

Trial Hearing
Witness: CAR-OTP-PPPP-0009

(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 Thursday, 5 May 2011
8 (The hearing starts in open session at 9.34 a.m.)
9 THE COURT USHER: All rise. The International Criminal Court is now in session.
10 Please be seated.
11 THE COURT OFFICER: Good morning, your Honours, Madam President. We are
12 in open session.
13 PRESIDING JUDGE STEINER: Good morning. Could, please, court officer call the
14 case.
15 THE COURT OFFICER: Yes, Madam President. Situation in the Central African
16 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, case
17 reference ICC-01/05-01/08.
18 PRESIDING JUDGE STEINER: Thank you very much. Good morning. I
19 welcome the Prosecution team, the legal representatives of victims, the Defence team,
20 Mr Jean-Pierre Bemba Gombo. Good morning to our interpreters and court
21 reporters. We will continue today with the questioning by the Defence of Witness 09
22 and, for that purpose, I ask please court usher to bring the witness in.
23 (The witness enters the courtroom)
24 WITNESS: CAR-OTP-PPPP-0009 (On former oath)
25 (The witness speaks French)

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- 1 PRESIDING JUDGE STEINER: Good morning, sir.
- 2 THE WITNESS: (Interpretation) Good morning, Madam President.
- 3 PRESIDING JUDGE STEINER: We hope you are feeling better today.
- 4 THE WITNESS: (Interpretation) I do feel a bit better. Thank you.
- 5 PRESIDING JUDGE STEINER: Are you ready to continue giving your testimony?
- 6 THE WITNESS: (Interpretation) Yes, madam, I am ready.
- 7 PRESIDING JUDGE STEINER: If at any time you feel tired or you need a break for
- 8 any reason, just let us know.
- 9 THE WITNESS: (Interpretation) Thank you very much.
- 10 PRESIDING JUDGE STEINER: I have to remind you that you are still under oath.
- 11 Do you understand that, sir?
- 12 THE WITNESS: (Interpretation) I fully do, madam.
- 13 PRESIDING JUDGE STEINER: So I will give the floor to the Defence. The
- 14 Defence will continue questioning you today. Maître Kilolo.
- 15 MR KILOLO: (Interpretation) Thank you very much, indeed, your Honour, for
- 16 giving me this opportunity to address the witness.
- 17 QUESTIONED BY MR KILOLO: (Interpretation) (Continuing)
- 18 Q. Mr Witness, good morning.
- 19 A. Good morning, Mr Counsel.
- 20 Q. We will continue now and I will ask the court officer to please display
- 21 document 4 on the screen of the Defence list, document CAR-OTP-0019-0137, which
- 22 is the order for a partial dismissal of charges and referral to a criminal court,
- 23 confidential document.
- 24 THE COURT OFFICER: Document CAR-OTP-0019-0137 is available on your screens.
- 25 This document is confidential.

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1 MR KILOLO: (Interpretation)

2 Q. Would you please, Mr Witness, tell the Bench whether you recognise this
3 document, this order of partial dismissal and referral to criminal court that you
4 drafted?

5 A. Yes, I do.

6 Q. Looking through this document I can see that the procedure was undertaken
7 against 16 people; Koumtamadji, Martin, alias Miskine; Barril, Paul; Bemba,
8 Jean-Pierre; Patassé, Ange-Félix; Ziguele, Martin; Angoa, Pierre; Koyambonou,
9 Gabriel Jean-Édouard. I have already given you the names of seven people, would
10 you confirm that this is correct?

11 A. Yes, these people were concerned, indeed.

12 Q. Sir, usher, could we go on to the following page, please, 0038. I will now
13 continue reading the names, Mr Witness. Bombayake, Ferdinand; Dokoula, Lazare;
14 Kouloumba, Simon-Pierre; Banguetandet, Michel-Paulin; Liguella-Mboutou,
15 Alain-Serge; Naïnangue-Tendo, Bruno Jean-Chrysante; Mbokani, Abraham Pierre;
16 Sanchez, Louis; Gan-Befio, Lionel. In fact, it's a total of 16 people. Can you confirm
17 this for the Bench?

18 A. Yes, that is right.

19 Q. Court officer, would you please enlarge the last paragraph on that page, please.
20 At the very end of this order you say what the counts are: Assassination; deadly
21 wounds; arrests; arbitrary arrest; detentions and kidnapping; hiding corpses; rapes;
22 looting; intentional wounding and hurting; property destruction; undermining the
23 internal security of the State; secret dealings with a foreign power; complicity in
24 murder; deadly wounds; arbitrary detention and kidnapping; rapes; looting; property
25 destruction; embezzlement of public funds; complicity in the embezzlement of public

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1 funds; forgery and use of forged written documents, either authentic or private; and
2 complicity in the use of forged documents. Could you confirm this for the benefit of
3 the Bench?

4 A. I do confirm that.

5 MR KILOLO: (Interpretation) Court officer, can we now go to the next page 0039,
6 please.

7 Q. Mr Witness, before we begin referring to the actual body of your order, which
8 begins with the presentation of the facts as well as the description of the
9 responsibility or liability of each of the persons charged, you point out in four
10 paragraphs a certain number of elements. In the first paragraph you refer to a
11 certain number of articles. I will not mention them all, because there are far too
12 many of them. But in the first paragraph, all these articles, in fact, only have to do
13 with the Criminal Code and law 03.010 of 1 March 2003. These are violations
14 provided for and punished under the Central African Criminal Code. Can you
15 confirm this for the Bench, please?

16 A. Yes, I confirm that.

17 Q. Then in a second paragraph you mention your own order, saying that it should
18 be communicated to the Prosecutor of the Republic with the Tribunal of Grand
19 Instance of Bangui, and you did communicate the whole of the case file to the
20 Prosecutor for him to be able to draft his final bill of indictment and you did this in
21 July of 2004. Can you confirm this for the benefit of the Bench, please?

22 A. I can confirm that.

23 Q. Now, the third paragraph. In the third paragraph you mention the application
24 for dismissal, partial dismissal and referral, by the Prosecutor of the Republic which
25 was issued after your order was communicated. It was the submission that we

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1 talked about yesterday dated 17 August 2004 from the Prosecutor of the Republic.

2 Can you confirm this?

3 A. Yes, I can.

4 Q. Sir, could you confirm for the Bench that it's basically on the strength of the data
5 that was included in that application for partial dismissal of the Prosecutor that you
6 actually made your order?

7 A. I think I need to clarify things. It's on the basis on the information contained in
8 the file that I drafted my order.

9 PRESIDING JUDGE STEINER: I am requested to remind you and the witness about
10 the five-second pause between a question and an answer and a subsequent question,
11 please. Thank you very much.

12 MR KILOLO: (Interpretation) Thank you very much, your Honour, for this
13 reminder.

14 Q. Mr Witness, we are to make an effort, both of us, to make sure that we abide by
15 the five-second rule before we speak.

16 A. Yes, I shall do so.

17 Q. Mr Witness, just before the comment made by the Presiding Judge, you were
18 pointing out that your order was actually based on all the evidence that you had
19 collected in the course of your investigation. Was that right?

20 A. That is right.

21 Q. Thank you. Witness, sir, before we start addressing the substance of your
22 order for a dismissal - almost 25 pages because, in fact, the full length of your order is
23 28 pages long - you mention two provisions in the Criminal Code, and these are the
24 only two provisions that you evoke in the whole of your order concerning the
25 provisions that are applicable under the Central African Criminal Code, and I quote,

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1 "Considering the provisions in Articles 91(a) and 95(a) of the Criminal Procedure
2 Code." Can you confirm for this Bench that you are, in fact, referring to these two
3 particular provisions in the Criminal Code?

4 A. I am, indeed.

5 Q. Mr Witness, would you confirm for the Bench that these two Criminal Code
6 provisions provide the legal basis upon which are based the powers invested in you
7 by Central African law in order to draft your order for referral and partial dismissal?

8 A. I'm afraid I cannot remember exactly the wording of those two provisions.
9 I think these two provisions have to do with the relations between the investigating
10 judge and the prosecutor. I really cannot remember, I'm afraid. I cannot give you
11 an answer. But if I mention them there, there must have been a very powerful
12 reason for me to do so.

13 Q. Mr Witness, I will ask you, please, to refer to the former Criminal Code, which
14 was applicable at the time of the events. And I will ask, therefore, the court officer
15 to please show on the screen document 752, Annex B, dated 14 April 2010. This is
16 the fifteenth document on the list of documents submitted by the Defence.

17 PRESIDING JUDGE STEINER: Maître Kilolo, what page?

18 MR KILOLO: (Interpretation) Before giving you the page, I just wanted to ask the
19 witness to confirm this.

20 Q. Mr Witness, you have now the document before you. Would you please
21 confirm for the benefit of the Bench that this is, indeed, the Criminal Procedure Code
22 that was in force at the time of the events?

23 A. Yes, sir.

24 MR KILOLO: (INTERPRETATION) I should now like to ask that the court officer
25 to be kind enough to take us to page 19 -- or, rather, in the numbering of that

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1 document it should be paragraph at page 17. Page 17. If you were kind enough to
2 enlarge the very last paragraph on that page; it is Article 95, 9-5.

3 Q. Mr Witness, you have Article 95(1)(a), 95(a) of the Criminal Code that you just
4 referred to. Would you kindly read it out slowly so that it can be interpreted?

5 A. Yes. Article 95(a): "If the investigating judge believes that the facts should be
6 punished as they may be considered as crimes and that the charges are sufficiently
7 established, he will refer the person charged to a criminal court and will, therefore,
8 issue an order of detention against that person."

9 Q. Sir, you have just read out that provision, 95(a). Is that the legal basis for
10 issuing an order of detention and charging a person?

11 A. Yes.

12 MR KILOLO: (INTERPRETATION) I would ask the court officer to be kind
13 enough to revert to document 4 of the Defence list, page CAR-OTP-0019-0164. Court
14 officer, would you kindly enlarge the last paragraph, please?

15 Q. Mr Witness, sir, you have before you the actual operative part of your order, the
16 very substance thereof, and I would like to ask you the following question. Could
17 you confirm for this Chamber the fact that the provision in Article 95(a) that you just
18 read out of the Criminal Code of Central Africa is the legal basis upon which you ask
19 for charges to be expressed against President Ange-Félix Patassé, Mr Paul Barril,
20 Mr Victor Ndoubabe, as well as Mr Abdoulaye Miskine? Five seconds, please.

21 A. I beg of you, please remember that this is a file coming out of an investigation,
22 as the result of an investigation. An investigating judge can only base himself on
23 legal provisions. I have already said this and I must state it again. I feel obliged to
24 state it every single time. I have already said it. If I have mentioned these
25 provisions, it's because these provisions were applicable. I have already said that,

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1 and I must reassert it this time again.

2 JUDGE ALUOCH: The real-time English transcript, it's page 9. I'll just read from
3 page 9, line 1. I think you asked that -- you had just -- you had asked the witness to
4 read Article 95(a) and you then said that is that, "The portion you have just read out
5 of the Criminal Code of Central Africa is the legal basis upon which you ask for
6 charges to be expressed against ..." What did you mean? Did you mean expressed,
7 or -- the English version reads "expressed." I'm not sure whether that's what you
8 meant. Pressed, or expressed, or what? If that's what you -- I just want you to
9 confirm that's the word you meant.

10 THE INTERPRETER: Comment from the interpreter: The interpreter said "charges
11 pressed."

12 JUDGE ALUOCH: Thank you. Thank you very much. Then the interpreter has
13 clarified, thank you. Yes, it's fine.

14 MR KILOLO: (Interpretation) Thank you very much, your Honour. I'm very
15 happy for this clarification from the interpreters.

16 Q. Mr Witness, every time I'm afraid I'm going to have to delve into your wording
17 in some detail for the purposes of transcription, because you must realise that what
18 we have here before you is going to be interpreted and transcribed in real time and
19 for us to be accurate I will have to go over some details which for you are obviously
20 very familiar to you, but you will understand that I do nonetheless have to refer to
21 them to make things abundantly clear here. So thank you in advance.

22 Sir, you have just confirmed that Article 95(a) of the Criminal Code in Central Africa
23 provided you with the basis in order to issue charges specifically against the former
24 President Ange-Félix Patassé, Abdoulaye Miskine, Paul Barril, et al. Did I
25 understand your answer well?

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1 A. That is exactly right. I would add that it is on the basis of the self-same article
2 that we dismissed charges against Mr Jean-Pierre Bemba and others.

3 Q. I'm very much afraid that is not true, because I'm referring here to Article 95(a).
4 We're not yet referring to Article 91(a). We will get to that article later. You will
5 agree with me, sir? Instead of just nodding with your head, would you be kind
6 enough to actually answer with your voice?

7 A. Yes, that is quite right.

8 MR KILOLO: (Interpretation) Court officer, could we go back to document 15 of the
9 Defence list on the same page, that is to say page 17, and I ask you, sir, kindly, to
10 enlarge Article 91(a). 91(a).

11 Q. Mr Witness, before we go to Article 91, to wrap up the question concerning
12 your decision to take into custody -- to press charges, could you please confirm before
13 this Chamber that that was done on the basis of proof which was gathered during
14 your investigation that you took the former President Patassé et al into custody, or
15 pressed charges against them?

16 A. That is correct.

17 MR KILOLO: (Interpretation) Unless you think it's necessary, your Honour, for the
18 witness to provide some additional information concerning the detention centre, or
19 do you think that's not necessary perhaps?

20 PRESIDING JUDGE STEINER: Since this is a proceeding that is very specific to the
21 legal system to which the witness and you belong, maybe it would be useful for those
22 that belong to other legal systems to understand what exactly that means. It will be
23 quite useful, I think.

24 MR KILOLO: (Interpretation) Thank you, your Honour.

25 Q. Mr Witness, can you please provide us with additional information concerning

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1 the definition of the idea of pressing charges?

2 A. Thank you. The people who are taken into custody are those who are
3 considered as -- who can be accused of something and who should appear in court to
4 explain the charges which have been brought against them.

5 Q. Mr Witness, should we from that understand that the elements of proof which
6 you gathered in the process of your investigation seem to you to be sufficient to merit
7 taking the former President Ange-Félix Patassé into custody, Abdoulaye Miskine into
8 custody, Paul Barril and others into custody?

9 A. Yes. Yes, indeed.

10 Q. Mr Witness, should we also understand that these same elements of proof
11 which you were able to obtain did not turn out to be sufficient in terms of being proof
12 to take into custody Mr Jean-Pierre Bemba?

13 A. Thank you. I think that that question has been asked since the beginning and I
14 have always answered. What I would like to state here, though, is that this is a case
15 file which -- which was dealt with a certain time ago and in a very difficult situation,
16 and I think that I've always provided you with the reasons why the individual had to
17 be -- had to have the charges dropped. I explained why a given person should be
18 taken out of the detention centre, why a certain other person should have stayed
19 there, and Mr Jean-Pierre Bemba is not the only person who was released from the
20 detention centre.

21 According to the prosecutor's document, there were some people who should stay
22 there and who shouldn't have appeared before a criminal court, and there were
23 certain others whom the investigating judge decided should be released. In
24 Mr Bemba's case, I provided the reasons for the decisions. I said that Mr Jean-Pierre
25 Bemba was during the -- actually it's at the end of the investigation, he was a member

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1 of the government and that the elements which I had obtained didn't make it possible
2 for me to determine whether or not Mr Bemba had committed certain acts.
3 At that time, because he was already a member of the government, he enjoyed
4 diplomatic immunity, and I felt at that time that that was sufficient grounds to
5 dismiss the charges against him. Perhaps I didn't share the prosecutor's point of
6 view, that happens, but I think that at the time that we're talking about, had he been
7 in Bangui the facts were so serious - the accusations against Mr Bemba's men were so
8 serious - that I felt that if it was possible I thought that it was necessary to put a
9 certain number of questions to him, because there were a certain number of questions
10 which had not been answered, a certain number of questions had not been answered,
11 and I think it was important to ask those questions.
12 My answers remained the same and nobody was actually able to give me the answers
13 to the questions that I was after, so I felt that if I could put a certain number of
14 questions to Mr Bemba and to Mr Patassé then that would have made it possible for
15 me to answer a certain number of questions which hadn't been answered at that time.
16 We felt that -- at the time we felt that that it would be a good idea to use the fact that
17 he was a politician to resolve the issue. I have to take things which happen and
18 things which happened at that time very seriously. It was very important for me to
19 bear in mind his status as a politician.
20 As soon as the order was sent, it was the object of appeal. It was appealed against.
21 So -- and that appeal was made the same day to the prosecutor's office, and some
22 lawyers and some other people who were being held in the detention centre were
23 released and the prosecutor's office I believe did that on the basis of the order.
24 Now, why didn't I say the same thing as the prosecutor? Quite simply because I felt
25 that at that time, given the information that I had, that I didn't have enough

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- 1 information - I didn't have enough information - and that it would be useful to hear
2 certain people and also to question Mr Bemba and perhaps Mr Patassé in order to
3 arrive at a decision, but when I'm asked today why I have to -- how do I explain the
4 decision which I made at the time, I think that really that is a very difficult
5 undertaking for me. Once again, the decision was appealed against. These are the
6 answers that I can give you concerning that question, sir.
- 7 Q. Thank you, Mr Witness. You spoke for about five minutes and I would like to
8 try in 45 seconds to sum-up the substance of your answer. You talked about four
9 reasons. The first you say that Mr Bemba enjoyed political immunity. Second
10 element, you said that in any event the proof which you had been able to gather up
11 until you release your order did not sufficiently establish his responsibility in terms of
12 proof. The third point which you mentioned, you said that you were not able to
13 personally question Mr Bemba or Mr Patassé. The last element was the following,
14 "In any event, the opinion of the prosecutor was different from mine and I was not
15 obliged to adopt his same -- his exact same position." Is that correct, sir?
- 16 A. That is the answer that I just gave you. That is the answer that I just provided
17 you with, sir. So all of that is correct. These are the reasons. I was not very happy
18 to have to go back over responsibility and to try to explain why the order for
19 dismissal was not respected by the Prosecutor and so on and so forth but I think that
20 you made it -- I think it's important to understand that my order was appealed
21 against. And I think that it would be a good idea to go back and look at the
22 decisions which were handed down subsequent to mine.
- 23 Q. Mr Witness, you are not the president of the Court de Cassation for the Central
24 African Republic. I'm asking the question of you, and I am looking at the decision
25 which you made at your level. You brought together four elements and I see over

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1 them one-by-one, if you will.

2 The first, you say that you did not have the same opinion as the Prosecutor and that
3 you did not have to follow that. Could you please clarify that for the Chamber. I
4 know you talked about this yesterday, but would you please go over it again. Are
5 we to understand, sir, that the Prosecutor's position, such as we read in his
6 application concerning the responsibility of Mr Jean-Pierre Bemba, simply stated that
7 it was true that Mr Jean-Pierre Bemba had sent a contingent of the MLC to the Central
8 African Republic but that he was not linked to their use on the ground and that, for
9 that reason, charges against him should be dismissed? Do we agree, sir, on that
10 point, that was the position of the Prosecutor?

11 PRESIDING JUDGE STEINER: Can you give the reference to this, this statement?

12 MR KILOLO: (Interpretation) This is the fifth document on the Defence list.

13 I would like to ask the court officer to please put it up on the screens. Page

14 CAR-OTP-0004-0085. Court officer, could you please enlarge the first paragraph of
15 the document. Before that, Mr Court Officer, could you please provide the
16 following page, for reasons relating to clarification, to see the title of the section.

17 Please show the previous page, I think is what I want to say. Page

18 CAR-OTP-0004-0084.

19 Q. Mr Witness, can you please read the title of this section of the Prosecutor's
20 document, the Prosecutor of Bangui?

21 A. "Concerning the criminal responsibility of Jean-Pierre Bemba."

22 Q. Could you please read for the Chamber the paragraph which is just below what
23 you just read, sir.

24 A. "Given that Mr Jean-Pierre Bemba is accused of complicity in murder, mortal
25 blows, rape, pillaging, property destruction, theft, receiving goods and bodies and

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1 voluntary aggression, arbitrary kidnapping."

2 MR KILOLO: (Interpretation) Mr Court Officer, could we please move on to the
3 following page, page 0085. Page 85, please. If you could enlarge the first
4 paragraph, please.

5 Q. Mr Witness, would you please be so kind as to read the second and last
6 paragraph of the section concerning Mr Jean-Pierre Bemba's responsibility in the
7 document of the Prosecutor of the Republic in Bangui, please.

8 A. Of course. "Given that it has been demonstrated that Jean-Pierre Bemba
9 travelled to the Central African -- to Central Africa several times, during and after the
10 events of 25 October 2002, and that he had meetings with some of his men, I must
11 note that until now no element has made it possible to prove his direct participation
12 in the commission of the acts which were perpetrated by his -- these men. There is
13 no doubt that he sent his troops at the request of Mr Ange-Félix Patassé, that he
14 remains disconnected as to their use on the ground and that, for that reason, charges
15 against him should be dropped."

16 Q. Mr Witness, can you please confirm to this Chamber that this is, indeed, the
17 section of the document which deals with the possible responsibility of
18 Mr Jean-Pierre Bemba?

19 A. That is indeed the case, Counsel.

20 Q. Now I would like to go back to the question which I put to you earlier, sir. In
21 this paragraph, the Prosecutor begins by saying, "Given that it has been proven,"
22 given that it has been demonstrated, can you confirm, sir, to this Chamber, that this
23 observation which was made by the Prosecutor of the Republic in Bangui is the
24 results of elements which were drawn from the investigation which you sent to him
25 in your ordinance once you finished gathering the elements of proof?

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1 A. Thank you. I think that the Prosecutor is responsible for his document and it is
2 not up to me to make any comments in his place. I did not -- it is his document and,
3 therefore, I can't really answer any questions about it.

4 Q. This is a very straightforward question, either you know or you don't know,
5 and you can't claim that as a senior investigating judge that you don't know what the
6 legal bases are which underpin the approach adopted by the Prosecutor of the
7 Republic. I'd like to ask you the question again, sir: Before the Prosecutor can draft
8 his document concerning the application concerning Mr Jean-Pierre Bemba's
9 responsibility, could you please confirm to this Chamber that prior to that that you
10 sent him the entire case file containing the elements of proof which you had -- which
11 you had obtained at that point?

12 A. I would say, yes, I did send him the file and I even had the reference number at
13 the -- on the front page of the document. So of course he had that information.

14 Q. Can you please now confirm to the Chamber that after the file was sent that he
15 drew the conclusion which consisted of saying that Mr Jean-Pierre Bemba could not
16 be seen as being criminally responsible because even if he only sent his troops to the
17 Central African Republic he was not associated with the way in which they were
18 employed in the Central African Republic during combat. That is what the
19 Prosecutor said. Can you confirm that for us, sir?

20 A. Yes, Counsel, I can.

21 Q. That's the first element on the -- that's the first element concerning the opinion
22 of the Prosecutor of the Republic in Bangui Mr Firmin Findiro. I would now, sir, like
23 to move on to the second element and this has to do with things at your level in your
24 document. I'd like to go back to the 15th document on the Defence 's document list,
25 please; the Code of Criminal Proceedings in the Central African Republic. I would

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1 like to ask the court officer, once again to please display page 17 of the document,
2 Article 91(a). Article 91(a). Mr Witness, can you read the document on the screen
3 in front of you? Can you read Article 91(a) and would you, please, read it out loud
4 for the Chamber?

5 A. Thank you. If the investigating judge feels that the fact does not represent a
6 crime or a contravention or a misdemeanour and that there are not sufficient charges
7 against the accused then he will release an ordinance that there are no reasons to
8 prosecute and that the accused, if he has been arrested, will be released.

9 Q. Mr Witness, can you please confirm for this Chamber that provision 91(a),
10 Article 91(a), which you based your document concerning the partial dismissal of
11 charges is accurately reflected by the excerpt which you have just read out to us here
12 in Court?

13 A. Yes, indeed.

14 Q. Can you also confirm to this Chamber that it is on the basis of this
15 provision - once again, Article 91(a) of the Code of Criminal Procedure of the Central
16 African Republic - which was in force at that time that you declared in your
17 document that there were no reasons to continue the prosecution of Mr Jean-Pierre
18 Bemba?

19 A. Thank you. I understand your question now. In fact, Article 91(a), which I
20 used in the document, had to do with the fact that there were no longer the charges
21 that didn't exist and we decided to use the Bemba case, which was just in suspension,
22 but I don't think that that should actually have been the case because, according to
23 our document, the fact that Mr Bemba was a politician did mean that we shouldn't
24 say -- or didn't mean that we should say that there were charges against them. We
25 should have suspended, suspended the action, in fact, because of his position. And

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1 if you will allow me, I'd like to say that that's why I said that my ordinance was
2 appealed against and the accusations -- and I don't know what the Chamber of
3 Accusations decided after that.

4 PRESIDING JUDGE STEINER: Maître Kilolo, if I may interrupt you to seek a
5 clarification from the witness.

6 This Article 91(a) talks about a fact that it is not a crime, and the second option is that
7 "Qu'il n'existe pas de charges suffisantes." What exactly is the meaning of "n'existe pas
8 de charges suffisantes"? Is that the same as saying that there's no sufficient evidence,
9 or the meaning is somehow different? Could you please clarify me on that?

10 THE WITNESS: (Interpretation) I believe it's one and the same thing. When there
11 are not sufficient charges, that means that we don't have enough evidence against
12 that person. That is why I said that we were perhaps wrong -- well, it was perhaps
13 wrong that Mr Bemba was in the group of people for which this article was cited,
14 according to our understanding of the facts at the time. That may have been wrong.

15 PRESIDING JUDGE STEINER: Thank you very much. Maître Kilolo.

16 MR KILOLO: (Interpretation)

17 Q. Witness, we shall now end on this second aspect of the four elements in the
18 answer you gave us earlier on.

19 JUDGE ALUOCH: I beg your pardon. Just before you wind up, can I ask the
20 witness whether within this code there is any provision that -- because he's now
21 talking of maybe we should have suspended the charges. Is there such a provision
22 in this particular code at the relevant time that would have enabled you to suspend
23 the charges, as you now put it in your answers, please?

24 THE WITNESS: (Interpretation) Thank you. Political or parliamentary immunities
25 are among the causes for suspension if the person in question has been vested with

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1 those functions, so it would have been enough to spell out, as was stated in the order,
2 that he was covered by political immunity and that he could not continue to be
3 charged or prosecuted. That would have been enough to say that.

4 MR KILOLO: (Interpretation)

5 Q. Witness, to be perfectly clear towards the Court, I shall attempt to summarise
6 this second element and you should tell me whether I am mistaken or not.

7 We could consider that, in actual fact, in the Central African Criminal

8 Procedure -- well, the Prosecutor of the Republic is the one who commands the

9 prosecution process. We have just ended with the section concerning the position

10 adopted by the Prosecutor for the Republic at the time. What we shall do now is to

11 come to you as the investigating judge.

12 The law permitted you, in summary, two things, to do two things: When you were

13 seized by the initial application from the prosecutor who asked you to charge or to

14 prosecute such-and-such a person, if you find out that this person is covered by

15 immunity, you can actually issue an order under Article 55 of the new Code of

16 Criminal Procedure in the Central African Republic. I don't have the reference in the

17 former code that was applicable at that time. But before we go any further, do we

18 agree that you -- that when the prosecutor asked you to prosecute and that you

19 realised that this person had become a vice-president of a republic and was covered

20 by immunity, you could issue an order whereby you can refuse to investigate?

21 A. Thank you. The case of Jean-Pierre Bemba is slightly different, I believe. At

22 the beginning of the proceeding, he was not yet Vice-President of the Republic, unless

23 I'm mistaken. I think it was during the proceeding, indeed, towards the end, that

24 the transitional government of the Democratic Republic of the Congo was set up and

25 he was appointed. So that was not the case initially.

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1 Secondly, I acknowledged -- I acknowledged that I shouldn't have treated the Bemba
2 case as I did. I said that I recognised that. I said it was wrong that Bemba should
3 have been among the people who were benefited from the non-lieu, from the
4 dismissal of charges.

5 Q. Witness, you must understand something. We are not -- you are not on trial
6 about the way in which you carried out your investigation. The reason we are
7 asking questions is simply because we want to understand exactly what happened,
8 both as regards the criminal procedure in the Central African Republic and on the
9 basis of the evidence that you were able to gather. We are not trying to denigrate
10 you.

11 My question is as follows: This is a question of criminal procedure. Yes or no, did
12 Mr Jean-Pierre Bemba become vice-president on the 15 July 2003? Your order goes
13 back to 2004. So my question is simple. Yes or no, under the Central African
14 Criminal Procedure, when a person becomes vice-president and is covered by
15 immunity, you, as an investigating judge, are able to respond to the referral that was
16 made to you by the Prosecutor issuing an order of refusal of investigation. Is that a
17 possibility there; yes or no?

18 A. Yes, of course, that possibility does exist. It exists in the legal system in the
19 Central African Republic.

20 Q. Can you now confirm to the Court that you never made use of this possibility?

21 A. Thank you. You were saying earlier on that you were not attempting to put
22 me on trial, but I do get the impression that that is, unfortunately, the case. As I said
23 earlier, it was perhaps a slight omission on our part that -- the fact that we didn't
24 make use of that possibility, but that's not because we had any malevolent intentions
25 against Mr Jean-Pierre Bemba. I think that must be made perfectly clear.

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1 Q. Fine. Now things have become clear. You had two possibilities. First
2 possibility: The person is covered by immunity. I'm not going to prosecute, I'm not
3 going to investigate the charges as an investigating judge - of course, I'm speaking
4 about you - but I shall immediately issue an order that I will not continue
5 investigation or suspend the charges. But you didn't use that option. Are we
6 agreed on that?

7 A. Yes.

8 Q. Thank you.

9 THE INTERPRETER: The interpreter would like to point out that the five seconds
10 should be respected.

11 MR KILOLO: (Interpretation)

12 Q. The other option that you had is that you could have continued your
13 investigation to continue to go through the process and accomplish the various acts,
14 and you did that. You heard a lot of people, high-ranking Central African officers,
15 and at the end of the process, without being forced or compelled by anybody - you
16 said that you never underwent any pressure this case - you addressed the Prosecutor
17 for the Republic and handed over the file and asked him to make his final application.
18 And once that final application had come out, you, yourself, recognised that you
19 weren't compelled to follow his recommendation.

20 So you decided to base yourself on Article 91(1)(a) - 91(a) - of the Criminal Code of
21 Procedure. You declared, by means of an order, that there were no grounds for
22 continuing to -- with the charges against Mr Bemba because in spite of the evidence
23 coming out of the investigation with General Bombayake, General Mazi and
24 Mr Konana (phon), you considered that those declarations, those statements, that
25 evidence -- you did not consider them to be sufficient as evidence to continue to

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1 uphold charges against Jean-Pierre Bemba. I'm not criticising you, but I would like
2 you to confirm to the Court that that is how things happened, without any value
3 judgment.

4 PRESIDING JUDGE STEINER: Before the witness answers your question, now I am
5 a little bit confused. And I would like you to clarify because, at least according to
6 the transcript, on page 26, from lines 1, that evidence -- that according to the evidence
7 collected, the declarations, et cetera, you did not consider them to be sufficient as
8 evidence to continue to uphold charges against Jean-Pierre Bemba. This is what
9 appears that you said.

10 On the other hand, in the document in front of me, which is CAR-OTP-0019-0147, it
11 appears that the witness said very clearly that because Mr Jean-Pierre Bemba is the
12 Vice-President of the Democratic Republic of the Congo - and I'm reading in
13 French - "Covered by diplomatic immunity and as a consequence he cannot be
14 prosecuted under those charges."

15 You are pressing on the Article 91(a), but apparently in the reasoning there is
16 something different. So I would like the witness maybe to clarify, because maybe
17 91(a) has nothing to do with that. I am paying more attention to the reasoning of the
18 decision, so I think we need a clarification on that whether -- whether the charges
19 were not confirmed on the basis of the lack of evidence, or the charges were not
20 confirmed on the basis of the immunity. They are two different situations and I
21 need clarification on that, because it appears that you are saying something and the
22 reasoning of the decision is something different. Could you please explain to the
23 Chamber?

24 MR KILOLO: (Interpretation) Are you asking me the question, your Honour, or --

25 PRESIDING JUDGE STEINER: First for you to clarify from whether you took this

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1 statement that the witness did not confirm the charges on the basis of the lack of
2 evidence.

3 MR KILOLO: (Interpretation) Your Honour, yesterday I referred to the preliminary
4 statement made by the witness, and the witness said two things and I want this to be
5 perfectly transparent. He said, "I found myself in a situation where I can see that
6 Mr Jean-Pierre Bemba is covered by immunity. He has become vice-president, but
7 because I want to be honest I also have to observe that the evidence, the elements of
8 proof as gathered after interviewing the high-ranking Central African officers, were
9 not sufficient to come to the conclusion that the evidence was sufficient."

10 So there was this duality vis-à-vis these two elements and that is why what we need
11 to understand now is which was the true foundation on which that non-lieu order
12 was based on. So you can understand that my attitude is to first of all look at
13 who -- at the person in command of prosecution, the prosecutor, and we've just
14 clarified that the Prosecutor of the Republic's position was perfectly clear.

15 Mr Jean-Pierre Bemba was not involved on the ground.

16 I'm not reproaching or blaming the witness for anything, but to be quite frank when
17 Ms Petra asked a question to the witness he didn't say the truth because he began by
18 saying that the Prosecutor of the Republic, Firmin Findiro, who had told him not to
19 besmirch Mr Bemba because he was vice-president and that things should be covered
20 up. He also told us that we should read the prosecutor's final application, and that
21 is indeed what we did. We brought the application out and we asked him to read
22 line-by-line the pages, and he confronted with that recognised that what he had said
23 was not true, that the truth was the one that he ended up by acknowledging, i.e. that
24 the person in command of the prosecution after analysing the file that he as
25 investigating judge had disclosed to the prosecutor considered that under no

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1 circumstances could the responsibility of Mr Jean-Pierre Bemba be implicated,
2 because he wasn't involved in commanding the operations on the ground, even
3 though he did come to Central African Republic several times and even though he
4 did send over troops to the Central African Republic.

5 And after having -- well, in the face of this duality of arguments, after having
6 uncovered the true reason on which the non-lieu judgment, or rather order, was
7 founded, this gives us some insight of the point of view of the Prosecutor of the
8 Republic.

9 But the second insight comes from the testimony of the witness himself. We read it
10 yesterday. The witness said, "Yes, it is true that Mr Jean-Pierre Bemba had become
11 vice-president." 0188, I know it by heart practically, it was very striking, but
12 perhaps we should put it up on the screen again.

13 Document -- Mr Court Officer, the document is the third document on the list - the
14 Defence list - CAR-OTP-0010-0188. Could we look at the second part, the second
15 half of this page, the lower half. There we are, your Honour. Thank you very
16 much for having asked your question, your Honour, because this is truly the question
17 that is at the heart of this examination today of the witness.

18 This page, we have used it and so has the Office of the Prosecutor, in particular the
19 last part where immunity is mentioned, and we allowed the Office of the Prosecutor
20 to do that. We have made use of the whole document, and indeed you yourself read
21 out the second part, I believe.

22 On this page the witness puts us in a difficult situation, at least at first sight, because
23 he gives two different reasons for the non-lieu. First of all, he says, "On the basis of
24 the evidence that we gathered," and I'd like to draw your attention to the fact that he
25 said, "Most of the witnesses ...", and let me give you the transcript reference. "Most

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1 of the witnesses that we heard ...", he said, "... are officers, Central African officers."
2 It is transcript reference real-time French version of 3 May 2011, page 34, lines 4 to 9,
3 and let me quote it: "Generally speaking the witnesses that we heard in this case were
4 the military leaders. So the focus of this investigation, apart from victims, were not
5 witnesses in the Central African Republic. So most of them were
6 officers - high-ranking officers - and that was at the heart of the command system and
7 they were on the ground, the people who had a number of functions and
8 responsibilities at the time of the events ...", and he adds, "... and there was truly no
9 difficulty in identifying them", end of quote. Those were the men that the witness
10 interviewed and it was on that basis that he established his case; his file.
11 Now he answers, and I ended with this file, and let me read this out. You asked at
12 the time of the survey, because indeed this was a difficulty for the prosecutor's
13 investigators interviewing him because there seemed to be two contradictory things
14 being said. So he's asked to clarify, and I quote -- I'm being asked to slow down. I
15 shall try to do so. So he's asked a clarifying question. I'm talking about
16 CAR-OTP-0010-0188: "At the time of the investigation, the decision not to press
17 charges against Bemba, at what time during the investigation was this decision not to
18 press charges against Bemba taken?" Answer: "Towards the end." Another
19 question, he's asked another question: "Prior to that decision, i.e. the decision not to
20 press charges for political reasons, were you able to gather elements of proof or
21 evidence concerning the criminal liability of Bemba?" The investigators were the
22 ones asking that question not because they are acting absurdly, or lack common sense,
23 but simply because he had said that most of his witnesses had been high-ranking
24 Central African officers who had been in the field, on the ground, and that he had
25 easily been able to identify, and this is his answer: "No, no."

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1 I must confess, your Honour, I do like to read particularly this file, that this is one of
2 the rare places where he repeats the word "No." I think actually there's another
3 place where he said "No" three times, but no other instances - I found no other
4 instances of this. So he says "No" twice, and what we see is indeed we are in a
5 situation where at least in his approach there seems to be two reasons that justify his
6 decision not to press charges against Mr Bemba.

7 PRESIDING JUDGE STEINER: Maître Kilolo, I'm sorry to interrupt you. It's my
8 recollection that after we made -- you made such mention to this answer, the double
9 "Non, non," I myself read the last question and the last answer. So I don't think it
10 would be necessary for me to read it again, but I would like to put this "Non, non" in
11 the context with the last answer given by the witness in order to be fair.

12 MR KILOLO: (Interpretation) Your Honour, I need to answer you on that question.
13 It is true that down below he says that there was this issue of setting aside anything
14 that could harm Mr Bemba, who was vice-president in the Republic of Congo, and we
15 didn't really delve into the detail of investigations to possibly establish his liability.

16 PRESIDING JUDGE STEINER: Could it be this last sentence, the third reason,
17 because you mentioned two reasons? Could it be the third reason for the
18 ordonnance de non lieu, the fact that the witness says that he's not really "approfondi
19 les enquêtes pour établir éventuellement sa responsabilité"? That's the question that
20 should be put to the witness.

21 MR KILOLO: (Interpretation) Yes, we shall come to that, your Honour, but perhaps
22 to end, just before we have our break - we only have two minutes - I truly do not
23 think that that was a reason. And why is that? We all familiar with law here and
24 we all know that the only reason is found in the illegal foundation for the order, and
25 the Witness was in a position to make use of the true legal foundation. He didn't

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1 issue these orders arbitrarily, he's a professional magistrate, and he mentions Article
2 91(a) of the Code of Criminal Procedure which is perfectly clear.
3 And I think in all the legal traditions all over the world, whether there is some lack of
4 clarity on the actual reason for a judge's decision means that you have to immediately
5 refer to the law and see which legal provision was invoked. And in the case of 91(a)
6 of the Code of Criminal Procedure that he read out, things are perfectly clear when he
7 says that there are not sufficient charges against the person accused. And you asked
8 him a question, he answered that the absence of charges is equivalent to the absence
9 of sufficient evidence.
10 Now to say that he didn't go on with their investigation would be wrong. It would
11 be the same as saying that here at the ICC there had been more than five years of
12 investigation, costing several million euros, and many statements and many
13 witnesses, 40, now when you compare this with the investigation in Bangui we see
14 that the Investigating Judge gathered more testimonies in less time with just 200,000
15 or less than 200,000 euros in budget, and we use the UNDP documents. So he heard
16 more people, had more statements made, than the ICC in five years, more than
17 40 million euros.
18 So either we say now that the Investigating Judge in Bangui did not conduct a
19 thorough investigation -- well, if that is the case, well, then the ICC, the ICC
20 Prosecutor, didn't conduct a thorough investigation or the ICC investigator.
21 So there are not even five officers or five witnesses concerning command brought by
22 the Prosecutor, so we cannot say in this case that the actual reason was that
23 investigations were not thorough.
24 He said that he had not heard Patassé, but the Prosecutor, too - while Patassé was still
25 alive - did not deem it useful to bring him here as a witness. So all this enables us to

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- 1 say that the only reason is the one that is in the Code of Criminal Procedure. And
2 I'm sorry I took up this much time.
- 3 PRESIDING JUDGE STEINER: Thank you, Maître Kilolo. We would have to come
4 back to this issue, because for me it appeared that you are making -- like making final
5 submissions, and the only thing I wanted is for a clarification to be made by the
6 Witness. But, in any case, we have to go to our break now in order to allow the
7 Witness and our interpreters and court reporters to rest for a while. We will resume
8 at 11.35. I ask, please, the court usher to accompany the Witness outside the
9 courtroom.
- 10 (The witness stands down)
- 11 The hearing is suspended.
- 12 THE COURT OFFICER: All rise.
- 13 (Recess taken at 11.04 a.m.)
- 14 (Upon resuming in open session at 11.40 a.m.)
- 15 THE COURT USHER: All rise. Please be seated.
- 16 PRESIDING JUDGE STEINER: Welcome back. We will continue with the
17 questioning of Witness number 9. I ask, please, court usher to bring the witness in.
- 18 (The witness enters the courtroom)
- 19 PRESIDING JUDGE STEINER: Mr Witness, welcome back.
- 20 THE WITNESS: (Interpretation) I am ready to continue.
- 21 PRESIDING JUDGE STEINER: Thank you very much. Maître Kilolo.
- 22 MR KILOLO: (Interpretation) Thank you again, your Honour, for allowing me to
23 address the Chamber.
- 24 I should like to ask the court officer to kindly display on the screen document 21 from
25 the Defence list. This is a confidential document.

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1 PRESIDING JUDGE STEINER: Court officer, the blinds, please.

2 MR KILOLO: (Interpretation) I am sorry, this is a document that was reclassified
3 as public by a decision made on 15 June 2010. Court officer, please turn to page 5.
4 Out of the 12 pages of the document, it's page 5.

5 Q. Mr Witness, earlier, you said, with a certain degree of insistence, that your
6 order had been appealed against, which means that the Defence must therefore take
7 this document of appeal that was submitted to the Appeals Court of Bangui.

8 And I would like to ask the court officer to enlarge the middle of the page,
9 paragraphs 2 and 3. That is right, that's exactly what I want. Thank you.

10 Mr Witness, I will ask you, sir, to read out for the benefit of the Chamber, the first
11 paragraph that you have before you, and I shall ask you, sir, to read it slowly, so as to
12 be able -- to make the transcription easier, and interpretation as well. It begins with
13 the word "attendu" in French or "given" in English.

14 A. "Given that the case file shows that the only high-ranking military man who
15 enjoyed the trust of President Patassé was General Bombayake, Ferdinand, and that
16 as soon as Jean-Pierre Bemba's men arrived, commonly known as 'Banyamulengue',
17 these men were made available to him and that that officer himself drew up the
18 action plans." Should I stop there, sir?

19 Q. Mr Witness, I'm afraid that in English we were not able to follow you correctly.
20 Would you re-read that paragraph, please, but in dictation speed, so as to make
21 interpretation easier.

22 A. Thank you. "Given that the case file shows that the only high-ranking military
23 man who enjoyed President Patassé's trust was General Ferdinand Bombayake, and
24 that as soon as Mr Jean-Pierre Bemba's men, commonly known as 'the
25 Banyamulengue', arrived, these men were placed at his disposal and that that officer

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1 himself drew up the action plans."

2 Q. Mr Witness, would you kindly confirm for the benefit of the Bench that when
3 the prosecutor who appeals - because you talk about the appeal lodged by
4 him - when he speaks of a case file since, in fact, it says, "Given that the case file
5 shows that," is that your case file? Would you confirm it is your case file that he's
6 referring to?

7 A. I think it is possible. I think it is indeed that particular case file that the
8 prosecutor is referring to.

9 Q. Would you read for this Chamber the following paragraph that begins with the
10 word "attendu" in French and ends with the name "Bombayake Ferdinand"?

11 A. "Given that it stems from the previous paragraph that Jean-Pierre Bemba's men
12 could not kill, rape, loot, kidnap or wound except under instructions from General
13 Ferdinand Bombayake."

14 Q. Mr Witness, would you please confirm to this Bench that in this excerpt that
15 you have just read out, when mention is made of the fact that "given that it stems
16 from the previous paragraph that," that is a reference specifically to your own case
17 file?

18 A. Yes, it is a reference to it.

19 MR KILOLO: (Interpretation) For the record of this hearing, I have said this only
20 to draw the Bench's attention to the approach taken by the prosecutor's office at the
21 time the prosecutor lodged an appeal against the investigating judge's order. Thank
22 you.

23 THE COURT OFFICER: Madam President, if I may, for the sake of the record of the
24 case, the document that was just shown to the witness, and is listed in the Exhibit 21
25 of the list of the documents presented by the Defence team, it's filing

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1 ICC-01/05-01/08-770, Annex 2, and this is a public document.

2 PRESIDING JUDGE STEINER: Maître Kilolo, now, or maybe later, at a time at the
3 convenience of the Defence, we need to know whether the Defence is tendering this
4 document into evidence, all these documents that have been mentioned since the
5 beginning of Defence questioning.

6 MR KILOLO: (Interpretation) Indeed, your Honour, we would like this to be
7 tendered as evidence.

8 PRESIDING JUDGE STEINER: So starting by the present document, then I ask court
9 officer to attribute an EVD-T number.

10 THE COURT OFFICER: Yes, Madam President. The document that was shown to
11 the witness, ICC-01/05-01/08-770, Annex 2, will be attributed reference
12 EVD-T-D04-0027 and will be marked as public.

13 MR KILOLO: (Interpretation) While we're at it, your Honour, Defence would also
14 like for document 15 from our list, which is the former Criminal Proceedings Code of
15 Central Africa, be also tendered as evidence.

16 PRESIDING JUDGE STEINER: Court officer.

17 THE COURT OFFICER: The document that is the filing ICC-01/05-01/08-752, Annex
18 B, will be attributed reference EVD-T-D04-0028 and will be classified as public, unless
19 otherwise instructed by the Chamber.

20 MR KILOLO: (Interpretation) Your Honour, the Defence would also like
21 document 4 from its list, which is the order for partial dismissal and referral to the
22 Criminal Court to be given an EVD number and thus tendered as evidence.

23 PRESIDING JUDGE STEINER: I think these documents have already been
24 attributed, but I want confirmation from court officer. THE COURT OFFICER:

25 Indeed, Madam President. Document CAR-OTP-0019-0137 has been attributed

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1 reference EVD-T-OTP-00608 and it's currently marked as confidential.

2 PRESIDING JUDGE STEINER: And document 5, Defence mentioned as well?

3 MR KILOLO: (Interpretation) You are right, Madam.

4 PRESIDING JUDGE STEINER: Ms Kneuer.

5 MS KNEUER: Thank you very much, your Honour. I'm not sure if document 5 can
6 be tendered through Witness 9. It's the document that was generated by Witness 6.

7 PRESIDING JUDGE STEINER: This is the information that I have, that it has
8 already been attributed an EVD number so it's not necessary.

9 MS KNEUER: It is my understanding from Appeals Chamber's decision that all
10 EVD numbers are moot.

11 PRESIDING JUDGE STEINER: The Chamber has still to decide what to do with the
12 EVD-T numbers that were attributed before the judgment of the Appeals Chamber.
13 In any case, the Prosecution is right. This is a document that was tendered through
14 Witness 6, so the Chamber will analyse whether the number is kept. Court officer.

15 THE COURT OFFICER: Thank you, Madam President. Indeed, document
16 CAR-OTP-0004-0065 has already been attributed an EVD reference on 7 April 2011,
17 and it was reference EVD-T-D04-00016, and the document is classified as confidential.

18 PRESIDING JUDGE STEINER: Thank you very much. Maître Kilolo.

19 MR KILOLO: (Interpretation) I would like to ask the court officer, still on the same
20 document, Annex 2 thereto, of 16 June 2010, to move on to the next page, please, page
21 6. Same document, 77, Annex 2.

22 Q. Mr Witness, you have the next page on the screen now of the appeal submitted
23 by the prosecutor. Can you read out the two paragraphs for the benefit of the
24 Chamber, please?

25 A. "Under Article 103, and in keeping with the Criminal Procedure Code, I ask that

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1 the Accusation Chamber accept referring Ferdinand Bombayake to the Criminal
2 Court so as to be tried in keeping with the law."

3 Q. Can you confirm for this Bench that you do realise that this is a document
4 signed by the Prosecutor-General of the Appeals Chamber of Bangui in January 2004?

5 A. Well, I do not see the signature on the document but it must have been signed
6 by him because I see his name.

7 Q. May I state for the record that this is a document that Central African justice
8 submitted to the ICC via the OTP which then made it available to the parties. Thank
9 you.

10 Mr Witness, let's go back to the Criminal Code which was in force at the time in order
11 to take a look at Article 103 of that Criminal Code which was invoked in the appeal
12 lodged against your order.

13 So I would ask you, Mr Court Officer, please to show document 702 annex 2, page 21,
14 and enlarge Article 103. There we go.

15 Mr Witness, would you please read Article 103 of the Criminal Code?

16 A. "The Chamber of Accusation is contacted directly by the Appeal by the Ministry
17 of Public, the civil parties or the accused. The file of the procedure will be sent
18 without delay by the Prosecutor-General who will append all written addenda."

19 Q. Mr Witness, can you confirm to this Chamber that the written document which
20 you -- of which you read an excerpt earlier are, indeed, those which are referred to
21 under Article 103 of the Criminal Code which was in force at the time?

22 A. I think so.

23 Q. This will make it possible for you to say why the Republic of the -- why the
24 Prosecutor of the Republic called for dismissal because there was no evidence against
25 Mr Bemba, nevertheless appealed against the order. The answer is clear, it's because

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1 General Ferdinand Bombayake was the one who was being targeted because he also
2 benefited from the dismissal of charges.

3 I would now like to ask the court officer to please put the order for dismissal of
4 charges on the screen. This is document 4 on the *Defense's list.

5 Page CAR-OTP-0019-0139.

6 Mr Witness, for the record, can we say that you are a professional judge?

7 A. I do not know, I'm sorry.

8 Q. You are an investigating judge?

9 A. I was the investigating judge at the time when these events occurred.

10 Q. Why, at that time, did we say that you were senior investigating judge? What
11 exactly does that mean?

12 A. It was a post; it was a position. I was one of the judges, one of the
13 investigating judges. It's a position; it's a legal position.

14 Q. Is there a difference between an investigating magistrate and a senior
15 investigating magistrate?

16 A. Yes, because he's the senior judge, the head judge, in the whole thing.

17 Q. Should we understand that from the events at the time that you were the lead
18 investigating judge of all the investigating judges from Bangui?

19 A. Yes, that is correct.

20 Q. So you are an experienced magistrate, an experienced judge.

21 A. I -- I don't know.

22 Q. Mr Witness, you have before you a page of your order for dismissal. My
23 question, sir, is very simple: Can you please specify to this Chamber what the legal
24 bases were upon which you based your order for dismissal of charges against

25 Mr Bemba? What were the reasons, sir?

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1 A. Thank you. Excuse me for being somewhat skeptical, because some of your
2 questions are making me uncomfortable. Asking me whether I'm a judge or not, I
3 think that's -- well, in any event, with regards to the reasoning I think that we've been
4 over it time and time again. As we have seen here, I should not have put him in the
5 same group as those who had charges dismissed because there was an absence of
6 evidence.

7 Q. I just want to know the -- we need this answer; the Chamber needs this answer.
8 What were the legal reasons on which your order for dismissal of charges against
9 Mr Jean-Pierre Bemba were based? What was the foundation? What exactly was
10 established in your order?

11 A. Thank you. The legal foundation, I think, is because he was the Vice-President
12 of the Republic. I was not able to question him and I didn't have enough evidence in
13 order to be able to determine whether or not he was liable, and I think that's because I
14 wasn't able to obtain enough useful information in order to make an applicable
15 decision.

16 Q. Mr Witness, I'm talking to you about the legal foundation and not about the
17 factual reasons. We'll talk about that later. I'd like to talk to you now about the
18 legal reasoning. I'd like you to specify here what the provisions -- provided the
19 foundation for the order for the dismissal of charges against Mr Jean-Pierre Bemba,
20 unless you say that there were none.

21 A. It was based on Article 93. My order was based on Article -- excuse me, 91, as
22 we said earlier.

23 Q. But you said earlier that Article 91 can only be applied if there was not
24 sufficient evidence. Can you confirm that, sir?

25 A. If you are asking me to give the answer to your question according to the

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1 document which is up on the screen now, look at Article 91. That's all I can tell you.

2 MR KILOLO: (Interpretation) Your Honour, the question was to know where the
3 Defence found the elements of which showed the reasoning for the dismissal was the
4 lack of evidence and that was Article 91(a) of the Code of Criminal Proceedings
5 which was applicable, which was in force at the time.

6 PRESIDING JUDGE STEINER: Yes, Maître Kilolo, I think that we are just having
7 different interpretations on wording. For me motive and base légale are different
8 things, but you can proceed. We will analyse this at the end.

9 MR KILOLO: (Interpretation)

10 Q. Mr Witness, I would like to talk to you about the legal foundation and -- the
11 legal reason, excuse me. Are there two kinds of reasons; first of all the legal
12 reasoning, which comes from the article in the law which provides its foundation,
13 and also the factual reason, which deals with the material elements which can be used
14 as well? Do we agree on that, sir?

15 A. Yes, we do.

16 MR KILOLO: (Interpretation) Madam, your Honour, this answers your question
17 whether we should distinguish between a reason and a foundation. There, indeed,
18 are in all legal documents, in the procedures in Central Africa, two kinds of reasons,
19 basically. The first is the legal and the second is the factual. We are finished with
20 the legal reason and now I'd like to move onto the factual reason.

21 Q. Mr Witness, could you please tell this Chamber what the different reasons are
22 that might justify drafting an order for dismissal of charges according to the Criminal
23 Code which was in force at the time?

24 A. There -- among other things, the lack or insufficient nature of the charges.
25 That, first of all. In public hearing --

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1 Q. We heard the fact that Mr Firmin Findiro, the Prosecutor of the Republic, who
2 said that there were only three reasons. I can give you the references later. The
3 first reason was the absence or insufficiency of charges, which is to say evidence.
4 The second had to do with the fact that the facts, or the acts, were not seen as being a
5 crime. The third was that there was an amnesty law which had been passed,
6 according to the facts?

7 A. That's true.

8 Q. Can you confirm that?

9 A. Yes, I can.

10 Q. Out of these three reasons - these three potential reasons - which we have just
11 gone over, do you see any more, any others, which might exist? Anything else
12 which might lead to a dismissal of the charges?

13 A. There are only the three that you have been over that I can think of, Counsel.

14 Q. Now, can you tell the Chamber, out of the three reasons - the three potential
15 reasons - which we have been over, can you tell me which reason was applied for the
16 dismissal of charges against Mr Jean-Pierre Bemba?

17 A. Thank you. The work which we did wasn't only concerning accusation work
18 against Mr Bemba. We also did exculpatory work as well. And I think that if you
19 go through the investigation, you will see that there are very few people who will talk
20 about Mr Bemba's actions in the country, and the answer that we heard the most
21 often was that people didn't know and very often people tell us that the contact
22 between Mr Bemba and Mr Patassé was always very discreet in nature. So these
23 people didn't know anything about what Mr Bemba had been really accused, or was
24 accused of, or what he had done in the Central African Republic. So to sum-up, in
25 the file - in the case file - there is very little that can be seen as being a count against

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1 Mr Bemba, except for time to time I think that there is some people who say how
2 people arrived, how the Banyamulengue arrived, were there meetings between them
3 and Mr Bemba, but all that they wouldn't know very much about them and so there
4 really are no accounts against him in the case file.

5 Q. Very well, Mr Witness. I would now like to go over these elements with you.
6 The Defence's position is the following: What you are telling us now is not true.
7 You have heard several -- you questioned several officers and many of these officers
8 talked to you about the fact that uniforms were provided to the MLC troops. The
9 MLC troops were provided with combat equipment and they also talked about their
10 housing; housing for the MLC soldiers. They talked about how the MLC troops
11 were deployed, and they also talked to you about the fact that a certain amount of
12 combat materiel was provided, that military intelligence was provided, that orders
13 were transmitted, and they also talked to you about the command structure. Do you
14 contest that?

15 A. Thank you. I don't think it's in my interest to lie here.

16 PRESIDING JUDGE STEINER: Monsieur, s'il vous plaît. Ms Kneuer.

17 MS KNEUER: Madam President, I object to the way how the Defence is addressing
18 the witness. The Defence stated on page 46, line 15, "What you're telling us now is
19 not true." I do not think that there is any justification to accuse a professional judge
20 from the Central African Republic of lying to this Court.

21 PRESIDING JUDGE STEINER: Maître Kilolo, I think you should rephrase the way
22 you put the question - it's not even a question - to the witness, without making any
23 judgment, because this is up to the Chamber to decide whether the witness is telling
24 the truth or not. The objection is sustained.

25 MR KILOLO: (Interpretation) Thank you, your Honour. I will of course respect

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1 your position. I would like to ask the court officer to move on to document number
2 7 from the Defence document list. This is CAR-OTP-0019-0211.

3 THE COURT OFFICER: Document CAR-OTP-0019-0211 will be shortly available on
4 your screens and it's document number 6 of the list of evidence presented by the
5 Defence team. This document has already been attributed previously a reference
6 EVD-T, which is EVD-T-D04-00017, and it's currently marked as confidential.

7 PRESIDING JUDGE STEINER: Maître Kilolo, you confirm that you are tendering
8 this document into evidence?

9 MR KILOLO: (Interpretation) Absolutely, your Honour.

10 Q. Mr Witness, we have a procès-verbal from a questioning session on the screen
11 in front of you. Can you confirm to this Chamber that this is the procès-verbal that
12 came from the questioning session of Mr Bombayake?

13 A. That's exact -- that's correct.

14 Q. Can you now tell the Chamber the date when you were able to question
15 General Ferdinand Bombayake?

16 A. 17 September -- 7 September 2003.

17 Q. Can you confirm that this was before you issued your order for dismissal of
18 charges?

19 A. Yes, of course.

20 MR KILOLO: (Interpretation) I would now like to ask the court officer to please
21 move on to document CAR-OTP-0019-0214.

22 Q. Mr Witness, do you recognise your signature on this document?

23 A. Yes, I do.

24 Q. Can you confirm to this Chamber that General Bombayake did also sign this
25 statement?

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1 A. Yes.

2 MR KILOLO: (Interpretation) I would like to ask the court officer to please now
3 return to the first page, CAR-OTP-0019-0211, the last paragraph, please.

4 Q. Mr Witness, would you please read the last paragraph out loud to the Court,
5 please?

6 A. "I can -- I feel personally that it is useful to answer your question, before I
7 answer your question, that I should explain that I carried out my functions for a State
8 and under the institutions of the Republic and under a democratically elected Head
9 of State, a constitution which has principles - the fundamental principles - which
10 govern the CAR. At the time I was nominated by decree from the Head of State as
11 the Director-General of the presidential security detail in the year 2000, and as such I
12 reported to the Minister of Defence and the President of the Republic."

13 Q. Mr Witness, can you confirm to the Chamber that these indeed are the
14 comments which were made to you by General Bombayake?

15 A. Because he signed the document and those are indeed his comments. That is
16 indeed his statement.

17 MR KILOLO: (Interpretation) I would like to ask the court officer to move to the
18 second page of CAR-OTP-0019-0212, first paragraph, please.

19 Q. I am going to read an excerpt of the document for you and then I'm going to ask
20 the question. "Concerning the intervention of the Banyamulengue in the city, I can
21 inform you that they were called up for the first time after the events which occurred
22 on May 28, 2001. I was not involved in the approaches and the other negotiations on
23 the basis of which the combattants du Congo, the fighters from the Congo, came to
24 the Central African Republic at that time. They crossed the river together at the
25 force naval, after which they were made available to the Chief of Staff at the time, the

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1 current Head of State, General François Bozizé, who was assisted by the now dead
2 Colonel Abel Abrou, who was commander of operations in the east zone, who was
3 subsequently replaced after his death by General Mazi. During the events which
4 occurred on May 28, 2001, the Banyamulengue operated in coordination with the
5 FACA."

6 I would like to look at this excerpt in some detail and I would like to ask you the
7 following question: Sir, can you confirm to this Chamber that these are the
8 comments which were made by General Bombayake?

9 A. Yes.

10 Q. Can you confirm to this Chamber, sir, that General Ferdinand Bombayake made
11 this statement to you in the presence of Mr Firmin Findiro, who was the Prosecutor of
12 the Republic in Bangui?

13 A. Yes.

14 MR KILOLO: (Interpretation) I would like the court officer to please show us the
15 last two chapters that begin "les combattants," "Jean-Pierre Bemba's fighters."

16 Q. Witness, I shall be going over these elements one-by-one for the purpose of
17 these. Let me read out one excerpt. "Jean-Pierre Bemba's combatants, once they
18 had arrived in Zongo, had replenished their supplies in Fouh thanks to Mr Lionel
19 Gan-Befio, under the instructions of the Head of State." Let me stop there for the
20 time being. Witness, this excerpt, does it exactly reflect what you personally heard
21 from General Ferdinand Bombayake?

22 A. This is contained in the procès-verbal of the questioning session with the
23 General Ferdinand Bombayake, so it must be so.

24 PRESIDING JUDGE STEINER: We need some clarification. Just one second, please.
25 Court officer, please, could we turn very briefly into private session.

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1 *(Private session at 12.34 p.m.) Reclassified as Open session

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

3 PRESIDING JUDGE STEINER: Thank you. I would like to ask first Prosecution,
4 and maybe also the Defence, a clarification because this document is still confidential.
5 We are still pending a request of -- for authorisation of the authorities of Central
6 African Republic for the reclassification of this document as public. At the same
7 time, Defence is reading paragraphs of the document in which names are mentioned
8 of other -- of officers or -- and the content of the statement of Mr -- in this case
9 Mr Bombayake, has been made public. So my question is whether all this
10 information should be kept confidential, because if they are to be kept confidential, so
11 I would ask Defence not to mention these names, or to go into private session in order
12 to quote parts of the confidential document. Could maybe the Prosecution clarify
13 and then, of course, I will listen to the Defence.

14 MS KNEUER: Madam President, may I have a moment, please?

15 (Prosecution Counsel confer)

16 PRESIDING JUDGE STEINER: We are trying to -- maybe Ms Kneuer already has
17 something to tell us.

18 MS KNEUER: Yes, Madam President. I'm referring to an email that the
19 Prosecution had sent to the Chambers, copying the parties and participants, from 21
20 April 2011 at 5.34 p.m., and basically what it is saying is that, like during the hearings
21 with regard to Witness 6, the position of the Prosecution is that, in general, we don't
22 have objections that these documents will be classified. We don't see specific
23 reasons for protection or so.

24 However, it would be the preference of the Prosecution that, first, the CAR
25 government would be heard on that matter, just as a precaution and because they are

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1 ultimately the owner of the documents.

2 Also, we distinguish between victims and other witnesses, and our position is that
3 with regard to victims, certain redactions should be applied, and we listed also the
4 documents that are relevant, based on the submission of the Defence counsel on the
5 list of documents.

6 We had made an inquiry to the CAR government and we are following up on that
7 regularly. It is still pending, and just for your knowledge, the government in the
8 CAR is changing the administration. However, we do our utmost to get a response
9 as quickly as possible.

10 The guidance that your Honours gave us at the beginning of this hearing of this
11 witness, and it's transcript number 102, on page 5, lines 1 onwards, your Honours
12 said yourself, "Pending a decision of the Chamber on the issue, the Chamber hereby
13 instructs the parties and participants not to mention in public sessions the names or
14 any information that may lead to the identification of any of the victims referred to in
15 the documents for which reclassification is sought by the Defence."

16 So the position of the Prosecution is, with regard to victims, we really want to make
17 sure that certain redactions are being applied; and with regard to other documents,
18 we prefer to wait for observations from the CAR government before your Honours
19 are taking a final decision. But, in general, there are no reservations.

20 PRESIDING JUDGE STEINER: Thank you, Ms Kneuer. I notice from filing 1380,
21 from the Defence, a filing of 21 April 2011, the Defence itself requested not only the
22 reclassification of some of these documents, most of them are documents related to
23 the procès-verbal d'audition des témoins. And, at that time, I remember
24 during -- it's stated here in footnote 17 that during the questioning of Witness 6 the
25 Prosecutor already raised the issue that parts of the document were being read in the

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1 public session.

2 So the Defence is asking for the reclassification of the documents? And, at the same
3 time, on paragraph 14 the Defence respectfully requests that the sections of the
4 transcripts of 11 April 2011, in which the Defence read extracts from these judicial
5 documents in private session, also be reclassified as public.

6 So, of course, I want to listen to the Defence, but it appears that the Defence is reading
7 in public session extracts of confidential documents before we have a decision on
8 their reclassification. So this is my first concern and I would like to listen to the
9 Defence in this respect.

10 The second is that, apparently - I don't know whether it was just on purpose or a
11 mistake - in the same Defence request 1380, among other documents, the Defence
12 asked for reclassification of document CAR-OTP-0019-0215, which is part of the
13 procès-verbal d'interrogatoire de Mr Ferdinand Bombayake, but it's not the one that
14 is being discussed now during this hearing.

15 So I don't know if it's on purpose that the Defence has not included the second part of
16 the statement, the procès-verbal of Maître Bombayake, or the Defence just forgot to
17 include this document in its request. So those two are my concerns that I would like
18 Defence, if possible, to clarify for the Chamber before we continue.

19 MR KILOLO: (Interpretation) Thank you, your Honour. First of all, this is a
20 question of legal certainty. One of the guarantees for Defence is a fair trial. We
21 have two guarantees; the first is yourself, your Honour, your Honours, and the
22 second is the international public opinion that is following this trial and we want it to
23 hear our Defence.

24 You have already issued a decision which is binding on everybody, 3 May 2011, two
25 days ago, and you say, I quote you, "In the meanwhile, while we wait for the final

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1 decision on the reclassification, the Chamber asks the parties and participants not to
2 mention during a public hearing any names or information that might lead to the
3 identification of any one of the victims referred to in the documents for which
4 reclassification has been requested by Defence."

5 In this respect, Defence once again in the documents, the procès-verbal that we are
6 looking at here, undertakes not to mention any name that might relate to a victim. I
7 can assure you that we shall be extremely careful in this respect. That's my first
8 point.

9 My second point: When you look at document number 21 in the Defence list, well,
10 here again, the document comes from the Central African Republic government just
11 as the procès-verbaux that we are reading come from there. You, yourselves, this
12 Chambers, has reclassified those as being public without asking for permission from
13 the Central African Republic government and today, we believe, that you did so quite
14 rightly because the Chamber cannot have to rely on political decisions of
15 governments as to how to conduct the proceedings inasmuch as this could affect one
16 of the fundamental rights of the accused; i.e., the right to a fair trial, the right to be
17 heard by all.

18 So, in this respect, our proposal is that we should continue in the same way as we
19 started but being very careful about not mentioning any of the victims' names.

20 In addition, you also raised the question of whether we wished to have the
21 document -- not only the procès-verbaux for Mr Bombayake reclassified, but whether
22 we also wanted to cover the procès-verbaux d'audition before the Prosecutor. If I
23 understood your question correctly, that is.

24 PRESIDING JUDGE STEINER: Maître Kilolo, the procès-verbaux du Monsieur
25 Bombayake we have two different documents; one is document finishing by 0211,

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1 which is the -- his interrogatoire du 17 novembre, and the other document is 0215.
2 It's the continuation of his interrogatoire on 18 November, and you asked for the
3 reclassification of just one of them. That is my question.

4 MR KILOLO: (Interpretation) I am sorry. That is a mistake, your Honour. We
5 actually wished to have them both considered.

6 PRESIDING JUDGE STEINER: So we can turn into open session, please.

7 (Open session at 12.51 p.m.)

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

9 PRESIDING JUDGE STEINER: Thank you very much. So, first, just a clarification
10 for the Defence, that the document, I think document 21 of the Defence list of
11 evidence - which Defence mentions was reclassified by the Chamber in
12 May 2011 - without listening in advance to the Central African Republic authorities, it
13 was reclassified exactly in order for the discussion on the challenge on admissibility,
14 in which the Central African Republic was a party. So it's a completely different
15 situation.

16 In relation to this document that the Defence is bringing into discussion in this
17 hearing, without advancing the final decision on the Chamber on reclassification, just
18 taking into account that the few names that were mentioned here have already been
19 mentioned in public sessions, the Chamber will allow Defence to continue in public
20 session. But this does not prevent the Chamber to decide otherwise when analysing
21 the whole of the documents to be discussed in public hearings. You can proceed,
22 Maître Kilolo.

23 MR KILOLO: (Interpretation) Thank you, once again, your Honour, for having
24 allowed me to continue.

25 Q. Witness, I was in the process of questioning you. Let me return to an excerpt

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1 from the statement made by General Ferdinand Bombayake, and let me quote him,
2 "Jean-Pierre Bemba's combatants, once they arrived in Zongo, had their supplies of
3 fuel replenished by Mr Lionel Gan-Befio under the instructions of the Head of State."

4 Witness, could you tell us whether these are actually the words that the Central
5 African General Ferdinand Bombayake used with you personally?

6 A. Yes, I remember that.

7 Q. When he talks about the instructions of the Head of State as regards
8 replenishing supplies of fuel for Jean-Pierre Bemba's combatants, which is the Head
9 of State in question here?

10 A. Mr Ange-Felix Patassé.

11 Q. Let me read out another excerpt: "After they had crossed, the Banyamulengue
12 had assembled at the force naval to thereafter be taken to the regiment du soutien --"
13 the support regiment "-- under the command of General Mazi and of Colonel
14 Lengbe."

15 Witness, can you confirm to this Court that the Central African General Bombayake
16 said these words to you, the ones I just read out?

17 A. Since you can read it out from the procès-verbal d'interrogatoire, from his
18 statement, that is obviously what he said.

19 Q. Witness, I have no other choice but to systematically question you about this.
20 What is important here today is your testimony. I am using information that I find
21 in documents and it is your task, as a witness, to confirm or go against or challenge
22 the information that we are submitting to you. It's not a matter of annoying you or
23 trying to irritate you.

24 Let me read out another excerpt, and I quote: "The Head of State, having
25 ascertained that the Congolese combatants did not wear uniforms, gave me the

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1 instruction to make available to General Mazi uniforms that were intended for the
2 Central African Army so that the Congolese combatants could use them."

3 Witness, could you confirm to the Court that these words reflect what General
4 Ferdinand Bombayake, Central African General, told you?

5 A. Yes, I believe so.

6 Q. Let me go on. "For the purpose of harmonising operation, an operations centre
7 was established at Camp Béal comprising General Mazi, Colonel Lengbe, a number of
8 FACA officers, the USP was represented by Commander Mokodoui and an officer
9 representing the Banyamulengue."

10 Witness, does the excerpt that I've just read out to you reflect the information that
11 was conveyed to you in the framework of your investigation?

12 A. Yes.

13 Q. Can you tell the Court who provided that information to you?

14 A. Well, these are the words said by General Bombayake. It was his statement,
15 General Bombayake's statement.

16 Q. I'm going to read out a question that you asked General Ferdinand Bombayake.
17 Let me quote: "Could you give us the name of the persons that made up the crisis
18 cell that was set up at the time of the events and could you tell us what the duties of
19 that cell were?"

20 Can you confirm to the Chamber that you were, indeed, the person who
21 asked -- addressed this question to General Ferdinand Bombayake?

22 A. Yes, that's right.

23 Q. Let me ask the court officer to go on to the next page, if he would. Document
24 CAR-OTP-0019-0213.

25 MR KILOLO: (Interpretation) Your Honour, perhaps you would allow us three

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1 extra minutes to end on this issue?

2 PRESIDING JUDGE STEINER: Yes, interpreters have signed that, yes, three
3 minutes.

4 MR KILOLO: (Interpretation)

5 Q. Witness, I am going to read out the answer that was given to you by General
6 Bombayake. I quote. "The crisis cell or crisis council," interpreters correction, "has
7 a different composition depending on whether it has held under the authority of the
8 President of the Republic, or under that of the Minister for National Defence. In the
9 first case, it is made up of the President of the Republic, the Prime Minister, the
10 Minister for Defence, or his deputy or representative, the Minister for the Interior, the
11 Parties Executive Bureau, the Chief of General Staff of the Armies, the General
12 Inspector of the Armies, the DG, Director-General of the Gendarmerie, the DG
13 of -- Director-General of the Police, of the DG -- Director-General of the USP, the
14 Presidential Security Unit and the chief of -- the Special Chief of Staff for the Head of
15 State and the Head of the Presidency's Military Cabinet." Witness, the excerpt that I
16 just read out, does it truly reflect information that you were able to gather in the
17 context of the investigation you conducted in Bangui?

18 A. Yes.

19 Q. Could you tell the Chamber who conveyed this information to you?

20 A. I got this information from General Bombayake.

21 MR KILOLO: (Interpretation) Thank you. Your Honour, I can see your Honour,
22 that my three minutes are up.

23 PRESIDING JUDGE STEINER: Thank you, Maître Kilolo. Mr Witness, we have
24 now our lunch break. You deserve to take some rest. We are going to suspend the
25 hearing and resume at 2.35. I ask, please, court usher, to accompany the witness

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1 outside the courtroom.

2 (The witness stands down)

3 PRESIDING JUDGE STEINER: The hearing is suspended.

4 THE COURT OFFICER: All rise.

5 (Luncheon recess taken at 1.05 p.m.)

6 (Upon resuming in open session at 2.38 p.m.)

7 THE COURT USHER: All rise. Please be seated.

8 PRESIDING JUDGE STEINER: Good afternoon. Welcome back. We will

9 continue with the questioning by the Defence of Witness 9. Before we bring the
10 witness into the courtroom, I ask please, court officer, to turn very, very briefly into
11 private session.

12 *(Private session at 2.39 p.m.) Reclassified as Open session

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

14 PRESIDING JUDGE STEINER: Thank you very much. It's just in order for the

15 Chamber to organise itself, and because it is up to the Presiding Judge to ensure the

16 proper conduct of the proceedings, I would like to ask Defence whether Defence

17 intends to continue questioning the witness by way of reading paragraph by

18 paragraph the documents on the Defence list of evidence? Why or whether Defence

19 has any specific reason for doing that because, if we continue in that way - and the

20 Chamber cannot interfere, it's just as a matter of organisation - it will take too long for

21 questioning the current witness. So has the Defence any specific reason for justifying

22 the need of reading documents that are in front of the Chamber? I would like to

23 listen to the Defence in that respect, if possible.

24 MR LIRISS: (Interpretation) Your Honour, your Honours. The documents we are

25 reading are documents connected with the very heart of this trial concerning liability

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1 under Article 28. Such documents are all drafted in French. Our concern is that the
2 person who interviewed should, in his turn, state clearly that it was he who
3 conducted the interviews and that his statement is shown on the transcript for this
4 Chamber. That is the purpose we pursue, Madam.

5 PRESIDING JUDGE STEINER: Thank you very much, Maître Liriss. Can we
6 please turn back into open session.

7 (Open session at 2.42 p.m.)

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

9 PRESIDING JUDGE STEINER: Thank you very much. Could, please, court usher
10 bring the witness in.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE STEINER: Mr Witness, welcome back.

13 THE WITNESS: (Interpretation) Good afternoon, Madam.

14 PRESIDING JUDGE STEINER: I hope that you had the opportunity to rest a little
15 bit?

16 THE WITNESS: (Interpretation) Yes, but so far I've had a headache and I still have
17 not overcome it.

18 PRESIDING JUDGE STEINER: Do you feel ready and willing to continue giving
19 your testimony?

20 THE WITNESS: (Interpretation) No, Madam, no, no, no, I do have a very bad
21 headache.

22 PRESIDING JUDGE STEINER: Would you prefer that we suspend the hearing for
23 today?

24 THE WITNESS: (Interpretation) If at all possible, yes, Madam.

25 PRESIDING JUDGE STEINER: Has the Prosecution any observation or any

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1 objection?

2 MS KNEUER: Madam President, if the witness does not feel strong enough to testify,
3 it should be supported.

4 PRESIDING JUDGE STEINER: The Defence?

5 MR LIRISS: (Interpretation) Defence agrees with the Prosecutor.

6 PRESIDING JUDGE STEINER: Mr Witness, since your well-being, it's important for
7 the Court, for the Chamber, for the parties and participants, we are not going to ask
8 you to do something that you are not feeling able to do, so we are going to adjourn
9 the hearing for today. We are going to ask VWU to provide you with all necessary
10 assistance coming from the doctor, or any kind of medication, or whatever you need
11 in order to feel better. We don't have a session tomorrow, which means that we are
12 going to adjourn for today and we will resume on Monday morning at 9.30 in the
13 morning, in Courtroom 2.

14 THE WITNESS: (Interpretation) Thank you, Madam.

15 PRESIDING JUDGE STEINER: So, if that is fine with Prosecution, legal
16 representatives and Defence, this is what the Chamber decides. Therefore, the
17 present hearing is adjourned. I thank very much Prosecution team, legal
18 representatives of victims, the Defence team, Mr Jean-Pierre Bemba Gombo. I thank
19 very much our interpreters and court reporters. We are going to adjourn this
20 hearing and resume on Monday morning at 9.30 in the morning in Courtroom 2.
21 I ask, please, court usher to accompany the witness.

22 (The witness stands down)

23 PRESIDING JUDGE STEINER: I apologise to the parties and participants. The
24 Chamber should have been informed about this situation before we came into the
25 courtroom. I also apologise to the public in the galleries. This could have been

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1 avoided, but with the understanding of all parties and participants, this hearing is
2 now adjourned.

3 (The hearing ends at 2.48 p.m.)

4 CORRECTION REPORT

5 The Court Interpretation and Translation Section has made the following correction
6 in the transcript:

7 *Page 33 line 4

8 "This is document 4 on the documents list of documents." Is corrected by "This is
9 document 4 on the Defense's list."

10 RECLASSIFICATION REPORT

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

12 ICC-01/05-01/08-3038 and the instructions in the email dated 9 January 2015, the

13 version of the transcript becomes entirely Public.