

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 Monday, 3 September 2012
8 (The hearing starts in open session at 9.07 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE STEINER: Good morning and welcome.
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: Thank you.
17 Good morning and welcome the Prosecution team, Maître Douzima. I'm sure that
18 Maître Zarambaud is about to arrive. Good morning Defence team, Mr Jean-Pierre
19 Bemba. Good morning to our interpreters and court reporters.
20 Today we'll start with the testimony of the second expert witness called by Defence,
21 Witness CAR-D04-PPPP-0059, specialist in politics and strategy, Mr Octave Dioba. No
22 application for protective measures or special measures has been made for the witness.
23 Maître? Welcome, Maître Zarambaud.
24 I was saying that no application for protective measures or special measures has been
25 made for the witness and, therefore, I ask please, court usher, to bring the witness into the

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1 courtroom.

2 (The witness enters the courtroom)

3 WITNESS: CAR-D04-PPPP-0059

4 (The witness speaks French)

5 PRESIDING JUDGE STEINER: Mr Dioba, good morning and welcome.

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

7 PRESIDING JUDGE STEINER: First of all, the Chamber would like to thank you for
8 taking the time to come and give evidence before this Court.

9 Mr Dioba, I hope that somewhere in front of you there is a card on which it is printed the
10 solemn undertaking, and I would like to ask you, please, to read out the words of the card.
11 If the card is not there I ask, please, court usher to provide it to the witness.

12 THE WITNESS: (Interpretation) I solemnly declare that I will tell the truth, the whole
13 truth and nothing but the truth.

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

15 You have provided the Court with a report comprised of 27 pages. Mr Dioba, to the best
16 of your knowledge, are the contents of that report a true reflection of your views
17 impartially stated?

18 THE WITNESS: (Interpretation) I can assure you of that, your Honour. This report,
19 which was subject to a personal study, reflects my point of view.

20 PRESIDING JUDGE STEINER: Mr Dioba, although you will be testifying in open
21 session, and with your identity known to the public, there are some victims, witnesses and
22 other people connected with this case whose identities are not publicly known.
23 With the help of the Defence, I would ask you that you exercise caution in mentioning the
24 names of persons who may be considered vulnerable in the context of the present
25 proceedings.

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1 You will be questioned first by the Defence, then by legal -- by the Office of the Prosecutor
2 and, finally, by the legal representatives of victims that were authorised by the Chamber
3 to put some questions to you. Lastly, the Defence will be given the floor to clarify or to
4 follow up some of the answers you'll be giving.

5 Mr Dioba, now there are some ground rules that must be observed during questioning.

6 As you can see, we have interpreters and court reporters. Everything you say is being
7 translated simultaneously into English, and everything that is said in English is translated
8 in French. For that reason, it is crucial that you try to speak slower than normal, as I'm
9 doing now, in order to allow our interpreters and court reporters to do their job.

10 Because sometimes that seems unnatural, it is likely that you start speeding up. In that
11 case, I will have to interrupt you and ask you to slow down. Please don't take offence.

12 It's just for practical purposes.

13 Finally, Mr Dioba, we have another rule which we call "the five-seconds golden rule."

14 That means that, after a question is put to you, you need to wait five seconds before you
15 start giving your answer in order to allow interpreters to finish with the translation of the
16 question. I hope that's fine with you, and again I apologise in advance if I have to
17 interrupt you in order to remind you of these practical rules.

18 Are you ready to start with your testimony, sir?

19 THE WITNESS: (Interpretation) Thank you, your Honour.

20 You asked me first of all to introduce myself. This is something that I am going to do.

21 I'm called Dioba Octave and I am from Gabon. I am a researcher in political and strategic
22 issues at the centre for political and research studies of the University of Yaoundé II.

23 I think that for the moment I could perhaps stop there for my presentation, given that
24 everything else, for example my matrimonial situation, are of a private nature.

25 PRESIDING JUDGE STEINER: Thank you, Mr Dioba.

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1 I will give the floor then to Maître Kilolo, lead counsel for the Defence. He will be in
2 charge of questioning you.

3 Maître Kilolo, you have the floor.

4 MR KILOLO: (Interpretation) Thank you very much, your Honour.

5 QUESTIONED BY MR KILOLO: (Interpretation)

6 Q. Mr Dioba, good morning.

7 A. Good morning.

8 Q. You've already introduced yourself. Could you speak to us about your academic
9 background, if you would be so kind?

10 A. Thank you, Counsel. Well, first of all, because we are in open session, I would like
11 to give certain clarifications with a view to providing for better understanding. I'm not
12 here as a factual witness. I am here following up a work of in-depth reflection that I was
13 asked to carry out with regard to the intervention of the MLC in the Central African crisis,
14 and it is therefore further my admission to the list of experts of the Court that I am here in
15 order to present this work and to discuss it with all the parties here.

16 When the rebel troops of General François Bozizé and the Central African Armed Forces
17 were fighting in Bangui, I wasn't there. As such, I'm not a factual witness. I am here as
18 an expert and to provide the Court with expertise and, if you would allow me to say so,
19 I'm not a Central African, nor am I Congolese. It is therefore with a concern of objectivity
20 and neutrality and of distance that has guided me taking the floor before this esteemed
21 Court, which is a symbol of international justice and of human rights and of the harmony
22 of peoples.

23 Having said that, in order to answer your question, Counsel, I started my
24 studies - primary studies - at public school in Dienga, the south of Gabon, and secondary
25 at the Lycée of Gramotu (phon). After I got a baccalaureate I then went to University in

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1 Omar Bongo in the Human Sciences Faculty, and then thereafter I then went to study
2 communication with an option - social economic option - and thereafter, as I was
3 interested in political issues, I therefore went to University of Yaoundé II to the Centre of
4 Political Research and Studies on Politics and Strategy and Defence Strategy and Security
5 Conflict Management, and in the same framework, much more with regard to my
6 specialisation, I was admitted for an internship - well, a research internship it should be
7 clarified here - to the higher court in -- the Defence Court in Yaoundé - this is also what's
8 called the war school - where I was very much interested in aspects relating to the military
9 command and peacekeeping operations, geopolitics, the geopolitics of Central Africa, civil
10 and military actions which were carried out, civilian and military actions, and also given
11 that France was obviously a very important partner, also their activities, also looking at
12 their role with regards to the former colonies. And obviously I'm here -- I was also a
13 researcher, and since then I have been carrying out activities at this centre with a course
14 on the geopolitics of armed conflict in Central Africa.

15 Q. Beyond your own academic background and your internship as a researcher, did
16 you take part in any colloquia or seminars on strategy and geopolitics?

17 A. Yes, of course. I indicated in the CV that I provided the Court with that the last one
18 which I took part in goes back to last April, and this was on the new forms of threats that
19 there were in Africa, the problems; strategic problems, legal problems and political
20 problems. This was a colloquium which was organised by the Interim Defence Court,
21 which was addressed or addressed this new form of conflict in Africa where the
22 conventional norms of war are no longer respected and what to do. Well, there were lots
23 of questions which were put to a certain group of academics, specialists, issues of -- well,
24 military issues and issues relating to conflict. You know that in a field such as this one
25 you always participate in seminars at all levels, so obviously it's difficult to list all of them

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1 given that, well, it has been happening for a long time now.

2 Q. In your capacity as an expert in strategy and geopolitics of armed conflict in Central
3 Africa, what was your speciality with regards to a military expert?

4 A. Thank you. Well, in order to understand strategy, first of all, well, I have to say it
5 can seem -- well, it does seem a bit strange to have a civilian talk about strategic issues,
6 because I'm not a military person. I'm not a soldier. I'm a civilian, it has to be said.
7 Now, when it comes to strategy, obviously at the start this was the art of the general, so
8 this was if you like in the hands of the military, but now, with new forms of conflict and
9 the complexity that has arisen, a lot of civilians are now involved in military issues. So
10 when it comes to -- well, I'm a strategist. This is different from a military strategist,
11 because fundamentally a military strategist is an operator. This is somebody - an
12 operator - involved in war, but what I am, this is a strategist, somebody just reflects on the
13 issues of war.

14 So the military, well, that's a -- a soldier is a person who's trained for war. A strategist is
15 a theorist, who reflects on issues - military issues - and who has a theoretical perspective.

16 A soldier is in the field. He can carry out a war. He could be in the theatre of
17 operations, while the general strategist normally is just involved in reflection on this and
18 is able to give certain ideas outside the strategic mindset of a soldier.

19 So that is the difference between a military expert and myself. An expert in the field is
20 able to go into the field to organise the troops, to tell you to go from point A to point B. I
21 am a theorist. I reflect on war operations and military issues.

22 Q. What are the countries of Central Africa which you have concentrated on within the
23 framework of your expertise?

24 A. Well, it's true, as I said, the geopolitical seminar for armed conflict in Africa, which
25 we carry out, this is something that firstly is of interest to Central African countries which

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1 are in conflict, obviously.

2 If you observe -- well, if you look at a map and you look where the crises are in Africa,
3 you will note that Central Africa since about 20 years is a zone where conflict is almost
4 endemic in that area, and as such I have very much been interested in the Central African
5 case, particularly in the Congo -- well, in the two Congos, but also in Chad.

6 So if you see these countries which are part of the CEMAC area, then these countries at
7 least recently, much more Congo recently, Central African Republic and Chad, these have
8 been subject to turbulence, but there's also a very important point to raise here with
9 regards to this area, and this is that a lot of geopolitical specialists consider the triangle of
10 death.

11 The triangle death. What's that? That's this area which is situated from the Chad,
12 Central African border, Cameroon, where there is a huge amount of banditry, where
13 people are -- where you have people who cut the roads. These are armed robbers. They
14 stop people. They sometimes attack peaceful citizens on the roads and then they flee into
15 the forest, sometimes taking the property of these people.

16 This is an area which is at high risk and we are very much interested in this area.

17 Personally, I'm very interested in this area, given that the actors - or the robbers - are often
18 people who have light, small calibre weapons. So sometimes we ask ourselves: Where
19 do these arms come from? So this is an area which is very interesting to study, for
20 somebody who deals with conflict in Central Africa.

21 Q. To your knowledge, how many research centres are there in francophone Central
22 Africa, in the area of geopolitics and strategy in armed conflicts?

23 A. If I consider Central Africa like the geographical space inside CEMAC, or the
24 Central African Community of States, I believe as far as I know there are just -- there is
25 just one centre in that area, at least as far as I know, and it is for that reason that that

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1 centre receives researchers from many countries in the Central African area.

2 You also have civilians and members of security and defence forces, except there have
3 been new developments recently. I believe the Centre for Strategic Studies in the
4 University of Yaoundé II is the only centre existing in that domain for the time being.
5 That is as far as I know.

6 Q. While talking about the francophone African countries, you have mentioned
7 CEMAC and CEAC. Can you clarify what those acronyms mean?

8 A. CEMAC and CEAC are what we know as original economic organisations.

9 CEMAC is the Economic and Monitoring Community of Central African States, and it has
10 six members: Cameroon, the Central African Republic, Gabon, Equatorial Guinea, Chad
11 and Congo. This is a regional economic organisation specialising in development and
12 there is a single currency being used in all those six countries, that is the CFA franc, which
13 was originally linked to the French franc but now is linked to the euro.

14 The CEAC is the Economic Community of Central African States and it is a larger group
15 bringing together not only the countries of CEMAC, that I've talked about already, but
16 also includes a certain number of countries from the Great Lakes region; including the
17 Democratic Republic of Congo, Burundi, Angola, and there was also Rwanda but, if I'm
18 not mistaken, during the Heads of States Summit in Kinshasa in 2007, Rwanda had
19 expressed the desire to withdraw. So I believe Rwanda is no longer a member of CEAC
20 today.

21 So, generally speaking, this was a description of those two groupings. In summary,
22 CEAC is larger, while CEMAC is smaller, but both organisations are devoted to
23 development in the Central African region.

24 Q. Mr Dioba, did you ever carry out any study and research trips?

25 A. Yes, of course. It is not possible to reflect on conflicts in the Central African region,

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1 or republic, and then you stay in your office. I did in fact travel to Congo, to the Central
2 African Republic, in 2009 and I analysed the issue of highway robbers.

3 I tried to analyse the situation based on interviews with several sources in order to better
4 understand the situation, because the researcher is someone who relies on sources, given
5 that he is not always present at the time of the events, but then he has to travel to the site
6 and carry out analysis based on his own methodology and come out with conclusions.

7 As you know, in the area of social sciences, which is of relevance to us here, people say a
8 lot of things, but at one point you have to make a distinction between epistemological
9 issues and then you analyse the facts rigorously before drawing conclusions.

10 Q. With regard to the methodological tools, what framework did you use? What
11 analytical framework did you use for your report?

12 A. Strategic sciences are part of what we generally refer to as social sciences. There is
13 a certain amount of tools that the researcher can use in this area, but in this particular case
14 of the report I relied on observation, observation through conversations or interviews.

15 This means that I went out and met with people who could provide important
16 information and then you sort it out.

17 There is also documentary analysis, which is looking at a certain number of projects or
18 publications that have been issued on the same issues by other researchers and then you
19 try to have an understanding and then come up with your own point of view. So these
20 are methodological tools used in social sciences and these are the type of tools that I relied
21 on in the theoretical approach.

22 So, in a nutshell, you have discussions, analysis of documents, and then personal or
23 individual interviews with people who might have played a role in a particular event.

24 These people can provide answers to you based on their own personal experiences which
25 you could use to extrapolate and come out with deductions in an attempt to understand

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1 the issue on which you are working.

2 Obviously, a researcher is not someone who passively accepts everything that he is told
3 by the sources. He tries to determine relevance, probability, reliability of what has been
4 said, and comes up with the elements that would be important for his own work.

5 Q. In document number 3 of the Defence list, which is your report, page
6 CAR-D04-0003-0421, amongst your sources there is a title "Documents provided to us by
7 the Defence," and these are documents that include various witness statements from
8 people who were questioned or interviewed at the time by the Office of the Prosecutor.
9 My question to you is this: Did you have the opportunity to go through these various
10 documents?

11 A. Yes, of course, I used these documents as part of my sources. I used them for my
12 work.

13 Q. Very well. You also mentioned oral sources. Can you throw more light on that?
14 And, if it is necessary, we might have to go into private session for you to give more
15 details.

16 A. Yes. Of course I met with a certain number of people. As I said, I analysed the
17 documents from the Defence, but I also wanted to meet with other people. And, as you
18 have said, I think we should go into closed session because most of those people are
19 former soldiers – (Redacted) and those people
20 hesitated quite a lot before expressing themselves and requested that their names not be
21 made public. So I would like us to go into private session.

22 PRESIDING JUDGE STEINER: Court officer, please turn into closed session.

23 (Private session at 9.46 a.m.) Reclassified into open session

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

25 THE WITNESS: (Interpretation) One of the most interesting sources was (Redacted)

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1 (Redacted). He was introduced to me in (Redacted). I met with him and we discussed
2 all those events that had taken place in Bangui; how did he as a Central African Republic
3 soldier feel about those events.
4 Then I went to (Redacted). I met (Redacted)
5 (Redacted). He told me that he was a (Redacted)
6 (Redacted) at the time of the events. He explained a few things to me
7 regarding the various movements and what was happening.
8 There was also (Redacted), and in order to understand what was
9 happening in the DRC I was fortunate enough to be received by a (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted) and I tried to understand with him - and that is (Redacted)
13 (Redacted) how he understood the political/military situation at the time, what were the
14 objectives and what actually happened, and all the stakeholders. Well, this was very
15 useful. I had in-depth discussions with him to enable me to better understand.
16 Furthermore, I travelled to the Democratic Republic of the Congo where I met (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 I also met with (Redacted)
22 (Redacted)
23 (Redacted)
24 And also to better understand the Congolese Liberation Movement I had initially carried
25 out a study on that movement as part of my work in the university, but I needed to meet

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1 someone very involved in that movement. So I met with (Redacted)
2 (Redacted). According to what he himself told me, he was the
3 (Redacted). So during our interviews, or our discussions, with
4 (Redacted), he helped me to understand how the MLC functioned at the political
5 level and at other levels. For example, he talked about the contacts between the MLC
6 and other organisations.
7 And still in an effort to better understand the MLC, apart from (Redacted)
8 (Redacted) I had the opportunity to meet with
9 (Redacted)
10 (Redacted).
11 I also contacted other sources to better understand the functioning of the political/military
12 movements in the DRC. I also met with (Redacted)
13 (Redacted). He was a member of the RCD, which was
14 another political/military movement in the DRC.
15 I had an interest to also meet with those people of the RCD in an effort to carry out a
16 comparative study, because there was parallel government of the country at the time. So
17 I tried to find out what the various stakeholders did, what role they played during the
18 negotiations, and I focused on the MLC because the core of my analysis was the MLC
19 intervention in the Central African Republic.
20 Still, in a further effort to understand the military wing of that movement, I met with
21 (Redacted)
22 (Redacted). So these were the oral sources that I was able to meet with, but this happened
23 at various times.
24 That said, I believe we can go back into open session.
25 MR KILOLO: (Interpretation)

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1 Q. Since we are still in closed session, Mr Dioba, I would like to ask you some
2 follow-up questions. You talked about the Rassemblement Congolais pour la
3 Démocratie, or RCD. How can you compare that with the MLC; that is in order for the
4 Court to understand?

5 PRESIDING JUDGE STEINER: Maître Kilolo, the reason for this question to be put in
6 closed session?

7 MR KILOLO: (Interpretation) That is because later on I will ask a question about two
8 members of that movement that Mr Dioba met with.

9 PRESIDING JUDGE STEINER: I think the first -- the presentation of the opinion of the
10 expert on this issue can be put in open session and then we turn back into closed session.
11 Court officer, please turn into open session.

12 (Open session at 9.56 a.m.)

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

14 PRESIDING JUDGE STEINER: Maître, could you please repeat your question?

15 MR KILOLO: (Interpretation)

16 Q. Mr Dioba, is there some sort of parallelism that you can make between the RCD and
17 the MLC; that is as part of your work as an expert?

18 A. Thank you, Counsel. I looked at the RCD, but I believe that one has to understand
19 the political context of Congo. At that time, the DRC was living through a crisis after
20 Mr Laurent-Désiré Kabila took over power as the leader of a rebel movement that had left
21 from the east of the Congo. That is the AFDL; that is the Alliance of Democratic Forces
22 for the Liberation of Congo-Zaire. This movement left from the east, with the support of
23 a certain number of countries that perhaps I should not name, but I can say this
24 movement was supported by Rwanda and the current Minister of Defence of Rwanda was
25 one of the officers when Kinshasa fell. So after Mr Désiré Kabila took over power, the

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1 constitution was suspended and a certain number of human rights were overlooked. So
2 there were many movements, and amongst the most important movements you had the
3 RCD and the MLC.

4 Now, these political/military movements ate into the authority of the AFDL, which was in
5 Kinshasa, so the RCD occupied the eastern part of the Congo, while the MLC occupied the
6 north of Congo, and the Kinshasa government occupied Kinshasa and Bas-Congo. So
7 these movements occupied practically more than 60 per cent of the territory. This means
8 that the government in Kinshasa found itself in a situation in which it did not have
9 authority over the entire country.

10 As you know, the DRC is a very large country, and political scientists in Africa generally
11 consider this country as a States continent. It is more than 2.3 million square kilometres
12 and, if I am not mistaken, it is about 57 times the size of The Netherlands.

13 So Kinshasa did not have authority over those areas, and each movement had authority
14 over the territory that it occupied, and this was done with the political agreement in
15 Lusaka, which conferred de facto legitimacy to those movements, to the extent that each
16 of those movements had administrative prerogatives, and you will realise that those
17 movements took decisions that had nothing to do with the government in Kinshasa.
18 They had their justice system, they appointed magistrates, and organised their defence
19 systems and their armies.

20 So, faced with this reality, the Lusaka agreement simply recognised the powerlessness of
21 the Kinshasa government and the three main movements; the AFDL in Kinshasa, the MLC
22 in the north and the RCD in the east, carried out a collegial administration of the country.
23 I looked at the situation in Kinshasa. Why? Because the prerogatives of the AFDL, the
24 MLC, had their end zones so it was quite interesting to look at this and try to compare and
25 see what was going on, to see how they operated in relation to the MLC. So these

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1 movements had prerogatives that were practically recognised, that were in existence.

2 They made their decisions autonomously. They operated autonomously, be it the MLC
3 or the RCDL. Regardless of Kinshasa.

4 THE INTERPRETER: Message from the interpreters: Could the witness be encouraged
5 to slow down.

6 MR KILOLO: (Interpretation)

7 Q. Sir, did you look at when the MLC was actually created?

8 A. In a study that I conducted of political/military movements in Central Africa, the
9 MLC, the MLC emerged in 1999 led by Jean-Pierre Bemba.

10 PRESIDING JUDGE STEINER: I'm sorry to interrupt you. The interpreters are asking
11 you please to slow down, sometimes you're going too fast for them, to help them in
12 translating and providing us with the transcripts. Thank you.

13 THE WITNESS: (Interpretation) Thank you, your Honour.

14 Now, when did the MLC emerge? I would say it was in 1998. Now, I told you that
15 these movements emerged from a particular political context in the DRC. Why?

16 Because the FDL, the Alliance of Democratic Forces for the Liberation of the Congo and
17 Zaire, led by Laurent-Désiré Kabila, came to Kinshasa in May 1997 and drove out the
18 former president, Marshal Sese Seko Mobutu.

19 And the elements or, rather, the criticism of the former regime emerged once again,
20 particularly -- well, for example, basic aspects of democracy were being utterly dismissed
21 and so the political/military movements in turn attempted to restore democracy, this
22 democracy that everyone desired so much.

23 MR KILOLO: (Interpretation)

24 Q. Now, judging by your analysis, what sort of movement was the MLC when it
25 initially emerged?

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1 A. Thank you. When the MLC was created, the MLC was a military/political
2 movement, with a much stronger military component to it, in my opinion. However,
3 with the changes or the evolution, rather, with the Lusaka agreement, well, I tried to look
4 at from that time, from that agreement, the Lusaka agreement that was entered into in
5 Zambia. The international community, in light of the events and the political realities,
6 recognised, recognised the MLC *and the RCD as the political entities of the Congolese
7 State, each in its own particular area.
8 When I did my analysis I saw that the MLC went from being a military movement and
9 became far more of a political movement that administered, that managed, that had
10 prerogatives, the prerogatives of a State in the area.
11 I'll point out one particular thing to you. Now, this is not necessarily about a State with a
12 proper constitution. We're talking about legitimacy, not legality, so you have to see that
13 distinction so as not to make any mistakes. In actual fact, the MLC in its area, the area
14 that it administered, led and organised the State, took decisions, appointed people.
15 So as of that time the MLC, which practically ran the country or the State, administered
16 the day-to-day activities of the people, could not be dismissed as a mere military
17 movement. It was much more a political movement that had gained legitimacy to
18 administer the State, and so those *leaders were recognised as being legitimate, because if
19 you look, if you observe the approach that we find within the Lusaka agreement, and
20 when you look at the provision, the signatures of the leaders, all the leaders of the DRC,
21 for example the leaders of the MLC, the RCD, were all put on the same level. They all
22 had the same standing, and beside you will see the signatures of Heads of State.
23 In this particular case, you can draw a parallel. The symbolic aspect of the very
24 provision within a political/*diplomatic framework is such that they were at the same
25 level as Heads of State, so it was no longer possible. From that time, when the

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1 MLC -- once the MLC was put at practically the same level as Heads of State, or the
2 government in Kinshasa, the MLC could no longer be considered as just some or one of
3 several rebel movements. It had become a movement with legitimacy that had
4 prerogatives.

5 Between 1999 and the year 2003, when you look at how the country was managed, you
6 can see that pursuant to the Lusaka agreement these various movements were
7 administering their territories. *The MLC in the North, the RCD to the east, and the
8 government in Kinshasa administering part of the country, and so on and so forth.

9 PRESIDING JUDGE STEINER: Before we go even further, I have some clarifications
10 here that I would like to put to the -- to ask the witness to clarify.

11 The Lusaka agreements, at least this is what is publicly known, had as an objective or
12 purpose to bring peace to DRC and therefore many rebel groups were called for the table
13 to negotiate; is that correct?

14 THE WITNESS: (Interpretation) The Lusaka agreement was intended to end all the
15 various confrontations in the DRC.

16 As I told you, your Honour, within the Congo many -- and this is something that the
17 political scientists have referred to as the Congolese world war, so these people were in
18 Lusaka with one primary objective, namely ending the conflict, and they wanted to
19 encourage reunification, and so the Lusaka agreement brought together all the various
20 players, protagonists, stakeholders, people involved in these conflicts within the DRC.

21 PRESIDING JUDGE STEINER: That means that was not only the RCD and MLC that
22 were part of the Lusaka agreements, but as well other rebel groups in DRC?

23 THE WITNESS: (Interpretation) There was the RCD-ML, the liberation movement,
24 but you must realise that there were three major blocks, so to speak, three major blocks or
25 coalitions, and they had -- they occupied specific areas. Consequently, those main

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1 movements, they gained legitimacy as a result of the agreement, so the MLC had a
2 particular area and the RCD had its particular area. Each movement had an area and
3 remained within the boundaries of the area until reunification, until reunification and
4 unification of the country, and then a single government was set up in Kinshasa.

5 PRESIDING JUDGE STEINER: This is exactly the difficulty I'm having. When you say
6 that - and we know that because it's public - the Lusaka agreements had as a purpose to
7 unify or reunify the DRC, so how -- I don't understand when you say that the Lusaka
8 agreement could recognise legitimacy to two groups that took over part of the territory in
9 the DRC. If the agreement was exactly to reunify, how could at the same time they
10 recognise the legitimacy of these groups that took over 60 per cent of the territory?

11 THE WITNESS: (Interpretation) The Lusaka agreement preceded a number of other
12 agreements. Initially, it was necessary to end the conflict. That was the first thing.
13 Now, the conflict was ended and each movement remained in its particular area, or zone,
14 and each movement was requested to organise a number of activities of general interest.
15 In actual fact, they were asked -- from a political science point of view they were asked to
16 organise the State, because that was the facts of the matter, and gradually the parties were
17 to do everything to find ways and means to move towards unification.
18 So first of all they met to end the conflict, then they took part in the unification.
19 Providing this opportunity, or allowing for this opportunity, each movement in its area
20 organised activities of general interest, or for the general good.

21 PRESIDING JUDGE STEINER: Do you know approximately how many leaders of
22 political/military movements participated at the Lusaka agreement?

23 THE WITNESS: (Interpretation) There were several leaders. It must be said the
24 movements that were the most present were the MLC, the RCD, RCDL, but to answer
25 your question, your Honour, you can look at the signatories to the agreements to better

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1 understand. The Lusaka agreement was signed by the MLC on 1 August by the
2 representative, the person who was responsible for that movement, but it was necessary
3 to wait 30 days. It was only on 30 August when the agreement was signed by the RCD.
4 As for the RCD, the agreement was signed by approximately 50 people and they were
5 called "the founding fathers." So you can see that -- and we mustn't forget the Heads of
6 State of Rwanda, Zimbabwe and other countries, who had also taken part in the event,
7 each one representing his or her organisation. So there were several people responsible
8 who were taking part in these negotiations.

9 PRESIDING JUDGE STEINER: Thank you.

10 Maître Kilolo?

11 MR KILOLO: (Interpretation)

12 Q. Sir, when does this agreement date back to?

13 A. The Lusaka agreement has a number of specific elements to it. This agreement was
14 signed in several stages. Consequently, some people talk about the 30th, 30 July 1999,
15 sometimes 1 August, but the most important thing is to realise -- well, the discussions
16 started in July '99 and the initial signatories signed on the 31st and some people signed on
17 1 August. The RCD - the founding fathers of the RCD - signed on 30 August. So I think
18 the important thing here to remember is the actual year.

19 MR KILOLO: (Interpretation) I'd like to ask the court officer to please display
20 document number 5 on the Defence team's list: CAR-DEF-0001-0049.

21 THE COURT OFFICER: (Interpretation) Maître Kilolo, now the reference number we
22 have here, tab 5, is CAR-DEF-0001-0056. Is that the document you would like us to put
23 on the screen?

24 MR KILOLO: (Interpretation) Yes, indeed, and the page number was 0049.

25 PRESIDING JUDGE STEINER: There is no page 49, Maître Kilolo.

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1 MR KILOLO: (Interpretation) Yes, according to my case manager it's

2 CAR-DEF-0001-0049.

3 PRESIDING JUDGE STEINER: Then we are not talking about the same document,

4 because document CAR-DEF-0001-0056 finishes at 59 -- sorry, finishes at 74. It starts on

5 56, Maître Kilolo, so we don't have here 49.

6 MR KILOLO: (Interpretation) In any event, I'm referring to the last page of that

7 particular document.

8 Q. Sir, I will return to this issue a little bit later with the particular document. I will

9 show it to you later.

10 PRESIDING JUDGE STEINER: Maître, I'm sorry to interrupt you. Maybe you are

11 talking about document number 4 of the list? This document has a page finishing by 49.

12 MR KILOLO: (Interpretation) Your Honour, I would suggest that we return to this

13 document at a later time.

14 Q. Sir, now amongst the various signatories to the Lusaka agreement, other than those

15 representing the former political/military movement, could you tell us which countries

16 signed the agreement?

17 A. Thank you, Counsel. I'll try to list them for you. You must realise that the crisis of

18 the Congo - and I mentioned this earlier - was such that throughout the entire territory of

19 the DRC various States became involved, working through the movements that they

20 supported, and some of those States signed. I'll mention -- I'll mention Rwanda, for

21 example, which signed. Uganda, the President of Uganda signed. The President of

22 Uganda signed the agreement. Angola signed the agreement. Zimbabwe signed the

23 agreement. So those were Heads of State that approved the agreement, just like various

24 other protagonists from the Congo itself.

25 Q. Now, just to be perfectly clear about the Congolese protagonists who signed the

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1 Lusaka agreement, could you list those names?

2 A. I just said a few moments ago, the protagonists included the government in
3 Kinshasa, the government in Kinshasa of course represented by Mr Laurent-Désiré Kabila;
4 there was the Movement for the Liberation of the Congo, represented by Mr Jean-Pierre
5 Bemba; the RCD-ML; the RCD-Goma.

6 I told you that the RCD signed the document, or rather had the document signed by the
7 founding fathers, and they were approximately 50 people, the College of Founding
8 Fathers, who signed the agreement and, you see, it would be quite a task to mention all of
9 those names.

10 Q. Could you tell us a little bit about the concept known as parallelism of form in the
11 world of diplomacy?

12 A. Well, that's a simple concept, really. If, let us say various prerogatives are
13 recognised for one particular stakeholder in a particular situation, let us say a conflict,
14 parallelism of form means that the same prerogatives are recognised for the other
15 protagonist.

16 Q. Beyond the Heads of State, who signed this Lusaka agreement, and in addition to
17 the Congolese protagonists who signed, do you know if there were other persons or
18 organisations who signed this agreement?

19 A. The Lusaka agreement didn't just happen between the protagonists, no. In the
20 framework of a conflictual situation there are always persons, whether with a mediation
21 role or other, and when it came to the Lusaka agreement this was observed with regards
22 to the representatives of the Secretary-General of the United Nations, for example, and if
23 my memory serves me well that must have been Lamine Cissé from Senegal, if my
24 memory serves me well.

25 Now, on the other hand, there were also representatives of the Organisation for African

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1 Unity as well. That must have been, if I'm right, Mr Ketamile Masire. So the Lusaka
2 Accord -- or I think there was SADEC representative as well.
3 Now, the Lusaka Accord was an agreement, and an internationally recognised agreement,
4 it was internationally validated, and the proof of this is that beyond the -- when they
5 signed this agreement, a certain number of leaders - political leaders - from the Congo,
6 signing movements, they had meetings with top-ranking people from the major powers
7 and also with the people from the Security Council of the United Nations, and I think that
8 that, once again, has been confirmed by (Redacted) and I
9 also put the question as to whether they were able to have following this meeting, if they
10 were -- received diplomatically. They said of course.

11 By the Security Council of the United Nations, they were received by the American State
12 Department, Quai d'Orsay as well. So you have to understand, Counsel, that the
13 Security Council if it -- it doesn't just receive any movement.

14 Q. Mr Dioba, the fact that the international community Heads of State of different
15 countries, and even the United Nations and the Organisation for African Unity, were
16 stakeholders in the Lusaka Accord, does that have a particular political meaning with
17 regards to the MLC or the RCD?

18 A. Thank you. I would like to say, Counsel, here when Heads of State and
19 international organisations, in particular the highest public servants, United Nations, can
20 take part in that, well, here, what we're talking about is legitimacy. It's a legitimisation, a
21 legitimisation of the movements which are stakeholders thereto. There is a legitimacy
22 which is given to these movements and then everybody in their zone therefore had to
23 administer things for activities of a general interest. So, indisputably, here we're
24 talking about a legitimisation of these movements, but I'm talking about political
25 legitimacy here.

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1 THE INTERPRETER: Clarifies the witness.

2 MR KILOLO: (Interpretation) Very well. I'd like to ask the court officer to show
3 document 5 of the Defence's list, page CAR-DEF-0001-0059. Could you please show the
4 bottom of the page?

5 Q. Mr Dioba, can you see the last sentence of the Lusaka agreement at the bottom in
6 bold, where it's written, "The agreement was signed by representatives of the Republic of
7 Angola"?

8 A. "... of the Republic of Angola" and then there's nothing thereafter.

9 MR KILOLO: (Interpretation) Therefore, I would ask us to go on to the next page and
10 this at page CAR-DEF-0001-0060.

11 A. Yes, obviously we come back to what I said before. So you can see that there were
12 Heads of State who signed it. There you saw Angola, Democratic Republic of the Congo,
13 Republic of Namibia, Republic of Rwanda, Republic of Uganda, Republic of Zimbabwe,
14 and witnesses, representatives of the Republic of Zambia, the Organisation of African
15 Unity, the United Nations and the Community for the Development of Southern Africa,
16 SADEC.

17 The agreement -- so you have a first group of signatories, I spoke to you about that, and
18 then I said afterwards the agreements were thereafter signed by Jean-Pierre Bemba, the
19 MLC, on 1 August, and I also told you that the agreement was also signed 30 days later by
20 the Rassemblement Congolais pour la Démocratie, who they would call "the founding
21 fathers," so by 50 founding members of the Rassemblement Congolais pour la Démocratie
22 on 31 August 1999.

23 So this is very much what I explained to you a moment ago, and also with regard to all
24 these signatories above all I would like to stress the United Nations. Why? Because the
25 United Nations is the highest body in international diplomacy, in international diplomacy

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1 or of public service generally at international level, which was created firstly to prevent
2 war. The primary objective of the United Nations was first and foremost to prevent war
3 from happening. So the fact that the United Nations, as well as the Organisation for
4 African Unity -- well, here now we speak about the African Union. There was a change
5 that happened after this, but the Organisation for African Unity, that is the major regional
6 organisation of the whole African continent. The fact that these organisations, if I can
7 just state that, are taking part, or did take part, in this meeting and appended their
8 signatures thereto and encouraged the organisation by each party of matters of a general
9 interest within the country, then that is -- from a political scientist's point of view and a
10 diplomatic point of view, that is a legitimisation of each party in the area over which it
11 controls.

12 Q. Mr Dioba, just by way of clarification with regard to the question of Congolese
13 signatures of the Lusaka Accord, given that the Presiding Judge asked you a question
14 stating that the Lusaka Accord was signed by a multitude of rebel movements, well, what
15 do you say about this?

16 A. Well, here it's very clear. In the document before us there's not a multitude, and if
17 the document is there I suppose it's an authentic document and you can see that here we
18 mainly have two movements. It's written, "The Accord was signed by Jean-Pierre Bemba
19 of the Mouvement de Libération du Congo on 1 August and thereafter by 50 founding
20 members of the Rassemblement Congolais pour la Démocratie. Well, 50 founding
21 members doesn't mean 50 people responsible for different rebel movements. No, it's 50
22 members of one political or politico-military movement.

23 Q. Mr Dioba, when you speak about this effect of political legitimisation of the MLC,
24 following this Lusaka accord, what exactly does that mean with regard to the status of the
25 MLC as presented as a politico/military movement?

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1 A. Well, thank you, Counsel. I think that following this agreement, from a political
2 perspective it's no longer possible to consider the MLC as just a common rebel movement.
3 There was a legitimisation, a de facto legitimisation, a recognition, a recognition by these
4 organisations but one can ask the question: Do you know how many rebel movements
5 signed agreements with international organisations and Heads of State? To my
6 knowledge, I hardly know any, unless my memory is deficient, but these movements,
7 after this they are legitimate. I wasn't there but I would like to stress the legitimacy that
8 these movements gained therefrom. After this, they can no longer be considered just as
9 common rebel movements, no. They have become actors, state -- actors or protagonists,
10 which are significant, which count for this country and which are hereafter interlocutors,
11 interlocutors for these organisations there, and it is not for nothing that these movements
12 are put on the same footing as the Kinshasa government and that they are often received
13 at the same level. I remember this statement of Vital Kamerhe which -- who at the time
14 was in the Kinshasa government, who told me, "Well, we were often very uneasy about
15 this but this was a de facto situation." They were recognised at the same footing as the
16 government so coming from a high-ranking official who negotiates for the government
17 party, well, this is something that is very important, and beyond this statement which I
18 remember the fact that the United Nations recognised them and accepted to negotiate
19 with them, legitimised them, means that they could no longer be considered as just
20 another rebel group.

21 Now, we were talking about an entity which counted and with which there needed to be
22 discussions, and that's why they were all sitting around the same table to negotiate, and to
23 have negotiations at international level, with actors such as the Security Council.

24 PRESIDING JUDGE STEINER: Maître Kilolo, I wanted just a clarification. On page 24,
25 lines 10 and 11, my question to the clarification I asked from the witness was, to be very

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1 clear: Do you know approximately how many leaders of political/military movements
2 participated in the Lusaka agreement? I never, I never said what you said in your
3 question, that I mentioned that many rebel leaders signed the Lusaka agreements. My
4 question was only whether other leaders of political/military groups were called to sit at
5 the negotiation table in Lusaka. Just to clarify.

6 MR KILOLO: (Interpretation)

7 Q. Mr Dioba, within the framework of your studies, have you observed situations
8 where there's been international recognition given to a rebel armed movement?

9 A. A moment ago I asked the question. When I asked the question, I also shared that
10 with the courtroom, to say that if we talk about rebel movements, has there really been a
11 rebel movement anywhere in the world which has been sitting around the same table as
12 the representatives of state? In history, well, I don't think so, but perhaps you could see
13 current affairs underway, with the National Transitional Council in Libya as an example, I
14 think that the National Transitional Council, perhaps -- maybe I can remember the
15 organisation, or the PLO but, to my knowledge, the CNT or transitional council, which is
16 a -- it was a movement which was rapidly recognised by States to become a privileged
17 interlocutor until the fall of the Tripoli regime, and I think to my knowledge those are the
18 only examples to my knowledge, but in Africa, sub-Saharan Africa, to the best of my
19 knowledge, no.

20 Q. Because you talk about the National Transitional Council in Libya in your -- from
21 your comparative reading in-between the NTC in Libya and the MLC, could you make a
22 comparison between the two, when the Lusaka accords were signed?

23 A. Well, you can make a comparison. The National Transitional Council was a
24 movement which had demands from Benghazi to call for the establishment or the
25 democratisation of Libya, given that this country was functioning under the control of one

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1 individual without a particular constitution, and you will see that the MLC had pretty
2 much the same approach to challenge the regime of Kinshasa, which was also functioning
3 as if it were under the control of one individual who had suspended the constitution, and
4 other institutions, so you could just say that in one way or another the two movements
5 can be compared, above all because sooner or later one or the other was going to have a
6 certain degree of legitimacy.

7 Q. In order to be clear: From the Lusaka agreement, how many state actors, who were
8 internationally recognised, were there in the DRC?

9 A. Well, I told you a moment ago that when it came to the administration of Congo, in
10 1999, at the time of reunification and formation of what the -- when the government was
11 formed, this was -- there was a collegial management carried out in three blocks. You
12 had Kinshasa on the one hand, which was represented firstly by Laurent-Désiré Kabila,
13 and then after the assassination of Laurent-Désiré Kabila, Joseph Kabila Kabange and on
14 the other side, the other party was therefore going to be the MLC represented by
15 Mr Jean-Pierre Bemba and the RCD which was going to undergo a lot of changes.
16 Wamba Dia Wamba was the leader, that changed, but to better understand that, to look at
17 the institutional level, if you consider there were three institutions, three blocks: The
18 eastern block, RCD in the east, Kinshasa with the FDL, and then the north with the MLC.
19 So it was these three components which were going to administer or manage the DRC.
20 There wasn't a -- or hadn't been a unification until that time, so these were the main
21 figures who were interlocutors of states or -- and so you had the people who were leading
22 these three different components who were responsible at a political level.
23 PRESIDING JUDGE STEINER: Maître Kilolo, we -- now that we are having blocks of
24 two hours we need to be very strict because of the tape, that in two hours it's over. So we
25 are going to our break.

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- 1 Mr Witness, we have half-an-hour break. It's almost 11 o'clock. We'll be back at 11.30.
- 2 I ask, please, court usher to accompany the witness outside the courtroom. In the
- 3 meantime, we will suspend and resume at 11.30.
- 4 (The witness stands down)
- 5 THE COURT OFFICER: All rise.
- 6 (Recess taken at 10.57 a.m.)
- 7 (Upon resuming in open session at 11.32 a.m.)
- 8 THE COURT USHER: All rise.
- 9 Please be seated.
- 10 PRESIDING JUDGE STEINER: Could, please, court usher bring the witness in.
- 11 (The witness enters the courtroom)
- 12 PRESIDING JUDGE STEINER: Mr Dioba, welcome back.
- 13 THE WITNESS: (Interpretation) Good morning once again, your Honour.
- 14 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?
- 15 THE WITNESS: (Interpretation) Yes.
- 16 PRESIDING JUDGE STEINER: You have the floor, Maître Kilolo.
- 17 MR KILOLO: (Interpretation) Thank you, your Honour.
- 18 Q. Mr Dioba, a short while ago, that is before the break, you told us that after the
- 19 Lusaka agreement Congo was administered by two state entities or, rather, three state
- 20 entities; that is the MLC, RCD and the central government in Kinshasa. Have you
- 21 analysed the reaction or position of the international community regarding this
- 22 administration of Congo by the three entities mentioned?
- 23 A. Thank you, Counsel. The reaction of the international community was approval
- 24 because as from the Lusaka agreement it was the international community that
- 25 legitimised this situation to the effect that each entity exercised powers that were

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1 practically state powers on the area it controlled. So the international community could
2 not oppose this because they approved it with an objective. There should be movement
3 towards the unity of the country. This is why I'm saying that the international
4 community considered all the entities concerned as equal and as their interlocutors, so
5 I would say that community favorably welcomed this de facto situation.

6 MR KILOLO: (Interpretation) I would like to ask the court officer to make available
7 document number 5 on the Defence list, CAR-DEF-0001-0063. Please kindly display
8 Chapter 6 of the annex, which is part and parcel of the Lusaka agreement. Would it be
9 possible to shift the text towards the right for better visibility? Very well.

10 Q. Mr Dioba, I would like to ask you to read Chapter 6 of the annex, which was an
11 integral part of the Lusaka agreement.

12 A. Thank you. I will read Chapter 6. "The re-establishment of the State
13 administrative authority over the entire territory of the Congo. Pursuant to this
14 agreement, and following the inter-Congolese political negotiations, the administrative
15 authority of the State shall be restored throughout the entire territory of the Democratic
16 Republic of the Congo. Following the coming into force of this agreement, there shall be
17 a consultation mechanism between the Congolese parties which will make it possible to
18 carry out activities throughout the national territory and also to carry out operations and
19 actions of general interest. For example, in the area of public health, national vaccination
20 campaigns, education" -- correction "of examinations, immigration, movement of people
21 and property." So there is a political or diplomatic interpretation of this chapter.
22 When the international community states that as soon as the agreement comes into force,
23 that is there will be a consultation mechanism between the parties which will make it
24 possible to take measures throughout the national territory and to carry out operations or
25 activities of general interest, and this relates to activities intended for members of the

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1 population in all the territories being governed or occupied, but the objective is to initiate
2 movement towards consultation and unification, but prior to that each entity is supposed
3 to administrator its own territory in the public interest.

4 So if you look at this as a political scientist, you will understand perfectly that the
5 international community was actually legitimising the stakeholders and conferring upon
6 them powers to administer those territories and take measures of public interest with the
7 objective of moving towards the unification of the country.

8 Q. In the exercise of the respective State attributions, did you analyse the difference
9 between the central government in Kinshasa and the MLC as well as the RCD; that is in
10 relation to the measures that they were able to take?

11 A. Thank you. Let me repeat what I said before: Each entity took measures or
12 decisions in the area it controlled. For example, it appointed individuals to positions.
13 They appointed magistrates and military officers, each entity in its territory, and when the
14 comprehensive agreement was signed all the decisions taken by the various entities were
15 to be respected. This means that if the RCD had appointed you colonel, when the army
16 was merged you would keep your rank as colonel just like someone else who had been
17 appointed colonel by Kinshasa or by the MLC, and that remains the case up 'til today.
18 If you look at what happens in the Congolese public service today, you will find that there
19 are senior magistrates, senior military officers, who had been appointed by the various
20 groups or entities, each in their own territory. So you will see that they all functioned at
21 the same level and each entity took decisions that would be respected after unification.

22 Q. Mr Dioba, we are now analysing the Lusaka agreement, and it is an unsigned
23 version, but during your research did you have access to the original document signed by
24 the various stakeholders in that agreement?

25 A. Yes, of course. I was able to obtain a copy of the Lusaka agreement, but which I

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- 1 did not bring with me here. It is100 possible for me to locate that document from
2 amongst my documents, but I saw that Lusaka agreement with the signatures of all the
3 parties.
- 4 Q. Can you please tell the Court how you managed -- how you managed to obtain a
5 copy of that agreement?
- 6 A. I received that agreement from (Redacted). During our discussions in
7 Kinshasa I asked him whether he had a copy of that agreement, and (Redacted),
8 after explaining to me that agreement, gave a copy of it to me in the form of a small
9 pamphlet.
- 10 PRESIDING JUDGE STEINER: Court officer, please turn very briefly into private
11 session.
- 12 (Private session at 11.46 a.m.) Reclassified into open session
- 13 THE COURT OFFICER: We are in private session, your Honours.
- 14 PRESIDING JUDGE STEINER: Thank you.
- 15 I ask Mr Dioba whether the name of this (Redacted)
16 (Redacted)
- 17 THE WITNESS: (Interpretation) (Redacted)
- 18 PRESIDING JUDGE STEINER: Therefore I ask you, please, to be more cautious before
19 mentioning certain names in order to avoid that these names go public. Thank you very
20 much.
- 21 Court officer, please turn into open session.
- 22 THE WITNESS: (Interpretation) Thank you.
- 23 (Open session at 11.47 a.m.)
- 24 THE COURT OFFICER: We are in open session, your Honours.
- 25 MR KILOLO: (Interpretation)

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1 Q. Mr Dioba, did you analyse the effects of the Lusaka agreement on the international
2 relations of the MLC, or the RCD?

3 A. It should be pointed out that the Lusaka agreement was not an agreement for the
4 cessation of certain areas in Congo. The parties to the Lusaka agreement, that is after the
5 agreement, did not create any special diplomatic relations. These were not constitutional
6 States. They were entities that had been legitimised and empowered to carry out certain
7 acts within their respective territories. So the diplomatic relations between States and
8 organisations were done in a collegial manner. The three entities governing Congo at the
9 time were often received together. You would have the MLC, for example, and the RCD
10 which did not secede. They did not have their own currency, they did not have
11 diplomatic relations as a State, but they acted in a collegial manner because the three
12 entities were the interlocutors of the international community. But of course a certain
13 number of contacts could have taken place, but this is quite usual in the area of political
14 activities.

15 Q. Did you analyse which international structures or institutions met with or received
16 the MLC or the RCD after the Lusaka Accord; that is State entities?

17 A. You are aware that these movements were supported by States and those States
18 were their partners. In addition to that, I have told you that the parties had been
19 received by the Security Council and also by the governments of major powers.

20 Q. On the basis of your analysis and research on this issue, do you have any examples
21 of countries at the international level that welcomed the MLC as a State interlocutor; that
22 is after the Lusaka agreement?

23 A. I told you a short while ago, to begin with there is the Security Council. The
24 Security Council is the highest diplomatic organ at the international level and, if they can
25 receive a movement, I believe it is something very important when it comes to the

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1 recognition or legitimacy of those moments.

2 Q. Apart from the Security Council, do you remember that the MLC visited any
3 important western capitals after the Lusaka agreement?

4 A. With regard to the stakeholders to the Lusaka agreement -- well, your Honour, can
5 we go into closed session?

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

7 (Private session at 11.53 a.m.) Reclassified into open session

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

9 THE WITNESS: (Interpretation) As I was saying, there were a certain number of
10 western capitals, including the American State Department, which received those
11 movements or entities. I believe that (Redacted)

12 (Redacted). These are important capital

13 cities in international diplomacy. These are major powers, (Redacted)

14 (Redacted).

15 PRESIDING JUDGE STEINER: Can we turn into open, session, please.

16 (Open session at 11.54 a.m.)

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

18 MR KILOLO: (Interpretation) I would like to ask the court officer to display document
19 number 5 in the Defence list, page CAR-DEF-0001-0058. Can you please display Chapter
20 3 of the Lusaka agreement, paragraph 11(b)? Is there a way to focus on subparagraph (b),
21 to zoom in on subparagraph (b), please? Would it be possible to zoom out a little bit so
22 that the entire text should be visible?

23 Q. Mr Dioba, can you read out Chapter 3, 11(b), of the Lusaka agreement, which starts
24 with, "The parties shall set up ..." and ends with "... this agreement"?

25 A. That paragraph states as follows: "The parties shall set up a joint military

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1 commission ,which shall be responsible for executing immediately after this agreement
2 comes into force, in collaboration with the Observer Group of the UN and the OAU, the
3 peacekeeping operations right up to the time of the deployment of the peacekeeping
4 missions of the United Nations and the OAU." Is this where you asked me to stop?
5 "The parties shall set up a joint military commission which shall be responsible,
6 immediately after the coming into force of this agreement and in collaboration with the
7 Observer Mission of the UN and the OAU, for executing the operations - the
8 peacekeeping operations - up until the deployment of the peacekeeping mission of the UN
9 and the OAU," and you will notice that all the time mention is made of "the parties,"
10 which means that the three parties were legitimised by the Lusaka agreement.
11 So at the military level, mention is made of the three parties, and even at the level of the
12 other domains mention is made of those same three parties. So this is further proof that
13 the Lusaka agreement legitimised the political/military movements of the Democratic
14 Republic of the Congo because here they're being given the right to be responsible for
15 peacekeeping operations, and this means - and I will repeat - that each entity had its army,
16 so this mission was attributed to their armies, which would carry out the mission until the
17 UN peacekeeping force is in place.

18 PRESIDING JUDGE STEINER: When the Lusaka agreement was signed, Mr Witness?

19 When? The date, do you remember that?

20 THE WITNESS: (Interpretation) Thank you, your Honour. A few moments ago I was
21 saying that the signature of the Lusaka agreement was progressive in nature. That is
22 why it's difficult to say that it was signed on a particular date. That's a problem. You
23 see, the first signatures were the States; that was on 30 July, I believe. You'll also see that
24 the MLC, the MLC signed the agreement on 1 August. The MLC signed on 1 August.

25 PRESIDING JUDGE STEINER: Which year, Mr Witness? Sorry to interrupt you, July,

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1 August of which year?

2 THE WITNESS: (Interpretation) Oh, I'm sorry. 1999, your Honour. The MLC signed
3 the agreement on 1 August 1999 and the RCD signed 30 days later, on 31 August 1999. It
4 was signed by approximately 50 people, and they were called the Founding Fathers. So
5 given these various dates, given that the signatures were provided over the course of time,
6 it would be better not to speak of a specific date; it would be better to give a date for each
7 particular stakeholder signing.

8 PRESIDING JUDGE STEINER: Is it of your knowledge when the Security Council
9 deployed the MONUC to DRC?

10 THE WITNESS: (Interpretation) After the signature of the Lusaka agreement the
11 peacekeeping operations were managed by the administration, and I believe that
12 MONUC came in, if my memory serves me correctly, in the year 2000, early in the year
13 2000, but I'm not 100 per cent sure of the exact date on which MONUC deployed but, in
14 any event, the UN mission to the Congo was one of the largest missions deployed by the
15 UN, one of the most large -- the largest ones in the world in terms of men and equipment,
16 and its aim was to ensure the security of people in the Democratic Republic of the Congo.

17 PRESIDING JUDGE STEINER: Which means, and I ask you to correct me if I'm wrong,
18 that this Article 11(b) that you just read, that authorised a mixed military commission for
19 the maintenance of peace, was supposed to being -- to force only to the moment the
20 MONUC arrived, which was in the year 2000; is that correct? So it was a provisional
21 mixed commission, military commission?

22 THE WITNESS: (Interpretation) Thank you. Yes, it was a joint endeavour before the
23 arrival. The arrival of MONUC made it possible to help the country move towards
24 unification, so the mixed commission, the joint commission, was a provisional thing but it
25 doesn't mean that each entity still had its men, its soldiers, in its territory awaiting

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1 unification or the setting up of a national army. So that commission had to be a
2 provisional thing, waiting for the UN operations to begin.

3 PRESIDING JUDGE STEINER: I'm sorry to interrupt, Maître Kilolo, just because I need
4 to understand the chronology of the events. Here, on chapter 6 of Annex A of the Lusaka
5 agreement, which is page 0063, talks about the reunited the armed forces of DRC. No,
6 sorry, no that. It's chapter 10. "Formation d'une armée nationale," saying that in the
7 terms of the present agreement, and in accordance with the negotiations, the troops of the
8 parties, as you call them, would be integrated into the armed forces. This is part of the
9 agreement on reunification.

10 In accordance with Annex B of the Lusaka agreement, there was some time limits for
11 compliance with all different steps of the agreement. Do you know how long it would
12 take for the troops of these two parties to be integrated into the armed forces as part of the
13 agreement?

14 THE WITNESS: (Interpretation) Thank you, your Honour. It was supposed to take
15 four years, but you have to look at the evolution. After the 1999 Lusaka agreement we
16 saw the Sun City agreements. In 2002, that was the inclusive agreement. You'll see that
17 those agreements, despite the fact that they had been signed, there still were a number of
18 problems, problems with implementation in the field.

19 So the Sun City agreement led to the Pretoria agreement in 2003, and after that agreement
20 unification went ahead with the one-plus-four government; one president of the
21 government and four vice-presidents, and as of that point in time all three administrations,
22 or all three governments, if you wanted to put it that way, were brought together
23 including the military government.

24 So each group brought -- each group had its decisions and acts. The soldiers of each
25 component were to join the national unified army, and each official -- correction, each

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1 officer retained his rank. Within the MLC, for example, the leaders -- if the leaders had
2 said you were a colonel, after the formation of the national army you would retain that
3 rank, you would still be a colonel. Similarly, if the RCD had given a particular rank to a
4 soldier, that soldier kept his rank. So the agreement did not come into effect
5 immediately; it was a gradual thing. So the unification became clearer as time went on.
6 PRESIDING JUDGE STEINER: Mr Witness, I'm not really concerned about the grade of
7 the officers that were -- the grades that were kept when they were integrated into the
8 national armed forces. My concern here is the chronology, because you are talking about
9 legitimacy of the two parties, the MLC and the RCD. Yes. RCD --

10 THE WITNESS: (Interpretation) Yes, the RCD.

11 PRESIDING JUDGE STEINER: -- about a calendar of implementation of the Lusaka
12 agreement, and I can see that there are many different time limits. The longest one is one
13 year. Now you are saying that between '99, when the Lusaka agreement was signed, to
14 2002, it was still legitimate for the two parties to keep their armed wing and fight against
15 the government?

16 THE WITNESS: (Interpretation) Thank you, your Honour. As of that point in time
17 the role of the parties was no longer to fight the government. I told you, I said initially,
18 that each entity, each entity administered its area, the area that it had control over. In the
19 final analysis, the concern was no longer waging war against the government. Each
20 administration, with its army, administered its territory and moved gradually towards
21 unification and the formation of a single government and a single army.

22 PRESIDING JUDGE STEINER: In accordance with the Lusaka agreement, you mention
23 that it was going progressively, progressively. How long the agreement provided
24 for? I'm not saying in de facto, but did the agreement mention any time limit for the
25 integration of these armed forces?

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1 THE WITNESS: (Interpretation) The agreement -- the agreement determined -- well, in
2 actual fact, the agreement gave the opportunity to the various entities to gradually move
3 towards. But, your Honour, today -- well, the signing of an agreement doesn't
4 necessarily mean -- it doesn't necessarily mean that it will be implemented immediately.
5 When an agreement is reached, that's one thing, but implementation is another. There
6 can be all kinds of problems with implementation, that's why I'm talking about the
7 gradual movement, or the gradual implementation. There were various points that the
8 movements, the entities could not agree on and so to be careful I'm speaking about a
9 gradual movement.

10 PRESIDING JUDGE STEINER: Mr Witness, would it be fair for me to say that in
11 conclusion this agreement was never complied with or at least until 2002 when another
12 agreement had to be signed?

13 THE WITNESS: (Interpretation) Thank you, your Honour. One can't say it in that de
14 facto manner. The agreement was implemented in one way or another, and I do dare say
15 in political agreements there are always a number of diverging points.

16 You see, your Honour, the agreement made it possible to stabilise; to stabilise each entity
17 within its area. The agreement made it possible to end the direct clashes, even
18 though - even though - there were still a few points that were divisive, and then gradually
19 they moved to Sun City and then Pretoria, but you can't say that the agreement was not
20 implemented. It was just the starting point for unification of the Congo.

21 If we look at this unification of the DRC, we see that this agreement was the starting point.
22 It was implemented but, like all political agreements, when various stakeholders all come
23 together you can't say that the implementation is immediate. There are always a few
24 minor points that the parties can't correct -- agree to, and those points are gradually
25 corrected and with time everyone converges and finds common ground.

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1 PRESIDING JUDGE STEINER: Thank you, Mr Dioba.

2 Maître Kilolo, you have the floor.

3 MR KILOLO: (Interpretation) I would like to ask the court usher if he could please
4 display Article 2 of the Lusaka agreement, once again document number 5 on the
5 Defence list, the same page, CAR-DEF-0001-0058? Might it be possible to focus on
6 Article 2 so that we can read it in its entirety?

7 Q. Sir, would you be so kind as to read out Article 2 of the Lusaka agreement for us, if
8 you could?

9 A. Thank you. Article 2 speaks to security concerns and it reads as follows:

10 "Immediately upon the coming into force of this agreement, the signatories commit to
11 immediately finding solutions to the security concerns of the Democratic Republic of the
12 Congo and neighbouring countries."

13 So if you were to ask me for a comment, Counsel, I would prefer to say that this is
14 something clear and precise. It's indicated quite clearly in print in simple French that the
15 signatories commit to finding immediate solutions to the security concerns; not just of the
16 DRC, but also the concerns of neighbouring countries. It's quite clear.

17 Q. Sir, I'd like to ask you what is your analysis of this particular chapter, chapter -- this
18 article, rather, Article 2 of the Lusaka agreement, in relation to the capacity to
19 implement - the MLC's capacity to implement - it at the time?

20 A. Well, that's quite simple. Initially we said that the Lusaka agreement recognised
21 the various entities; the entities that were to take a number of actions in the general
22 interest. That was said earlier. Each entity had a military organisation; a military
23 organisation that was supposed to be moving towards unification and the formation of a
24 national army.

25 Now, here the signatures -- the signatories mentioned here are the three major

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1 components. So the Lusaka agreement afforded them legitimacy, even legality, the
2 ability to find solutions to these security concerns; the security concerns of both the DRC
3 and neighbouring countries. It's quite clear that the army, the Congolese army at the
4 time divided into three components, did have that opportunity to provide greater security
5 for neighbouring countries. The Lusaka agreement provides for that in this article,
6 Article 2, concerns relating to security.

7 MR KILOLO: (Interpretation) Could the court usher please display once again
8 document number 5 on the Defence list of documents, CAR-DEF-0001-0062, Article 5 of
9 the Lusaka agreement?

10 Q. Sir, would you be so kind as to read out Chapter 5 from the Lusaka agreement?

11 A. Chapter 5: "National dialogue. Inter-Congolese political negotiations.
12 Immediately upon the coming into force of this ceasefire agreement in the DRC, the
13 parties agree to make every possible effort to create a suitable framework for
14 Inter-Congolese political negotiations intended for the implementation of a new political
15 order in the Democratic Republic of the Congo.

16 5.2. With a view to implementing the new political order and ensuring this national
17 reconciliation, thanks to the Inter-Congolese political negotiations, the Congolese parties
18 agree to follow the following principles. The Inter-Congolese political negotiations
19 process must include amongst the various Congolese parties the following entities: The
20 government of the RDC, the Congolese -- the Rassemblement Congolais pour la
21 Démocratie, the MLC, the political opposition and the representatives of active forces of
22 the nation. All participants will enjoy equal identical status. All resolutions adopted
23 during the Inter-Congolese political negotiations shall be binding upon all parties. The
24 parties agree that -- so that the Organisation for African Unity can assist the DRC with the
25 organisation of Inter-Congolese political negotiations led by a neutral facilitator chosen by

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1 the parties in light of his moral authority, international credibility and experience, with a
2 view to successful Inter-Congolese political negotiations; negotiations that are inclusive in
3 nature that shall lead to national reconciliation.

4 This facilitator shall be responsible for the following: The facilitator shall contact
5 stakeholders with a view to organising these political negotiations, and the framework
6 shall be one that -- shall be a framework that will bring people together and will ensure all
7 the necessary security prerequisites."

8 Now, this document ends right there.

9 MR KILOLO: (Interpretation) Court officer, if we could move to the next page, please?

10 THE WITNESS: (Interpretation) So, as I was saying: "The facilitator shall organise, in
11 co-operation with the Inter-Congolese parties, consultations with a view to inviting the
12 main organisations and political parties that are representative and recognised, as well as
13 the main representatives of the active forces of the nation.

14 The facilitator shall organise the discussions in light of this time frame with a view to the
15 establishment of a new political order in the DRC. Without any prejudice to other points
16 that could be raised by participants, the Congolese parties agree that the agenda for these
17 political negotiations shall have to do with the timelines and the principles for the political
18 negotiations.

19 The formation of the new Congolese army. The members of this army shall come from
20 the Congolese Armed Forces, the Armed Forces of the Congolese Rally for Democracy
21 and the Armed Forces of the Movement for the Liberation of the Congo.

22 The new political order in the DRC, in particular the institutions, shall be put into effect
23 with a view to governance in the DRC; the process for free democratic and transparent
24 elections in the DRC, a draft constitution, that shall apply in the DRC after elections are
25 held.

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1 The timetable for Inter-Congolese political negotiations are as follows: Choice of
2 facilitator D-Day plus 15; beginning of national dialogue, D-Day plus/minus -- plus 45; the
3 time frame for the end of the national dialogue D-Day plus 90; installation, or setting up
4 rather, of new institutions D-Day plus 91."

5 MR KILOLO: (Interpretation)

6 Q. Sir, the Presiding Judge asked you an important question a few moments ago. She
7 asked you whether the fact that the MLC had continued to keep the MLC within its
8 territory after the coming into effect of the Lusaka agreement, did that mean that the
9 Lusaka agreement was not complied with? Could you answer that question in light of
10 Chapter 5 of the Lusaka agreement?

11 A. I was clear, saying that the process was a gradual one, and you can see that the
12 timetable for negotiations, that the timetable shows that. It is true that one can't say that
13 the agreement had not been implemented because in the final analysis there was this
14 movement towards unification and the text shows that. It speaks of moving towards
15 unification. It was not a matter of blocking the agreement; it was a matter of respecting a
16 certain process so as not to clash with the agreement.

17 So this approach was gradual, and certainly it was leading towards the negotiations
18 mentioned in the article here, negotiations that were to be held gradually amongst all the
19 various parties with a view to setting up a unified army.

20 MR KILOLO: (Interpretation) Very well, Mr Dioba.

21 I would ask the court officer to make available page CAR-DEF-0001-0059, Article 3 of the
22 Lusaka agreement, namely, paragraph 17 thereof. Could you also focus in, in order to
23 better highlight paragraph 17, please.

24 Q. Mr Dioba, if it's easier for you now, could I ask you to read Chapter 3, paragraph 17,
25 of the Lusaka agreement?

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1 A. Paragraph 17. "The parties to this agreement must take all necessary measures for
2 the normalisation of the situation along the international frontiers orders of the
3 Democratic Republic of Congo including the illicit traffic, the controlling the illicit traffic
4 of weapons and infiltration of armed groups." That's what we were saying before.
5 Here, what we're talking about is, well, we have to remind ourselves here that if, despite
6 the fact that Congo or the territory of the Congo was administered by three different
7 entities, Congo -- well, there hadn't been secession there, so the Congolese territory was
8 intact, but with collegial management or administration by three different entities,
9 different administrative entities.
10 Now, each entity had a territory, and on this territory, if this territory had borders,
11 international borders, then this territory -- the army of that territory was responsible for
12 controlling all the illicit traffic and the infiltration of weapons and armed groups, but here,
13 we're still at this level of recognition of the entities in their territories in order to
14 administer the civil, civilian and military acts with regards to the control of the borders.
15 Particularly where it concerns this paragraph, the parties to this accord, as you saw in the
16 agreement, there are three parties, three essential parties. You have the Government of
17 Kinshasa, you have the MLC and the RCD. So when we speak about the parties to this
18 agreement, thank you, your Honour, for reminding me, we mustn't be mistaken here.
19 When we speak about parties to this agreement, things have to be clear. Here we are
20 talking about the Kinshasa government, the MLC and the RCD.
21 So it was demonstrated, and I demonstrated previously, that each entity had an
22 administrative role in its territory and, as such, when we speak about the parties to this
23 agreement having to take all necessary measures to normalise the situation along the
24 international borders of the DRC, each one in its territory had to do that with regards to
25 the borders.

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1 The Democratic Republic of the Congo has a border in the north with the Central African
2 Republic, so the army of the MLC had, had to look at this border at the same level that the
3 RCD army had to look at the eastern frontier, namely with Rwanda and others, so each
4 army had to be responsible for ensuring that along the borders, the international borders
5 of the Democratic Republic of Congo, that there wasn't traffic or infiltration of armed
6 groups, and this is another way of conferring legitimacy to them by carrying
7 out -- allowing them to carry out military actions along those borders to ensure the
8 security of the country.

9 MR KILOLO: (Interpretation) I would ask the court officer to show Chapter 3,
10 paragraph 20, of the Lusaka agreement. This is on the same page, CAR-DEF-0001-0059,
11 if you would be so kind.

12 Q. If that is okay, could you please read paragraph 20 of Chapter 3 of the Lusaka
13 agreement?

14 A. Thank you. "Under the terms of this agreement, and following on from national
15 dialogue, there will be a mechanism for the establishment of a national army which is
16 restructured and integrated including the forces of the Congolese signing parties of this
17 present agreement on the basis of negotiations between the Government of the
18 Democratic Republic of Congo, the RCD and the MLC."

19 So you can see here, and as I said previously, these are the stakeholders, these are the
20 parties who have to form this national army, a unified army, and each of them keeps its
21 prerogatives and particularly within the framework of the administration of its territory.
22 You can't lose sight of this.

23 Attributing to the three movements, or the two main movements, if you can put it like
24 that, RCD, the MLC, putting them at the same level of the Kinshasa government, the other
25 stakeholders who are going to participate in the establishment of this army, there isn't

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1 another entity, and it's these entities who are responsible not only for ensuring security
2 along the borders but also security for neighbours but, in addition to that, internal security
3 within the country. They are the ones who are going to build this national army.

4 Q. Mr Dioba, in order to ensure that we understand each other well, I'll go back to the
5 question that was put by the Presiding Judge.

6 In what framework are we ultimately with this Lusaka agreement? On the one hand you
7 have an interpretation, which would be to say that from the entry into force of the Lusaka
8 agreement, the armed forces respectively of the MLC and the RCD were automatically
9 integrated into the national army such that the MLC and the RCD could no longer have an
10 autonomous armed force on the territory that they were administering, or are we talking
11 about a different scenario, a different interpretation, whereby from the entry into force of
12 the Lusaka agreement there is a transitional period which comes into being during which
13 the MLC and the RCD could legitimately not only administer their territory but also
14 continue to manage their armed forces on their territory until there was inter-Congolese
15 national dialogue established which would come later for the formation of a national
16 army?

17 A. Well, the terms of the agreement are clear: The agreement, the Lusaka agreement,
18 comes within a framework whereby having stabilised, the entities would administer and
19 that would go progressively towards national dialogue and this would make it possible
20 for the unification of all the military entities. That's clear. That doesn't mean that de
21 facto, after the signing of this agreement, okay, an army was formed, no. They are
22 talking about negotiations. The agreement always go back to the need to discuss and
23 negotiate the possibilities of unification of the territory and all the components thereof;
24 namely, the armed forces. So when I talk about progressive, that's what I mean.

25 Q. If you would --

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1 A. If you would excuse me, Counsel, if we just look at 20, for example, it does say
2 clearly under the terms of this agreement and coming out of national dialogue there will
3 be -- there's a future tense used "will be," there will be a mechanism for the formation of a
4 national army, which is restructured and integrated. So you can see the future tense
5 used here does show that this is something that will be progressive but, in the meantime,
6 each entity remains in its territory and progressively there will be a mechanism so as they
7 are speaking this mechanism hasn't been set up and that's why they use the future tense
8 here.

9 The future tense is used here to express the fact that there will be a mechanism for the
10 formation of a national army, and the form of this army will be one that is restructured
11 and which is integrated. What does that mean? Integrated means that they are going to
12 take all the components and they are going to put them together; so a national army
13 which is restructured and which is integrated.

14 Having stated that - having stated that - they make a clarification. There's a precision
15 made here. It is not just anyone who is integrated but, no, this will include the forces of
16 the Congolese parties who have signed this agreement on the basis of negotiations
17 between the Government of the Democratic Republic of the Congo, i.e. Kinshasa, the
18 Rassemblement Congolais pour la Démocratie, RCD in eastern (sic) Goma, and the
19 Mouvement pour la Libération du Congo, MLC, which is in the north, Gbadolite. So
20 that's clear.

21 Q. Mr Dioba, I'd like to put you a question in your capacity as an expert recognised by
22 the ICC, also being a researcher at this sole centre of research that can be found in
23 francophone Africa which deals with strategic and geopolitical issues related to armed
24 conflicts in Central Africa.

25 The MLC as an entity, after the Lusaka agreement and before the reunification of the

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1 country in 2003, so we're talking between 1999 and 2003 here, could it commit its troops
2 abroad at the same level as the central government in Kinshasa could have done so for its
3 armed forces?

4 A. Counsel, I shall answer you clearly. We have examined the agreement. We have
5 observed that the agreement itself gives the possibility to the entities not only to make safe
6 their territory, or secure their territory. They even spoke about neighbouring countries
7 that was showed on the screen. Well, I had it here. I had it projected here. It is the
8 agreement that tells us this.

9 So the Movement for the Liberation of the Congo, MLC, which had autonomy with
10 regards to its functioning, of course it could take up contacts and it could deploy its army
11 for the security of the frontiers not only within the territory, but also in neighbouring
12 countries. There's no ambiguity here. As far as I'm concerned, there is absolutely no
13 ambiguity here in that regard.

14 PRESIDING JUDGE STEINER: Sorry, Maître Kilolo, to interrupt you again, but just to
15 make it sure that I understand what the witness has just said because on page 57, as from
16 line 5, the witness said, "So it was demonstrated, and I demonstrated previously, that each
17 entity had an administrative role in its territory and as such, when we speak about the
18 parties to this agreement having to take all necessary measures to normalise the situation
19 along the international borders of the DRC, each one on its territory had to do that with
20 regards to the borders."

21 So when the agreement said that, "So the party has to ensure the ...", what is the wording
22 of Article 17, "... normalisation of the situation on the borders, international borders,
23 including the control of arms trafficking and infiltration of armed groups," you
24 understand that as being an authorisation for the parties to intervene militarily in other
25 countries? Is that your conclusion? Secure the borders is the same as sending troops to

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1 another country? I did not understand the relation between one authorisation and your
2 conclusion. I wanted some clarification, please.

3 THE WITNESS: (Interpretation) Thank you. Thank you, your Honour.

4 This is a measure which has been put on the screen, or an article that was shown on the
5 screen. We're not only talking about internal security, but we're also talking about
6 neighbouring countries, unless we no longer remember that.

7 This provision was put on the screen and it clearly stated -- if the court officer could find it
8 again, we discussed it a moment ago where it was clearly said, "... the securisation (sic) of
9 neighbouring countries." It's a provision that was shown here a moment ago, one of the
10 provisions of the Lusaka agreement, so I've just interpreted this provision and if we could
11 find it again I certainly didn't make a mistake in this regard.

12 PRESIDING JUDGE STEINER: So maybe I'm wrong, but I was referring to this
13 paragraph 17 that was put on our screens. That says, and I will read in French in order
14 to be loyal to the witness, (Interpretation) "The parties to this agreement must take all the
15 necessary measures for the normalisation of the situation along the international borders
16 of the Democratic Republic of the Congo, including the control of illicit traffic of arms and
17 infiltration of armed groups."

18 (Speaks English) This is what I read. And this -- the conclusion is that this article
19 allows the party to send troops to neighbouring countries.

20 THE WITNESS: (Interpretation) Thank you, your Honour. No, not this -- not this
21 provision. This speaks about securisation along the borders, but what I'm saying is it's
22 not this one. We did comment on a provision previously, which not only talks about
23 security at an internal level, but also there's a possibility to securise (sic) the neighbouring
24 countries and we've presented it here. We even commented on that provision.

25 So I think that it wasn't very long ago and I do remember it, so we can find this provision

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1 and once again maybe we can comment once again on this particular provision. It's
2 not -- it's not this point 17, it is a previous provision, but now I don't know if it's Chapter 2
3 or what, but we did show it on the screen here and I did comment on it.

4 PRESIDING JUDGE STEINER: Maybe I'm wrong.

5 You can proceed, Maître Kilolo.

6 MR KILOLO: (Interpretation) Your Honour, if you would allow me, I would try to
7 help you in order to find the correct article.

8 JUDGE ALUOCH: Sorry, Mr Kilolo. The witness says he did comment on it. Maybe
9 he can remind us what was his comment on it? The topic that is going on right now, the
10 witness recalls that he commented on it. What was his comment? It's not clear. What
11 was it? Whether --

12 MR KILOLO: (Interpretation) To be fair to the expert witness, I would ask the court
13 officer to show Article 2 of the Lusaka agreement, CAR-DEF-0001-0059.

14 THE WITNESS: (Interpretation) So that's it. That is obviously this Article 2, in terms
15 of concerns with regards to security, Provision 4, and this is what is written: "On the
16 coming into force of this agreement, the parties commit themselves to immediately
17 address the security concerns of the DRC and ...", and this is a conjunction in French, "...
18 her neighbouring countries."

19 So it is clear, your Honour.

20 PRESIDING JUDGE STEINER: Mr Witness, I know it's clear and I can read it even in
21 French. My doubt is, it is your conclusion as an expert that this article that you just read
22 means that the party, the signataire, is authorised to intervene militarily in another
23 country? I'm just asking whether it is your conclusion as an expert?

24 THE WITNESS: (Interpretation) Your Honour, thank you, and I'm going to ask a
25 question myself. Well, how can we find solutions to the concerns of neighbouring

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1 countries if we don't have a possibility to intervene? I mean, that's the question I would
2 ask and everybody can ask themselves that question.

3 Now, the agreement says that the signatories, or the parties, commit themselves to
4 addressing the security concern of neighbouring countries. Now, how do you find, or
5 how do you address, these security concerns of neighbouring countries if you don't have
6 the possibility to intervene? That's the problem.

7 My conclusion, therefore, is clear. That gives legitimacy to the parties, gives them the
8 possibility to intervene, if they have to meet the security concerns of neighbouring
9 countries, and it's only following that path. It's not just being on your territory that the
10 security problems can be addressed. Well, that can be done perhaps through negotiation,
11 yes, but if military force is needed then the best way of finding a solution to security
12 concerns of a neighbouring country is to go and help that country in its territory when this
13 country is confronted with problems of security.

14 That is my conviction and my expert point of view.

15 PRESIDING JUDGE STEINER: Thank you.

16 Maître Kilolo?

17 MR KILOLO: (Interpretation)

18 Q. Mr Dioba, now that you have shed light importantly on the understanding of the
19 MLC and it's prerogatives, it's legitimately recognised prerogatives recognised by the
20 international community, I would like now to focus on the Central African Republic. Do
21 you think that it is important to take into account political and diplomatic and strategic
22 considerations in order to understand, well, the crisis in the Central African Republic, or
23 what was happening between October 2002 and March 2003?

24 A. Thank you. In a study where -- which reflects on the intervention in the Central
25 African Republic, you cannot not take into account the political situation in the Central

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1 African Republic in order to understand developments there. So, of course, it's necessary
2 to understand the context, the political context, of this country and to see under what
3 circumstances, for example, and in what context a foreign force intervenes or is called
4 upon to intervene in this country.

5 Obviously, there is a particular political context that would require a foreign force to
6 intervene in the Central African Republic, so that has to be taken into account.

7 Q. Do you know when the Central African Republic acceded to independence?

8 A. The Central African Republic, well, that was 13 August 1960. There was a whole
9 series of francophone African countries that had independence. I think Congo was
10 13 August, Gabon 17 August and the Central African Republic I believe it was on
11 13 August 1960, if I'm not mistaken.

12 Q. Mr Dioba, I would like to remind you once again to please slow down so that the
13 court reporters can record whatever we are saying in real-time. This is something that all
14 of us have to do.

15 Now, since the accession of the CAR to independence, to your knowledge and based on
16 your analysis, was the political history of this country affected by any particular
17 phenomenon?

18 A. Thank you, Counsel. I would like to say that the political history of the Central
19 African Republic has been marked by the particular phenomenon of military coup d'états.
20 I will try to explain.

21 Madam President, your Honours, if today we find ourselves in this courtroom, well, I'm
22 simply talking about a historical approach over a period that is relatively recent, but we
23 are here because of military coups in 2001, August 2001.

24 Your Honour, I would like to ask that we go into closed session, and I wanted to talk
25 about a sitting Head of State, and I have a lot of respect for our country's institutions, that

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1 is why I'm asking we go into private session.

2 PRESIDING JUDGE STEINER: Maître Kilolo, as you know, usually we go into private
3 session when we are dealing with protection issues. Do you think that now it's time to
4 go into private session for the discussion on the history of a country?

5 MR KILOLO: (Interpretation) In answer to your question, your Honour, I would like
6 to ask Mr Dioba the same question.

7 Q. Sir, do you think that the names of known public personalities can be mentioned in
8 open session, except of course you think that for personal reasons that you believe
9 yourself are necessary we need to go to closed session?

10 A. If this is the usual practice in the Court, then I would like to continue with my
11 testimony.

12 There is this major phenomenon of coup d'états in the Central African Republic. The
13 people of the Central African Republic have made coup d'états the option of choice to
14 accede to the presidency, so that is how I understand it. For me, they have turned coup
15 d'états into the method - the preferred method - of acceding to supreme power in the
16 country.

17 And why am I saying this, your Honour? It is because if we are now in this courtroom, it
18 is because initially there was a coup d'état, a coup d'état perpetrated by the former Chief
19 of Staff of the Armies, General Bozizé.

20 Following that failed coup d'état there were raids carried out against Bangui in an attempt
21 by him to destabilise the institutions of his country. It was an effort to put an end
22 through force and weapons to the mandate of a democratically-elected Head of State and
23 to take over power by force. So if we analyse why we are here today, it is actually
24 because of that initial incident. And as you know, there was this initiative to fragilise
25 this country by the military movements which has caused our presence here today.

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1 One can always ask questions, such as why is it that the people of the Central African
2 Republic, despite the reinstitution or institution of a pluralistic democracy in their country,
3 still have this tendency to perpetrate coup d'états or to take over power by force? So this
4 is a fact that I have identified after analysing the political history of this country, the
5 phenomenon of coup d'états.

6 Q. Mr Dioba, let me now move on to the facts. Based on your analysis, what have
7 been the various methods of accession to power in the Central African Republic ever since
8 this country achieved independence, and you can please mention the various Heads of
9 States who have occupied power up to 15 March 2003?

10 A. We talked about the independence of the Central African Republic a short while ago,
11 and we are going to start from this period of independence with President David Dacko.
12 David Dacko was overthrown in 1965 by General Jean-Bédél Bokassa through a military
13 coup d'état. This is why they referred to it as the Christmas Eve coup d'état, because it
14 took place on 31 December 1965.

15 When General Jean-Bédél Bokassa took over power much later on in 1976, General
16 Jean-Bédél Bokassa changed the structure of the Central African state; he transformed the
17 Central African Republic into an empire and he became Emperor Bokassa I.

18 THE INTERPRETER: And correction, the coup d'état was on New Years Eve,
19 31 December 1965. So it is the New Year Eve's coup.

20 THE WITNESS: (Interpretation) Now, in 1979, there was another coup d'état in the
21 Central African Republic, and it was marked by the return of David Dacko, but what was
22 special about this coup d'état, your Honour, is that it was perpetrated with the support of
23 the former colonial power.

24 As you know, at that time, France had an interventionist doctrine in Africa and of course
25 there has been a paradigm shift today given that the French government is standing more

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1 towards the reinforcement of security and co-operation. So they have moved away from
2 military intervention in Africa to co-operation. So this was just a digression.
3 This operation was known as Operation Barracuda, which brought back David Dacko to
4 power and removed Jean-Bédél Bokassa, but David Dacko was not president for long.
5 Two years later, and I believe this was in 1981, another general, General André Kolingba,
6 perpetrated his own military coup d'état and took over power from David Dacko.
7 André Kolingba instituted a one-party system up until the early '90s, and you will realise
8 that in the early '90s the new world geopolitical configuration led to a certain number of
9 African countries, particularly francophone countries, moving towards pluralistic
10 democracy, and the Central African Republic was part of that movement.
11 As from 1992, a certain number of multiparty elections took place, and the Central African
12 Republic had also accepted this new method of State organisation. There was, therefore,
13 an election in October 1993, and at this election Mr Ange-Félix Patassé was elected
14 president, and the main political party behind his election was the MLPC. However,
15 after he was elected, Ange-Félix Patassé was going to be affected once again by the
16 vampire of power grabs, that is mutinies, and I believe this was as from 1996.
17 We have talked about the introduction of pluralistic democracy, but unfortunately this
18 was not going to banish the demons of coup d'états amongst the Central African leaders.
19 This is how come in 2001 André Kolingba, who had been president before, tried or
20 attempted another coup d'état in the month of May, and then there was also the coup
21 d'état of the former Chief of Staff, General François Bozizé.
22 The confrontation, or conflict, that followed from October 2002 led to the acts and
23 consequences that are being examined by this august Court, and this led of course to the
24 taking of power on 15 March 2003 through the use of arms by General François Bozizé,
25 who took over the presidency.

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1 So this is a brief political history of the Central African Republic, which was marked by a
2 particular phenomenon, the coup d'états. And one can wonder when you look at all
3 these individuals, and the events that took place and that are bringing us here together,
4 this is the conclusion that one can reach.

5 Q. Mr Dioba, if you wish, I think we should look more closely at President Bokassa
6 because you say that the Republic was transformed into an empire during his reign. As a
7 geopolitical scientist, how would you describe that regime of Bokassa in the Central
8 African Republic?

9 A. Thank you. The regime under Jean-Bédél Bokassa, who self-claimed himself
10 emperor, was a sort of monarchy. And in order to not create any misunderstanding, I
11 have to say that monarchies are not always illegal or mismanaged, but there are
12 monarchies throughout the world which are well-managed, well-administered and quite
13 legal, but Jean-Bédél Bokassa's regime was a bloody or sanguinary and despotic regime.
14 For those who are familiar with the situation or who were in the Central African Republic,
15 there are always anecdotes about the sanguinary nature of the Bokassa regime. It was a
16 regime that was marked by violence and the spilling of blood.
17 During his trial by the Central African courts, this is something that emerged, and it was
18 stated that this was a dictatorial and despotic regime. This is a reality, and many people
19 who have written about this situation actually recognise this.

20 Q. Once again, I will ask you a question as a geopolitical scientist. Did you look at the
21 role of General Bozizé during Jean-Bédél Bokassa's regime?

22 A. No, I cannot tell you that I particularly analysed his role because, at that time,
23 Mr Bozizé was a mere aide de camp of General Bokassa, so which particular role could he
24 have played except being a close collaborator of the leader of the country? So Mr Bozizé
25 was an aide de camp to Emperor Bokassa.

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1 Q. One last question before we adjourn: Do you know who promoted François Bozizé
2 to the rank of general?

3 A. Based on what I know, it was Emperor Bokassa I who promoted Bozizé to the rank
4 of general. At that time, he was one of the youngest generals who was promoted to
5 general. At the time, he was his immediate collaborator, his aide de camp, and you
6 know that when you are an aide de camp of a Head of State you have to be a trusted
7 collaborator, a close collaborator. It is not just anyone who can be appointed an aide de
8 camp. It must be someone that is well-trusted, so it is someone who must be
9 unconditionally loyal, so it must be a close and important relationship.

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

11 Mr Dioba, we are now adjourning for today. You have the whole afternoon to take some
12 rest and to get prepared for tomorrow morning. At 9 o'clock we will resume with your
13 testimony.

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

17 We will adjourn and resume tomorrow morning at 9.00.

18 I ask, please, the court usher to accompany the witness outside the courtroom.

19 (The witness stands down)

20 THE COURT OFFICER: All rise.

21 (The hearing ends in open session at 1.25 p.m.)

22 CORRECTIONS REPORT:

23 The Court Interpretation and Translation Section has made the following corrections
24 in the transcript:

25 *Page 16 line 6

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1 "...recognised the MLC, the AFDL, as the political elements of the Congolese
2 State..." is corrected by "...recognised the MLC and the RCD as the political entities
3 of the Congolese State..."

4 *Page 16 line 18

5 "...so those people..." is corrected by "...so those leaders..."

6 *Page 16 line 24

7 "...a political/democratic framework..." is corrected by "... a political/diplomatic
8 framework..."

9 *Page 17 line 7

10 "...RCD to the east..." is corrected by "...The MLC in the North, the RCD to the
11 east..."

12 RECLASSIFICATION REPORT

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

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