

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
6 Judge Kuniko Ozaki
7 Trial Hearing
8 Tuesday, 4 September 2012
9 (The hearing starts in open session at 9.05 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE STEINER: Good morning.
14 Could, please, court officer call the case.
15 THE COURT OFFICER: Thank you, Madam President. Situation in the Central
16 African Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo,
17 ICC-01/05-01/08.
18 PRESIDING JUDGE STEINER: Thank you very much.
19 Good morning and welcome the Prosecution team, legal representatives of victims,
20 the Defence team, Mr Jean-Pierre Bemba Gombo. Good morning, welcome our
21 interpreters and court reporters.
22 We will continue today with the questioning of expert witness D-59. Before I ask
23 court usher to bring the witness in, I was informed that Defence would like to address
24 the Bench? Maître Kilolo?
25 MR KILOLO: (Interpretation) Thank you, your Honour.

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1 Yesterday the Defence sent an email to the Chamber requesting authorisation to use
2 the signed version of the Lusaka agreement, and that is document number 5 which
3 was used yesterday with the witness. Now, that version - that signed version - was
4 disclosed to the OTP this morning.

5 Yesterday, during his testimony, the witness specified that he himself had the signed
6 version of the Lusaka agreement. Given that document number 5 is a copy of an
7 excerpt from the press taken off the internet, we seek leave not so much to use the
8 actual content of the Lusaka agreement, but rather to show a hard copy of the signed
9 version of this agreement and ask him whether that corresponds to the document that
10 he was using while giving testimony as an expert witness.

11 PRESIDING JUDGE STEINER: This document was disclosed to the Prosecution.

12 Mr Iverson?

13 MR IVERSON: The Prosecution has no objection to the Defence using this document.
14 I'm a bit confused why it's referred to as "the signed version" because it appears at
15 least a few signatures are missing, but that's just an observation. The MLC signature
16 for example is missing, but in principle no objection.

17 PRESIDING JUDGE STEINER: Maître Kilolo, do you have hard copies for the
18 Judges and legal representatives as well?

19 MR KILOLO: (Interpretation) Given that the OTP already has a copy, indeed we
20 can make a copy available to the Chamber.

21 PRESIDING JUDGE STEINER: Please, Maître Kilolo.

22 MR KILOLO: (Interpretation) If you don't mind, your Honour, just to clear up one
23 particular point in relation to the point raised by the OTP. I think you can see here
24 that this is dated on 10 July 1999. The same day the document was signed by several
25 countries, Zambia, Rwanda, Uganda, the Organisation for African Unity, the United

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1 Nations, the Community for the -- the Southern African Development Community,
2 and yesterday our expert witness told us that the MLC signed the document only on
3 1 August and that the same document was signed by the RCD on 31 August. So this
4 clearly explains why this version, 10 July 1999, does not bear the signature of
5 representatives of the MLC or the RCD. To our mind what's important here is to
6 ensure that the signatures of the various nations and the UN are indeed what -- the
7 same as what the expert witness was able to make use of during his research.

8 PRESIDING JUDGE STEINER: If the Defence intends to use this document in its
9 questioning of the witness, I'm asking whether Defence is going to tender this
10 document into evidence?

11 MR KILOLO: (Interpretation) Quite so, insofar as that the idea is to adduce the
12 Lusaka agreement as evidence and we do intend to do so. Thank you.

13 PRESIDING JUDGE STEINER: Prosecution -- Maître Zarambaud?

14 MR ZARAMBAUD: (Interpretation) Thank you. The legal representatives of
15 victims have not received a copy of this document.

16 PRESIDING JUDGE STEINER: Maître, I am sure that during the break the Defence
17 will be kind enough in order to provide legal representatives with a copy of the
18 document.

19 Prosecution, any further comment?

20 MR IVERSON: No objection, Madam President.

21 PRESIDING JUDGE STEINER: Therefore, the Defence is allowed to use the recently
22 disclosed document in its questioning of the witness.

23 I ask, please, court usher to bring the witness in.

24 (The witness enters the courtroom)

25 WITNESS: CAR-D04-PPPP-0059 (On former oath)

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1 (The witness speaks French)

2 PRESIDING JUDGE STEINER: Good morning, Mr Dioba.

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

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

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

6 PRESIDING JUDGE STEINER: Mr Dioba, I need to remind you that you are still

7 under oath. Do you understand that, sir, that you are still under oath?

8 THE WITNESS: (Interpretation) Yes, I do understand that, your Honour.

9 PRESIDING JUDGE STEINER: I also would like to remind you that you need to

10 speak a little bit slower than normal in order to allow our interpreters and court

11 reporters to follow what you say and to provide all parties, participants and the

12 Chamber with real-time transcripts. Also the five seconds golden rule it's important

13 in that respect. Is that fine with you, sir?

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

15 PRESIDING JUDGE STEINER: Thank you very much.

16 I'll give back the floor to Maître Kilolo.

17 QUESTIONED BY MR KILOLO: (Interpretation) (Continuing)

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. I would like to quickly hark back to the Lusaka agreement, which we looked at

21 together yesterday. Now, you specified during your testimony that you had access

22 to a copy that bore a number of signatures, a copy of the Lusaka agreement. I would

23 like to show you a hard copy of the Lusaka agreement, which I have here, and this is

24 document CAR-D04-0003-0527. I just would like to provide you with this document.

25 We won't go into substantive issues, but I'd like to ask you to look at a number of

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1 signatures found on this document to determine whether this document corresponds
2 to the one that you reviewed, and now I would like to hand over this document to the
3 court usher.

4 (Pause in proceedings)

5 Sir, now if you've had a chance to review this document, could you please tell us
6 whether the document - the signed document - does correspond to the document that
7 you reviewed? I'm speaking of the Lusaka agreement dated 19 July 1999 and
8 perhaps if you could tell us whether this version, 19 July 1999, does not bear the
9 signature of representatives from the RCD or the MLC?

10 A. Thank you, Counsel. Of course, this document bears a number of signatures
11 and does correspond to the document that I worked from.

12 I would like to remind you in response to a question from the Presiding Judge asked
13 yesterday, I said that the Lusaka agreement was signed progressively; that is to say,
14 first of all, the first group of signatories signed document, that was in the month of
15 July, and I specified and told the Presiding Judge yesterday that the MLC signed the
16 agreement on 1 August and so it was necessary to wait 30 days.

17 It was only 30 days later when the document was signed by the representatives of the
18 RCD, by that group of people who were referred to as "the founding fathers," and on
19 that version of the document you will see those 50 names, Wamba Dia Wamba being
20 the last name, and that is why I was saying yesterday to the Presiding Judge that in
21 this regard one can consider this document to be one that was signed gradually.

22 The most important thing is to realise that the Lusaka agreement initially was a
23 political agreement because a conflict was raging. During any conflict management
24 situation, the first thing to be done is to find a number of ways and means to get all
25 the various stakeholders sitting around a table. Once you've done that, you try to

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1 get an agreement on cessation of hostilities.

2 Once that has been achieved, you move on to negotiations. In other words, you try
3 to smooth things out and political negotiations begin. After you have done that, you
4 sign a document; a document that provides a legal framework that becomes the legal
5 foundation on which one manages the transition period before unification.

6 So that is why the Lusaka agreement was the legal foundation, an institutional legal
7 framework for the management of the Democratic Republic of the Congo during that
8 period of time up until the unification in the year 2003. So that is the most important
9 thing to realise in relation to the Lusaka agreement.

10 I thank you, Counsel.

11 MR KILOLO: (Interpretation) Perhaps we could get the hard copy back now from
12 the expert witness?

13 PRESIDING JUDGE STEINER: In the meantime, Maître Kilolo, I notice that this
14 version has many annotations. Are they made by Defence, or the copy that you have
15 have already these annotations, many paragraphs that are underlined and some
16 information that is starting by the cover page, some information is just deleted,
17 second page the same?

18 MR KILOLO: (Interpretation) Your Honour, if we could go into private session so
19 I could answer that question?

20 PRESIDING JUDGE STEINER: Court officer, please.

21 (Private session at 9.27 a.m.) Reclassified into open session

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

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

24 If you don't mind, your Honour, I would suggest that when it comes to some of the
25 scribbles that we see on the very first page, on the front page and the second page,

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1 perhaps the witness could answer the question and that would shed light on the issue
2 and myself I will answer the questions about the words that were underlined.

3 Q. Sir, we'll give you a hard copy again so that we can ask you some questions
4 about these scribbles on the first page of the Lusaka agreement.

5 A. Yes, if you could give me a hard copy? Your Honour, yesterday I was
6 saying -- well, I was telling you about a number of meetings and I mentioned a
7 number of sources. I had obtained a document, this document, from (Redacted)

8 THE INTERPRETER: Inaudible.

9 THE WITNESS: (Interpretation) But this gentleman did not want -- (Redacted)
10 (Redacted) and I had to insist quite strongly, (Redacted)
11 (Redacted)

12 Later on I think you'll see that there is (Redacted)

13 (Redacted)

14 (Redacted)

15 Thank you, your Honour.

16 THE INTERPRETER: Interpreter correction: The name mentioned was (Redacted)
17 (Redacted)

18 PRESIDING JUDGE STEINER: And, Maître Kilolo, when this document has been
19 handed over to Defence?

20 MR KILOLO: (Interpretation) Yes, your Honour. The Defence also received this
21 same document from (Redacted)

22 and we made a copy of the document with these things that had been (Redacted)
23 (Redacted). I think you'll realise that a number of

24 paragraphs have been underlined and those are paragraphs -- those are the

25 paragraphs that the Defence was focusing on in order to have our expert witness shed

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1 light on a few matters. It was our working document, so that is why certain things
2 are underlined.

3 Now, on the other hand, I don't know whether Mr Dioba has his own copy here in
4 The Hague? It might be useful to ask him that, because we can see that his version
5 has not been underlined. It was the Defence team that underlined a few passages for
6 its own work, and since this was the only copy that we could disclose, since we were
7 unable to contact the expert witness, we might want to ask him now if he has his own
8 version.

9 PRESIDING JUDGE STEINER: Thank you, Maître Kilolo, for the clarification.

10 Court officer, please turn back into public session.

11 (Open session at 9.33 a.m.)

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

13 MR KILOLO: (Interpretation) At the same time, if the Court officer could be so
14 kind as to provide the Lusaka agreement to the Defence. I am now going to continue
15 with Mr Dioba, asking the following question:

16 Q. Now, I'm going back to the Central African Republic. Now, in order to do this,
17 I'd like to ask you in order to go back to the period of the accession of the Central
18 African Republic to independence on 13 August 1960. If we look at that period and
19 we go to the accession to power of President Bozizé on 15 March 2003, what are or
20 who were the different Heads of State who took power in Central Africa in a
21 democratic manner?

22 A. Thank you, Counsel. Well, if by "democracy" we define this as voting, a
23 pluralist voting system, voting on the part of the population, then we will see that just
24 one, Ange-Félix Patassé. There was just one, 1993.

25 Q. After his first term as a Head of State from 1993, Ange-Félix Patassé, did he have

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1 a second term?

2 A. President Ange-Félix Patassé was re-elected in 1999, six years afterwards, after
3 the first term.

4 Q. From a geopolitical perspective, the elections and then the re-election of
5 President Patassé, did that have particular meaning?

6 A. What is certain and what has to be understood, and this is something that I said
7 to you yesterday, is that at the start of the '90s, the winds of democracy were blowing
8 over the African continent. This is something that can be explained by a new
9 geopolitical fact. For example, you had the end of the blocks and you had winds of
10 democracy which were blowing over the African continent that I was speaking about.
11 So, therefore, there was some aspirations on the part of the populations, aspirations
12 for democracy, where everybody had to be able to express their vote in order to be
13 able to choose that person who would have to meet their aspirations. And this is
14 something that was fundamental and that is the reason why in this new pluralistic
15 order in the Central African Republic I am convinced that the people once again
16 would mark their attachment to democracy to ideological pluralism and to voting, to
17 multi-party democracy, and I'm convinced that's the reason why the Central African
18 people once again voted in favour of Mr Ange-Félix Patassé for his re-election in 1999.

19 MR KILOLO: (Interpretation) I would like to ask the court officer to show on the
20 screen document 71 of the Defence list, page CAR-D-0001-0132 (sic). Could I ask
21 you to focus in on Article 21, that's on the left, in the first chapter, "The President of
22 the Republic"? Could you also move it slightly so we can see the text completely?

23 Q. Can I ask you to read Article 21 of the Constitution of the Central African
24 Constitution which was in force in 2002 in the Central African Republic?

25 A. "Article 21: The President of the Republic is the Head of State. He incarnates

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1 and symbolises national unity. He ensures respect of the constitution, ensuring
2 through his arbitration the regular functioning of public authorities as well as the
3 continuity and the perennality of the State. He is the guarantee of national
4 independence, the integrity of the territory and of the respect of agreements and
5 treaties. He sets out the major direction of national policy. He appoints the prime
6 minister, the head of the government, and puts an end to their functions. On a
7 proposal of the prime minister, he appoints the other members of the government and
8 also puts an end to that office. He is the head of the executive, and in this regard he
9 brings together and presides over the Council of Ministers. He sets prior thereto the
10 agenda and registers the decisions thereof. He ensures the implementation of laws.
11 He promulgates the laws, signs the orders and the decrees. He is the supreme chief
12 of the armies, or supreme leader of the armies.
13 He brings together and presides over the Superior Council of National Defence. He
14 presides over the Superior Council of The Magistrature. He ensures the
15 implementation of judicial decisions. He has all the administrations under him and
16 appoints to civilian and military office. He negotiates and ratifies treaties and
17 international agreements. He accredits the ambassadors and sends them to the
18 foreign Heads of State. The ambassadors and the foreign envoys are accredited with
19 him. He has the right of pardon. He confers honorific distinctions of the republic.
20 Article 22 of the Article here of the Central African Republic. Thank you.

21 THE INTERPRETER: I have read the article, corrects the interpreter.

22 MR KILOLO: (Interpretation)

23 Q. Mr Dioba, what's your analysis of Article 21 of the constitution of the Central
24 African Republic from a political/military perspective?

25 A. Well, first of all, you have to understood that, if the President of the Republic is

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1 the supreme leader of the armies, what does that mean? That means that, when it
2 comes to major military decisions, he is the guarantor thereof. He takes those
3 decisions. He sets out the major guide-lines or direction to be followed. It is that
4 person who sets out the lines in terms of political and strategic thinking of the country,
5 in terms of security and also with regards to respect of the territorial integrity of the
6 country. So in one word that person is, if you like, the head.

7 Nothing in terms of political or strategic -- of a political or strategic nature can be
8 done in such a context without his say and that is the reason why Article 21 does
9 indeed state that he is the supreme leader. After him there's nobody, so everything
10 that can be done in terms of agreements with regards to security in terms of
11 support - foreign support, or within the country as well - all of that comes from him,
12 the supreme leader of the armies.

13 So from that moment it is the head of the political and strategic level in defence
14 matters in the country.

15 Thank you.

16 Q. From your perspective as a strategist and a geopolitical specialist in armed
17 conflict, President Patassé from the month of October 2002 did he have the
18 prerogative to call upon a foreign force in order to drive back the rebellion carried out
19 by General Bozizé?

20 A. Thank you, Counsel. Well, we've just read a provision which gives him the
21 prerogative. I can -- I mean, you're the ones who -- I'm not going to ask a question,
22 you put the questions here, but from 2002 was Mr Ange-Félix Patassé, did he stop
23 being President of the Republic of the Central African Republic? To my knowledge,
24 no, he didn't stop holding that function.

25 The president, President Ange-Félix Patassé, in 2002 and still -- was still the head of

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1 the supreme magistrature in the Central African Republic, so as the supreme leader of
2 the armies as the main person, the main person responsible for any deployments of a
3 political or strategic nature as I already said, this is something that I explained a
4 moment ago to you, he had this prerogative. He can call upon a foreign force in
5 order to help him make secure his country. This is a prerogative that he has, so this
6 prerogative does -- there's no challenge to that prerogative that he has, whether at
7 legal level or whether at a political level, whether at a strategic level.

8 Thank you.

9 MR KILOLO: (Interpretation) I would like to ask the court officer to show
10 document 75.

11 PRESIDING JUDGE STEINER: Maître, since you are changing subject, I would like
12 a follow-up question in relation to this document 71, and I ask, please, the court
13 officer to display page 0133.

14 Mr Dioba, since Defence asked you to read Article 21, I'm now asking you please to
15 read Article 28 of the constitution. If you could please read in -- read it for us,
16 please?

17 THE WITNESS: (Interpretation) "Article 28: When the institutions of the republic,
18 the independence of the nation, the integrity of the territory, the execution of
19 international commitments or the normal functioning of the public authorities are
20 threatened in a serious manner and in an immediate way, the President of the
21 Republic upon the opinion of the Council of Ministers of the President of the National
22 Assembly and the President of the Constitutional Court take the measures required
23 by the circumstances with a view to re-establishing public order, the unity of the
24 territory and the regular functioning of the public authorities. The nation is
25 informed by a message of the President of the Republic of his decision to implement

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1 or to interrupt the application of this Article. The National Assembly meets in full
2 powers. During the exercise of exceptional powers by the President of the Republic,
3 the National Assembly cannot be dissolved and the constitution cannot be modified.
4 The application of exceptional powers by the President of the Republic must in no
5 case compromise national sovereignty or territorial integrity."

6 PRESIDING JUDGE STEINER: Thank you. In your analysis as a political expert,
7 how do you reconcile your assertion that this is a personal prerogative of the
8 president as chief of the armed forces and President of the Republic even to -- on
9 political or at strategic level to call the foreign forces to help in case of serious
10 disturbances? How do you reconcile that with Article 28, when it talks that "après
11 avis du Conseil des Ministres, du Président de l'Assemblée Nationale et du Président
12 de la cour Constitutionnelle"?

13 THE WITNESS: (Interpretation) Thank you, your Honour. I am just particularly
14 interested in the last part of the Article. "The application of exceptional powers by
15 the President of the Republic must in no case compromise national sovereignty or
16 territorial integrity."

17 We are therefore in a situation which is particular, where sovereignty, the sovereignty
18 of the country, of the Central African Republic, is threatened. It is threatened by an
19 insurrectional movement and in this case the prerogatives of the Head of State confer
20 upon him the possibility to call upon troops - foreign troops - not to participate, or not
21 to compromise sovereignty, but in order to maintain that sovereignty to safeguard
22 that territorial sovereignty, because ultimately it's threatened and who's it threatened
23 by? By the troops - insurrectional troops - Central African ones. So the President of
24 the Republic is the guarantor of the institutions.

25 The guarantor of the security policy of the State has other possibilities to keep security,

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1 to maintain the territorial integrity, and can call upon troops, and these are measures
2 which are exceptional, which are conferred upon the president.

3 These are exceptional measures, because the Central African State is threatened. The
4 sovereignty of the State is threatened, threatened by insurrectional forces.

5 PRESIDING JUDGE STEINER: I was more interested in listening your expertise on
6 what would be the necessary steps to be taken by President Patassé before
7 authorising foreign troops to get into Central African territory.

8 THE WITNESS: (Interpretation) Your Honour, can you kindly repeat your
9 question, please?

10 PRESIDING JUDGE STEINER: Yes. It is in accordance with Article 28 of the
11 constitution, the President of Central African Republic could take whatever measures
12 in order to ensure the re-establishment of the peace of the proper functioning of the
13 institutions, et cetera, but (Interpretation) after consultation with the Council of
14 Ministers, the speaker of the National Assembly and the President of the
15 Constitutional Court, in the present case the prerogative of the President of the
16 Republic, whatever president, is it conditioned to some prerequisites that he needs to
17 get the authorisation or advice of other institutions of this democratic country, or he
18 can take the decision himself alone?

19 THE WITNESS: (Interpretation) Thank, you Madam President. I would like to
20 begin by pointing out that my analysis did not focus on the internal judicial or legal
21 issues of the Central African Republic. I dealt with the political strategical issues.
22 Here we can see that the President of the Republic has the powers to call upon
23 external forces to maintain security, sovereignty and territorial integrity. So
24 specifically at that political level he has those powers, but I must tell you that I did not
25 look into whether -- for example, I've looked at the legal aspects. I do not know

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1 whether he complied with those, but the issue that I am concerned with is that as
2 supreme commander of the army could he call upon a foreign force? And the
3 answer is "Yes." So my work focused at that political and strategic level.

4 Thank you.

5 PRESIDING JUDGE STEINER: Maître Kilolo.

6 MR KILOLO: (Interpretation)

7 Q. Mr Dioba, please inform me if I'm still within your scope of experience, because
8 I'm following up on the Presiding Judge's question on Article 28. When it is stated
9 that the President of the Republic may take a decision only after consultation with the
10 Council of Ministers and the other authorities, would it be different from if it is stated
11 that the President of the Republic can act only after a consistent opinion? What
12 I mean is, is the Council of Ministers, the President of the National Assembly and the
13 President of the Constitutional Court, are they part of the decision-making process or
14 not?

15 PRESIDING JUDGE STEINER: I'm sorry, you just said that you are not really expert
16 in these legal matters, internal matters, what is the basis for your answer now? What
17 is the basis? If you said that you are not --

18 THE WITNESS: (Interpretation) Madam President, I have said that I am not an
19 expert in the substantive legal issues. What I'm trying to do is to base myself on a
20 political and strategic orientation in order to understand the legal codification,
21 because when we look at an article, for example, we try to make a projection at the
22 political level, so substantive legal issues do not constitute my area of expertise. So
23 in my work I have tried to avoid everything that is legal, or judicial, in nature.
24 Now, if I am asked whether in exceptional circumstances the President of the
25 Republic is compelled, or rather does he have exceptional powers to call upon foreign

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1 forces to maintain national integrity, I will say that he is the guarantor - the only
2 guarantor - of territorial integrity.

3 Thank you.

4 MR KILOLO: (Interpretation)

5 Q. Mr Dioba, well beyond the constitutional legal provisions that were in force in
6 the Central African Republic, on the basis of your geopolitical and strategic expertise,
7 I would like to ask you the following question: The Council of Ministers is made up
8 of political authorities. Is that the same thing with the President of the National
9 Assembly? Can he be considered as a political authority?

10 A. It depends at -- on the level that you place him. It is true that even though the
11 President or Speaker of the National Assembly is a member of the legislative arm of
12 government, he is a political leader. He is elected by his peers, who are elected
13 through a general election, so he is a political leader. Even though those two
14 branches of government are different, that is the legislative and political branches, he
15 is a political leader.

16 Q. Based on your knowledge in this area, do you have any examples of situations
17 around the world in which the Head of State or President of the Republic, in the case
18 of extreme circumstances, call upon foreign intervention forces without consulting the
19 other political authorities of his country?

20 A. Thank you. Let me mention the case of the DRC prior to the Lusaka agreement.
21 You will realise, for example, that the Kinshasa government called upon Zimbabwean
22 troops to come and assist them in order to secure the authority of the government and
23 the territorial integrity. Those were foreign forces. There are probably other
24 examples, even though they do not readily come to mind.

25 Q. To your knowledge and from your point of view, is there a possible parallel that

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1 can be made with the last or the most recent conflict in Côte d'Ivoire?

2 A. You can say that, but I do not want to venture into that because I did not carry
3 out a study on the situation in Côte d'Ivoire, but if you are familiar with the situation
4 there you would realise that the Government of Côte d'Ivoire had called upon
5 Liberian forces. This is reported in various documents, but I really do not want to
6 venture into this area because I did not carry out any in-depth analysis to determine
7 who was who and who was doing what, but when you look at a certain number of
8 documents, even on current events, mention is frequently made of the presence of
9 Liberian forces that had come in to assist the Ivorian government army.

10 MR KILOLO: (Interpretation) Court officer, can you please display document
11 number 75 on the Defence list and it is page CAR-DEF-0001-0325?

12 Q. Mr Dioba, can you please read out this document, which is from the official
13 United Nations site; that is a press release by the President of the Security Council on
14 the Central African Republic?

15 A. "The members of the Security Council listened to a presentation by the
16 Under-Secretary for Political Affairs, Mr Tuliameni Kalamoh, on the situation in the
17 Central African Republic. The members of the Security Council strongly condemned
18 the coup d'état of 15 March as well as the acts of violence and pillaging that were
19 perpetrated during that coup. They appealed for calm and for the respect of people
20 and property. The members of the Security Council called on all the Central African
21 leaders to immediately begin a genuine political dialogue without exclusion in order
22 to enable the restoration of the rule of law, national cohesion and public peace as well
23 as the immediate restoration of democracy. The members of the Security Council
24 reiterated their full support to the action of the representative of the Secretary-General,
25 General Lamine Cissé, who is the head of the United Nations Office for the

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1 Consolidation of Peace in the Central African Republic. They renewed their support
2 for the efforts of the economic and monetary community of Central African States and
3 deplored the losses incurred by the original force and the African Union."

4 MR KILOLO: (Interpretation) Court officer, can you please display the next page,
5 which is CAR-DEF-0001-0326, and that is document number 76?

6 Q. Once again, Mr Dioba, I would like to ask you to read out this press release
7 from the official site of the UN.

8 A. "The Secretary-General of the United Nations organisation condemns the coup
9 d'état in the Central African Republic. The following declaration was issued today
10 by the office of the spokesperson of the Secretary-General, Mr Kofi Annan. The
11 Secretary-General followed with great concern the recent developments in the
12 situation in the Central African Republic. He strongly condemns the military coup
13 d'état perpetrated over the weekend as well as the accompanying acts of violence and
14 pillaging. He deeply regrets that such an event should occur at a time when the
15 people and the Government of the Central African Republic have committed
16 themselves to an all-inclusive national dialogue. The Secretary-General appeals for
17 the rapid restoration of the constitutional order, as well as for the respect and the
18 protection of human rights and the fundamental freedoms of the civilian population."

19 Q. Mr Dioba, how do you interpret those two press releases from the Security
20 Council of the United Nations, as well as from the Secretary-General of the UN on the
21 situation in the Central African Republic?

22 A. To begin with, it is necessary to point out that the coup d'état which was
23 perpetrated in the Central African Republic in March 2003 was an indication of the
24 backward movement of democracy, as well as the violation of human rights. The
25 text is clear. During the coup d'état there were acts of violence and pillaging, and

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1 when there is violence and pillaging these are serious acts that the United Nations'
2 organisation cannot accept. This explains this condemnation, because the United
3 Nations is attached to democracy and to the respect of democratically elected or
4 instituted bodies.

5 After having imposed an armed conflict on the country, the rebel troops ended up
6 victorious and took over power, but it is obvious that during that time the people of
7 the Central African Republic suffered. This is because a military confrontation can
8 never happen without collateral damage, including acts of violence against the
9 members of the population. This means that the people of the Central African
10 Republic suffered as a result of that conflict and the coup d'état of March 2003.
11 The United Nations could not accept that. This is why the organisation strongly
12 condemned that coup d'état. This is absolutely clear, because accession to the
13 Supreme Magistracy has to be done through the ballot box. From the moment that
14 the citizens of a country take up arms and impose an armed conflict against
15 institutions that have been democratically elected, then this is a degeneration of
16 democracy. There would be acts of violence and serious violations of human rights.
17 The United Nations are also the guarantors of human rights and, therefore, that
18 organisation cannot but condemn such a violent means of taking over power
19 accompanied by violence and the pillaging perpetrated to the detriment of the people.
20 Thank you.

21 MR KILOLO: (Interpretation) Court officer, please kindly display document
22 number 72 of the Defence list, page CAR-DEF-0001-0097. It is a document entitled
23 "Mutual Assistance Pact between the Member States of the CEAC".

24 Q. Mr Dioba, can you please read out Articles 1, 2 and 3, that is the Mutual
25 Assistance Pact between the Member States of the CEAC?

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1 A. Thank you. I would like to point out that the CEAC is the Economic
2 Community of Central African States. "Within the meaning of this pact, an
3 aggression shall be the use of an armed force against the sovereignty, territorial
4 integrity or the political independence of another State or otherwise or in any other
5 way that is incompatible with the United Nations Charter or the OAU Charter. An
6 internal conflict shall be any conflict between two or several States Parties to this pact,
7 or any conflict within a Member State which constitutes a serious threat to peace and
8 security or a breach of the peace or security in the sub-region described as such by the
9 Conference of Heads of State and Government. Defence assistance shall be any
10 assistance, whether it is matériel, technical or in the form of civil or military
11 personnel.

12 Article 2: Any threat of an armed aggression or any aggression led from outside
13 against any one of the States Parties to the present pact shall constitute a threat or an
14 aggression against all the Member States of the CEAC.

15 The Member States of the CEAC commit themselves to mutually provide aid and
16 assistance to each other for their defence against any threat of aggression or any
17 armed aggression."

18 MR KILOLO: (Interpretation) I'd like to ask the court officer if he could move on to
19 the next page, CAR-DEF-0001-0098. If we could please move to that page of the
20 document?

21 Q. Mr Dioba, at the very bottom of the document you will see some signatures.
22 Could you tell us which nations signed this pact of mutual assistance?

23 A. Well, it is true that on this document that you are showing me there are two
24 signatures. However, if this is an agreement or a pact that applies to the CEAC, the
25 signatories should be all the ten nations that belonged to this organisation.

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1 Q. At this particular stage, which nations do you see mentioned here?

2 A. Well, we see here on this document mention is made of Angola and the
3 Republic of Burundi. That's what I see here on the screen.

4 MR KILOLO: (Interpretation) If we could move on to the next page,
5 CAR-DEF-0001-0099?

6 THE WITNESS: (Interpretation) The Republic of Cameroon, the Central African
7 Republic, the Republic of the Congo, the Democratic Republic of the Congo, the
8 Democratic Republic of São Tomé and Príncipe are shown here.

9 MR KILOLO: (Interpretation)

10 Q. If we could now go back to the substantive issue. Could you please give us
11 your analysis of this particular document?

12 A. Thank you. In this particular case, the Central African Republic, the Central
13 African Republic was being subject to aggression, was being subject to aggression by
14 a rebel force which included a number of elements. This pact stipulates clearly that
15 the States shall provide assistance to one another in relation to security by deploying
16 matériel or troops, men in the field. If we could go back to the first document, so
17 assistance is to be provided, military matériel or troops.

18 The Central African Republic, just like the Democratic Republic of the Congo, is a
19 member of this organisation, the ECCAS, and consequently was a signatory to the
20 document. If the Central African Republic is attacked, subjected to aggression, if its
21 sovereignty is threatened, the pact is quite clear. The pact does provide for the
22 Democratic Republic of the Congo to intervene, and this would be within the
23 boundaries of this particular agreement.

24 Now, to better understand this issue, I think we need to go back to the Democratic
25 Republic of the Congo at the time of the MLC intervention in the Central African

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1 Republic because, you see, yesterday I was explaining to you how the DRC operated
2 after the Lusaka agreement up until the year 2003 when unification occurred, when
3 we saw the unified government of 2003, but before that time there was a group of
4 three organisations that basically ran the country and this was institutionalised in the
5 Lusaka agreement. That is why the Lusaka agreement states that the army of the
6 Democratic Republic of the Congo is made up of the armed forces of three
7 components awaiting the establishment of a unified army, but up until then the DRC
8 was -- correction, the armed forces of the DRC was made up of these three
9 components. The agreement testifies to this and we saw this yesterday. There were
10 the three components: The government in Kinshasa, the RCD and the MLC. So
11 those were the three elements of the army of the DRC as a State that had signed that
12 particular agreement.

13 The army of the DRC, in order to comply with this political/legal commitment, was
14 entitled to provide assistance to another State that had signed this pact that had been
15 attacked, or whose sovereignty was threatened, that had been subject to aggression,
16 whether you like it or not.

17 The Central African Republic was being assaulted. The democratic institutions of
18 the CAR were under attack by a rebel movement that was imposing an armed conflict
19 upon them, so obviously there are consequences. This has -- there are consequences
20 for the population, consequences for human rights, and so the Congo, showing its
21 sense of solidarity and following this agreement, was in a position to quite
22 legitimately and quite legally provide assistance by deploying men to the soil -- on
23 the soil to the country in question, namely, the Central African Republic whose
24 sovereignty was under attack.

25 Thank you.

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1 PRESIDING JUDGE STEINER: I'm sorry to interrupt you. I want -- I need a
2 clarification from the expert. On page 28 here, as from line 21, you say that "The
3 Lusaka agreement states that the army of the DRC is made up of the armed forces of
4 the three components," then correction, "The armed forces of the DRC was made up
5 of these three components."
6 From the examination of the Lusaka agreement yesterday, I don't remember any
7 statement in that respect. Could you please try to clarify which statement that the
8 armed forces of DRC was composed by three armed forces, or this is a deduction from
9 your part?

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

11 In relation to the Lusaka agreement, allow me to say the following: The Lusaka
12 agreement was intended to prepare the Congo for unification. In the meantime - in
13 the meantime - the three entities, the three entities taking part in this agreement, each
14 one of these entities remained in its own territory with its own organisation, and
15 within this organisation each organisation had its armed forces and in the meantime,
16 while awaiting unification and the establishment of a national security, the security of
17 the country, of the DRC, or the armed forces making up the -- you see, the armed
18 forces were made up of those three components, the armed forces of those three
19 components and, well, I don't have the actual information -- correction, the agreement
20 right before me, but we can go back to that and I can show you Chapter 6. In the
21 agreement, this provision does exist and I was explaining that this agreement formed
22 the legal foundation, the legitimate legal foundation, for the functioning of the
23 Democratic Republic of the Congo up until the time of unification.

24 PRESIDING JUDGE STEINER: Maître Kilolo?

25 MR KILOLO: (Interpretation) I would like to ask the court officer if we could go to

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1 CAR-DEF-0001-0097, if we could go back to that page, please?

2 Q. Sir, could you please provide us with analysis of Article 2 of this pact of mutual
3 agreement -- correction, pact of mutual assistance amongst these nations of the
4 ECCAS. If you could begin by reading out this particular provision for us?

5 A. Thank you. "Article 2: Any threat of armed aggression, or any aggression,
6 form of aggression, coming from the outside against any one of the nations party to
7 this pact, is deemed to be a threat or a form of aggression against all Member States of
8 the ECCAS, the Economic Community of Central African States."

9 Ladies and gentlemen, your Honour, here we see that any threat of armed aggression
10 becomes or can be deemed to be an aggression against all members of the
11 organisation. When a nation is subject to any form of assault or when the entire
12 community is subject to an aggression, what does the State do? Well, the State reacts.
13 The State reacts. And, since this is an agreement of solidarity and the wording is
14 quite clear, it speaks of Member States being subject to aggression. It is crystal clear
15 that a Member State, a signatory State, is in a position to intervene and can provide
16 assistance to a Member State that is being subject to any form of aggression and it
17 says "any threat of armed aggression".

18 Consequently, if we read this particular provision and then look at what was going on
19 in the field, on the actual soil of the Central African Republic, we see that the CAR
20 was indeed a signatory to this agreement. The Central African Republic was being
21 subject to the threat of armed aggression by a rebel movement. The CAR was
22 being -- was subject to aggression, was being -- was under assault, so to speak. This
23 threat -- and the agreement is very clear. This is a threat or a form of aggression
24 against all the Member States of the ECCAS.

25 Furthermore, if I could move on to Article 3 now, Article 3 specifies that, if that is the

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1 case, the Member States of the ECCAS commit to providing mutual aid and assistance
2 for their defence; for their defence against any threat of armed aggression. So there
3 you have it. That is what the situation was.

4 Logically, the Democratic Republic of the Congo represented by the MLC component
5 was in an entirely legitimate position because of this agreement to provide assistance
6 to another State, namely the Central African Republic, that was being subject to
7 aggression by a rebellion, a rebel movement, that was imposing an armed conflict
8 upon the country.

9 Thank you, your Honour.

10 MR KILOLO: (Interpretation)

11 Q. If we could go back to Article 2 of the Lusaka agreement, I will read the -- from
12 the hard copy, CAR-D04-0003-0527. I'll read out from the particular document:
13 "Security concerns. On the coming into force of this agreement, the parties commit
14 themselves to immediately address the security concerns of the DRC and her
15 neighbouring countries." End of quote. Sir, could you shed more light on this
16 particular provision of the Lusaka agreement?

17 A. Thank you. This provision from the Lusaka agreement, if you analyse it from a
18 political point of view, this is really not very far away from what we were saying
19 earlier regarding the pact of mutual assistance of the ECCAS. The Lusaka agreement
20 calls upon the forces, the stakeholders, to address the security concerns of the DRC
21 and her neighbouring countries, so here we see that the neighbouring countries, the
22 neighbours are not determined or specified. Really, here we are talking about all
23 neighbouring countries.

24 Consequently the MLC, a party to the agreement and thus a stakeholder involved in
25 the -- in managing this security situation could not -- if requested could not refuse to

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1 provide assistance to a neighbouring country as provided for in the agreement, and
2 this neighbouring country which is being attacked was the Central African Republic.
3 So in terms of the Lusaka agreement, the Democratic Republic of the Congo was
4 completely, or rather acted with complete legitimacy, because the Lusaka agreement
5 was a political agreement and served as the legal foundation, the legal foundation for
6 administering the DRC up until the time of unification. So the Lusaka agreement
7 provided this opportunity to the parties administering the DRC to make secure, or to
8 help make a neighbouring country safer, more secure.
9 Now here, it is not specified exactly how security concerns are to be addressed.
10 From a military point of view, ensuring the security in a neighbouring country can be
11 done by sending to the theatre of operations, by sending troops to the theatre of
12 operations, and to my knowledge, and going by my analysis, this is what was done
13 and I am quite convinced of this. At the request of this country, whose security was
14 being threatened, the Movement for the Liberation of the Congo, the MLC, complied
15 with these political/legal standards and provided this neighbouring country, which
16 was subject to aggression, with a number of men, a number of troops, to ensure
17 security and to protect its sovereignty and territorial integrity.
18 Thank you.

19 Q. One last question before we have our break. Mr Dioba, judging from your
20 particular analysis, once the Lusaka agreement was signed in the DRC, and this was
21 moving towards unification of the country and of the army, did Mr Bemba or the
22 MLC have some kind of strategic interest in sending his armed forces to the Central
23 African Republic as of April 2002?

24 A. Counsel, I shall give you my opinion, my analysis, as a specialist in political and
25 strategic issues. You must realise the fate of a politician very much depends on

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1 domestic considerations. Consequently, to answer your question, if Mr Jean-Pierre
2 Bemba, who was a politician involved in the negotiations for the Lusaka agreement,
3 and given that other negotiations were coming up, negotiations that were more
4 important for the Democratic Republic of the Congo, well, I really don't see why
5 external concerns would be major given that the fate of a politician is determined at
6 the domestic level. Since the MLC - the MLC component - was called upon, one
7 could send troops to provide assistance to a neighbouring country, but that would not
8 be a major concern for a politician given that in the future negotiations were coming
9 up; negotiations relating to the very future of the DRC. These negotiations were
10 coming up soon.

11 Since the Lusaka agreements, or as of 2002, April, since the -- we can see that the
12 Lusaka agreement was leading up towards the Sun City agreements and then in turn
13 the Pretoria agreements, December 2002, if my memory serves me well, and the
14 very -- the very future of the DRC was at stake. So from a political point of view, for
15 any politician, for anyone involved in politics in any way, shape and form, what was
16 important, the main concern was to focus on the upcoming negotiations; negotiations
17 that would shape the very future of the country. So those were far greater concerns.
18 All the same, this did not mean one would rule out providing assistance, for example
19 troops, men, to a neighbouring country that was being threatened, a neighbouring
20 country whose security was at stake.

21 Thank you.

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

23 Mr Dioba, we have now our break. It's 11 o'clock. We'll be back at 11.30.

24 I ask, please, court usher to accompany the witness outside the courtroom. In the
25 meantime, we will suspend and resume at 11.30.

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- 1 (The witness stands down)
- 2 THE COURT OFFICER: All rise.
- 3 (Recess taken at 11.00 a.m.)
- 4 (Upon resuming in open session at 11.34 a.m.)
- 5 THE COURT USHER: All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE STEINER: Welcome back.
- 8 I ask, please, court usher to bring the witness in.
- 9 (The witness enters the courtroom)
- 10 PRESIDING JUDGE STEINER: Mr Dioba, welcome back.
- 11 THE WITNESS: (Interpretation) Good morning, your Honour.
- 12 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?
- 13 THE WITNESS: (Interpretation) Yes, your Honour.
- 14 PRESIDING JUDGE STEINER: Maître Kilolo, you have the floor.
- 15 MR KILOLO: (Interpretation)
- 16 Q. Mr Dioba, I'd like to go back to a clarification with regards to the last question I
- 17 put to you before the break. My question is as follows: Did the MLC have a
- 18 personal interest - a politico-strategic interest - in opening up a front in Central Africa,
- 19 or going to intervene militarily in that country from October 2002?
- 20 A. Thank you, Counsel. The answer that I gave you before we went into break is
- 21 as follows: The MLC is an organisation. An organisation is composed of men. So
- 22 firstly you have the leaders, and I am talking about the highest leader of this
- 23 movement at the time, Mr Jean-Pierre Bemba, and what I told you was as follows: I
- 24 told you that the leader of a movement - a political movement - is first of all a political
- 25 player and the opinion, or the life rather, of a politician is firstly played out at national

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1 level, while from the Lusaka agreement onwards it was the fate of the DRC which
2 had to be designated because the Lusaka agreement opened up the path to a series of
3 negotiations. As such, from a political perspective, and even from a political and
4 strategic point of view, the leaders of the MLC who were involved in the negotiations
5 on the DRC objectively couldn't have a particular objective, a particular interest, to go
6 and intervene outside, given that at national level they are there for the construction
7 of their own country.

8 However, the MLC at that time is a component of the administration of the DRC in its
9 area, and it is called upon because what is clear, nobody convinced me to say the
10 opposite, the MLC didn't just get up one morning to go into the Central African
11 Republic. No.

12 I am persuaded, and this is a conviction that I have, that the leader of the MLC had
13 been contacted at a political level to make available to the neighbour of
14 the -- neighbour of the DRC and within the framework of the assistance, because we
15 saw within the previous texts with regards to the Lusaka agreement is that it's
16 possible to send men into a neighbouring country in order to go and help for the
17 security of that country, but that is not a major concern given that the major concern is
18 already committed in negotiations at national level.

19 Because we're talking about October 2002 here. In October 2002, that is several
20 months after the Sun City meeting because the Sun City meeting was in April 2002.
21 So you can count there from May, June, July, August, September, there are all those
22 months, and the MLC was there for undertaking negotiations at national level, where
23 not only the destiny of the players was at stake, but also the reunification of the
24 country.

25 And the objective of all these movements was not to break up the DRC. No. It was

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1 not to unintegrate it, or have a succession. No, the negotiations were going towards
2 unification. Given that this movement is committed to the negotiations at national
3 level and involved in negotiations at national level, any analyst, any expert at a
4 political level, cannot think that a political player will first of all be interested in
5 what's happening elsewhere to the detriment of what's happening in the national
6 sphere.

7 So that is the reason why I have my profound conviction, and that is my opinion as a
8 pure politico-strategic expert. The MLC, or Jean-Pierre Bemba, from the political
9 perspective, he had no particular interest in Central African issues given that the
10 destiny of the DRC was at stake through the negotiations which were being carried
11 out subsequent to the Lusaka agreement.

12 PRESIDING JUDGE STEINER: Maître Kilolo, just in relation to this final statement
13 from the witness, that you say that the destiny of the DRC was at stake in the Sun City
14 negotiations, the destiny of DRC, or the destiny of the other parties, let's put it like
15 that, like MLC and RCD? I didn't understand the destinies of DRC were at stake?

16 THE WITNESS: (Interpretation) Thank you very much, your Honour. The DRC
17 is a State. The State was coming out of a crisis. It was a post-conflict situation.
18 The negotiations that started following the Lusaka agreement had the objective of
19 unifying or, if you like, the reunification of all the components. As such, it was a
20 matter of preparing the future of the State, a State that was coming out of conflict, and
21 also the players involved, given that the State is composed of men, it's the men who
22 built the State so, as such, the negotiations which opened up were there in order to
23 construct or build the future of the State and to avoid situations of crisis.

24 So that is the destiny of the country, as it were, on the one hand, and the country and
25 the destiny of the men as well, the destiny of the country and the destiny of men, or

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1 their fate, and that is the reason why I have the profound conviction that in this type
2 of situation all players, or political players, are above all interested in what happens at
3 national level because their interest is primarily what happens at national level and
4 not abroad, your Honour.

5 JUDGE ALUOCH: Mr Witness, can I seek a further clarification from you, please?

6 What I understand you to be saying is that this intervention in CAR, according to
7 your analysis, was really a non-issue. What the issue was was at national level, the
8 negotiations leading to unification of DRC. Do I understand you right?

9 THE WITNESS: (Interpretation) No, you haven't understood me well. It's not
10 about a problem. What I'm speaking about is the interest that there was, the interest.
11 What am I saying? In my opinion, according to my analysis, while the negotiations
12 were carrying on on the future of the DRC, so of the children of these leaders, the
13 interventions or the external problems could not be a major concern for all the actors
14 because the interest was firstly at national level.

15 Here we're talking about politics, and the interest is first and foremost at the national
16 level, and this is the reason why I say from my point of view, from my point of view,
17 a specialist in political issues, they couldn't go into Central Africa that -- or going into
18 Central Africa couldn't have a -- be a major concern or be of major interest for an actor
19 in the DRC while the negotiations for the unification of the country were carrying on
20 because they had already come out of Sun City and you would see, Judge, that
21 afterwards, afterwards you are going to find yourself in Pretoria, and then you have
22 Pretoria, and then you have this unification which is going to be materialised on 30
23 June 2003 where the government is established, Government of National Unity, and
24 when you read it you will find the actors who were involved at the time.

25 Thank you.

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1 JUDGE ALUOCH: Mr Witness, I think we are saying the same thing but using
2 different -- just using different words, but I think I understand what you are saying.
3 It's not very different from what I'm asking you, but we're using different words.
4 Thank you.

5 PRESIDING JUDGE STEINER: Just a follow-up on the question put by Judge
6 Aluoch and your answer. If I well understood, you're saying that going to Central
7 African Republic shouldn't have been a major concern because at that time the parties
8 were in the negotiations in Sun City and Pretoria for the reunification of the country.
9 We had a previous witness, and later I can give the reference to the parties and
10 participants, saying that Mr Bemba's decision to send his troops to Central African
11 Republic was a regrettable mistake. Would you agree with this analysis?

12 THE WITNESS: (Interpretation) As stated -- well, I can't be in complete agreement
13 with this analysis, and I will explain the reason why, and this is my point of view here.
14 We mustn't forget, taking into account the agreements, and in particular the pact, this
15 mutual assistance that we examined together with regards to the ECCAS, there is a
16 duty of solidarity, a duty of solidarity. So one can assist a state, a neighbouring state,
17 attacked, whose security is attacked, there is that possibility, but what I'm saying is
18 that the destiny of the politician is firstly decided at national level and that's the
19 reason why I have the strong conviction to say when you have the presence of MLC
20 troops, that couldn't be a major concern, that couldn't have a political or strategic
21 interest for a first-level actor, but there's a duty of solidarity. You can send troops
22 there, because the troops that were sent, they are going to be made available to the
23 Central African government. They are going to be available to the Central African
24 defence forces. These units that are sent are going to be units for manoeuvres used
25 by the Central African Republic, and that is out of a duty of solidarity for mutual

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1 assistance, they are made available to them, but that does not mean that it is going to
2 become a major concern, that's what I was saying.
3 Now, everyone has their way of analysing this. I'm not necessarily saying the
4 person's wrong. Somebody's free to think that this was a mistake. There are
5 reasons for that, that person would think that. I would say that the duty of solidarity,
6 the duty of solidarity towards a neighbouring country which was attacked meant that
7 you sent troops there because the troops are made available to them for their use and
8 they are under their responsibility.

9 Now, with regards to the rest, what's of concern to you is above all issues of national
10 interest. That's my perspective, your Honour.

11 PRESIDING JUDGE STEINER: Maître Kilolo.

12 MR KILOLO: (Interpretation)

13 Q. Mr Dioba, I would like to go back to another subject which goes into three
14 points essentially: Firstly, I would like to examine with you the issue of the mini-site
15 in Khartoum, 4 September 2001; secondly, I would like to examine with you the
16 CEMAC summit, 2 October 2002; and, finally, to examine with you the issue of
17 positions between CEN-SAD forces and those of CEMAC on the basis of the
18 agreement of 19 December 2002, between CEN-SAD, CEMAC, the Central African
19 Republic and the United Nations. Those are the three points which I want to
20 address with you now.

21 In order to do this, I would ask the court officer to be so kind as to show document
22 number 6 of the Defence list, namely, page CAR-DEF-0001-0102.

23 Mr Dioba, you have in front of you a Protocole d'Accord. Before reading it, I would
24 like to ask the court officer to show the last page thereof, CAR-DEF-0001-0104.

25 Mr Dioba, could you tell us the date of this agreement, as well as the persons who

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1 signed this agreement?

2 A. Well, here, I can see when you had the positions between the forces of
3 CEN-SAD and CEMAC a ceremony was organised on Thursday, 19 December 2012.
4 This was done in Bangui on 19 December 2002, and the signatories were for
5 CEN-SAD Dr Ali Abdessalam Treki, Secretary of the Popular General Committee of
6 the African Unity, President of the Executive Council of CEN-SAD for the Central
7 African Republic, there was His Excellence Mr Agba Atikpo Mesode, Minister of
8 Foreign Affairs, and for CEMAC, His Excellency, Jean Ping, Minister of Foreign
9 Affairs of Gabon. And representing the Secretary-General of the United Nations
10 General Lamine Cissé. For the CEN-SAD force General Alhadi Muftah Bougela and
11 for CEMAC General Mahamat Ratanga.

12 Q. Thank you very much. I would like to ask the court officer to go back to the
13 first page CAR-DEF-0001-0102.

14 Mr Dioba, could I ask you to read this document, if you would be so kind.

15 A. Thank you. "In answering the call of His Excellency, Mr Ange-Félix Patassé,
16 democratically-elected President of the Central African Republic, Member of the
17 Community of Sahel-Saharan States, CEN-SAD, the brother of Colonel Muammar
18 al-Qadhafi, with the agreement of his brothers Heads of State, organised a
19 mini-summit in Khartoum, Sudan, on 4 December 2001, with a view to resolving the
20 Central African crisis.

21 The participating countries in this mini-summit are respectively the Grande
22 Jamahiriya, the Republic of Sudan, the Republic of Chad and the Central African
23 Republic, in the presence of His Excellency, the President of the Republic of Zambia,
24 in his capacity as President of the OUA and the representative of the
25 Secretary-General of the United Nations.

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1 The summit decided to send a CEN-SAD force in order to preserve security and
2 stability in the Central African Republic under the aegis -- and under the aegis of the
3 guide of the Libyan revolution, Colonel Muammar al-Qadhafi, and President Hassan
4 Al-Bashir of Sudan, with the co-ordination of the President of the Central African
5 Republic and the representative of the Secretary-General of the United Nations."

6 Thank you.

7 Q. Let us stop there for the time being, Mr Witness, and before we continue with
8 the analysis of this document, can you give us your interpretation - your analytical
9 interpretation - of the Khartoum mini-summit of 4 December 2001; that is of course in
10 light of the coup d'état that you mentioned a short while ago?

11 A. Thank you. I would like to begin by saying something about CEN-SAD, which
12 is the Community of Sahelo-Saharan Countries. It is an economic or
13 development-based organisation, bringing together about 30 countries from North
14 Africa, West Africa, Central Africa and even Southern Africa, because Kenya is a
15 member of CEN-SAD. So this refers to the countries that are somewhat affected by
16 the Sahara Desert, which covers a large part of the Maghreb region in Africa right up
17 to the Central African areas.

18 This organisation was created in 1998 for economic and development purposes, and it
19 also has powers to act on political issues when a Member State is threatened, as was
20 the case in the Central African Republic.

21 It should be recalled -- and let me limit my intervention in time; that is as from the
22 year 1996 to 2003. During this period you will realise that the Central African
23 Republic was affected by mutinies, as well as two failed coup d'états; that is the coup
24 d'état of General Kolingba and that of General François Bozizé. After that there were
25 several incursions as from October 2002, when General Bozizé imposed an armed

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1 conflict on his country. This is how come the Central African Republic for a period
2 of about seven years was perpetually in a state of violence.

3 Now, when you come to '99, '98/'99 -- and the CEN-SAD summit was in 2001. Now,
4 if we go back to 2001, you will see that from that time Central Africa was shaken or
5 affected by violence and subsequently by two military coups within a period of three
6 to four months.

7 Anyone who analyses those power grabs, or any other power grabs, will know that
8 such coup attempts are always accompanied by acts of violence and by collateral
9 effects, such as looting as well as violation of human rights.

10 A country that is affected by two military coups within a period of two months could
11 not be in a situation that would leave the others indifferent, because there is this
12 principle of solidarity between States.

13 In order to prevent the Central African Republic from descending into a situation of
14 chaos, and to prevent the Central African people from descending into a situation of
15 civil war, preventive diplomacy requires that preventive action be taken through
16 political measures. It was therefore within this framework that the Heads of State,
17 whose countries were members of CEN-SAD, met in Khartoum to save that country.

18 The document is clear. "At the request of His Excellency, Ange-Félix Patassé, the
19 democratically-elected president ...", and that is the operative phrase, "the
20 democratically-elected president." We know that today all the peoples of the world
21 aspire to democracy, and this is the case of a president who was democratically
22 elected and then attacked. Democratically-installed institutions of the republic were
23 also attacked by rebel forces that wanted to institute chaos, violence and pillaging.

24 The CEN-SAD countries, therefore, decided to dispatch a force. This was a political
25 decision to send a force for the purpose of preserving or safeguarding the security

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1 and stability of that country, and this was supposed to be done under the
2 co-ordination of Mr Ange-Félix Patassé himself, who was democratically elected.
3 Even if he was the victim of coup attempts he was still democratically elected, so it
4 was up to him to ensure the co-ordination of all the measures so as to safeguard the
5 stability of that country with the assistance of those fraternal countries.
6 That is the analysis that I can provide.

7 Q. Mr Dioba, can you now read the last paragraph of the document that you have
8 in front of you?

9 A. Thank you. "In line with the OAU policies relating to the non-destabilisation
10 of legal regimes and the non-recognition of the anti-constitutional changes of regimes,
11 the Durban summit of 10 July 2002 adopted a resolution taken during the session of
12 the central organ of the OAU mechanism for the prevention, management and
13 settlement of conflicts."

14 Q. Please continue with the first two paragraphs on that page.

15 A. I see there, "Tripoli, 21 January 2002, which provides for the dispatch of a
16 peacekeeping force in the Central African Republic. The CEN-SAD force assumed
17 its responsibilities and fully accomplished its mission, leading to the restoration of
18 stability, security and peace and putting an end to the degradation of the situation."

19 Q. Mr Dioba, I would like to ask you to carry out a progressive analysis of this
20 document. Can you tell us what your analysis is of the policy of the OAU in light of
21 that crisis in the Central African Republic?

22 A. My answer to you would be simple: In its founding principles, that is the OAU,
23 which has become the AU today, the African Union does not accept coup d'états, that
24 is the anti-constitutional take-over of power. Therefore, in light of the coup attempts,
25 that is the attempts to take over power in an anti-constitutional manner by citizens of

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1 the Central African Republic through the coup attempts mentioned a short while ago,
2 the OAU or the African Union could not agree to that. That is why the organisation
3 condemned that and political decisions had to be taken to promote security, stability
4 and peace.

5 If people want to take over power, they have to do so using democratic means. That
6 is through the ballot box.

7 Q. Can you now please continue with the reading of the remainder of that page,
8 please?

9 PRESIDING JUDGE STEINER: Maître Kilolo, sorry to interrupt you. According to
10 the estimation made by court officer, you have already gone further than the five
11 hours estimated for your questioning of the witness, excluding the time taken by the
12 Chamber to put its questions.

13 Could I suggest maybe, in order to expedite a little bit the -- your questioning of the
14 witness, that to ask the witness to read for himself silently the document and then you
15 can put your questions? Because it is taking too long just for the witness to read
16 documents that are in front of our views. So maybe it's just a suggestion.

17 MR KILOLO: (Interpretation) I have no problem with that, your Honour. We
18 fully intend to conclude the examination of this witness before the end of this session.

19 Q. Mr Dioba, you can silently read the remainder of that document to yourself and
20 then give us your analysis of the substance of that document.

21 A. My answer is simple: Here we are still talking about the expressed intention of
22 African countries, that is the members of CEMAC, of ensuring that the Central
23 African Republic does not degenerate into chaos. So they intend to take over from
24 the CEN-SAD force for the purpose of protecting the legal regime, ensure security in
25 the country, restore security and stability, and provide security in the border regions.

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1 So it is not only their aspirations to maintain democratically-elected governments, but
2 they also wish to ensure the stability of such countries and prevent the acts of
3 violence in the Central African Republic.

4 Q. Mr Dioba, as you have just shown, we can see that the OAU intervened to
5 ensure a buffer force in the CAR, that is the CEN-SAD force, which would later be
6 replaced by the CEMAC force.

7 My question is as follows: Based on your own strategic analysis, why was it
8 necessary to call upon the MLC force in the Central African Republic?

9 A. This is my answer to your question: There were political decisions taken, and
10 the execution of those decisions from the political and matériel -- from the personnel
11 and matériel point of view, usually you have problems. So the recourse to MLC was
12 linked to the fact that the forces available were not sufficient or it was also linked to
13 the shortcomings of the previous forces.

14 So the MLC forces that are mentioned here were supposed to come and reinforce the
15 other forces that had already been there, but I have already mentioned that the MLC
16 forces did not just get up one morning in the DRC and crossed the river into the
17 Central African Republic. The Khartoum agreement authorised Mr Ange-Félix
18 Patassé to co-ordinate the constitution of a force, the bringing together of forces to
19 ensure the stabilisation of the country.

20 So the MLC forces that arrived did so at the request of Mr Ange-Félix Patassé,
21 President of the Republic and Supreme Commander of the Army. That is my strong
22 conviction. He was responsible for the political organisation of his country, so when
23 those forces arrived the purpose was to reinforce the other forces for the purpose of
24 ensuring the stability and security of the country and the institutions of the country as
25 well as its democratically-elected authorities.

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1 Thank you.

2 Q. Mr Dioba, you have stated that the MLC arrived in order to reinforce the forces
3 that were already in the CAR, including the CEN-SAD force. My question to you is
4 as follows: Based on your research and analyses, were you able to determine who
5 specifically called upon the MLC to come to the Central African Republic?

6 A. Thank you. A short while ago I told you that, in spite of the attacks against the
7 institutions of the republic, Mr Ange-Félix Patassé remained the President of the
8 Republic and Supreme Commander of the Army; that is, he was responsible for the
9 security and defence forces of his country. This means that if an appeal is made, that
10 is first of all the responsibility of the President of the Republic.

11 You will of course realise that in any State, at the level of the military command, we
12 have a strategic level, that is a political/strategic level at the top, where you have the
13 President of the Republic, and that is the person who decides on the defence and
14 security policy to be implemented by the Minister of Defence. You have operational
15 command and, below that, you have the tactical execution level.

16 So if you have to identify those who called upon the MLC forces, then you have to
17 know that they would be at the strategic level; that is, at the level of the supreme
18 commander of the army. It is possible that he can delegate his minister or his Chief
19 of Staff of the Army.

20 So the people who called upon the MLC to deploy in the CAR are located at the
21 strategic level of the defence structure of the Central African Republic, and the
22 supreme leader at that level is the President of the Republic who can, of course, rely
23 or delegate to a certain number of his collaborators.

24 PRESIDING JUDGE STEINER: Maître Kilolo, just one clarification related to your
25 last question. You mention here, in your question, which is on line -- page 52, line 7,

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1 "Mr Dioba, you have stated that the MLC arrived in order to reinforce the forces that
2 were already in the CAR, including the CEN-SAD force."
3 According to the document we are analysing, this agreement to send CEN-SAD forces
4 was signed, although the copy we have is not signed at all, but was signed in
5 December, and the MLC troops, according to evidence that we had before us, were in
6 the territory of Central African Republic since October.
7 So I would like to have the clarification on the chronology. So was MLC sent to
8 reinforce CEN-SAD or vice-versa, since MLC apparently, or allegedly, was in Central
9 African Republic before this agreement was signed? Could, please, maybe the
10 witness clarify?

11 THE WITNESS: (Interpretation) Your Honour, can you kindly repeat? I did not
12 quite understand your question.

13 PRESIDING JUDGE STEINER: Could, please, court officer display page, the next
14 page, document 0140.

15 As you can see, Mr Witness, it said (Interpretation) "Done in Bangui,
16 19 December 2002." So it appears that this Protocole d'Accord, which is not signed at
17 all, was "Fait Bangui" in December 2002. The troops of MLC were in Central African
18 Republic, or apparently they were in Central African Republic, since October. So
19 that means that the MLC troops were sent before this agreement was signed; is that
20 correct?

21 Maybe Maître Kilolo could clarify?

22 MR KILOLO: (Interpretation) Yes, your Honour. To help clarify this agreement,
23 19 December 2002 represents the agreement on the beginning of the change-over of
24 positions between the CEN-SAD forces and the CEMAC forces. It has nothing to do
25 with the arrival of CEN-SAD troops in the Central African Republic.

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1 In fact, we are talking about three distinct agreements. So here we have
2 19 September, or rather 19 December. That is just the beginning of the departure of
3 CEN-SAD forces, which have had to progressively leave the Central African territory
4 from 19 December to be replaced by CEMAC forces on the basis of an agreement that
5 was signed by the Minister of Foreign Affairs of the Central African Republic
6 appointed by President Patassé together with other authorities, including the
7 representative of the Secretary-General of the United Nations.

8 PRESIDING JUDGE STEINER: So now I understand the chronology.

9 My last clarification from the witness is that whether the witness had access to the
10 signed copy of this document?

11 THE WITNESS: (Interpretation) No, your Honour.

12 PRESIDING JUDGE STEINER: Maître?

13 MR KILOLO: (Interpretation)

14 Q. Sir, now since we're on this particular point, we see that in the last part of this
15 document, and I quote, "Upon the beginning of the transfer of positions from between
16 the CEN-SAD forces and the CEMAC forces, a ceremony was organised Thursday,
17 19th of the 12th month 2002," end of quote.

18 Now, during your research, did you have an opportunity to look at this issue of the
19 CEN-SAD forces leaving the Central African Republic?

20 A. Thank you. Well, I should begin by reminding you that during disengagement
21 operations, or when troops withdraw, those operations are always done gradually.

22 What does that mean? Well, between the point in time when the decision is taken to
23 withdraw troops, well, the decision is not implemented immediately because
24 withdrawing troops means an operation that can mean -- that can be quite
25 considerable in terms of transporting troops, withdrawing military matériel, so

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1 usually a withdrawal is done gradually.

2 So even if mention is made of the transfer, or the passing over, that is the political
3 decision, but that does not necessarily mean that a few days after the signing of the
4 agreement, that does not necessarily mean that the other troops take over
5 immediately. These are rather demanding operations that take a certain amount of
6 time.

7 Q. When you conducted your analysis, your purely -- your analysis of the strategy,
8 now what about the directive or the decision regarding this withdrawal of the MLC
9 forces from the CAR?

10 A. I haven't quite grasped your question, sir.

11 Q. At one particular time, we see that as of 19 December 2002 the CEN-SAD forces
12 began to gradually leave the Central African Republic. You told us a few moments
13 ago that the MLC came to reinforce those troops. Did you look at the issue of the
14 withdrawal of the MLC troops?

15 A. Yes, the documents that I had access to, the withdrawal of the MLC troops was
16 scheduled as well. It was also a gradual withdrawal. What's more, a certain return
17 was organised before others were surprised by incursions of rebel troops, and
18 I believe judging by the document sometimes there was some returns, but generally
19 speaking the withdrawal of the MLC troops was scheduled.

20 MR KILOLO: (Interpretation) I would like to ask the court officer if she could
21 please display document 20 on the Defence's list on the screen, CAR-OTP-0064-0759.

22 THE COURT OFFICER: (Interpretation) Mr Kilolo, could you please confirm the
23 level of confidentiality of this document?

24 MR KILOLO: (Interpretation) This is a public document.

25 PRESIDING JUDGE STEINER: Maître Kilolo, could you please check with

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1 your -- maybe the case manager, because in your list this document is said to be
2 confidential?

3 (Defence counsel confer)

4 MR KILOLO: (Interpretation) It goes without saying, your Honour, that initially
5 the OTP had classified this document as confidential out of prudence, but I think it
6 goes without saying that the information found in this document does not justify
7 giving such a rating to the document.

8 PRESIDING JUDGE STEINER: In principle I agree with you, but I would like to
9 hear from the Prosecution. As a matter of fact, in the copy that we have I can't see
10 the ERN number.

11 MR IVERSON: I think it's a public document, Madam President.

12 PRESIDING JUDGE STEINER: The document can be displayed.

13 MR KILOLO: (Interpretation)

14 Q. Sir, I would like to show you this document. This is a diagram showing a
15 structure - the command structure - of the MLC, and this diagram was prepared by
16 General Opende who came and gave testimony before this Chamber as a military
17 expert called by the Office of the Prosecutor. We would appreciate your analysis of
18 this document. As someone versed in strategy, someone who is familiar with armed
19 conflicts in Central Africa, could you give us your opinion?

20 A. Well, let me be clear about one point. I said at the very beginning that I am not
21 a soldier. A soldier is a professional in the art of war, someone who has been trained
22 to wage war. I am a strategy person, and really I am looking at war and military
23 matters from a different view-point. There is a difference between a civilian
24 strategist such as myself, who is a theoretical expert when it comes to conflict and war,
25 and then you have a soldier; someone who actually operates within the theatre of

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1 war.

2 That having been said, I would like to specify once again that -- well, this
3 document -- this document is a theoretical sort of document. It's not really a
4 document that would be used for deployment in the field.

5 Now, when you look at this diagram, you see that -- well, in French you would call
6 this an organigramme, an organisational chart, an org chart, that shows the military
7 structure of the MLC in 2002 and 2003.

8 I beg your pardon. Your Honour, might there be a French version of this document?
9 No?

10 PRESIDING JUDGE STEINER: I think it's document 21, unless I'm wrong?

11 MR KILOLO: (Interpretation) That's entirely correct, your Honour.

12 Could the court officer please display document number 21 for us?

13 THE COURT OFFICER: (Interpretation) Is that a confidential or public document?

14 PRESIDING JUDGE STEINER: It's only the translation of the same document. It's
15 public. It's CAR-OTP-0064-0763.

16 THE WITNESS: (Interpretation) Thank you. Well, the first thing I'd like to say is
17 that, with all due respect for this expert who showed this particular document, well,
18 I would like to make a number of comments.

19 First of all, regarding the configuration, now, the first thing you notice about the
20 configuration is these dotted lines. There's a dotted line on the left, and it goes from
21 the box reading "commander-in-chief" and then it goes down to "Central African
22 Republic Intervention Force, General Moustapha."

23 A structure means that -- a structure is something that is direct. One does not have
24 dotted lines within an org chart. If something is demonstrated or depicted by way of
25 a dotted line, usually that is something that is virtual, something virtual. It's not

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1 something that has a particular effect. So the fact that a dotted line is used here in an
2 org chart, already this leads me to wonder.

3 My second comment is as follows: Once again, regarding these dotted lines, in the
4 final analysis, when the MLC troops left for the Central African Republic, that unit,
5 was it a specific unit under the command of the Commander-in-Chief Jean-Pierre
6 Bemba as we see here? One really must wonder.

7 These troops, if they left, the MLC troops, if they left the DRC, they would have to be
8 linked not to the commander-in-chief, the boss, but rather to the Chief of Staff because
9 it is the Chief of Staff who commands the units even when the units go outside the
10 country.

11 All the same, they still report back to the Chief of Staff. They remain units of the
12 General Staff reporting back through these links, these channels. So it is the Chief of
13 Staff. So the lines really should be going to the box that is marked "Chief of Staff."
14 That is my second comment, my second challenge to this document.

15 Now, my third comment, and this is my opinion, in my analysis I tried to determine
16 how the MLC operated, and here we see three rectangles -- no, four, four rectangles.
17 Below the Chief of Staff, General Amuli, we see four rectangles, G1, and it depends on
18 the army, sometimes they refer to these units as B1 but, well, whether it's B1 or G1,
19 the meaning is the same; those are the administrative offices, administrative offices.
20 B2 or G2, and it really doesn't matter what the letter is, that is the intelligence service.
21 G3 or B3, and this depends on the codification of the country, that group is the
22 operations group. And then G4 or B4, that represents logistics.

23 But here, in this particular document, there is something missing; namely, the G5.
24 The G5 are what we call the psychological war. The psychological aspect is always
25 important in -- during warfare. So that is missing. So this org chart here, to my

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1 mind, this org chart just doesn't work.

2 Now, in terms of the actual men that are represented here, the G1 here, it says "gen," I

3 suppose that stands for "general." The G1 here, the person in charge of

4 administration in 2002/2003, was no longer General Mongapa but rather it was

5 Lieutenant Kenwapa Bitankuya (phon). That was the G1 in 2002/2003. That person

6 was Jean-Pierre Wabo Guipa (phon).

7 The G2 in 2002/2003, was Lieutenant-Colonel Égide Kongoli. Lieutenant-General

8 Égide Kongoli. The G3 was Lieutenant-Colonel Dieudonné Kitenge. That was the

9 G3. Lieutenant-Colonel Dieudonné Kitenge. And the G4 in 2002, the person in

10 charge of logistics, his name -- his name is, he's still alive, he's now a high-ranking

11 officer within the land forces of the DRC, that was Colonel Mbiato, Colonel Aime

12 Mbiato. That was the G4. He was in charge of logistics.

13 And the G5, as I was telling you, Lieutenant-General Odas Mohigabo (phon),

14 lieutenant-colonel replaced by Captain Monzebo (phon). So when you look at the

15 very structure here, there are a lot of weaknesses here. It really seems quite false.

16 And in terms of the actual people, the men in question, I do have questions about this

17 document.

18 If the men who led these units, if we were to record, if we were going to put the

19 names of other people there, that would give the impression -- it would give the

20 impression that some manipulation has gone on and so, that being said, now, I talked

21 about the dotted lines.

22 If the diagram were to be reasonable, from a military point of view, at least from a

23 theoretical point of view, I remind you that I am an expert. I am about theories.

24 I am a theorist. If this document is to be serious, I really think that the dotted line,

25 since -- well, when you send forces outside of the country, the forces remain under

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1 the General Staff, part of the General Staff, and still there is an administrative link or
2 tie, an administrative tie, and this is a direct link between the staff headquarters and
3 the force.

4 I'll give you an example: If a state provides, let's say in a peacekeeping operation, if
5 a state, a nation, provides assistance to the UN, it is true that the first thing that is
6 done is the symbols are changed and they become peacekeepers, Blue Helmets.
7 They become UN forces reporting to the UN. But just because a country has made
8 troops available to operations, that doesn't mean that the administrative link
9 disappears.

10 So that administrative link continues, but it is not a command link. It is not a
11 command operational link. It is a link, and I've said this, one can ensure that the
12 forces made available to a particular operation, or to a particular state, are indeed the
13 men -- let us say there are problems, let us say they are not well-fed or not -- their
14 uniforms are not proper, or let us say -- let us assume there are a few administrative
15 or day-to-day problems, that's one thing, but it doesn't mean, it does not mean at all
16 that you have operational control, you don't have operational control over those
17 forces.

18 When you provide troops to the UN or NATO or another coalition, or the AU, for
19 example, those troops belong to a particular structure. So I think I will leave it at
20 that for right now. Thank you.

21 As I was saying, I really do have a problem with this document, and if such a
22 document were made available, if it's a supporting document, well, I really must say
23 I think this document was treated in a very light sort of way, and I think that it is very
24 much -- quite misleading.

25 MR KILOLO: (Interpretation) I merely have two more questions for you, and

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1 I would like to ask the court officer to please show us document 24 on the Defence list,
2 and that is CAR-OTP-0042-0237.

3 Sir, you do have this document before you now or, rather, on the screen, and this is a
4 memo and it is from the Ministry of National Defence, Head of General Staff, et cetera.

5 I would like to ask the court officer if we could please move on to page
6 CAR-OTP-0042-0239. And I would also like to ask one question in private session, if
7 that would be possible.

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

9 (Private session at 12.59 p.m.) Reclassified into open session

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

11 MR KILOLO: (Interpretation)

12 Q. I'd like to ask you a question now. When you see this list of the staff members
13 within the command structure that was set up at that particular time in the Central
14 African Republic, do you recognise any of these names that we see here on this list of
15 staff members?

16 A. Yes, of course. Yesterday when we were discussing things in private session, I
17 spoke about this meeting that (Redacted)

18 (Redacted)

19 (Redacted)

20 If I understand this note de service, (Redacted)

21 (Redacted), and you have the logistics

22 communication, situation, behaviour, intelligence, logistics, transmission,
23 communication.

24 Q. I don't want to ask you too many questions about that, but (Redacted)

25 (Redacted)

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1 (Redacted) and

2 you could tell the Court the content of your meetings with him, what he said with
3 regards to the functioning of the command of the operations at the time?

4 A. Well, what's sure is that in our meetings it was a simple meeting that we had. I
5 mean, you just have to understand that later --

6 PRESIDING JUDGE STEINER: Mr Witness, I'm sorry to interrupt you. The
7 Defence is proposing that you give these explanations in public session, (Redacted)
8 (Redacted) Is that fine
9 with you?

10 THE WITNESS: (Interpretation) No problem.

11 PRESIDING JUDGE STEINER: Am I correct, Maître Kilolo? Was that your
12 proposal?

13 MR KILOLO: (Interpretation) It was indeed, your Honour.

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

15 THE WITNESS: (No interpretation)

16 PRESIDING JUDGE STEINER: Monsieur, (speaks French).

17 THE INTERPRETER: One moment please, says the Judge.

18 MS KNEUER: Madam President, I wonder if someone in the public gallery could
19 actually watch at the screen of the witness (Redacted)
20 (Redacted) because the shades are not down and, if I understand, it's a
21 confidential document.

22 PRESIDING JUDGE STEINER: We'll have to check, because it is listed as a public
23 document. Could, please, Defence check it for us?

24 MS KNEUER: Madam President, in the eCourt it's marked as "Confidential." It
25 may be wrong and it may be possible to reclassify. I'm just a little bit concerned at

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1 this stage because, as I said, the shades are not down.

2 PRESIDING JUDGE STEINER: Are we still in private session?

3 MR KILOLO: (Interpretation) If you would allow me, your Honour? The first
4 information that I had says that the document has been reclassified as public, so
5 perhaps in a moment I'll be able to give you the reference thereto.

6 PRESIDING JUDGE STEINER: I think this document has been already discussed
7 many times, but I'm not sure whether it was in public or private session. I don't see
8 in principle any reason for the document to be confidential, but --

9 MR KILOLO: (Interpretation) I could give you the reference now. So this is
10 document CAR-OTP-0042-0237_R01.

11 PRESIDING JUDGE STEINER: I think we can go into public session, just reminding
12 the witness not to mention the name of this person that you interviewed.

13 Let's turn into public session, please.

14 (Open session at 1.06 p.m.)

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

16 MR KILOLO: (Interpretation)

17 Q. Mr Dioba, could you tell the Court what Witness X, or rather Mr X, told you on
18 the subject of the functioning of the central operations which was in Camp Béal at the
19 time of the events?

20 A. Thank you. Well, first of all, it has to be said that there wasn't anything
21 particularly confidential related thereto. I just asked certain questions in that regard
22 in order to be able to find out in which camp he was in, how the centre was organised,
23 how they were deployed, how the MLC troops behaved. It was just a free interview
24 in the form of a conversation.

25 So that's what came out in the document. He was part of the centre of the command

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1 of operations, under the command of "B", and it was after the defection of the former
2 commander, I'm going to say "A," that the troops of the MLC -- well, they were
3 fighting in the camp of Central African loyalists, dressed with the uniforms of Central
4 African forces. They were looked after by the government - the Central African
5 government - and as such the troops were directly placed under the command of the
6 Chief of General Staff of the Central African forces.

7 Q. Without going into details - and this is something that can be said in open
8 session - did he mention names when he told you that the MLC troops were under
9 the control of the Chief of General Staff of the Central African Republic?

10 A. He didn't even have to mention the names. These are conclusions of any
11 researcher. If anybody tells you that the troops were under the command of the
12 Chief of General Staff, well, you just look at the staff who's the Chief of General Staff.
13 So you have to see when the Central African General Staff in October 2002 and from
14 there to March 2003, well, that during that period it will undergo considerable
15 change. From October, the commander-in-chief is under, or the chief commander is
16 under, the orders of Betibangi; General Betibangi.

17 If you would allow me, your Honour, can I mention such things? Okay. So I was
18 saying that in the first phase, from October, you saw that the command was directed
19 by General Betibangi. He had health problems until November, and in the
20 meantime the initiatives that were taken according to -- well, given his state of health,
21 the administration of the command chief was under the command of André Mazi, his
22 deputy, awaiting for the appointment from November of a new Chief of General Staff,
23 Antoine Gambi. So in that intermediary period it was when Betibangi was ill and it
24 was André Mazi, and then it was André (sic) Gambi who was the Chief of General
25 Staff of the Central African forces.

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1 Q. Did he speak to you about the Presidential Security Unit at the time?

2 A. Thank you. Not much, but I think that in our discussions (Redacted)

3 (Redacted), who was in the centre of command of operations

4 and, you know, in most countries, particularly in Africa, that's the one I know best,

5 the unit of presidential security is a unit which is directly linked to the President of

6 the Republic.

7 So this unit is often special, it brings together entrusted men, and at that level, well,

8 that is more or less the subject of the discussions. Now, it has to be said these

9 are -- I'm talking about events. When we talk about them today these are events

10 which occurred ten years ago, so sometimes it's my memory that I'm using to get this

11 information.

12 Q. My very last question. I would like you to help us to draw the lines between

13 your field of expertise and that of a military expert.

14 Lets take a scenario, the scenario you mentioned a while ago, that there were three

15 levels of command: Politico/strategic command; strategic --

16 A. I'll help you with this. There's a strategic level which is, lets say, civilian and

17 military, because you have civilians and you have politicians who intervene at that

18 strategic level, and that's why I prefer to say that there's a civilian/military level,

19 political/civilian level; and then you have an operative level with regards to the

20 conception of actions; and then you have a third level, a tactical level, if we can put it

21 like that.

22 Now, in order to answer your question, I told you, and this is something that I would

23 like to stress, that I am not a soldier. I am not a soldier. What's a soldier? A

24 soldier is a professional of war. That means that that person is trained to carry out

25 war. That person is able to lead military operations in the theatre of operations.

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- 1 That's something I cannot do.
- 2 I am a theorist. I am trained in strategic studies. That means you study war as a
- 3 phenomenon at a theoretical level, with a focus on political aspects. So I'm -- my
- 4 area of interest is not in what happens in the theatre of operations; that is to say, that
- 5 it's not possible for me to know whether soldier "A" shot whatever mortar, no.
- 6 At a strategic level, I carry out analysis at a theoretical level with regards to the major
- 7 decisions - major lines - and with regards to responsibilities, and that is the field, and
- 8 that is the difference between a strategic theorist and a military professional, between
- 9 the person who applies strategy and the person who reflects on strategy.
- 10 There's one who applies strategy, who implements strategy, that's a soldier, and the
- 11 other is a theorist who isn't even able to shoot a bullet, who might not even know
- 12 how to shoot. He reflects and he can look at how a staff can be organised, look at the
- 13 different levels, the decision-making levels, that there are within a military
- 14 organisation, and look at the levels of responsibility that there are.
- 15 At a theoretical level in war operations, this isn't somebody who can tell you how
- 16 we're going to deploy the troops, how you have to organise a corridor, no, but
- 17 nevertheless in research you can always be interested in such things to have a look at
- 18 how it's done, and maybe to use it as an example, as a basis. When you demonstrate
- 19 things at theoretical level, you can base them on that reality.
- 20 MR KILOLO: (Interpretation) I have no more questions for you. I'd just like to
- 21 thank you for having accepted to shed light on these matters.
- 22 THE INTERPRETER: Thank you very much, says Defence counsel.
- 23 PRESIDING JUDGE STEINER: Thank you, Maître Kilolo. Mr Iverson, we still have
- 24 a little bit less than ten minutes so, my question is, would you prefer to start right
- 25 now or should we adjourn and you can start with your questioning tomorrow

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1 morning?

2 MR IVERSON: Madam President, I think it would make most sense to adjourn at
3 this time and just start tomorrow morning. I can't imagine that I would get very far
4 into the questions that I do have, but I do intend at the very least on finishing
5 tomorrow as well.

6 PRESIDING JUDGE STEINER: Thank you very much.

7 Mr Dioba, we are going to adjourn for today. Tomorrow you will continue giving
8 your testimony, this time being questioned by the Prosecution.

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

12 We will suspend for today and resume tomorrow morning at 9.00 sharp.

13 I ask, please, court usher to accompany the witness outside the courtroom. In the
14 meantime, we will adjourn.

15 (The witness stands down)

16 THE COURT OFFICER: All rise.

17 (The hearing ends in open session at 1.20 p.m.)

18 RECLASSIFICATION REPORT

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

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