

Trial Hearing
Witness: CAR-D04-PPPP-0059

(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, 6 September 2012
8 (The hearing starts in open session at 9.08 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE STEINER: Good morning.
13 Could, please, court officer call the case.
14 THE COURT OFFICER: Thank you, Madam President. Situation in the Central African
15 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
16 PRESIDING JUDGE STEINER: Good morning. I welcome Prosecution team, legal
17 representatives of victims, Defence team, Mr Jean-Pierre Bemba. Good morning our
18 interpreters, court reporters.
19 We will continue this morning with questioning of Witness D-59 by the Prosecution, and
20 by the end of the day we will spare some time to discuss with the Defence the Defence
21 request for a status conference. Let's see how the questioning of the witness flows this
22 morning.
23 I ask, please, court officer to bring the witness in.
24 (The witness enters the courtroom)
25 WITNESS: CAR-D04-PPPP-0059 (On former oath)

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1 (The witness speaks French)

2 PRESIDING JUDGE STEINER: Good morning, Mr Dioba.

3 THE WITNESS: (Interpretation) Good morning, your Honour.

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

5 THE WITNESS: (Interpretation) Yes, your Honour.

6 PRESIDING JUDGE STEINER: Mr Dioba, I need to remind you that you are still under
7 oath; do you understand that, sir?

8 THE WITNESS: (Interpretation) Yes, your Honour.

9 PRESIDING JUDGE STEINER: And once again to remind you of our ground rules, that
10 you are expected to speak slower than normal and that you give the five seconds after a
11 question before you start giving your answer in order to allow our interpreters to finalise
12 not only the interpretation but the transcripts.

13 THE WITNESS: (Interpretation) Your Honour.

14 PRESIDING JUDGE STEINER: Mr Dioba, we all hope that today we can proceed with
15 the hearing without so many interferences or interventions better saying, and for that
16 purpose we would really appreciate if you could continue in your efforts to be as more
17 simple, objective and short as possible in your answers in order for us to advance to finish
18 with your questioning and to release you to allow you to go back in peace to your family
19 and to your country.

20 THE WITNESS: (Interpretation) Your Honour.

21 PRESIDING JUDGE STEINER: I'll give back the floor to Mr Iverson.

22 MR IVERSON: Thank you, Madam President, and good morning. Good morning, your
23 Honours.

24 QUESTIONED BY MR IVERSON: (Continuing)

25 Q. Good morning, sir.

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1 A. Good morning, Mr Iverson.

2 Q. Sir, I didn't see any documents with you this morning, and I'd like to ask you
3 questions about your report. I think it would probably be easiest if you had a paper copy
4 of your report in front of you so, to that end, I'd like to ask the court usher to supply the
5 witness with a copy of his report. And if the Defence would like to see it, by all means.
6 Sir, just as an initial matter, I notice that on every page of the document you refer to "The
7 case of the Central African Republic versus Jean-Pierre Bemba Gombo." Is there any
8 reason you did that?

9 A. Thank you, Mr Iverson. I'm making reference to that, because the case that has led
10 to Mr Jean-Pierre Bemba's being here is the case that has to do with the intervention of
11 troops from the Movement for the Liberation of the Congo in the Central African Republic.
12 Consequently this is a reference to the purpose of my study; that is to say my study does
13 not go beyond the framework of the intervention by the MLC troops in the Central
14 African Republic. Thank you.

15 Q. Sir, you were paid money to generate this report, were you not?

16 A. Thank you for the question, Mr Iverson. Any expert anywhere in the world, when
17 he is entrusted with a task such as receiving -- preparing an expert report, receives
18 resources in order for him to do his work. Otherwise how will an expert pay for travel to
19 another country, or to a particular place? So there is always compensation for preparing
20 an expert report. No matter who makes the request, no matter what side, it is a
21 prerequisite. Thank you.

22 Q. And when you're entrusted to generate a report, as you put it, details are important,
23 aren't they?

24 A. Thank you, Mr Iverson. When someone makes a request for an expert report from
25 an expert, one does not set limits. One is asking for light to be shed on a matter in one's

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1 particular area of expertise. And so what does that mean? Well, if clarification is
2 required, well, as an expert you have your tools, you have your approach for conducting
3 the analysis and you are not limited or restricted. You look at the issue, taking into
4 account what you know, your information, your methodological tools, your approach,
5 and you do your work. Otherwise if someone asks you for expertise and imposes things
6 on you, that just doesn't make sense. You are asked to provide clarification and you use
7 your tools, the tools that you have, bearing in mind your training, your specialisation and
8 the methodological tools that are available to you. Thank you.

9 Q. Are you aware that you are currently sitting in the proceedings called "The
10 Prosecutor ...", not "The Central African Republic..."? "The Prosecutor versus Jean-Pierre
11 Bemba Gombo"?

12 A. Thank you, Mr Iverson. Amongst the prerogatives of the Prosecution at the ICC
13 the Prosecutor can investigate a situation, but in this particular case this is a reference; that
14 is to say Mr Jean-Pierre Bemba was detained in relation to the MLC troops' intervention
15 in the Central African Republic. Thank you.

16 Q. Okay. Sir, could I ask you to turn to page 16 of your report, please, and look up at
17 me when you've finished turning to that page? I want to read a portion of your report
18 and I'm going to read it in English, but so everyone can follow along I'm going to start at
19 the third full paragraph on page 16. Do you see that paragraph, sir, starting with the
20 words "Aucun commandant"?

21 A. Yes, I see that, Mr Iverson.

22 Q. In your report you state, "No friendly or allied troop commander in Central Africa
23 had any operational discretion or control over operations. Therefore they cannot be held
24 responsible, much less the politicians of the troops' countries of origin." And going into
25 the next paragraph you state, "If it is difficult to hold the troop commanders responsible,

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1 how then can Jean-Pierre Bemba Gombo, who was never on the field of battle or in the
2 CAR, be held responsible for the conduct or other acts and actions of troops in the CAR?"
3 And this is my question, sir: You don't have any expertise in military operations at all?
4 You're a theorist?

5 A. Thank you for the question, Mr Iverson. A theorist in strategic matters can look at
6 operational command, but he is not someone who works in the field. What does that
7 mean? When I say that the friendly troops did not have the initiative in relation to
8 operations, my approach is from the strategic level.

9 And so what is being said at the strategic level? When within a command a joint -- when
10 joint troops are provided to a nation, or an organisation, those troops come under the
11 command and thus under the political and strategic responsibility of the country or the
12 organisation in question.

13 Let me continue. Let us take this particular example: The troops of the MLC. The
14 troops of the MLC were made available to the Central African Republic, and consequently
15 they became soldiers - manoeuvring soldiers - subject to the command of the CAR and
16 they were used in whatever way that the command wished because they had come under
17 their command. During such joint operations, those who come in do not take the
18 initiative. They receive their instructions - their strategic instructions - from their
19 strategists.

20 I'll give you an example. In the case of peacekeeping operations - United Nations'
21 peacekeeping operations - you will see that States provide the UN with troops and those
22 troops initially change status and they become peacekeepers, Blue Helmets, soldiers of
23 peace. They come under the strategic and political responsibility of the command set up
24 by the United Nations, so those people, those people who are responsible, they are the
25 ones who are responsible for the movements and the operations of those soldiers who

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1 belong to various States, but were provided. So they are not -- so it's not the original
2 countries that are responsible for those troops; those allied troops.
3 So that is why I made this statement. If the MLC troops had been provided to the
4 strategic and operational command of the CAR, well, that meant that those troops
5 automatically came under the control of the CAR. From a theoretical point of view, it's
6 quite clear. And since those troops were then under the responsibility - the strategic
7 responsibility, the political responsibility - of CAR command, it was the Central African
8 Republic officers who were responsible for the actions of those troops in the field
9 theoretically speaking. You don't have to be present on the field to see that, but since the
10 strategic -- correction, if the CAR strategists are known, and since the highest ranking
11 strategist at the time, the Supreme Chief of Armies, that was Ange-Félix Patassé. That is
12 why in the final analysis, since Jean-Pierre Bemba was not President of the Central African
13 Republic, where is his responsibility?
14 Any expert who wishes to carry out an objective piece of work cannot avoid asking
15 himself such questions, so that is why I asked such a question remaining within my field
16 of endeavour; that is to say policy and strategy.
17 Your Honour, if you allow me. If an expert wishes to do objective work, with a view to
18 shedding more light or providing clarification to a high court, such as this one, if an expert
19 does not ask such a question, one cannot be objective, but I wanted to do an objective
20 piece of work and so I asked that kind of question, and I said, in the final analysis, if the
21 troops, if there hadn't been a parallel General Staff, because that cannot exist, well then,
22 Jean-Pierre Bemba was not the political strategist, he was not the commander-in-chief of
23 the Central African Republic forces.
24 So the question is, what did he have to do with all of this, is an elementary question that
25 would be asked by any expert wishing to carry out an objective piece of work.

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1 Thank you, your Honour.

2 Q. Sir, actually, I didn't get an opportunity to ask you my question, but it's impressive
3 that you can give such an answer without a question but I'll move on, and I'd like to move
4 to page 4 of your report, and I want to read out the last paragraph. It's your introduction.
5 But before I read it out, I just want to ask you: You start off with the words of, "We
6 should do more."

7 Is this a recommendation that you're making, sir, as an expert?

8 A. Thank you, Mr Iverson. An expert does not make recommendations to a high court.
9 No, it is not a recommendation. One merely sets out the problems from an analytical
10 perspective. No serious expert, and above all not myself, who conducts an analysis on a
11 policy and strategical standpoint, no, no recommendations. This is just an observation
12 and an item of analysis. Thank you.

13 Q. Okay. I'd like to read out your observation. "We should do more than simply
14 limit ourselves to the legal and legislative framework based on the 'statements and
15 interpretations' of the current authorities in Bangui. Former rebel leaders using human
16 rights to rule on the Central African question, notably the 2001 crisis, which led to the
17 arrest of Jean-Pierre Bemba Gombo by the International Court. Such a perspective
18 would constitute a shortcoming and a serious error of justice in favour of the victors and
19 affects only an indirect and remote 'actor' having no significant role leaving the real actors
20 in the crisis and thus the real perpetrators of the crimes to go free and unpunished."
21 Sir, my question is, what are the legal shortcomings to looking at the law in a Court of
22 law?

23 A. Thank you, Mr Iverson. No expert may think that a court has such-and-such or
24 such a shortcoming. What I'm saying specifically is that there is a situation open in the
25 Central African Republic. I will give you a simple explanation.

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1 I will reason like Quintilian, who was a Latin philosopher, who lived through in the last
2 centuries and he asked himself easy questions for his analysis; who, what, when, where,
3 how? Who did what, when, where and what was the result?
4 On the basis of this simple reasoning by this Latin philosopher, I asked myself the same
5 questions. Who did what? There was an armed conflict which you can refer to as a war.
6 There were the Central African Republic armed forces and their allies against the rebel
7 troops of General François Bozizé. What did they do? There was this armed conflict.
8 When? During the period October 2002/March 2003. Where? In the Central African
9 Republic. And what was the effect? Violence perpetrated against civilians, which led to
10 serious violations of human rights.
11 Now, if we come back to this logic, put forward by this philosopher, everybody is in his
12 place. The stakeholders, the main players are known. What happened is known. The
13 site of the events, the sites are known, and the effects are well-known and on the basis of
14 all this you can now tell yourself, if you look at everybody in his or her own place, any
15 expert can ask himself these questions.
16 Since all the players are known, what is the place or the role of Mr Jean-Pierre Bemba in
17 this chain? And then you tell yourself, if human rights have been violated then you have
18 to examine the liability of each and every one. That is from a pluralistic approach. Do
19 not limit yourself to the legal characterisations, which I do not want to venture into.
20 That is why I am proposing, so as not to just remain at the legal level, to use several
21 approaches and better understand the responsibilities of each and every one so as not to
22 make the error of simply characterising facts and overlooking the real perpetrators of the
23 crimes and violations of human rights.
24 So this is just the perspective of someone who has a different approach from a purely legal
25 approach, and therefore proposes his own tools based on his area of training and expertise.

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1 Thank you.

2 Q. I'd like to move on to your conclusions, sir, but I do want to ask a follow-up
3 question here. So, you believe that it's an error to simply look into facts; is that right?

4 A. Thank you, Mr Iverson. Facts have people that are responsible for them, that is
5 there are perpetrators of facts, and facts do not just come from out of thin air; they don't
6 just happen ex nihilo. There is an author or a perpetrator of every fact, of every event,
7 and events happen because there are perpetrators, and my work is to ensure that light is
8 shed to the august Chamber, and I am saying that let us look at other responsibilities
9 because crimes have been perpetrated and no one can deny that, particularly myself. We
10 know that when there is an armed confrontation people die. That is inevitable. There
11 are serious violations of human rights, there are acts of violence, and any armed conflict,
12 at any level, leads to these consequences.

13 So my work was to try to provide clarifications to shed light for the benefit of this august
14 Court on the real perpetrators and that is what I did, based on putting simple questions.
15 We are working on facts or events, but there are people who are responsible for those facts
16 and those events and it is those people, the real people who are responsible, who have to
17 be identified.

18 Now, regarding the procedures of analysis, each person in his own domain carries out his
19 own analysis. I did my own analysis based on the tools that I received from my training
20 and that are available in my area of expertise.

21 Thank you.

22 Q. Sir, could I ask you to turn to page 20 in your report. I'd like to start reading with
23 the second paragraph, if you'd like to follow along.

24 You state in your report, the second paragraph of the conclusion, "We believe that for the
25 sake of democracy and human rights States and people need reconciliation, and this calls

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1 for a greater understanding of a case such as the one which brings us together in this
2 august Chamber.

3 In light of the foregoing, it is necessary to work towards reconsidering the extremely legal
4 approach which has its shortcomings, and move towards a wider approach involving
5 political and diplomatic considerations and rational strategies that demonstrate that
6 Jean-Pierre Bemba Gombo was in no way involved in the atrocities which violated human
7 rights in the Central African Republic in 2001 and 2002."

8 Sir, my question is this: You already listed what you believe the shortcomings of a legal
9 approach are, but it seems here that you are recommending, or observing as you put it,
10 that this Chamber take politics and diplomacy into account rather than the law; is that
11 right?

12 A. No, Mr Iverson. Let me explain this to you. What I'm saying is simple. This
13 august Court is purely legal. It is the International Criminal Court, the only such court in
14 the world. What I'm saying here is not a recommendation. I'm simply stating that the
15 law is very important, the legal approach is very important for the characterisation of the
16 facts, but for an overall understanding of the issues, in order to determine the level of
17 responsibility of each and every one, we cannot remain simply focused at the level of the
18 law.

19 In this case one can have a pluralistic disciplinary approach, in order to better understand,
20 and once we have had that understanding from a pluralistic approach and determined the
21 liability of each and every one, the rest would be up to the law.

22 One can use the political and strategic approach; that is for example at the level of the job
23 that I am doing it can assist at the level of determining the liabilities of each and every one.
24 I have been working as an expert and I cannot make recommendations, but there is no
25 standards preventing an expert from making suggestions, particularly since this is a

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1 document for internal consumption. It is intended for this august Chamber. It does not
2 contain recommendations.

3 However, based on the analysis, a suggestion can be made that you can also approach it
4 from this way or that way in order to determine the real perpetrators, and this does not
5 mean that we are encroaching on the legal domain, or that we are rejecting the purely
6 legal approach. It just means that, for an issue that is so complex, one can also approach
7 it from the perspective of the experts in order to determine the law in the final analysis.

8 Q. Sir, I'd like to continue with your conclusion right where I left off, "Although MLC
9 troops did attack civilians, Mr Bemba cannot be held strategically or politically
10 responsible since he neither controlled the troops nor had any political or strategic
11 decision-making powers, such powers being in the hands of the Central African high
12 authorities."

13 Sir, my question about this paragraph is: Do you believe we're here today to determine
14 strategic or political responsibility?

15 A. Thank you, Mr Iverson. Here we are talking about the facts, the acts of violence
16 that were perpetrated in the Central African Republic, but anything that happens is done
17 by someone. There are perpetrators of every act and, in order to determine those who
18 are responsible, one has to analyse those acts.

19 If those acts were perpetrated by MLC soldiers, well, as I sit here, I do not deny that there
20 were acts of violence, no. I have already stated that, whatever the level of armed
21 confrontation, there is always violence. You don't need to be a strategist to understand
22 that war implies death. I do not deny that, but what I'm saying is that this is not what I
23 worked on.

24 I said that, if acts of violence were perpetrated by MLC soldiers, let us not forget that it
25 was within the context of an armed conflict between two camps, the rebel troops of

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1 General François Bozizé against the Central African forces under President Ange-Félix
2 Patassé, and the MLC troops came to reinforce the troops of President Ange-Félix Patassé
3 and they did that under the command of the high CAR authorities.
4 If the excesses were perpetrated by the MLC soldiers this would still be under the
5 strategic and political responsibility of the Central African authorities, that is true, because
6 the troops came under the Central African Republic command, and these became the
7 tools - these troops became the tools - that were used by Central African authorities to do
8 what they wanted, so they are the ones who are responsible.

9 From the point of view of the theory of passive obedience, those who are responsible for
10 the acts perpetrated by soldiers on the field are the political, strategic and command
11 authorities. There was a President of the Republic, who was called Ange-Félix Patassé.
12 He had his -- he had his command, his General Staff and those are the people who were
13 responsible.

14 Now, if we go to the level of the theory of the intelligent bayonet --

15 THE INTERPRETER: Says the witness.

16 THE WITNESS: (Interpretation) -- this shows us that, if you arrest a soldier on the field,
17 then you have to punish him because a soldier is a professional and he has to think.

18 If the soldiers of the MLC perpetrated acts on the ground they had to be arrested, so it was
19 the operational command who had that responsibility to arrest them and to punish them,
20 even if they had to be prosecuted by the Central African jurisdictions where the crimes
21 were perpetrated, to ensure that those soldiers were punished.

22 That is why I'm saying that if those acts were perpetrated by soldiers, in light of the
23 second theory that I explained to you I am wondering how is Mr Jean-Pierre Bemba liable?
24 Any expert who carries out an objective assignment within the political strategic domain
25 must ask himself those questions, and those are the questions that I asked myself. Using

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1 my analytical tools, I wished to tell the august Chamber that I do not see how
2 Mr Jean-Pierre Bemba can be liable, whether at the political or strategic level. That is
3 simply what I wrote. Thank you.

4 Q. Sir, I'd like to continue with your conclusion. In your next paragraph you
5 make -- well, you say it's not a recommendation, you say it's an observation or a
6 suggestion, but it's a suggestion to prosecute.

7 Let me read it, "We believe that international justice, namely the International Criminal
8 Court, can help that country in the face of its limited and restricted capacity for
9 governance and performance and in terms of politics and institutions, politics and policy,
10 geopolitics, politics and strategy, economics and politics, by prosecuting those truly
11 responsible for weakening Central Africa who are still at large and some of whom are
12 today running the country."

13 Sir, do you believe that prosecutions for political reasons are appropriate?

14 A. Thank you, Mr Iverson. The work of the Court is not to initiate proceedings in
15 political trials. I simply want to say that the main players in the armed conflict in the
16 Central African Republic, whether you like it or not, are known.

17 There were two camps. I repeat, there were two camps. There was Hervé Couteau
18 Bégarie, who quoted Klaus Witz, stating that war is a duel, that is two camps fighting
19 against each other, and in such a conflict the players are known. There were the Central
20 African forces under the responsibility of the late President Ange-Félix Patassé and then
21 you had the rebel troops under the command of General François Bozizé. Those were
22 the players in that conflict that led to crimes, to acts of violence, that is those who were
23 responsible.

24 This is the conclusion that you will arrive following this simple logical reasoning, and
25 once these people who were responsible have been identified, you will see that they

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1 belong to the same social and state entity, the same geographical space known as the
2 Central African Republic.

3 That is why I have said what I said, because justice has the role of ensuring fairness, and
4 that is why I'm saying that in the final analysis, those who are truly responsible for those
5 crimes have to be identified in the Central African Republic. That is where it happened.

6 The parties to that conflict are known, and those were people from the Central African
7 Republic. One camp finally won the war on 15 March 2003.

8 In an armed confrontation, I know that in order to win the war you have to have killed the
9 enemy. To win the war and take over power, you have to have killed the enemy. Now,
10 is it possible to kill the enemies, or the enemy, without perpetrating acts of violence or
11 leading to collateral damage?

12 PRESIDING JUDGE STEINER: Do you situate as a collateral effect the rape of women?

13 THE WITNESS: (Interpretation) Thank you, your Honour. I'm talking about
14 collateral effects of war, because in my analysis -- or my analysis is strategic. I'm
15 interested in this question.

16 PRESIDING JUDGE STEINER: I repeat my question. You repeated ten times that a war
17 is a confrontation with violence, and in whatever confrontation with violence at the end
18 you kill people. My question is very simple: Raping women is also a necessary
19 collateral effect of a war, or an armed conflict, a confrontation between enemies? It's a
20 very simple question, Mr Witness.

21 THE WITNESS: (Interpretation) Thank you, your Honour. I'm also going to answer
22 that simply: No, you can't rape people.

23 PRESIDING JUDGE STEINER: Thank you. Thank you. I have my answer. You can
24 proceed.

25 MR IVERSON:

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1 Q. Sir, I'd like to continue --

2 PRESIDING JUDGE STEINER: Mr Iverson, sorry, I interrupted the witness. I wanted
3 him to finalise the answer to your question. Mine has already been answered.

4 MR IVERSON: Sorry.

5 PRESIDING JUDGE STEINER: You have the floor, Mr Witness.

6 THE WITNESS: (Interpretation) Your Honour, I had practically finished my
7 demonstration with regard to the question that Mr Iverson put to me, but I just wanted to
8 add another point, if you would allow me to do so, just to say that when acts of violence
9 are committed, or atrocities are committed, the perpetrators are arrested, the perpetrators
10 who've committed those atrocities are arrested, and they are put before justice, taken to
11 court.

12 Whatever the nature of the atrocities when they're committed in the field, even in a
13 military conflict, those people are arrested. Now, there could be a gendarmerie, military
14 police, but these people are arrested and they are punished. Thank you.

15 PRESIDING JUDGE STEINER: Since it appears that you are now giving your expert
16 opinion on more military issues, you made a comparison between this kind of conflict and
17 a peacekeeping mission composed by many countries, that when once deployed to a
18 country they are under the control of a third person or a third authority, if I well
19 understood your point.

20 You are saying that when troops that belong to peacekeeping missions commit crimes in
21 the territory, they are to be arrested and prosecuted by whom; the authorities of the
22 country or of their countries of origin?

23 THE WITNESS: (Interpretation) Thank you, your Honour. Well, I took the example
24 of peacekeeping operations in order to explain the level of responsibility, and that is the
25 reason why I told you that you can see when States, for example, make available their

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1 men to the United Nations, who are wearing Blue Helmets, they are under the command
2 of the United Nations.

3 Now, these men are under the control and the discipline of the command which manages
4 them and administers them. The rest depends on the mission which has been entrusted
5 to them. In my opinion, primarily, despite the fact that I'm not a lawyer, if let's say
6 atrocities are committed in a particular territory, and people can be arrested, they are
7 arrested, perpetrators are arrested in the field, and you have the possibility to present
8 them, first of all, to the court of that country, if the court of that country expresses the
9 need.

10 But other legal mechanisms, which I don't want to go into, do exist as well, certainly, in
11 order to punish, in one way or another, the perpetrators of these atrocities. But here
12 we're talking about very legal issues about which I don't want to enter into.

13 Thank you.

14 MR IVERSON:

15 Q. Sir, I'd like to continue with your conclusion and I'll just read the next paragraph.

16 The next two paragraphs, actually.

17 You state, "That would entail rejecting the widely-shared opinion of certain observers who
18 believe that the Court represents not only a new tool acquired by the West, in order to
19 impose neo-imperialism, thus reviving ipso facto the argument of a civilised nation, but
20 also the manoeuvrings of African leaders intended to neutralise political adversaries who
21 are militarily or politically formidable. Not subscribing to the conspiracy theory, we
22 believe that the Court's deployment mechanism in the Central African situation should be
23 reconsidered, particularly as regards Jean-Pierre Bemba Gombo who has no connection
24 with the destabilisation of the Central African Republic in 2001, or crimes against
25 humanity, save for the fact that the international community has decided to sacrifice him."

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1 Sir, my question is: Do you believe that there's an international plot against

2 Mr Jean-Pierre Bemba Gombo?

3 A. Thank you, Mr Iverson. We are still talking about responsibility here.

4 Responsibility. Now, in order to answer you, quite simply, I stated this opinion which is

5 widely shared. Any analyst who is interested in court issues, or issues of the ICC, and in

6 particular with regards to the African continent, cannot fail to form such an opinion, but,

7 having said that, when we state it in this way, having analysed this, as the true person

8 responsible for the atrocities, or those persons responsible are known, well, why,

9 therefore -- why, therefore, move against an actor who's far away from that?

10 Well, there's a direct perpetrator who can be identified, who can be found. These

11 directly involved actors can be found, and that is what I said, and that's what I have

12 observed after an analytical approach that I've taken in my field, a clear approach, an

13 analytical approach, with regards to objective questions within the framework of my

14 approach.

15 Thank you.

16 Q. Well, I was going to ask some follow-up questions but I think it's best that I just

17 move on at this point.

18 I'd like to read the last paragraph of your conclusion, and it's on page 21, sir: "The

19 release of Mr Bemba, a significant actor in the stabilisation of his country, the DRC, which

20 is currently overshadowed by the spectre of violence would also help the process of

21 stabilisation of this immense Central African state bearing in mind its strategic and

22 geostrategic significance in Central Africa's development."

23 Sir, you're advocating for the release of the accused here, are you not?

24 A. Thank you, Mr Iverson. The decision with regards to releasing the accused is

25 something for the Chamber ultimately. Now, the work that I carry out, this is a work

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- 1 which is aimed at an internal public and therefore it's aimed at the august Chamber.
- 2 Justice is about balance, and therefore if there's a suggestion, it's not a recommendation,
- 3 having analysed, having observed the political and strategic situation, if that is put to the
- 4 assessment of the august Chamber, well, it is that august Chamber which has admitted
- 5 me as an expert here. And so you make a suggestion which is put to the assessment of
- 6 the august Chamber, because the decision - and I state the decision - is up to the august
- 7 Chamber and, as for the rest, I prefer to keep to that. Thank you.
- 8 Q. Sir, I would suggest that you have an agenda. You've come here to testify, you've
- 9 taken the witness stand and the entire time you've used it to advocate your agenda.
- 10 You're biased, you're partial, you are not independent. You are just using the witness
- 11 stand to advocate your agenda.
- 12 A. Your Honour, does it mean if you put objective questions, is that synonymous with
- 13 bias? No. In this work I've made all the demonstrations possible, asking objective
- 14 questions, asking questions that any expert can ask themselves with regard to the
- 15 responsibility of Mr Jean-Pierre Bemba, and I have brought supports and the rest thereto.
- 16 Now, as to the rest, when it is a matter of suggestions, because what I keep saying is that
- 17 there is no norm as regards expert opinions which prohibit suggestions being made, and I
- 18 say that the document is -- this is a working document which is aimed at an internal
- 19 public.
- 20 It is not a matter of bias, no. It's about objectivity, asking the true questions with regards
- 21 to the responsibilities of everyone, and I finished by making some suggestions and I have
- 22 left it to the assessment of the august Chamber. When -- the decision is utterly
- 23 dependent on the august Chamber, and this is what I've done.
- 24 I'm not biased. I asked objective questions from a politico-strategic perspective, and that
- 25 is my field. That's my work. I'm not interested in legal issues. There are other experts

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1 who will carry out their analysis. They'll make their suggestions, they'll do their work
2 using their own methodological tools, but as far as I am concerned I asked the questions
3 that were needed in order to shed light on matters and in order to put it to the high
4 assessment of the high Chamber, the august Chamber.

5 PRESIDING JUDGE STEINER: Mr Iverson, if you allow me? Just to make it sure that I
6 understood this last explanation given by the witness, Mr Iverson referred to the last
7 paragraph of your report, in which you say that, "The release of Mr Bemba, an important
8 political man in the process of stabilisation of his country, would be equally a good way of
9 participating in stabilising DRC." Do you affirm that this is a neutral technical opinion
10 that should be given by an expert in a criminal case? Do you really believe that you are
11 being objective in this, at least in this point?

12 THE WITNESS: (Interpretation) Thank you, your Honour. I don't reason from a
13 criminal perspective. My reasoning isn't from a criminal law perspective. I'm not a
14 lawyer. I do it from the perspective of a politico-strategist, and as such I left it to the
15 assessment of this august Chamber. This is a working document, an internal document.
16 I left it to the assessment of the august Chamber, and I think that that is only the result of
17 a lot of questions that I put to myself throughout this work which I did myself with a
18 concern of objectivity.

19 Now, it is up to the others to criticise it. This is an intellectual work, put for the
20 assessment of others with other intellectual competencies who could have their own point
21 of view. Everybody has a point of view in accordance with their training, with their
22 education and with their analytical tools. Thank you.

23 PRESIDING JUDGE STEINER: It is your expert opinion, for instance -- I'm trying to
24 understand your point. I'm not criticising, nor advancing any opinion on your report,
25 but I'm trying to understand because sometimes you emphasise that you were being

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1 completely objective and based on your knowledge of political and strategic issues, but
2 sometimes it gives the impression that you are talking about people and not about
3 political or strategic issues. When you say that in your view Mr Bemba has played a
4 very important role - political role - in the stabilisation of the DRC, what is the basis
5 or -- the basis for this assertion, or this is just your deduction or your personal opinion?

6 THE WITNESS: (Interpretation) Thank you, your Honour. When we quote people in
7 the work, or we mention them in the work, the subject that brings us together is the
8 person, the person of Mr Jean-Pierre Bemba, former leader of the MLC, whose troops
9 participated in making the CAR secure, who participated in the political actions of his
10 country in 1999.

11 Well, from this period, well, as I -- if I take the Lusaka agreement, it doesn't mean that's
12 not going beyond that. I'm just taking a time frame for it. He played a significant role
13 then.

14 When I say that that should make it possible for the Court, as I said, I know that firstly
15 justice has a role to ensure balance between nations. I look at this issue with a
16 politico-strategic perspective. Someone who looks at the political level can see that and
17 any expert can give opinions. Any expert can give opinions, because when we write,
18 even if it's analytical, we express opinions, we choose words, we express opinions.
19 That's the reason why I said that it's with all objectivity, with a concern for objectivity, that
20 I asked that question, made that suggestion and I submitted it to the assessment of this
21 august Chamber.

22 Thank you.

23 PRESIDING JUDGE STEINER: Sorry if I just -- one final question in that respect. You
24 mentioned again, "... the Lusaka agreement, it doesn't mean it's going beyond that. I'm
25 just taking a time frame for it. He played a significant role then;" "then" you mean in

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1 the Lusaka agreement. Would you attribute the same important role as part of the
2 stabilisation of the DRC to the leaders of the Mouvement le Rassemblement Congolais
3 pour la Démocratie, Le Rassemblement Congolais pour la Démocratie ML, those other
4 groups that also participated in the Lusaka agreement? So they were very important
5 actors as well in the stabilisation of the DRC, is this what you are saying?

6 THE WITNESS: (Interpretation) Thank you, your Honour. When it comes to the
7 stabilisation of the DRC from the Lusaka agreement, this is something that will really
8 come under three components. There will be three components thereto: The Alliance of
9 Democratic Forces for the Liberation of Congo-Zaire, who were in Kinshasa; RCD-Goma;
10 and the MLC in Gbadolite. All were actors, significant actors all of them, every -- each
11 one of them at their own level. All of them were significant actors in the stabilisation of
12 the DRC.

13 PRESIDING JUDGE STEINER: And did the fight stop after the Lusaka agreements?

14 THE WITNESS: (Interpretation) Thank you, your Honour. The Lusaka agreement
15 was first and foremost a political agreement, the objective of which was a ceasefire. As
16 such, any political agreement for a ceasefire, whatever approach is taken, the first thing
17 that is put on the table is a cessation of hostilities; that is to say, the fighting stops,
18 everybody stays in their corner, there are no more clashes. Cessation of hostilities,
19 everybody in their areas.

20 So, from that time, once the political agreement is signed, for it to take legal substance,
21 once assigned, it takes legal substance and it becomes a guide, a legal guide for
22 functioning. From that moment, from the point of view of the signing of it and the
23 negotiations, you can say that the fighting stops but, your Honour, here sometimes we
24 talk about operations of men, and I said, when you're talking about disengagement, you're
25 talking about men's activities, and often these are actions which happen progressively.

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1 Men who withdraw materials are withdrawn in order for a war to cease. Once cessation
2 of hostilities is declared, it stops but sometimes you can't control little groups, you can't
3 stop skirmishes, but there are the main actors ensure that they are committed to a
4 cessation of hostilities and they take defensive positions.

5 So everybody goes back into their own corners and stays there, but what I would say is
6 that sometimes there can be skirmishes which sometimes are difficult to control, where
7 you have different groups of troops who are lost somewhat.

8 PRESIDING JUDGE STEINER: But then maybe you're talking about commanders that
9 have no control at all over his or her troops, so how can you imagine a military
10 commander without control over the troops even after the signing of a ceasefire
11 agreement?

12 I'm talking theory, I'm not talking about the specific case because I don't know anything
13 about that. It's just in theory. You're talking that there is a ceasefire agreement, which
14 is a political agreement, that implies in the obligation of a ceasefire each part stays in its
15 corner but sometimes fights continue because troops are uncontrolled; is that what you
16 said?

17 THE WITNESS: (Interpretation) Thank you, your Honour. I'm not saying that the
18 fighting continues. Once the commitment is made, the fighting in the traditional or
19 conventional sense of the word, no, they cannot continue. Once cessation of hostilities
20 begins, I was saying that you never know. It is possible there may be some skirmishes of
21 soldiers who have lost their way, but all commanders must have control over their troops.
22 Let me give you an example, a trivial example. Let us say that we are at home with our
23 children. Let us assume I am the father of seven children. I am the one who has control
24 over the children. However, one of them may lose his way and may go off and start a
25 fight somewhere, at a neighbour's home, for example. A child may go off and create an

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1 incident at a neighbour's home, or somewhere else, but that doesn't mean I don't have
2 control over that child. It doesn't mean that I have not been raising the child properly.
3 If we consider the human condition, we see that man is a dynamic creature, in constant
4 movement, because one can find all qualities amongst men. Men are not static, they are
5 dynamic and, consequently, that means that even if -- even if I have control over my
6 operations, it is possible, there is that possibility, that one or two soldiers may venture into
7 some area and depart from the standards that I have set.

8 That is what I mean, your Honour.

9 PRESIDING JUDGE STEINER: It's very interesting that this example you just gave us,
10 being the father of seven children, and one of them can create an incident at a neighbour's
11 home, or somewhere else, but doesn't mean you don't have control of that child. Very
12 interesting.

13 My question is: In case one of your seven children creates trouble or incidents with a
14 neighbour, who would be responsible for punishing the child; yourself or your neighbour?
15 I am following the example given by your expert, but if you have any objection?

16 MR KILOLO: (Interpretation) I thought, your Honour, that the witness is not our
17 expert witness but, rather, a witness coming before the Court to provide expertise.

18 PRESIDING JUDGE STEINER: Upon Defence request. I'm sorry, using the right
19 wording, it's upon Defence request and upon Defence instructions.

20 Proceed, Mr Kilolo.

21 MR KILOLO: (Interpretation) Your Honour, no doubt it was involuntary on your part,
22 but I do fear that this line of questioning may mislead the witness.

23 Either one should be direct with him, and saying clearly to him that you are putting a
24 hypothetical question to him, saying "Jean-Pierre Bemba, the MLC sends a detachment to
25 the Central African Republic," and if there are acts of violence or abuses attributed to that

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- 1 detachment, is he responsible? Did Mr Bemba, or did the General Staff headquarters,
2 have control over those troops?
3 I think it would be fairer to the witness to put the question in that way, but rather than us
4 making a number of rather virtual assumptions or hypotheses.
5 PRESIDING JUDGE STEINER: Thank you, Maître Kilolo. I think it's the first time that I
6 see in the courtroom one of the parties objecting to a question put by a Judge. It's really,
7 in this Court, some few things really, really amazing happen from time to time.
8 I just must say that I've been trying to obtain an objective answer from the witness, at least
9 the last five or ten minutes, and the only thing I obtain is exactly examples of fathers and
10 children, et cetera, et cetera, and that's why I followed that line; but if you prefer a more
11 direct question, I will try again to see if I obtain an answer from the witness that doesn't
12 start by "I will explain" and try to talk about fathers of seven children.
13 Many times you said that Mr Bemba had no responsibility at all by his troops that were
14 sent to Central African Republic and put at the disposal of Central African authorities. Is
15 that what you said or I am misinterpreting your words? Say "Yes" or "No," please.
16 THE WITNESS: (Interpretation) Thank you, your Honour. Mr Bemba was not
17 responsible for those troops made available to the Central African Republic armed forces.
18 Now if, and I'll return to my example of the father, as you --
19 PRESIDING JUDGE STEINER: For the record, I've just looked at Maître Kilolo in order
20 to justify why I continue in that same line of questioning.
21 Proceed, Mr Witness.
22 THE WITNESS: (Interpretation) Well, I needed to say something in response to the
23 Presiding Judge's question. Now, if we base ourself on this example of a father, if we are
24 talking about children who are of age, if we're taking that as our assumption, if they cause
25 an incident the State is organised and regulated and the children are arrested.

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1 One does not go and look for the father who is sitting at home, no. The children are
2 arrested because they are adults, they are of age. The police officers, or the gendarme,
3 arrest them and take them to Court. One does not arrest the father. The father has no
4 responsibility.

5 Now, if we continue with the example, let us assume that a father, for example, puts a
6 child in a boarding school. You see, in Africa we have many boarding schools. Let us
7 assume that a father places a child in a boarding school. The child is managed by the
8 establishment, by the boarding school. If the child does something silly at the boarding
9 school, it is the teacher at the boarding school who deals with him and punishes him, or
10 reminds him, of the discipline of the boarding school. One does not go fetch the father
11 who is back at home. That is what I am trying to say, if we continue with this example of
12 children.

13 Thank you, your Honour.

14 PRESIDING JUDGE STEINER: Mr Iverson, you can continue.

15 MR IVERSON: Thank you, Madam President.

16 Q. Sir, in the last paragraph of your report, and I already read it, I'm not going to read it
17 again, but you conclude that, "Mr Bemba was a significant actor in the stabilisation of his
18 country."

19 Since you're certainly aware that Mr Bemba led an armed group that for years waged war
20 in the DRC, I have to ask you: Does your definition of "stability" include conducting a
21 civil war?

22 A. Thank you. All peoples of the world today aspire to democracy. Democracy is
23 under threat, and so many people have to sit down and look at these issues and reflect.
24 If we chose the Lusaka agreement as our temporal boundary, the stakeholders including
25 Jean-Pierre Bemba, they sat down with a view to establishing or building a democratic

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1 republic, the Democratic Republic of the Congo. Consequently, the troops after the
2 Lusaka agreement had a new role. They were to provide security, ensure the boundaries,
3 stabilise the border and also the neighbouring country, if the need was there.
4 If we leave this particular framework and return to the case of the Central African
5 Republic, the request was made and troops went there. One cannot deny - one cannot
6 deny - that Mr Bemba was not a major stakeholder in the politics of his country. You
7 don't even need to be from the Congo to say such a thing. One only has to do some
8 studying.

9 I don't know Mr Bemba. I have never even met him. I've never met him. I don't know
10 him. However, since we are studying these issues, we cannot not say that
11 Mr Bemba -- one cannot not say that Mr Bemba was an important stakeholder and played
12 an important role in the stabilisation of his country.

13 Let us not forget that it was the alliance of the Democratic Forces for the Liberation of
14 Congo-Zaire, led by President Laurent-Désiré Kabila, who left the east and came and
15 destabilised the regime that was in place at the time that was led by Sese Mobutu, and so
16 the following or resulting events were just nothing more than a matter of
17 organising - reorganising - the country, getting the country back on track.

18 And I think everyone can see that Mr Jean-Pierre Bemba took part in that and he was one
19 of the primary negotiators of that agreement. He was present, because all those meetings
20 had to do with the life of the DRC if we take as our temporal boundary the Lusaka
21 agreement.

22 Thank you.

23 MR IVERSON: Madam President, I have no further questions for this honourable
24 gentleman.

25 PRESIDING JUDGE STEINER: Thank you very much, Mr Iverson.

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- 1 We still have ten minutes before the break and we are at a point at which every minute is
2 important, so I would suggest that we go immediately to the questioning by legal
3 representatives of victims. Is that fine with you, Maître Douzima, Maître Zarambaud?
- 4 MS DOUZIMA LAWSON: (Interpretation) We shall comply with the decision of the
5 Chamber.
- 6 PRESIDING JUDGE STEINER: Maître Douzima, if you are ready I would prefer that we
7 just start right now. We save ten minutes.
- 8 MS DOUZIMA LAWSON: (Interpretation) I thank you, Madam President.
- 9 QUESTIONED BY MS DOUZIMA LAWSON: (Interpretation)
- 10 Q. (No interpretation) -- as a legal representative of this group of victims I have asked
11 the Chamber for leave to put a number of questions to you regarding your report, and of
12 course I will ask you some questions about your testimony, the testimony that you have
13 been given -- been giving since Monday and up until today.
- 14 Now, to begin with, sir, I'd like to begin by putting a question to you about your report,
15 which is entitled "Study and analysis of the political/military crisis and the strategic
16 planning of joint operations in the Central African Republic 2001/2003."
- 17 My question is as follows: When were you entrusted with the task of preparing this
18 report?
- 19 A. Thank you, Counsel. I was asked to prepare this report and this request came from
20 the Defence. Our first contact over the telephone was towards late April, or early in May.
21 That is when we had our first telephone contact. That is to say, one day I had a call on
22 the telephone from a gentleman who introduced himself and said to me that he needed
23 someone to provide an expert report. Since I was a researcher at my centre and since I
24 had a particular interest in armed conflicts, so this was a form of expertise that I had
25 gained at the university and so we made initial contact. Well, we were speaking on the

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1 telephone first, and in June, the first half of June, this came to be; that is to say I received a
2 letter with instructions and I continued with the work.

3 Q. I suppose you're talking about April and May of this year, 2012?

4 A. Yes, of course.

5 Q. And when did you actually deliver this report?

6 A. Well, as soon as contact was initiated, on the basis of the request made I began in
7 May and June and until I think the first half of July. It was the first half of July that I sent.
8 It might have been around 11 or 12 July. In any event, since we're talking about human
9 memory and I've been testifying for four days, I don't have an actual document and so it's
10 somewhat difficult for me to give an exact date, but I believe it was during the first half of
11 July. And when we say "the first half," the first 15 days in French. I think we
12 understand one another. Thank you.

13 Q. How much time did it take you, one month or two months, to prepare this report?

14 A. I would say about two months, about two months, May and June. Two months
15 and a few days, I would say.

16 Q. Now, in practical terms, if we read the title of your report could you give us the
17 general gist of what you were asked to do?

18 A. Thank you, Counsel. I was asked to conduct an analysis of the intervention by the
19 Movement for the Liberation of the Congo in the Central African Republic. This was an
20 intervention that occurred during a crisis, the crisis of the Central African Republic, and
21 so I examined the crisis and the intervention by troops of the Movement for the Liberation
22 of the Congo.

23 Thank you.

24 Q. Do you think that two months was a sufficient amount of time to carry out this
25 work?

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1 A. Thank you, Counsel. Two months are sufficient for an expert. Why? Because
2 the whole issue of conflicts in the Central African Republic, this is not a new issue. This
3 is not something entirely unfamiliar to me. The crisis or the crises in the Central African
4 Republic are matters that we have been examining during our activities as a researcher, as
5 someone who conducts research into this issue of armed conflicts in Africa.
6 Once you have your methodological tools, Counsel, you know what you're talking about.
7 All you need is the data, and drafting a 20-page report for a university person, for an
8 academic, is not going to take two weeks. The most important thing is to have the data,
9 and in two months and a few days that is the time you need for a 20-page report if you
10 have those capabilities and, since my intellectual abilities are -- stand up to the task and
11 are equal to the task, I think it is quite normal for me to carry out this piece of work in two
12 months. Thank you.

13 MS DOUZIMA LAWSON: Thank you, Witness.

14 I realise it's time for our break now, your Honour.

15 PRESIDING JUDGE STEINER: Thank you, Maître Douzima.

16 Mr Witness, it's 11 o'clock. We'll have our short half-an-hour break. We'll be back at
17 11.30.

18 I ask, please, court usher to take the witness outside the courtroom. In the meantime, we
19 will suspend and resume at 11.30.

20 (The witness stands down)

21 THE COURT OFFICER: All rise.

22 (Recess taken at 11.00 a.m.)

23 (Upon resuming in open session at 11.38 a.m.)

24 THE COURT USHER: All rise.

25 Please be seated.

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1 PRESIDING JUDGE STEINER: Welcome back.

2 Could, please, court usher bring the witness in.

3 (The witness enters the courtroom)

4 PRESIDING JUDGE STEINER: Mr Dioba, welcome back.

5 THE WITNESS: (Interpretation) Good morning once again.

6 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?

7 THE WITNESS: (Interpretation) Yes, your Honour.

8 PRESIDING JUDGE STEINER: Maître Douzima, you have the floor.

9 MS DOUZIMA LAWSON: (Interpretation)

10 Q. Mr Expert, just before the break you stated that you had adequate time to carry out
11 the work assigned to you, and in your testimony on several occasions you mentioned
12 your sources, including the documents that were provided to you by the Defence. You
13 also mentioned documents that you researched, as well as books and interviews or
14 discussions that you had with certain individuals. Considering that you were given the
15 necessary resources, you travelled to the DRC to question certain people. Now, apart
16 from the DRC, where else did you travel to for the purposes of your assignment?

17 PRESIDING JUDGE STEINER: Before you answer, pay attention not to reveal the
18 location of persons that could be potential witnesses or could be seen as co-operating with
19 the Court. So be, please, very generic in your answer, please.

20 THE WITNESS: (Interpretation) Thank you, Madam President. Apart from the DRC,
21 before my visit there, as part of my activities I had travelled to the CAR as well as to
22 Gabon so as to cross-check the various opinions, as I said yesterday. I also met a certain
23 number of people in Cameroon who were in a position to provide relevant information to
24 me to enable a better understanding of the case, the players, the movements and whatever
25 could have happened. So I travelled in three countries and one country before that.

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1 MS DOUZIMA LAWSON: (Interpretation)

2 Q. Mr Expert, you have said that as part of your activities you travelled to the CAR.

3 Which activities were those?

4 A. Thank you, Counsel. At the time of my introduction here, I said that I am a
5 researcher in the research centre for strategic and political studies, so because of my
6 research activities I take out the time, as well as time from my academic activities, or
7 rather for the purpose of my academic activities I carry out analyses in areas related to
8 conflicts or security in the Central African region.

9 Q. Mr Expert, when did you travel to the Central African Republic as part of your
10 activities?

11 A. I went to the CAR in 2009. I had certain academic activities, and I was dealing with
12 an issue related to the problem of highway robbers. These are groups of bandits who
13 operate in the border areas between Cameroon, the Central African Republic and Chad,
14 and they are usually equipped with small calibre, light weapons. So they attack people,
15 and these were the trans-border activities that I was interested in.

16 Q. You therefore travelled to the Central African Republic as part of a study on
17 highway robbers, which is a phenomenon that is prevalent in Cameroon, the Central
18 African Republic and Chad. Now, as part of your expert study, did you travel to the
19 Central African Republic in the course of this year?

20 A. Thank you, Counsel. No, and I did in fact mention this in the document. I stated
21 that as part of my activities related to trans-border security obviously you would
22 sometimes discuss this type of issue, but with regard to this specific question of the case,
23 the instant case we are dealing with, I did not travel to the Central African Republic.

24 Q. And why did you not travel to the Central African Republic, since you have stated
25 that it was in fact the theatre of operations?

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1 A. Thank you, Counsel. The events that we are discussing today took place ten years
2 ago, and the research tools used by the expert at this level are mostly sources and for
3 those sources you don't need to travel to the Central African Republic because the conflict
4 is in the past. It has ended. So you identify the sources wherever you can identify them
5 in order to enable you to understand the situation, and these sources can be oral. Maybe
6 someone can tell you about another individual who took part in the fighting and he can
7 provide some information to you. Another person may have written an article - a
8 scientific article - on the situation and you can read what he knows about it. You can
9 also read further literature on the situation and familiarise yourself with what happened.
10 So the theatre of operations itself is no longer relevant because the conflict ended ten years
11 ago, and what is important is the relevant sources that can provide information for you
12 for your work.

13 PRESIDING JUDGE STEINER: Maître Douzima, if you allow me?

14 Just to make it sure if I understood the answer in the English translation, you said you
15 don't need to travel to the place because "... the conflict is in the past. It has ended. So
16 you identify the sources wherever you can identify them ... Maybe someone ..." -- okay.
17 Then my question is: In your view, the victims cannot be considered as sources of
18 information because the victims are in the Central African Republic? What are you
19 considering as sources? This is my question.

20 THE WITNESS: (Interpretation) Thank you, Madam President. The victims are very
21 important sources, that is when the focus of your study is the victims. Considering that
22 my expert analysis did not focus on the abuses or acts of violence against the victims, but
23 rather on the military deployment and the confrontations for the purpose of determining
24 those responsible, so as far as I am concerned it is the players that would enable me to
25 understand the political and strategic aspects of the conflict that I need to focus on.

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1 I am aware that there are victims - no one can deny that, especially not me - but I felt that
2 the issue of the victims themselves, the characterisation of the facts, constitute a legal
3 aspect and, since I'm not a legal expert, I did not want to get bogged down in that. I do
4 not deny that there are victims but, with regard to my analysis and my domain, the
5 victims were no longer a relevant source for me.

6 Thank you.

7 PRESIDING JUDGE STEINER: Thank you.

8 Maître Douzima, please.

9 MS DOUZIMA LAWSON: (Interpretation)

10 Q. Mr Expert, a short while ago you testified at length about your trip to the DRC as
11 part of your study and there you met with people who had information on the MLC, but
12 now you have said that when it comes to the CAR, which was the theatre of the conflict,
13 you did not need to go there. How can you explain this?

14 A. Thank you, Counsel. The issue here is really not one of a need. When you carry
15 out an expert analysis, each person in their domain would look for the sources that enable
16 him to understand the phenomenon so as to mobilise his methodological tools.

17 Why did I choose the DRC? Because I needed first hand sources to try to understand the
18 status of the MLC itself. What were the prerogatives of that movement and how did it
19 function, and based on its statute how was it possible for that movement to deploy to the
20 Central African Republic? How did the MLC actually carry out its activities in the CAR?
21 So my idea was to understand the mechanisms that enabled that deployment before
22 carrying out my analysis, so in my methodology, that is to examine liability or examine
23 the responsibilities, my sources would not have been the victims.

24 I am aware that since the conflict had taken place there must have been victims, but my
25 interest was not the victims because I wanted to leave the characterisation of the acts of

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1 violence to the jurists. My assignment was really to study the deployment of the MLC in
2 the Central African Republic, particularly their functioning and their acts in the CAR, and
3 try to determine the responsibilities before presenting them to the august Chamber.

4 Thank you.

5 Q. Mr Expert, you have just stated that you had to examine the presence of the MLC in
6 the CAR and this requires a trip to the CAR in order to be able to find out what the MLC
7 did there. What is your reaction to this?

8 A. Thank you, Counsel. In order to understand the deployment or presence of the
9 MLC in the Central African Republic, there is no need to travel to the CAR. It would be
10 sufficient to meet with those who were responsible and to speak with them and they
11 would be able to tell you what happened. So the point of departure is the MLC, and you
12 can also meet with other people who experienced the activities of the MLC in the CAR
13 without having to travel to the CAR itself.

14 I understand your position, it would have been interesting, but it is not relevant.

15 It is important to find sources, relevant information, about the presence of the MLC in the
16 Central African Republic; that is from sources in the MLC, for example, and other sources
17 in other countries who experienced that military presence. But, once again, let me repeat:

18 I did not interest myself in the acts or abuses perpetrated, I was not interested in that.

19 At the same time, I do acknowledge that there were abuses and acts of violence. In any
20 armed conflict there is violence and I am convinced that there were victims, I cannot deny
21 that, but what was of interest to me was the strategic action of the MLC in the Central
22 African Republic, their presence there, in order to determine the responsibilities. Why
23 were they there? How did they deploy there? Who was in command? Who was their
24 leader? Who gave them orders?

25 That is what I can say, Counsel, thank you.

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1 PRESIDING JUDGE STEINER: Maître Douzima, first I would recommend that you go
2 back to the questions authorised by the Chamber or, if you are putting questions that arise
3 from the testimony, you please give the reference because it appears that we are going a
4 little bit too far in this line of questioning that is not related either with the questioning
5 itself nor is within the questions authorised by the Chamber. And before that, Judge
6 Kuniko Ozaki would like to take the floor.

7 JUDGE OZAKI: I would like to have a clarification from the witness on what he has just
8 said in answering to the question posed by Maître Douzima.

9 You said that there is no one who are responsible in those conflicts in -- currently residing
10 in CAR, that is why you didn't travel to the CAR. Does this mean that from -- in order to
11 conduct your political/military strategic research you thought that you didn't need to talk
12 to anyone, anyone in CAR? I'm not talking about victims, I'm not talking about abuses
13 and the human rights violations, I'm talking about political/military situation, which is the
14 subject matter of you, according to you. But are you saying that for these purposes, for
15 your purposes of political/military studies, you didn't need to talk to anyone in CAR?
16 Thank you.

17 THE WITNESS: (Interpretation) Thank you, your Honour. What I wanted to say,
18 firstly, I would like to clarify. There are people responsible for this conflict who are in
19 the Central African Republic and who live in the Central African Republic. Okay? But
20 I had already a certain number of tools which were used to make this dossier and among
21 them there were a number of significant facts or data from certain sources, significant
22 sources, from the Central African Republic upon which I could base myself in order to
23 make progress with regards to my analysis and, as such, with this information to hand, I
24 no longer saw a reason - relevant reason, I no longer saw a relevant reason to go to
25 Central African Republic because I already had a certain amount of data concerning

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1 certain significant actors who were in the Central African territory. In order to carry out
2 such a work, you don't have to meet everybody.

3 Thank you.

4 MS DOUZIMA LAWSON: (Interpretation) Your Honour, I really don't intend to move
5 away from the list of questions which the Chamber authorised me to put to the witness.
6 The next question, or the follow-up question which I put, comes out of the answer that I
7 was given, so I was just going back to that. Now, there was the question that Judge
8 Ozaki has just asked, and that makes me want to -- or, rather, the answer that was given
9 to that, the answer that was given to the question put by Judge Ozaki, makes me want to
10 ask a certain number of questions and I think, your Honour, then it would be good to go
11 into private session because I'm worried that names will be mentioned.

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

13 *(Private session at 12.06 p.m.) Reclassified as Open session

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

15 MS DOUZIMA LAWSON: (Interpretation)

16 Q. Expert, in your report, and the reference is (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted) Could you tell us exactly in what period he assumed this
20 responsibility?

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. And it's exactly this time frame, this era that I'm talking about at the moment.

25 A. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. Am I to understand that you don't remember exactly what happened at that time?

5 A. I am sure that (Redacted)

6 (Redacted) Now, I

7 can -- I can also state that we're talking about a matter of human memory here which, I

8 mean, a date can be forgotten and we're not talking about a computer here, we're talking

9 about human memory here, for four days is -- before you without looking at a single

10 document and explaining matters, so it's possible that I might have forgotten a date that

11 was given but the important time frame is (Redacted)

12 Q. Expert, you said on (Redacted)

13 (Redacted)

14 (Redacted) that these were formers soldiers of the Central African forces (Redacted)

15 (Redacted)

16 A. Thank you, Counsel. (Redacted)

17 (Redacted) What was

18 important, as far as I was concerned, was to have people, people who had been there and

19 who were able to make it possible to understand a certain number of points in order to

20 carry out my work. So their status is of little importance to me, (Redacted)

21 (Redacted) whatever; that wasn't the point that was of

22 importance to me.

23 MS DOUZIMA LAWSON: (Interpretation) Your Honour, I think we can go back into

24 open session.

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

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1 (Open session at 12.12 p.m.)

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

3 MS DOUZIMA LAWSON: (Interpretation)

4 Q. Expert, in your report, and the reference is CAR-D04-0003-0401, page 3, you stated
5 that the successive episodes of sociopolitical crises and politico-military crises had made
6 the Central African Republic have a spectre of a ghost state. What exactly do you mean
7 by this ghost state?

8 A. A ghost state? Well, this is an expression, it's a metaphor, it's a metaphor that we
9 use a lot in political studies. What does this mean? Well, in fact, you take a metaphor
10 with regards to a ghost, a ghost. In Africa, and when I speak about "ghost," perhaps the
11 Africans who are here will understand better, when you talk about the ghost is haunting
12 your house. That means death, there's death. The ghost is haunting your house, there's
13 death. So you therefore take this transposition, we put it into political studies and we
14 construct what are ghost states. They are states haunted by death. They live under the
15 spectre of violence.

16 When a state is living under the spectre of violence, then there's death, and this is a
17 metaphor which we use to speak about ghost states. These are states which are in
18 difficulty, under the spectre of violence, and I would say death, but alongside that you
19 have other people who will speak about failed states, for example.

20 Yesterday I mentioned the William Zartman who speaks about failed states. Others
21 speak about quasi-states, but these are words. These are expressions. These are
22 expressions that are used to try and demonstrate what the situation is with regards to a
23 certain number of states. Thank you.

24 And so, excuse me, I tried to apply the expression "ghost state" to the Central African
25 Republic, because the Central African Republic of course was undergoing violence, a

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1 spectre of violence, and so the population could not enjoy security and they were living
2 with the spectre of death and ghosts.

3 Q. Thank you very much, Expert. I note that a ghost state is a state in difficulty, a
4 failed state, haunted by death. Can a state of such a type in your expert opinion -- well,
5 could you tell us how it could be organised?

6 A. Thank you. When we say that death is haunting your house, that doesn't mean
7 that everybody's dead, or everything's dead. No, the ghost enters, or the ghost haunts
8 your house. The spectre of violence that I described here concerning the Central African
9 Republic does not mean that the Central African Republic was disintegrated. No, the
10 Central African Republic, or the Central African Republic state, exists or existed, if we
11 have to speak about this period. That doesn't mean that the state was dead, no.
12 When you speak, or when you talk, about a failed state, it doesn't mean that it's
13 disappeared. A Central African state had not disappeared. A Central African state
14 existed indeed under the supreme authority of Ange-Félix Patassé. There were
15 institutions, but the institutions were weakened. There was a population who were
16 living under the spectre of violence, because ultimately, Counsel, armed conflict, what
17 does that involve, imply? Well, it implies death, because a bullet that is flying out of a
18 rifle, it doesn't choose. It kills.

19 So this conflict established a spectre of violence in the Central African Republic and the
20 weakening of the Central African state which was in difficulty even to carry out its
21 security functions, and it's in this sense that you have to understand it. So I'm talking
22 here -- well, I have to say this is a metaphor. "Ghost state," et cetera, these are metaphors,
23 constructions, expressions that are used in political studies. Thank you.

24 Q. Thank you, Expert, for your explanations which were clear, which enable me to see
25 what state the CAR was in at this time.

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1 I will now go on to another reference, CAR-D04-003-402 (sic), page 4 of your report, and
2 there you mention that, "One shouldn't limit oneself to judicial legal structures on the
3 basis of construction statements of the current authorities in Bangui, or (indiscernible)
4 rebel chiefs, who instrumentalised human rights, in order to decide on the Central African
5 issue particularly in regard to the crisis in 2001 which led to bringing Mr Jean-Pierre
6 Bemba before international justice." That's what you said at the time.

7 Now, the question that I wanted to ask was firstly what do you understand by this
8 construction statement, déclaration construction in French?

9 A. Well, you have to consider this as an authorised lexical construction. For example,
10 what I wanted to say by this here is that you have people, they make statements and that
11 leads to an instrumentalisation of human rights. Do you see what I mean by this?
12 Now, the actors made war, or they were in armed conflict, armed conflict or war. This is
13 something that I'd say to take back Klaus Witz, this is a duel which puts two parties
14 against each other, they're fighting, and so there are people fighting and what's certain is
15 that on the one side and on the other there were human rights violations on the part of
16 both sides.

17 Now, if those who won, for example, speak about human rights, that's where I consider
18 that sometimes these become constructive statements which instrumentalise human rights,
19 which use them as an instrument. Thank you.

20 Q. If you can, can you give an example of such a construction statement or constructive
21 statement in the case in point?

22 A. Thank you. The act of focusing on MLC troops alone, who came in support of the
23 Central African Armed Forces. The Central African army forces had an armed conflict
24 which was imposed upon them by rebel troops. Both parties clashed, and it is certain
25 that in one camp and another, both sides, there were atrocities that were committed.

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1 There were human rights violations committed.

2 But the fact that there was a focus only on MLC troops makes me ask the question -- well,
3 here you have a conflict that took place in a territorial space called the Central African
4 Republic, with Central African Republic actors involved, but you haven't understood that
5 atrocities were only committed by MLC troops who came to reinforce the army of the
6 Central African Republic. That can't be right. That's instrumentalisation. That is
7 reflection, in my opinion. That's my reflection. That can be instrumentalisation and, as
8 such, a construction.

9 Q. If I understand you correctly, it is the current authorities who have focused on the
10 MLC forces?

11 A. Thank you, Counsel. Everything that is being done at the moment happened, or
12 everything that was done happened in the Central African Republic. Now, whatever the
13 level, whatever the level of the accusation, you can't talk about the Central African
14 Republic issue without referring to Central Africa, and as such this Central African
15 Republic is a state which has authorities.

16 Thank you.

17 Q. Expert, you didn't answer my question. I will go on to the next question. You
18 spoke about a crisis in 2001, which led to bringing Jean-Pierre Bemba before international
19 justice. Now, what crisis in 2001 are you referring to in this case?

20 A. Thank you, Counsel. Well, you have to understand the crisis from 2001 to 2003.
21 And why do I take 2001 as the basis for that? I speak about that because the starting
22 point of the armed conflict which commenced in October 2002 goes from 2001. It was at
23 the time that General François Bozizé carried out the coup d'état which failed, which led
24 to a withdrawal later, and it was from that time that there were incursions that were made
25 into Bangui and therefore the opening of hostilities from October 2002.

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1 And this clash that started in 2002 and gone to March 2003, that ended with the victory of
2 Bozizé and that meant that the Central African State represented by Patassé
3 represented the -- there was the MLC troops. And it was following the atrocities that
4 were committed within the framework of this armed conflict, 2001 to 2003, it was in the
5 framework of the atrocities that were committed by the troops that Mr Jean-Pierre Bemba,
6 who was responsible for the MLC, was brought before justice. You have to understand
7 that as a starting point; a starting point which finishes in March 2003 with the victory of
8 General François Bozizé. Thank you.

9 MS DOUZIMA LAWSON: (Interpretation) I'm going on to another subject and the
10 reference is CAR-D04-0003-0408, page 10.

11 Q. In your document you spoke about a mini-summit of Sahelo-Saharan countries
12 which was held in Khartoum in Sudan, and it was on 3 December 2001, following which
13 there was a press release and a memorandum of understanding which were made
14 according to which the summit had decided to send a CEN-SAD force for the -- in order to
15 preserve security and stability in the Central African Republic, and you added that it was
16 in accordance with this mini-summit that the MLC had been called upon to make
17 available to the Central African Republic its troops, the MLC. Was this part of the
18 CEN-SAD forces?

19 A. Thank you, Counsel. Well, you have to understand the nature of the Khartoum
20 summit. It decided to make the Central African Republic secure, to preserve the
21 sovereignty of the Central African Republic, but the summit gave the co-ordination of all
22 the operations linked to that securitisation to President Ange-Félix Patassé and this
23 summit, well, it gave the tools to Mr Ange-Félix Patassé and it was Mr Ange-Félix Patassé
24 who called upon the MLC troops of the Congo. The summit did not limit the field of
25 action, or the scope, that Ange-Félix Patassé had. The Congo is not part of CEN-SAD,

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1 that is to say the DRC is not part of CEN-SAD, but the summit gave free play to
2 Ange-Félix Patassé to co-ordinate everything.
3 Now, the troops from CEN-SAD having left, Ange-Félix Patassé said "have use of others,"
4 and that is why he called upon not just as Head of State of the CAR but also as the one
5 who was co-ordinating these operations to make his country secure. He is the one who
6 called upon the MLC, and I stress this point, I return to this point. The MLC troops,
7 Counsel, did not just get up one fine day and cross the river to go over to the Central
8 African Republic. The people in charge of the MLC did not just get up one day and
9 decide to send troops to the Central African Republic. The Central African Republic had
10 authorities, and you and I -- you and I can be quite sure that it was the political and
11 strategical authorities of the Central African Republic, led by Ange-Félix Patassé, called
12 upon the troops of the Movement for the Liberation of the Congo.

13 Thank you.

14 PRESIDING JUDGE STEINER: Maître Douzima, may I put a follow-up question?

15 Following this line of thoughts of the expert witness, if President Patassé had decided to
16 call private armed groups from whatever countries, the presence of these private armed
17 groups in CAR would be legitimate, or legitimised, by the fact that they were called by
18 President Patassé?

19 THE WITNESS: (Interpretation) Thank you, your Honour. We are talking about
20 private groups, and if these groups were called upon, if President Ange-Félix Patassé
21 called for these troops, Ange-Félix Patassé, as the President of the Republic, as the
22 embodiment of the institutions of the Republic, he was the one who thereby gave
23 legitimacy to that because he had the political, legal and strategic tools to do so. If he
24 called upon them to come in, that meant they were legitimate. This conferred legitimacy
25 upon them.

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1 Thank you.

2 PRESIDING JUDGE STEINER: Maître Douzima, please.

3 MS DOUZIMA LAWSON: (Interpretation)

4 Q. Sir, your last reply leads me to ask you the following question: Should a Head of
5 State confer legitimacy upon an armed group?

6 A. Thank you, Counsel. In the case of the CAR, the President of the Republic is the
7 head of the armed forces. When he calls upon troops, the troops that arrive go from
8 being under the strategic command and go to his strategic and political command as head
9 of the armed forces. The troops become soldiers, part of the strategic structure of that
10 country, under the leadership of that particular president and, thus, these soldiers become
11 men or soldiers of that country and they fight under that country's command because they
12 are troops that were made available. There's no question about it. So this confers
13 legitimacy. I am talking about the legitimacy of those troops because he was the one
14 who made the political decision to bring in these troops. And when those troops came in,
15 they fought and they were under his orders, the orders of the commander-in-chief.
16 Those troops came under the command of the commander-in-chief of the Central African
17 Republic. Consequently, they became soldiers provided to the political and military
18 authorities of the CAR. In the final analysis, they could do what they wanted with them.
19 There's not different ways of giving them legitimacy. The troops were given legitimacy.
20 Thank you.

21 PRESIDING JUDGE STEINER: Again, following your line of thoughts, if a president of a
22 country, whatever country, calls the troop of mercenaries to fight against a coup d'état,
23 these mercenaries in that country they become a legitimate presence within the armed
24 forces?

25 THE WITNESS: (Interpretation) Thank you, your Honour. A Head of State does not

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1 call upon just anyone. A Head of State does not call upon just anyone. One must make
2 a distinction between organised troops that belong to a state and mercenaries, mercenaries.
3 Quite often, mercenaries are not great troops. Quite often, they are given missions and
4 they carry out the missions. So one must make this distinction because the troops of the
5 MLC, who came to Bangui, were not mercenaries, no. The troops of the MLC who came
6 to the Central African Republic were not mercenaries, and they certainly were not rebels.
7 They were certainly not rebels.

8 Let me explain to you what I mean by that. I'll put it in simple terms: A mercenary is a
9 trader, someone who is called in to carry out a mission, a business person. A rebel,
10 rebels are insurrectional forces that rise up against a government that is in place, their
11 own government in their country.

12 In the case of the Central African Republic, there were two camps that were quite
13 well-identified; there was the rebel side, the rebel camp, that was known. They were led
14 by General François Bozizé. On the other side we had the armed forces of the Central
15 African Republic. The troops of the MLC, which subsequent to the Lusaka agreement
16 had a status, were called upon to come and fight alongside the government army and
17 those troops were not mercenaries, nor were they rebels. In the final analysis, one can
18 even say that they had become soldiers, as plain and simple as that, because they came
19 under the banner of the CAR, commanded by the CAR, given uniforms by the CAR and
20 weapons by the CAR.

21 Thank you.

22 PRESIDING JUDGE STEINER: Just to make it clear that at no point I suggested that
23 MLC could be a group of mercenaries. But, in any case, again you did not answer my
24 question, but I think we could move forward, Maître Douzima.

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

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1 Q. Witness, you've just said that the MLC troops were not mercenaries, nor were they
2 rebels, nor were they government troops. If that is the case, how would you describe
3 them?

4 A. Thank you, Counsel. Let us return to the Lusaka agreement. This agreement was
5 the political and legal foundation for the operations of the DRC between 1999 and 2003.
6 Now, this agreement gave certain responsibilities and certain status. Three forces were
7 recognised that were needed to ensure security. First of all, the forces of the government
8 in Kinshasa; then the forces of the MLC; and, thirdly, the forces of the RCD. So these
9 were forces that had institutional legitimacy and status within the DRC, and this was
10 based on the Lusaka agreement, and now these forces that were called upon by the CAR,
11 when they arrived, they came under CAR command alongside regular forces of the CAR
12 that was fighting against rebels. There's no question about it, they became soldiers.

13 PRESIDING JUDGE STEINER: Sorry, Maître Douzima. I understand the doubt of
14 Maître Douzima in terms of the right qualification of the MLC troops because the witness
15 is attributing to them the quality of forces of the DRC as a result of the Lusaka agreement.
16 At the same time, and I will bring the reference later, the military expert called by the
17 Defence qualified the MLC as a private armed group. That's why I used this expression
18 "private armed group." So in my view this is not compatible with the idea of troops that
19 are part of the government forces, and this is the doubt that maybe in your expertise you
20 could clarify to us.

21 THE WITNESS: (Interpretation) Thank you, your Honour. I am a specialist --

22 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

23 MR KILOLO: (Interpretation) Your Honour, once again I certainly would like to read
24 the excerpt of the transcript of the military expert's testimony. What we've gathered is
25 that -- well, it is true that the military expert specified that the MLC was a paramilitary

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1 force, but he immediately specified that the troops deployed in the CAR were a fighting
2 force comparable to the FACA and other -- or comparable to the presidential forces
3 fighting for President Patassé.

4 Now, mention was made of an ALC contingent, and they were referred to as rebels or
5 mercenaries and the --

6 PRESIDING JUDGE STEINER: Maître Kilolo, maybe we have a problem in -- another
7 problem in translation. I'm not talking about rebels or mercenaries again. I will find the
8 reference, I don't have the transcripts here, but the military expert said not the contingent,
9 but the MLC troops were a private armed group since even the commander-in-chief was
10 not military. So he qualified as a private armed group, and this is how the translation
11 appeared in the transcripts, mentioning even the fact that the commander-in-chief was a
12 person without any military education, or formation, I don't remember. In that sense,
13 not that it is a rebel group or a mercenary, I'm not qualifying that, but I will bring to you
14 the exact quotation of the transcript.

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

16 I would like to remind my learned friend opposite that I was the one who asked the
17 question of the military expert. I asked him to explain what he meant by "paramilitary
18 troops," and when he gave me explanations he said that it was a private force.

19 Now, I'd like to move on to another reference, CAR-D04-0003-0413, page 12.

20 Q. Sir, during your testimony - and actually you've just said it once again - you said
21 that the MLC joined the CAR Armed Forces and you said that the MLC came under the
22 command of CAR authorities, and on that page you stated that Commander Moustapha,
23 who was leading the MLC unit, followed the orders and directives that came from the
24 Chief of Staff Armed Forces CAR, General Antoine Gambi, or his deputies.

25 Could you tell us during which period of time did the general give those orders to the

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1 commander, Commander Moustapha?

2 A. Thank you. I think you need to consider two periods of time. The first one is the
3 time during which Betibangi was commanding. He had a number of health problems,
4 and so the command was actually provided by his deputy, Antoine (sic) Mazi. He was
5 giving the orders. That was November 2002. General Gambi was Chief of Staff, so
6 I think you need to understand that point.

7 As the commander of the General Staff, he was the operational commander. He was the
8 one who issued orders. Even if he delegated, even if he delegated some things, he was
9 still the boss. He was the Chief of Staff. At the military operative level, he was the boss.
10 He was the one giving the orders. Thank you.

11 Q. We will be going back to that issue of the orders. Now, my question is: It was in
12 2002 that General Gambi, Chief of Staff, began to give orders to Moustapha?

13 A. Moustapha did not come under the command of General Gambi. He came in
14 before that time. You mustn't forget that Moustapha was the chief - the leader - of a unit
15 and that was at the tactical level. He commanded units that were automatically put
16 under the operational and strategical command of the CAR General Staff, so he came
17 under the command of the political and strategical authorities of the CAR.
18 Consequently -- and let me explain. The strategic level is political and military in nature.
19 It is civilian and military in nature. You will find high-ranking officers and politicians at
20 that level. Whether you like it or not, the Chief of Staff takes part from a theoretical point
21 of view at that level; at the strategic level.

22 That is why I say when Moustapha arrived he -- well, there was one Chief of Staff when
23 Moustapha came in as the head of the MLC troops, but the Chief of Staff he had some
24 health issues and during that time the orders came from his deputy, Mr André Mazi.
25 Later on towards November, unless I'm mistaken, when General Gambi -- when Gambi

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1 was appointed Chief of Staff, he -- he was the boss of the orders. He can delegate. I'm
2 speaking at a theoretical level. He was the Chief of Staff. He was the one commanding
3 the General Staff.
4 Now, if you look inside at the tactical level you might delegate things to lower-ranking
5 officers, but not so much at the operational level. He was the Chief of Staff, certainly
6 above the strategy. He was the supreme commander of the -- correction, above at a
7 higher level was the supreme commander-in-chief, Ange-Félix Patassé.

8 Q. Witness, finally you have answered my question. Now, you said that Commander
9 Moustapha received orders from the Chief of Staff, Antoine Gambi, or his deputies, his
10 immediate deputies. That is what you have said, and you have just told me in response
11 to my question that he had been appointed in November 2002. Consequently -- so,
12 Witness, you're confirming that it was as of November 2002 that the MLC troops were
13 being commanded by General Gambi as the Chief of Staff of the army. Are you aware of
14 certain orders issued by General Gambi to Moustapha, at least through the documents
15 that were provided to you by the Defence, the documents that allowed you to make such
16 a statement?

17 A. Thank you, Counsel.

18 PRESIDING JUDGE STEINER: Mr Witness, just one moment.

19 Maître Kilolo?

20 MR KILOLO: (Interpretation) Your Honour, I think, or rather I fear, that we are
21 starting to venture into military endeavours. Our witness has said quite clearly that he's
22 an expert in political and strategical matters, and when it comes to operational matters, or
23 tactics, now my learned friend is asking him questions about operational orders that were
24 passed on to Colonel Moustapha at the time. I fear that we may be moving beyond the
25 boundaries of our witness's expertise.

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1 PRESIDING JUDGE STEINER: Maître Douzima, would you like to make any
2 observations on the objection put by Maître Kilolo?

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

4 I think it's a pity that my learned friend has objected to my question. At the
5 beginning of -- at the very beginning of the examination, when I asked a question the
6 witness said that he had had enough time, he had his sources, he gave his sources, and he
7 confirmed that he had a number of documents, and he made all these statements on the
8 basis of these documents and I am just trying to give him the opportunity to confirm or
9 justify. I really have no intention to ask him whether he received a message, or whether
10 he saw a handwritten or hand-delivered message or anything like that. I'm merely
11 asking him for the source of the information that he has put down in his report, black on
12 white.

13 PRESIDING JUDGE STEINER: You can proceed. The objection is overruled. You can
14 proceed, Maître.

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

16 Q. Allow me to repeat my question. Sir, by way of the documents that were provided
17 to you, did you become aware of any orders issued by General Gambi to Commander
18 Moustapha?

19 A. Thank you, Counsel. I don't want to dwell on this for too long, but I've told you
20 that in any military organisation there is the level of strategy, that is both political and
21 military in nature or civilian and military in nature. We are -- let us remain at the
22 theoretical level. I said that Commander Moustapha came in at the head of the troops,
23 and there was a Chief of Staff of the armed forces, Mr Betibangi, who was having health
24 issues.

25 Now, during -- in the meantime, his deputy was replacing him temporarily. Then later

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1 there was a Chief of Staff of the armed forces who was -- who had been appointed,
2 Mr Antoine Gambi. Still within my political strategic domain, that is why I say that the
3 MLC troops had come under Central African command, but the boss at the operational
4 level was the Chief of Staff of the armed services. This means that at that time the Joint
5 Services Chief of Staff was General Gambi.
6 So even if he delegated responsibilities at the tactical level, when you study the theoretical
7 analysis you have no option but to conclude that the commander is the Chief of Staff. He
8 could have delegated to the field commanders, but I don't want to go there, but I can only
9 say that at the operational level, the commander was the Chief of Staff. At the
10 political/strategic level, the highest-ranking person was the president of the republic who
11 was supreme commander of the forces.

12 PRESIDING JUDGE STEINER: I have to interrupt you because I promised the reference,
13 and here it is: It's transcript 234, and I'm talking about the French version, page 26,
14 starting by line 18, and because it is in French I'm going to read it in French, the question
15 put to the military expert called by Defence. (Speaks French) "What is a paramilitary
16 force?" The expert's answer: "A paramilitary force is a private armed force which is not
17 integrated into the national armed forces of a country and which is structured as a
18 traditional armed unit with a pyramidal structure." Question: "In one of the references
19 you stated that the term 'insurrectional' used by your military expert colleague called by
20 the Prosecutor would not be appropriate within the context of the MLC presence in the
21 CAR and that it would be more appropriate to describe the MLC as a paramilitary
22 organisation. And in the answer that you gave me a short while ago you said it was a
23 private force. Is that the case with the MLC?" Answer: "This is a force that belongs to
24 a political movement, so one can consider that it is not a national force." Question: "So
25 it is a private force?" And the answer: "In a way, yes."

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1 You can continue, Maître Douzima.

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

3 Q. Witness, I do not dispute everything that you have just said. To even reinforce
4 what you have said, with the leave of the Presiding Judge, I would like to ask that a
5 document be displayed on the screen, that is document number 13 of the legal
6 representative, and the reference is CAR-D04-0003-0137.

7 Mr Witness, are you able to see that document?

8 A. Yes, Counsel.

9 Q. Did you see this document while carrying out your study?

10 A. Thank you, Counsel. This document simply confirms the fact that the MLC forces
11 were under the command of the Central African General Staff.

12 Q. Mr Witness, I'm not asking you to read the document. My question is simple: Do
13 you know this document? Did you see this document while preparing your report?

14 A. Thank you, Counsel. I have looked at this document, and it issues orders
15 regarding a counter-offensive in the field. I am not interested in tactical operations
16 relating to counter-offensives in the north or the centre, I'm interested in the strategic and
17 political aspects.

18 Thank you.

19 Q. Once again, Mr Witness, you have not answered my question. A short while ago,
20 in relation to what you wrote in your document, that is that it was General Gambi who
21 issued orders to Moustapha, that is in his capacity as a Chief of Staff, I asked you a
22 question about that and this is why I'm showing you this document which is, in fact,
23 signed by Antoine Gambi.

24 What I would like to know is whether this is one of the documents that led you to
25 conclude that Commander Moustapha received orders from General Antoine Gambi?

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1 A. Thank you, Counsel. Let me repeat my answer: The first thing I can say is that it
2 does, indeed, confirm that the MLC troops were under the command of the General Staff
3 of the Central African Republic, because it is the General Staff that gives orders for tactical
4 deployment on the field and, as Chief of Staff, General Gambi was the operational
5 commander.

6 Secondly, you can see that in the final analysis it is written here that MLC forces or, rather,
7 you can realise that MLC forces were placed at the service of the Central African General
8 Staff. Now, regarding whether it was an oral source that informed me that General
9 Gambi issued orders, and that is quite obvious, I can say that this document is not in
10 dispute.

11 Thank you.

12 Q. Do you have any knowledge of the immediate subordinates, or deputies, of General
13 Gambi?

14 A. Thank you, Counsel. I have said it before that I was interested in the political and
15 strategic level. During crisis periods in a country there is a lot of movements. There are
16 transfers, defections and so on, so I was looking at the institution itself, the Central
17 African military institution. I looked at the political and military structures, as well as
18 the command, so the names of individuals that can be mentioned today, or tomorrow,
19 were really not of great interest to me. I was examining the institutional structures
20 within the context of my area of expertise which led me to the analysis that I carried out.

21 Q. Mr Witness, a short while ago you told me that you did not need to go to the Central
22 African Republic to source information relating to what the MLC did in the CAR. You
23 had other sources that enabled you to prepare your report, and the document that I've just
24 shown you you have said that it confirms what you said. So at this stage, with the leave
25 of the Presiding Judge, I would like to ask that document 2 of the list of the legal

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1 representative, and the reference is CAR-V20-0001-0130.

2 PRESIDING JUDGE STEINER: Maître Douzima, what is the level of confidentiality of
3 the document?

4 MS DOUZIMA LAWSON: (Interpretation) It is confidential.

5 PRESIDING JUDGE STEINER: So the blinds need to be lowered, and --

6 (Pause in proceedings)

7 PRESIDING JUDGE STEINER: Maître Douzima, before you put your question, I see that
8 this is a document brought by legal representatives, which means that you attributed to
9 this document the confidential -- the confidential character. Are you sure it should
10 continue as confidential? Apparently, it's an official document. It's just a question.

11 MS DOUZIMA LAWSON: (Interpretation) Yes, indeed, your Honour. The document
12 itself is public, because it can be found in the Secretariat-General of the Government of the
13 CAR.

14 THE INTERPRETER: And correction from the interpreter: That document is
15 CAR-V20-0001-0130.

16 PRESIDING JUDGE STEINER: Any observations from Defence or Prosecution in that
17 respect?

18 MR KILOLO: (Interpretation) We defer to your wisdom, your Honour.

19 MR IVERSON: No objection from the Prosecution, Madam President.

20 PRESIDING JUDGE STEINER: Therefore, the Chamber reclassifies the document as
21 public and it can be discussed in public session.

22 You can proceed, Maître Douzima.

23 MS DOUZIMA LAWSON: (Interpretation)

24 Q. Mr Witness, I see that you have your glasses and that you are able to read. Can
25 you read the title; that is the title only?

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1 A. Thank you, Counsel. "Decree number 03.013, appointing senior officials of the
2 national army to positions of responsibility."

3 MS DOUZIMA LAWSON: (Interpretation) Thank you. Let us go to the next page.
4 There is the word "Decree." Court officer, can you please move to the next page and it is
5 stated "Decrees"?
6 Now, Mr Expert, can you please read out this page?

7 A. "Decrees. The senior officers below are appointed or confirmed in the following
8 position: Chief of Staff of the Joint Services, Colonel Antoine Gambi; Deputy Chief of
9 Staff of the Joint Services, Colonel Dieudonné Seregaza. This decree repeals all previous
10 and contradictory provisions and takes effect as from the date of its signature. It shall be
11 registered and published in the official gazette. Done in Bangui 10 January 2003."

12 Q. And who signed that decree?

13 A. Ange-Félix Patassé.

14 Q. Mr Witness, do you stand by your statement that the MLC, or Commander
15 Moustapha, received orders from a certain General Gambi as from November 2002?

16 A. Thank you, Counsel. We saw a text a short while ago on the screen. Who signed
17 that text; that is the text ordering Moustapha to place troops at the disposal of operations
18 in the centre and the north? In order to fully understand who signed that text and when,
19 a short while ago we had a document on the screen. So that we should be on the same
20 wavelength, we need to look at that text with the leave of the Presiding Judge so that I
21 should better understand.

22 PRESIDING JUDGE STEINER: Maître Douzima, which document is the witness talking
23 about?

24 MS DOUZIMA LAWSON: (Interpretation) The document that the witness is asking for?
25 It is document number 13; that is CAR-D04-0003-0137.

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1 THE WITNESS: (Interpretation) No, I'm asking for the previous document that was on
2 the screen before this one.

3 Thank you, Counsel. This document is dated 25 November 2002, "Brigadier-General,
4 Chief of Army General Staff." The document is dated 25 November 2002 and the
5 document is signed "Antoine Gambi."

6 Madam President, what I'm saying is that, on the basis of this document, General Gambi
7 was the Chief of Staff and as the Chief of Staff he issued orders. The orders could have
8 been given by delegation, but those were his orders as the Chief of Staff.

9 Now, regarding the second document that Maître Douzima presented, it is a decree of the
10 Head of State and it may be a document simply confirming the position of the Chief of
11 Staff. It does not mean that Mr Gambi was not chief before, because we have a document
12 here dated 25 November 2002. This means that on this date General Gambi was actually
13 issuing orders, and the decree of 2003 may have been a document prepared at the political
14 level simply to confirm the general in his position.

15 Thank you, Counsel. So these documents would have allowed me to arrive at that
16 conclusion. I would stop here. Thank you.

17 MS DOUZIMA LAWSON: (Interpretation) In order to assist the witness, I would like
18 to ask the court officer to display on the screen document number 3 of the list of the legal
19 representative, and the reference is CAR-V20-0001-0130.

20 THE COURT OFFICER: (Interpretation) Can you confirm the level of confidentiality of
21 that document?

22 MS DOUZIMA LAWSON: (Interpretation) Just like the previous document it was
23 initially confidential, but it is a document that can be public.

24 PRESIDING JUDGE STEINER: The document is reclassified as public and can be
25 discussed in public session.

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1 You can proceed, Maître. You have two minutes left.

2 MS DOUZIMA LAWSON: (Interpretation)

3 Q. Mr Witness, let us do what we did a short while ago. Please read the title only.

4 A. "Decree 03.096, appointing senior officers of the National Army, the President of the
5 Republic."

6 Q. That will be enough, Mr Witness.

7 A. It is necessary to point out that the constitution of 15 March 2003, that is the day on
8 which General François Bozizé took over power after having a military victory. That is
9 the same day that he took over, he issued this decree. Colonel Bemaka-Soui Michel was
10 appointed, as well as Colonel Antoine Gambi.

11 PRESIDING JUDGE STEINER: Maître, I'm really sorry, but we have the problem also
12 with the tape. We have to adjourn for now.

13 Mr Witness, we are very sorry that we couldn't finish with your questioning today. As
14 you may know, tomorrow we don't have hearings, which means that you will have to
15 spend the weekend far from the Court. I hope you take your time in order to take some
16 rest and to be prepared for Monday. On Monday, I'm sure the legal representatives will
17 finish with your questioning and Defence will be given the opportunity to put to you
18 some follow-up questions. We thank you very much, wishing that you have a very
19 restful, long weekend.

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

21 (The witness stands down)

22 PRESIDING JUDGE STEINER: In the meantime, court officer, please turn into private
23 session.

24 *(Private session at 1.29 p.m.) Reclassified as Open session

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

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- 1 PRESIDING JUDGE STEINER: Maître Kilolo, just because we have this problem
2 tomorrow, that we are not able to sit in court, the status conference that you requested,
3 can Defence wait until Monday in order to have a precise date for it?
- 4 MR KILOLO: (Interpretation) We defer to your wisdom, your Honour.
- 5 PRESIDING JUDGE STEINER: Yes, just because we need -- the Chamber is thinking
6 about having the status conference exactly at the end of the testimony of the current
7 witness and half-an-hour before we start with the next one, which would mean it would
8 be in the very same time allocated for the hearing. So this is the Chamber's proposal,
9 which means that would be on Monday, or maybe on Tuesday morning, depending when
10 we finish with Witness 53, in order to avoid having another hearing in the afternoon.
11 That's the Chamber's proposal, but we will turn back to it on Monday morning.
12 Is that fine with you, Maître?
- 13 MR KILOLO: (Interpretation) We have no problem with that, your Honour.
- 14 PRESIDING JUDGE STEINER: Thank you very much for your understanding.
15 Let's turn into open session, please.
16 (Open session at 1.31 p.m.)
- 17 THE COURT OFFICER: We are in open session, your Honours.
- 18 PRESIDING JUDGE STEINER: Just to thank very much the Prosecution team, legal
19 representatives of victims, the Defence team, Mr Jean-Pierre Bemba Gombo, our
20 interpreters and court reporters, reminding parties, participants and the public that we
21 won't have a hearing tomorrow, which means that we will adjourn today and resume on
22 Monday at 9 in the morning.
23 The hearing is adjourned.
- 24 THE COURT USHER: All rise.
25 (The hearing ends in open session at 1.32 p.m.)

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