- in Bumba there was the radio, but
9 elsewhere there were no radios, so the foreign press had the possibility of
10 broadcasting only for the hearings in Gbadolite.

11 PRESIDING JUDGE STEINER: You are saying that the TV, radio, media, including
12 foreign media, have been in Gbadolite more than once to assist hearings of the court
13 martial, so the case of Willy Bomengo was not something exceptional?

14 THE WITNESS: (Interpretation) No, because in Gbadolite there was the
15 possibility for those media correspondents to travel there. They arrived and some of
16 them stayed throughout the proceedings and -- which took a lot of time. Maybe they
17 came and went, but the first hearings of course were more popular, although all of
18 them were important and they were public.

19 PRESIDING JUDGE STEINER: Thank you, Mr Witness.

20 I give now the floor to Mr Bifwoli. The Prosecution now, Mr Witness, will start with
21 your questioning.

22 MR BIFWOLI: Thank you, your Honours.

23 QUESTIONED BY MR BIFWOLI:

24 Q. Good afternoon, Mr Witness.

25 A. Good afternoon.

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1 Q. Mr Witness, my names are Thomas Bifwoli and I represent the Office of the
2 Prosecutor. I will be asking you some questions this afternoon and my questions
3 will be focused and pointed. Where you do not understand my questions, please say
4 so and I will repeat. Do you understand?

5 A. I've understood that well.

6 Q. And for our interpreters to be able to interpret what I say and what you say in
7 this Court it is important that, whenever I pose a question to you, you observe five
8 seconds before you respond. Do you understand?

9 A. Well understood.

10 Q. Mr Witness, (Redacted)

11 (Redacted)

12 A. Yes.

13 Q. And today you've testified that you joined the MLC (Redacted); is that your
14 testimony?

15 A. Yes.

16 Q. Can you tell the Court the rank you held (Redacted) when you joined the MLC?

17 A. (Redacted)

18 Q. And can you explain to the Court how many ranks are there in-between the
19 rank of a major and brigadier-general?

20 A. Well, a major is an officer - a high-ranking officer - and the high-ranking officers
21 are ranked into three categories. At the bottom you have majors, lieutenant-colonels
22 and colonels; full colonels. After this superior category of officers, as we call them,
23 there's the category general officer, brigade generals or brigadier-generals, division
24 generals and lieutenant-generals for the troops -- for the officers, I'm sorry, for the
25 ground forces and for the air forces which have this same title, but this is different in

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1 that you have different titles for the navy.

2 THE INTERPRETER: And the interpreter corrects: It was previously major-general
3 and not division general.

4 THE WITNESS: (Interpretation) And as such, if you ask this question between
5 the majors and the major-generals, there's lieutenant-colonel and there's colonel.

6 MR BIFWOLI: Your Honour, can we go in private session?

7 PRESIDING JUDGE STEINER: You want the floor, Mr Haynes?

8 MR HAYNES: No, the words have been taken out of my mouth.

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

10 (Private session at 1.08 p.m.) * Reclassified as Open session

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

12 MR BIFWOLI:

13 Q. Mr Witness, we are now in private session and you can feel free to provide more
14 details because what you say will not go out of this courtroom. Back to my question:

15 (Redacted)

16 (Redacted)

17 (Redacted) is that your testimony?

18 A. Correct.

19 Q. You rose very fast, didn't you?

20 A. With regard to -- with regard to what? Because I want to help you, there are
21 the ranks and there are the categories of functions, employment and qualifications.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 Q. (Redacted)
- 22 (Redacted)
- 23 (Redacted) Did you hold these positions before you attained the rank (Redacted)
- 24 (Redacted)
- 25 A. No, I didn't hold those ranks. If the rank is of concern to you, well, I think

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1 there were agreements within the framework of inter-Congolese dialogue with regard
2 to the integration of the army, and of course the appointment of certain officers, who
3 weren't even qualified and, as such, leaving the army, well, it was (Redacted), so if you
4 ask me this question, it's because taking on responsibilities, there is also the
5 administrative rules which state exceptional measures for certain movements.
6 Now, you can be a major for a particular precise task. The superior authority can
7 decide, either give you a commission or an appointment, at an exceptional level, and
8 all the belligerents were not spared that. I mentioned the case of certain officers who
9 never went through all those levels like me.

10 Q. So you moved from the rank of (Redacted) is that correct?

11 A. Yes, I confirm that.

12 Q. And in view of that, am I right that you rose very fast?

13 A. Well, very fast with regards to the progression. I told you here the context in
14 which you have to make a comparison with regard to rank and also the type of
15 employment carried out. When I took on responsibilities at the time (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 To say that it's very fast, well, I would tell you that my former colleagues who stayed
23 in the army, some of them are still there today, they went up even faster. Even when
24 we finished the academy, the colleagues from my year, some of them advanced even
25 faster than I did. In one year they went to first lieutenant, and when they had

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1 foreign training, they were captain before me, and other colleagues who were at the
2 academy after me, one became a lieutenant-general, and he had less seniority than I
3 had. (Redacted), and the person who was from the fifth year became
4 lieutenant-general and was responsible for the army and there you could also say that
5 he was faster, appointed faster to that level.

6 Q. It is Mr Bemba who appointed you (Redacted) is that correct?

7 A. I confirm that. He did what the other belligerents did. Where it concerns the
8 government, it was the President of Joseph Kabila, and with regards to the RCD, it
9 was the Vice-President Rubero, and in the MLC, it was the Vice-President Jean-Pierre
10 Bemba, and all his appointments were not questioned because -- well, in Kinshasa, in
11 a general way, administratively, regularised this and during the transition, because
12 there was a transition government -- so when it came to the unification of the state,
13 these acts with regards to appointments were regularised by a decree taken at that
14 time by the President of the Democratic Republic of the Congo as supreme
15 commander and not as a Supreme Commander of the Armed Forces of the
16 Democratic Republic of the Congo, which had regrouped to integrate the former
17 combatants and the different factions.

18 Q. (Redacted) Mr Bemba was your commander-in-chief, wasn't he?

19 A. I confirm that.

20 Q. As a commander-in-chief, Bemba issued orders to you, didn't he?

21 A. The commander-in-chief is at the top of the army when it concerns the
22 implementation, but when it comes to the administration, then the Chief of General
23 Staff of the Army was not Mr Bemba, the senator. I did not depend as a (Redacted)
24 as -- in terms of receiving orders, but as a political and administrative authority, I
25 didn't go directly via him. There were structures, political structures. (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 Q. (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 A. (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 MR BIFWOLI: Can I proceed, your Honour?

5 PRESIDING JUDGE STEINER: Mr Bifwoli, we have two minutes.

6 MR BIFWOLI: Thank you, your Honour, for reminding me of that. I think I will
7 stop at this point.

8 PRESIDING JUDGE STEINER: Thank you, Mr Bifwoli.

9 Court officer, please turn into open session.

10 (Open session at 1.27 p.m.)

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

12 PRESIDING JUDGE STEINER: Mr Witness, we will adjourn for today. It's already
13 1.30. We hope you can rest during the afternoon, the evening.

14 We will continue tomorrow morning as from 9 o'clock.

15 I thank very much the Prosecution team, legal representatives of victims, the Defence
16 team, Mr Jean-Pierre Bemba Gombo.

17 I thank very much, as always, to our interpreters and court reporters.

18 I will ask court officer to turn into closed session for the witness to be taken outside
19 the courtroom.

20 In the meantime, we will adjourn and resume tomorrow at 9 o'clock.

21 (Closed session at 1.29 p.m.) * Reclassified as Open session

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

23 (The witness stands down)

24 THE COURT OFFICER: All rise.

25 (The hearing ends in closed session at 1.29 p.m.) * Reclassified as Open session

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- 1 RECLASSIFICATION REPORT
- 2 Pursuant to Trial Chamber III 's Orders, ICC-01/05-01/08-2223 and
- 3 ICC-01/05-01/08-3038, the version of the transcript with its redactions becomes Public.