

Trial Hearing
Witness: CAR-D04-PPPP-0045

(Open Session)

ICC-01/05-01/08

1 International Criminal Court
2 Trial Chamber III - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki
6 Trial Hearing
7 Tuesday, 19 March 2013
8 (The hearing starts in open session at 9.05 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE STEINER: Good morning.
13 Could, please, court officer call the case.
14 THE COURT OFFICER: Thank you, Madam President. Situation in the Central African
15 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
16 PRESIDING JUDGE STEINER: Thank you.
17 Good morning. I welcome the Prosecution team, legal representatives of victims, the
18 Defence team, Mr Jean-Pierre Bemba Gombo. Good morning our interpreters, our court
19 reporters.
20 We will continue today with the questioning of Witness 45.
21 Good morning, Mr Rojas.
22 THE COURT OFFICER (Redacted): (Interpretation) Good morning.
23 WITNESS: CAR-D04-PPPP-0045 (On former oath)
24 (The witness speaks Lingala)
25 (The witness gives evidence via video link)

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1 PRESIDING JUDGE STEINER: Good morning, Mr Witness.

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

3 PRESIDING JUDGE STEINER: Mr Witness, are you feeling well and ready to continue
4 with your testimony?

5 THE WITNESS: (Interpretation) Yes, your Honour, I'm feeling fine.

6 PRESIDING JUDGE STEINER: Mr Witness, I need to remind you that you are still under
7 oath. Do you understand that, sir?

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

9 PRESIDING JUDGE STEINER: Mr Witness, the Prosecution will continue questioning
10 you and for that purpose I give the floor to Mr Iverson.

11 Mr Iverson.

12 MR IVERSON: Thank you, Madam President. Good morning, your Honours.

13 QUESTIONED BY MR IVERSON: (Continuing)

14 Q. Good morning, sir. How are you doing this morning?

15 A. Good morning. I feel just fine. Thank you for asking.

16 Q. Sir, when we left off yesterday you had mentioned a Lieutenant Bomengo and his
17 criminal activity; is that right?

18 A. Yes, I did mention him.

19 Q. Sir, are there any other cases of criminal activity within the ALC during the time that
20 you were in CAR that you failed to mention?

21 A. No, I'm not aware of anything. I do know about the activities of Bomengo.

22 Now, let me tell you clearly what happened with Bomengo. Since he was present there,
23 where the battalion was operating, he was stopped by the authorities, General Mazangi
24 and Thierry, and some police officers and relatives of soldiers of that country were able to
25 gather up the various goods that had been taken from the local people.

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1 What happened when he was stopped, he was no longer -- when he was arrested he was
2 no longer working with me, but to say that I know about things that the ALC did then I
3 really couldn't answer that question. You would have to specify something. You have
4 to specify a particular event that I was present at and that will allow me to give a proper
5 answer to your question.

6 Q. According to you, sir, when did this event with Lieutenant Bomengo take place?

7 A. Well, the problems that led to Bomengo being arrested, it was a problem that
8 occurred on the 31st. The war had started on the 30th. As the ALC soldiers were able
9 to capture PK4 where the enemy was positioned, Lieutenant Bomengo was in charge of
10 intelligence at that time. He was amongst the various officers that the people responsible
11 for operations had chosen to gather the various goods or items that the enemy had
12 abandoned where they were positioned, so all those goods were brought together and
13 handed over to General Mazangi.

14 So Bomengo was there, he was supposed to be working with someone else, working in
15 General Mazangi's office, as well as other soldiers, and so a committee was set up to
16 gather up all these various items and goods that had been abandoned. Now, if Bomengo
17 had tried to do something else, I think that's why the authorities in charge of the operation
18 arrested and imprisoned in the Central African Republic, and after that the authorities had
19 decided and I was no longer working with him.

20 Q. So whatever happened with Lieutenant Bomengo?

21 A. After his detention in the CAR I don't know what happened, but I heard some
22 people say that he had been arrested and then he was put on trial by the court martial and
23 that was just, well, to give -- make an example, to set or to show an example, to the other
24 soldiers so they wouldn't do anything stupid or ridiculous.

25 Q. And when did you hear that?

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1 A. Well, we had heard talk about that after PK12. The authorities responsible for
2 operations had organised a lecture with the soldiers to talk about morality and ethics, so
3 that they would remain loyal, and the authorities informed the soldiers so that they would
4 know that any who -- anyone who committed a crime would be put on trial, and that is
5 when I heard about this particular problem.

6 MR IVERSON: Madam President, I'd like to request that we go into private session.

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

8 MR IVERSON: Could I ask the court officer to please display --

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

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

11 MR IVERSON: My apologies. Could I ask the court officer to please display item

12 number 16 on the Prosecution's list of documents, and the ERN number is

13 CAR-OTP-0017-0351 and if the court officer could just go directly to page 0353.

14 THE COURT OFFICER: Could you please confirm whether this document is
15 confidential?

16 MR IVERSON: This document is confidential.

17 PRESIDING JUDGE STEINER: It's document 16?

18 MR IVERSON: It is document 16, Madam President.

19 PRESIDING JUDGE STEINER: Thank you.

20 MR IVERSON:

21 Q. (Redacted)

22 A. (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 A. (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 (Redacted)
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 Q. (Redacted)
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- 21 (Redacted)
- 22 A. (Redacted)
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- 5 Q. (Redacted)
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- 7 A. (Redacted)
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- 11 Q. (Redacted)
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- 17 A. (Redacted)
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- 5 PRESIDING JUDGE STEINER: (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 THE WITNESS: (Interpretation) (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 PRESIDING JUDGE STEINER: Thank you.

5 Mr Iverson.

6 MR IVERSON:

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 THE INTERPRETER: (Redacted)

22 (Redacted)

23 THE WITNESS: (Interpretation) Can you kindly repeat your question? I did not fully

24 Understand it.

25 MR IVERSON:

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1 Q. Well, maybe it would be clearer if I used an example from your testimony with
2 Defence counsel. I sensed that there were some unprompted answers in some of your
3 answers. I just want to ask you about them. So, on transcript 293, page 51, line 18,
4 Defence counsel asks you: "Did the section go to the other side?" And your answer:
5 "Yes, indeed, the section did go there but did not spend the night." You were never
6 asked about the return or spending the night, but yet you added that to your answer. I
7 was just wondering why, sir.

8 A. I cannot hear you very well. Some of your words are inaudible. If you are
9 referring to the first day, the day on which the observers crossed, well, I am telling you
10 they did not spend the night there; they returned.

11 PRESIDING JUDGE STEINER: Judge Aluoch would like a clarification.

12 JUDGE ALUOCH: It's not really a clarification. I have a feeling, Mr Iverson, that the
13 witness is probably confused as to which question he's supposed to answer because you
14 seem to have posed two questions. Maybe if you could just be clearer than you are now
15 and make -- be very specific as to which question you want him to answer, please.

16 MR IVERSON: Thank you, your Honour.

17 Q. Sir, I'm under the impression that you're giving unprompted answers to questions;
18 am I wrong about that?

19 A. I did not quite understand the question. I heard you say that the Defence team
20 asked me a question, and I said something like "They did not spend the night there." I
21 did not quite understand you because some parts of your question were inaudible.
22 That's why I asked you if you were referring to the day the advanced soldiers or scouts
23 crossed over; then that's why I said they did not spend the night there. So if you kindly
24 repeat your question, maybe I will be in a better position to answer.

25 Q. Okay. New question in an attempt to clarify what I'm getting at here: Sir, I'm

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1 under the impression that you're aware of the material facts of this case, and that you are
2 conveniently adding portions to your answer that are calculated to exonerate the accused.
3 They're calculated to try to add things that help Mr Bemba. Am I wrong about that?

4 A. No, that is not true. If you have an incorrect version, then I am giving you the true
5 version.

6 Q. Very well, sir. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 And I don't understand how the answer correlates to the question and I was wondering if
11 you could help the Chamber with that.

12 A. Let me repeat myself. That is -- this is what I told the Defence counsel: The
13 rebels had occupied PK12 and PK4. I no longer remember how many days they spent at
14 those locations, but I believe they spent quite some time there.

15 (Redacted) The rebels

16 were on the side of Bozizé, and these rebels were maltreating, and raping and

17 perpetrating all sorts of abuses which have been mentioned in the Court against the

18 members of the population. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted) how they had been chasing away families to set up their command

22 posts in the houses of those families. That is why in my answer to Defence counsel I was

23 saying that if you heard about those, that is the abuses, it was because of the rebels who

24 were in PK12 and PK4.

25 MR IVERSON: Madam President, could I ask to go into open session, please?

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

2 (Open session at 9.51 a.m.)

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

4 MR IVERSON:

5 Q. Sir, I'd like to ask you about another portion of your testimony, and this is from
6 transcript 295, page 17, at line 14, given in open session. Counsel for the Defence asked:
7 "So what happened during this visit?" And I'd like to provide just a bit of context. He
8 was talking about Mr Bemba's visit to PK12. And in line 21 in your answer, you
9 mentioned that "He told us that, 'You are under the military -- the command of the
10 military commanders of this other side,' so he said two sentences in Lingala and then
11 translated the same sentences in French."

12 And I want to ask, why did you add this portion to your answer?

13 A. He had said a few words before that, but he did not conclude. What I said is this:
14 He did not visit the soldiers who were there; it was the Central African president who
15 sent him to address the troops, and the first thing that he said was to congratulate us for
16 the work accomplished, and then he encouraged us to stay under the command of the
17 Central African authorities.

18 He said that in Lingala and translated the same thing into French. I did not add anything.
19 I did not omit anything. Maybe there is a translation problem when it comes to the
20 sentences that I mentioned, but I am giving you the substance of the speech that he made
21 during his visit when -- which lasted less than ten minutes. Then he left.

22 Q. And, sir, just to be clear, I'm not asking you at this point what actually happened;
23 I'm asking you why did you feel the need to add that, the fact that, according to you,
24 Mr Bemba spoke two sentences in Lingala and then translated those sentences into French?
25 Why add that to your question when it wasn't asked -- or, excuse me, your answer?

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1 A. As far as I'm concerned, he was quite correct in interpreting what he had said into
2 French. The people with whom we were working did not understand Lingala. That is
3 why it was important for his message to be translated so that it should be understood by
4 those with whom we worked, so that we should be able to work in harmony.

5 Q. Okay. And I get that, but why is this something that sticks out in your head and
6 you consider it worth mentioning to the Judges when you answer the question?

7 PRESIDING JUDGE STEINER: Mr Iverson, I'm sorry to interrupt, but this is leading
8 nowhere. The witness will answer again the same thing. It's too subtle for him to
9 understand your point. If you want -- of course I cannot prevent you from doing that,
10 but I don't think we are going anywhere.

11 MR IVERSON: I'll move on, Madam President, but I frankly think that it's not too subtle
12 for him to understand. I think he understands quite well what's happening.

13 PRESIDING JUDGE STEINER: Judge Aluoch will seek a clarification.

14 JUDGE ALUOCH: Mr Iverson, I want to seek a clarification from the evidence that the
15 witness has given just on the same page, when he says "The people with whom we
16 worked did not understand Lingala," something like that, what does -- Mr Witness, what
17 do you mean? Which people?

18 THE WITNESS: (Interpretation) Thank you for the question.

19 I started by saying that during that war it was not only the ALC soldiers who were
20 involved. I know that the ALC soldiers were mixed, were jointly involved with the
21 FACA soldiers, and there were many of them. So if he spoke in French it was so that the
22 FACA soldiers should be able to understand his message.

23 And I would like to add that since the other CAR military authorities were there, and
24 there were also members from Presidency there, it was important for him to also speak in
25 French so that they should understand that the congratulation message sent by the

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1 president had been conveyed by the ALC leader to the soldiers, and this was also
2 supposed to bring together the two groups of soldiers from both sides.

3 MR IVERSON:

4 Q. Sir, on transcript 295, page 29, line 23, Defence counsel asks: "To whom did the
5 battalion commander report?" And you answer: "The battalion commander reported to
6 the operations commander. The radio set did not have any other frequency other than
7 that of the operations commander."

8 Sir, so my question is a little bit different this time, but what -- what type of military radio
9 set only has one frequency?

10 A. Well, even if the equipment is multi-frequency, if you're given an order to only use
11 one frequency we can't break that rule, or that order rather. We had equipment with
12 short antenna that could only transmit within a certain radius, but the phonic equipment
13 of the commander of operations, which he used to transmit orders to us or which we used
14 to send information to him, only used one frequency. We didn't use other frequencies.
15 I don't know whether other frequencies had been blocked, because I'm not a radio
16 operator. There was just one frequency; the frequency of the commander of operations.

17 Q. Now, I don't intend to get into a line of questioning involving operational security
18 and what it entails and what the impact of having one frequency would have on
19 operational security, but I do just want to ask you: I notice that the answer you just gave
20 me is different. Why different? You said with the Defence counsel that the radio set
21 did not have any other frequency and so now what you're saying is slightly different, is it
22 not?

23 A. You are the one who's got it wrong, Prosecutor. You asked me about a phonic
24 equipment that used only one frequency and I answered, and I told you that even if the
25 phonic equipment had several frequencies I don't know whether other frequencies were

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1 coded or not, but the battalion commander used only one frequency to communicate with
2 the command. That is my answer.

3 Q. Okay, what was the make and model of the radio that you used?

4 A. Well, if I remember correctly that phonic equipment was a Codan, but an old model.
5 It didn't have AM frequency, so it couldn't transmit very far.

6 Q. Sir, are you saying that the radios supplied by the Central African authorities that
7 you used were not high frequency radios? They operated higher in the frequency
8 spectrum? Is that what you're saying, sir?

9 A. To my knowledge I think it couldn't transmit very far, but I didn't try because I
10 didn't have information to transmit very far. I could only give my report to my
11 commander. I could only receive orders from him.

12 Q. Sir, do you remember the actual frequency or frequency range that your radio used?

13 A. I don't know. That's what the radio operator does.

14 Q. Sir, when you say it didn't have an AM frequency, on page 18, line 8, does that mean
15 that it couldn't communicate with radios that operated on the AM frequency?

16 A. With all due respect, could you ask the question again because I haven't
17 understood?

18 Q. Sir, you stated it didn't have AM frequency and I'm asking you, so that means that it
19 couldn't communicate with radios that operated on an AM frequency; is that right?

20 A. If you ask me questions about technical matters, I have to admit that I really can't
21 answer. I was given instructions. I was told to only communicate with the commander
22 of operations to receive orders. I really don't know what to say about the frequencies, or
23 the technical aspects of the radio equipment.

24 Q. Okay, I'd like to turn to something else, sir. Sir, you recently spoke to someone
25 from the Defence team; is that right?

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1 A. Yes, I spoke to people from the Defence who are here in front of you in the
2 courtroom.

3 Q. And members of the Defence requested that you meet with members of the
4 Prosecution; is that right, sir?

5 A. I don't understand the question you're putting to me. Ever since the hearing began
6 I've been talking to Defence members; members of the Defence team. If you're asking
7 me -- if you're asking me questions about this, ask me questions clearly.

8 Q. Sir, did anyone from the Defence team call you and ask you if you would be willing
9 to meet with the Prosecution in this case?

10 A. In recent months I was asked whether I could meet the representative of the Office
11 of the Prosecutor. I was afraid to do so and I refused.

12 PRESIDING JUDGE STEINER: Judge Aluoch wants a clarification.

13 JUDGE ALUOCH: The witness has just made a statement, it's on record, page 19, line 11,
14 and I was wondering if you can clarify what he means when he says, "Yes, I spoke with
15 people from the Defence who are here in front of you in the courtroom." It's line 15,
16 sorry, when the witness said, "I don't understand the question you are putting to me.

17 Ever since the hearing began, I've been talking to the Defence members, members of the
18 Defence team." Would the witness like to clarify what he means, please?

19 THE WITNESS: (Interpretation) I don't know whether it's me who hasn't understood
20 the questions being put to me, because when the Prosecutor puts questions to me, asking
21 me whether I had spoken to Defence team members, I answered saying that I had spoken
22 with them only here, in the courtroom. He asked me another question, whether
23 beforehand the Defence representatives had talked to me, and if -- he had asked me, I
24 wanted to meet with people from the OTP, and I answered that question, saying that in
25 recent months they had made that proposal to me. They had asked me whether I wanted

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1 to meet with the representative of the Office of the Prosecution, but I said that I was afraid
2 to do so. I refused to meet with them.

3 JUDGE ALUOCH: I'm sorry to follow up on this again, Mr Witness. So this statement
4 that you made, is it correct, then, when you say "Ever since the hearing began, I've been
5 talking to members of the Defence team," is this statement correct, or did you not
6 understand? I just want you to clarify for the record, please.

7 THE WITNESS: (Interpretation) I've answered the questions put to me. They asked
8 me whether I had spoken to the Defence team and I answered, saying that last week,
9 Wednesday, Thursday, Friday, I answered questions from the Defence here in the
10 courtroom. He asked me another question, and the way I understood it, I took the
11 question to mean whether I had met them beforehand, and I said "No," except here in the
12 courtroom. Other than that, I had spoken to no one.

13 JUDGE ALUOCH: Thank you.

14 MR IVERSON:

15 Q. Sir, what were you afraid of, with regard to speaking to members of the Office of the
16 Prosecutor?

17 A. No, I was afraid because of my work. The military Regulations of the FARDC
18 forbid any and all officers from giving an interview unless you have received
19 authorisation from your superiors. Since my superiors were not aware of anything, I
20 couldn't do that because it would mean many consequences for me. I am a soldier and I
21 must obey orders.

22 Q. Sir, how many meetings did you have with the Defence in this case?

23 A. I remember, in 2012, in April, I don't know how the Defence team got my number,
24 but they called me, and the person who called me said he was coming to my country, and
25 if I wanted to, I could meet with him. I didn't know if he was a member of the Defence

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- 1 team. That was the first contact. Two weeks later he arrived, and he followed me all
2 the way to my jurisdiction. Peter was with him. The person who asked the questions
3 was Peter. They had a document, a piece of paper. They asked me questions. They
4 asked me whether I was one of the authorities, or the commanders, who had --
- 5 THE INTERPRETER: Inaudible.
- 6 THE WITNESS: (Interpretation) Then Peter asked me some questions and his
7 colleague also asked me some questions. The third meeting, during the third meeting,
8 they asked me whether the team from the Prosecution wanted to meet with me and what I
9 thought about that, and I answered saying that it wasn't possible.
- 10 At the third meeting the Defence team asked me whether I could give testimony about
11 everything that had happened, and I said I could do that. And so that is how it came to
12 be that I spoke with the Defence team.
- 13 MR IVERSON:
- 14 Q. Sir, that fear that you had not to talk to members of the Office of the Prosecutor
15 because of your position, why didn't that apply equally to talking to members of the
16 Defence team?
- 17 A. Let me say this: I wasn't afraid because when they called, I didn't know that they
18 were working with the Defence. We talked to him but we didn't get into the substance,
19 we didn't go into depth, and I don't know whether the Office of the Prosecutor could
20 agree to the conditions for meeting with me, under these difficult conditions.
- 21 THE INTERPRETER: The Lingala interpreter has not understood the last part of the
22 witness's reply.
- 23 MR IVERSON:
- 24 Q. Sir, could I ask you just to repeat the last part of your reply. The interpreter was
25 not able to hear it.

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1 A. This is what I'm saying. You asked me why I was afraid -- why I wasn't afraid to
2 speak to the Defence team, but I was afraid to talk to the Prosecution team, and I
3 answered by saying this: Since the Defence Office had called me in the past to set an
4 appointment with me, at that time I didn't know that the person making that appointment
5 was part of the Defence team. When those people arrived, the conditions were very
6 difficult because they met me where I was, and it was very difficult to get to the place
7 where I was. The road was not good, but they went all that way to meet with me. We
8 talked and it was the place where I worked, my jurisdiction. But about the OTP, I
9 refused because my bosses were not aware of this interview because that was contrary to
10 our Code of Good Conduct.

11 Since the Defence Office came all the way to where -- my place of work, that made things
12 somewhat easier for me, and I wasn't very much afraid, and that is why I said to the
13 Defence team that it wasn't possible for me to meet with the Prosecution, because in our
14 work we are forbidden. We are not allowed to answer questions from journalists or
15 answer other questions without first getting authorisation to do so, but I had no ill will of
16 any kind.

17 Q. I see. Sir, were you paid any amount of money to testify in this case?

18 A. No, I did not receive a single cent. What's more, I feel sorry --

19 THE INTERPRETER: The Lingala interpreter requests that the witness repeat his reply.
20 The Lingala interpreter has not understood the last sentence.

21 MR IVERSON:

22 Q. Sir, could I ask you to repeat your reply? There were a few interpretation issues.

23 A. I was asked whether I had received anything. My answer was that I had not
24 received anything at all. What was of concern to me were the conditions under which
25 they travelled right up to where I was, and even their return trip would be something

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1 very, very difficult. I was sorry for them.

2 PRESIDING JUDGE STEINER: Mr Iverson, if you allow me?

3 Mr Witness, I still need a clarification because it is not clear for me.

4 You said that you met Defence three times but you didn't want to meet the Prosecution
5 because that would violate your Code of Conduct, because for meeting the Prosecutor you
6 would need the authorisation of your superiors. For meeting the Defence you didn't
7 need any authorisation from your superiors? Can you explain the difference between
8 being interviewed by the Defence and being interviewed by the Prosecution?

9 THE WITNESS: (Interpretation) Thank you, Madam President, for your question.

10 I met with the Defence team only once, but we spoke on three occasions. What I said is
11 that we spoke on three occasions, but we met face-to-face only once. We did not meet
12 three times. The only time that we met made it possible for me to realise what had
13 happened in that country, and I told myself that I could not accept that, if my superiors
14 did not know that I was meeting with the OTP, I had to have authorisation to meet with
15 them.

16 The conditions were not good for me. They were not in favour of such a meeting. The
17 road was bad and the environment for their stay was not good also. If my superiors got
18 to know that I had had contacts without their knowledge, that would not be good for me.
19 That is why I refused to meet with them.

20 PRESIDING JUDGE STEINER: Well, you did not answer to my question, but let's go.

21 Let's go forward.

22 MR IVERSON:

23 Q. Sir, did you receive any money from any member of Mr Bemba's Defence team at
24 all?

25 A. No, I did not receive anything in the form of money from the Defence. Not even a

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1 single cent.

2 Q. And did the Defence pay for any reimbursable expenses that you incurred as a
3 result of being a witness in this case?

4 A. I have just said that we met in my jurisdiction, so no such thing happened. And so
5 my trip or my stay there did not cost me anything.

6 PRESIDING JUDGE STEINER: Mr Iverson, I'm sorry.

7 Court officer, please turn into private session for a minute.

8 *(Private session at 10.37 a.m.) Reclassified as Open session

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

10 PRESIDING JUDGE STEINER: Thank you.

11 Mr Witness, I'm trying to understand your answers, in order to have it -- everything clear
12 in the record of the case.

13 (Redacted)

14 (Redacted)

15 THE WITNESS: (Interpretation) There is a procedure in place. The Court asks for
16 authorisation from my country, and (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE STEINER: (Redacted)

20 THE WITNESS: (Interpretation) (Redacted)

21 (Redacted)

22 PRESIDING JUDGE STEINER: (Redacted)

23 (Redacted)

24 THE WITNESS: (Interpretation) (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 PRESIDING JUDGE STEINER: (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 THE WITNESS: (Interpretation) (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 PRESIDING JUDGE STEINER: (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 THE WITNESS: (Interpretation) (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 PRESIDING JUDGE STEINER: Maître Kilolo, now you can -- Maître Kilolo, now you
6 have the floor.

7 MR KILOLO: (Interpretation) Maybe it's already moot, Madam President, but I really
8 wanted to understand the scope of your question. Are you asking the witness, that is
9 assuming that he is the one who wants to meet with the OTP, or are we talking about the
10 Office of the Prosecutor wanting to meet with him? This is a rather minor difference
11 which maybe is not very important.

12 PRESIDING JUDGE STEINER: Yes, it's quite unusual that the Defence needs to
13 understand the scope of a question put by a Judge. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 For me it appears quite simple, but apparently for the witness it's not that simple and so I
19 just withdraw my question.

20 Mr Iverson.

21 MR IVERSON: Thank you, Madam President.

22 PRESIDING JUDGE STEINER: Can we go back into open session, or you --

23 MR IVERSON: Could you just give me a few seconds, Madam President? Thank you.

24 I think for the moment it's probably best to stay in private session. There are a number of
25 documents that are confidential and we'll be reading them. I just don't think

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1 that -- although parts of the questions could be in open, I think ultimately it has to be in
2 private session, Madam President.

3 Q. Sir, on yesterday's transcript 296, at page 22, lines 23 and 24, the question was asked:
4 "Sir, did the ALC commit any rape, any murders or did they pillage at all?" And you
5 answered: "I cannot answer that question in relation to the ALC in general terms.
6 However, (Redacted), all the intelligence services were led by the Central
7 Africans and during that period I did not learn of any such cases."
8 Did Central African intelligence services, according to you, provide information on crimes
9 (Redacted), sir?

10 A. The intelligence services were under the authority of the Central Africans. There
11 were a few ALC officers in those services. They had two missions: The first to gather
12 information about the enemy and the second was to control the activities of the command
13 on the field; how they implemented the activities on the ground. All those who could
14 have perpetrated offences were under the authority of the operations commander. He is
15 the one who could have arrested any such soldiers.

16 Q. Okay, (Redacted) the Central African intelligence services.
17 Did they ever provide information on crimes?

18 A. Apart from two people who were arrested, (Redacted)
19 (Redacted)

20 Q. So if it's correct that (Redacted)
21 (Redacted)

22 A. Let us put aside the intelligence services. (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 Q. (Redacted)

2 (Redacted)

3 A. (Redacted) The highest ranking officer-in-charge of
4 receiving such information was a Central African Republic citizen. Secondly, regarding
5 the soldiers who crossed over, I would say that the operation did not really take place in
6 rural areas and so if something had happened the operations commander would be aware
7 on the same day. If no crimes are perpetrated then they cannot be invented, but if crimes
8 were committed then the person who committed those crimes would be arrested.

9 MR IVERSON: Sir, I think it is now time to take a break, get a little bit of rest, and when
10 we come back I will continue questioning you.

11 PRESIDING JUDGE STEINER: Thank you, Mr Iverson.

12 Could, please, court officer turn into open session.

13 (Open session at 10.59 a.m.)

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

15 PRESIDING JUDGE STEINER: Thank you.

16 Mr Witness, it's 11 o'clock. We'll have now half-an-hour break for you to take a cup of
17 tea, a cup of coffee, take some rest. We'll be back at 11.30.

18 The hearing is suspended.

19 THE COURT USHER: All rise.

20 (Recess taken at 11.00 a.m.)

21 (Upon resuming in open session at 11.40 a.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE STEINER: Mr Witness, welcome back.

25 THE WITNESS: (Interpretation) Good morning again, Madam President.

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

2 THE WITNESS: (Interpretation) Yes, Madam President, I'm ready.

3 PRESIDING JUDGE STEINER: The Chamber was informed that the Prosecution would
4 like to address a procedural issue. Is that correct, Mr Iverson?

5 MR IVERSON: That is correct, Madam President. We would like to request
6 reclassification of the confidentiality level of documents that I would like to be shown to
7 the witness, and this is in an effort to try to keep the proceedings in open session. I think
8 we can do that if these documents are reclassified. I'm referring to documents 7, 8, 9, 10,
9 11 on the Prosecution list of documents, and document 45.

10 The Prosecution doesn't see any reason at this point why these documents should be
11 confidential, they were originally from the Office of the Prosecutor, and any reason that
12 they may have previously been categorised as confidential documents is not apparent to
13 the Prosecution any more, or the reason doesn't exist any more.

14 PRESIDING JUDGE STEINER: Let's, for the sake of the record, to define the ERN of the
15 documents, Mr Iverson.

16 MR IVERSON: Of course, Madam President. CAR-OTP-0042-0235,
17 CAR-OTP-0042-0236, CAR-OTP-0042-0242, CAR-OTP-0042-0243, CAR-OTP-0042-0246,
18 and the last one, CAR-OTP-0042-0255.

19 PRESIDING JUDGE STEINER: After examining the documents, the Chamber agrees that
20 there is no reason for keeping the confidentiality of the documents and therefore, on the
21 basis of Regulation 23 bis 3 of the Regulations of the Court -- sorry, yes, Mr Haynes.

22 MR HAYNES: I take it you didn't want to hear from the Defence on this issue?

23 PRESIDING JUDGE STEINER: It's always a pleasure. I don't have to. This is a
24 Chamber's decision, but it's always a pleasure to listen to you, Mr Haynes.

25 MR HAYNES: Thank you. I anticipated that this was the direction in which Mr Iverson

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1 was going, and at first blush I can see no reason that these documents should not be made
2 public, but of course as a lawyer I am a creature of my instructions, and I haven't had any
3 notice of this application. The documents had hitherto been confidential.

4 The Prosecution's notice containing the list of documents it was to use did not seek their
5 reclassification and I would, as a matter of formality, appreciate the opportunity of
6 obtaining my client's instructions on this.

7 I anticipate in due course that that will not alter the position which I would take
8 personally but, in that event, that would either dictate that we had a short break for me to
9 discuss the matter with Mr Bemba or that Mr Iverson refrain from using the documents
10 publicly until perhaps after the next break, but that's all I've got to say about it.

11 PRESIDING JUDGE STEINER: Mr Haynes -- Mr Iverson, would you like to respond?

12 MR IVERSON: I understand what Defence counsel is saying, but I'm not sure how the
13 reclassification of these documents to public implicates in any way a right of the accused.

14 PRESIDING JUDGE STEINER: I'm sorry, Mr Iverson.

15 MR IVERSON: But I suppose the follow-on from that, there's really no reason why the
16 accused would have any -- have anything to say on the matter. We're asking the
17 Chamber to reclassify a document that has no apparent reason for being confidential to a
18 public document. There's no right to having a confidential evidence that the accused has,
19 so I don't know see how it implicates any right of the accused to object in any way.

20 PRESIDING JUDGE STEINER: Mr Iverson, I agree with you, that in principle there is no
21 right for the Defence usually in this request is in accordance with Regulation 23 bis, the
22 Chamber doesn't need to listen to the other parties, but I agree as well with Mr Haynes in
23 the sense that the Prosecution had the opportunity to inform in advance that it would
24 request the reclassification, and it's true that in the Prosecution updated list of documents
25 for the purpose of the examination, all these documents are mentioned as confidential and

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1 that no request for reclassification will be done, so it would be advisable for the
2 Prosecution not to come with these surprises in the middle of a hearing, and that's why
3 we ask the parties in advance to communicate which documents they are going to use,
4 whether they intend to ask for reclassification and whether they intend to tender the
5 documents into evidence but, in any case, the Chamber has already deliberated.
6 Regulation 23 bis 3 of the Regulations of the Court says that when the basis for a
7 classification no longer exists, whosoever instigated the classification, be it the Registrar or
8 a participant, shall apply to the Chamber to reclassify the document.
9 A Chamber may also reclassify a document upon request by any other participant or on
10 its own motion, which means that if the Chamber is convinced that there is no prejudice to
11 the Defence or any risk for victims and witnesses of the case, the Chamber may even on its
12 own motion reclassify the document. And for that reason, the order for reclassification
13 of these documents as public is mandate.

14 Mr Iverson, you can proceed.

15 Mr Haynes?

16 MR HAYNES: Thank you. It's a wholly separate matter that I wish to raise briefly
17 before we recommenced, and that is that during the course of the morning we have
18 become concerned, and obviously we do have Lingala speakers in our team, that a
19 number of prolonged inquiries have been prefaced on mistranslations, and obviously in
20 due course there is a procedure by which we can seek the amendment of the transcript,
21 but I would just like to beseech all parties at this stage perhaps to keep questions more
22 straightforward and simple and to be more tolerant of some of the apparent answers.
23 I don't want to give examples, but certainly one or two very prolonged inquiries this
24 morning were based upon mistranslations of what the witness had said in Lingala, on my
25 understanding. So that's all I want to raise at this stage.

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1 PRESIDING JUDGE STEINER: You want to add anything to this point, Mr Iverson?

2 MR IVERSON: No, thank you, Madam President.

3 PRESIDING JUDGE STEINER: I take the opportunity then to remind parties and
4 participants that in our second order on the reclassification of transcript, which is decision
5 2223 of 4 June 2012, on paragraph 17 we deal exactly with this problem of -- or a similar
6 problem which would be for the redactions of the transcripts, and in that paragraph the
7 order says that in order to ensure publicity, fairness, efficiency and expeditiousness of the
8 proceedings, the Chamber orders the parties and participants to submit requests for
9 corrections to the transcripts within five working days following the completion of
10 evidence by the respective witness. So that would help the translation section to provide
11 us with an edited final version in which all corrections have been already requested by the
12 Chamber or parties and participants.

13 Mr Iverson, you have the floor.

14 MR IVERSON: Sir, welcome back.

15 Could I ask the court officer to please display CAR-OTP-0042-0236. It's document 8 on
16 the Prosecution's list of documents and it is now public.

17 Q. Sir, can you see the document displayed on the screen?

18 A. Yes.

19 Q. Do you recognise this document, sir? Sir, I see you motioning to move the
20 document up. Is that what you're doing, just for the record?

21 A. I can see this document. However -- but it mentions Yaloke, but our soldiers were
22 not there. We found the Central African Republic police there.

23 Q. Okay. Hold on, sir. I'm going to ask you questions in a moment, so I just
24 respectfully would ask you just to hold on a minute.

25 Could I have the court officer display the top portion of the message, yes.

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1 Now, sir, in that portion of the message, do you see the ALC, the Army for the Liberation
2 of Congo, mentioned anywhere?

3 A. I don't see "ALC."

4 Q. And the date of this memo is Bangui on 6 December 2002; is that right?

5 A. Yes, that's right.

6 Q. Okay. Now could I ask the court officer to display the text of the memo. Exactly.
7 Sir, could I have you read out the text of this memo?

8 PRESIDING JUDGE STEINER: Just one moment, please. Mr Witness, just one moment.

9 Mr Iverson, did I understand correctly when you said that "Do you see the ALC, the
10 Army of the Liberation of Congo, mentioned anywhere?" Was that your question, in the
11 top portion of the --

12 MR IVERSON: Yes, Madam President, in the top portion of the memo.

13 PRESIDING JUDGE STEINER: Okay. Thank you. Just to confirm.

14 MR IVERSON:

15 Q. Sir, could I ask you to read out the text of this memo?

16 A. Yes, I've read this text.

17 Q. Could I ask you to read it out loud so we can make use of the interpreters, so that
18 everyone understands what this text is, so when I ask you questions about it we're all on
19 the same sheet of music?

20 A. Yes, I can do that. "Reference message number 52/2-To-Baboua Battalion."

21 THE INTERPRETER: Inaudible.

22 THE WITNESS: (Interpretation) "BT.Baboua *message of 5 December 2002 - Stop - Brigade
23 Commander Baboua reports - Stop - those shipping goods on the road between Cameroon
24 and Bangui - Stop - say they will stop travelling along this road as of
25 5 December 2002 - Stop - until a favourable measure is

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1 obtained - Stop - Reason - Stop - They are being robbed of all their goods (money, watches,
2 jewellery, clothing, et cetera) - Stop - at check-points set up by Bemba soldiers in Yaloke
3 and Bossembélé - Stop - Dormitories and toll *offices, Yaloke and Bossembélé, full of
4 goods that have been recovered - Stop - At this time, no vehicles ..." -- correction, no traffic
5 has been seen along this road - Stop - This report is hereby provided for any and all
6 purposes - Stop."

7 MR IVERSON:

8 Q. Sir, did the 28th Battalion control any check-points in Bossembélé?

9 A. The 28th Battalion had not positioned anyone at the check-point. After the battle,
10 the staff who had been working at the toll gates resumed their work. After that the
11 operations commander had in his unit Central African citizens responsible for providing
12 security and acting as a protection unit, so there was no one from the 28th Battalion who
13 had been sent to the check-points.

14 Q. Now, your testimony is contradicted by this memo, isn't it?

15 A. That could not be the same thing; that is in light of the question that had been put to
16 me, questions relating to the toll gates and the locality of Yaloke, in fact I never went
17 there.

18 Q. But according to this document there were Bemba elements in Yaloke and
19 Bossembélé; right?

20 A. The person who prepared this message made a small mistake. Yaloke and
21 Bossembélé are two different localities. No soldier went as far as there. It was when the
22 battle reached that location that the units -- the unit that I was talking about, that is the
23 Central African Republic unit, they are the ones who went there to fight, that is close to
24 Bozoum, but there were no soldiers sent to Yaloke. There was no battle there.

25 Q. Well, to be fair the document doesn't talk about a battle at Yaloke, does it?

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1 A. Let me explain myself once again. Those -- or rather the person who drafted this
2 message wrote something that I think is an error. When you talk of Yaloke there was no
3 one, whether Central African Republic citizens or our soldiers. No one went there,
4 except the police people who were responsible for carrying out routine patrols. So no
5 one went to Yaloke. Even those who were in Bossembélé did not go to Yaloke, so those
6 who wrote this message, well, I do not know them.

7 Q. And, according to you, is that the only thing that the author of this memo got
8 wrong?

9 A. Yes. Amongst the soldiers who went to fight, none of them went as far as Yaloke.
10 No one. It is for that reason that I'm able to say that there is an error in that message.

11 Q. Okay. So the part about Bemba's elements robbing people, that's correct; right?

12 A. No, it is not correct. We protected our troops. I'm not aware of what you have
13 just said.

14 Q. So you are saying that the Central African authorities, who according to you
15 controlled you, didn't inform you of any of the contents of their memorandum?

16 A. Our leader was a Central African Republic national. He had all authority over us,
17 right to the very last soldier. They never told us about this. They never mentioned this
18 message to us. They never discussed or asked questions about this message, so I am
19 totally unaware of this.

20 Q. But somebody thought it was serious enough to write a memo and send it up to the
21 high offices of the Central African authorities; right?

22 A. No, that is not correct. If this had been true, well, the operations commander had
23 full powers. He would have been able to cross-check, but since he did not mention this,
24 in my opinion, despite the date of this message which is written there I think it was
25 written to create problems. I'm not aware of it. The operations commander had full

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1 powers over the troops that were there. He could have prevented them from carrying
2 out these acts, or arresting the perpetrators. The Central African Republic authorities are
3 not aware of this message.

4 Q. Okay, since you mentioned it I might as well talk about it now. What powers did
5 the operations commander have? And according to you the operations commander is
6 Mazi; is that right?

7 A. Yes, indeed. He was the supreme authority; that is the person in charge of
8 operations.

9 Q. Did Mazi ever send a single ALC soldier to a court-martial, or any type of military
10 or criminal proceeding?

11 A. The operations commander had sent soldiers, be they our soldiers or soldiers of the
12 Central African Republic. He sent them for trial.

13 Q. Okay, so your answer is sufficiently unclear. No ALC soldier coming from DRC
14 was ever tried for an offence because of the operations in the CAR in a CAR court; right?

15 A. This is what I have just said. He had the powers to arrest soldiers and send them to
16 the Central African Republic court-martial.

17 Q. Okay. Generally, the power to convene a court-martial doesn't just come out of
18 thin air. It has to be written down somewhere; right?

19 A. We have just been looking at a document. This document mentioned (Redacted)
20 (Redacted), Mbokani. He wanted to desert. He was arrested and taken to a Central
21 African Republic martial court. After serving his sentence, he returned to the other side
22 where he was arrested and tried.

23 Q. Sir, are you aware that there are many contemporaneous documents - and I can cite
24 them to the Court - that contradict your version of the events with regard to that
25 individual?

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1 THE INTERPRETER: Madam President, from the Lingala interpreter, he points out he
2 did not understand the witness's answer.

3 PRESIDING JUDGE STEINER: Mr Witness, could you please repeat your answer
4 because the interpreters could not follow you?

5 THE WITNESS: (Interpretation) This is what I just said to the Prosecutor: I am
6 outside without my statements.

7 MR IVERSON: I think there may have been an interpretation problem. I'm really at a
8 loss to know what that statement is responding to, and maybe it would be best if I just
9 move on.

10 PRESIDING JUDGE STEINER: Before you move on, Mr Iverson, may I ask for
11 a -- I would like to put a question to the witness. Mr Witness, one MLC officer told the
12 Court that the MLC troops arrived in Yaloke and Bossembélé, and this is on transcript 289,
13 page 8, lines 15 to 17, and you said that -- this is what I want to clarify: (Redacted)
14 never went to Yaloke and Bossembélé, or that the MLC never went to Yaloke and
15 Bossembélé? Can you clarify that, please?

16 THE WITNESS: (Interpretation) Thank you for that question, Madam President. Let
17 me repeat. This is what I said: During the battle of Bossembélé no ALC soldier, no
18 soldier of the Central African Republic, arrived Yaloke until the time when the enemy
19 arrived at Bozoum. There was a unit which had a majority of Central African soldiers.
20 They deployed in Yaloke, but they did not stop there; they went right to the junction of
21 the road going to Bozoum. They went there to fight. None stayed at Yaloke. That is
22 what I'm saying. And with regard to (Redacted), there's no -- none of them who
23 knows Yaloke.

24 MR IVERSON:

25 Q. So, just to make it clear for the record, sir, you deny that Bemba's elements were

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1 robbing people near Yaloke and Bossembélé?

2 A. I'm not aware of that, and I never heard any such thing.

3 MR IVERSON: Could I ask the court officer to please display CAR-OTP-0042-0242, and
4 this is now a public document. Could I ask the court officer to - and it might just be my
5 screen - to make the document available so you can read the whole top of the page?

6 Okay. It's -- apparently it's just my screen.

7 Q. Sir, on the left-hand side of the screen, are you able to see what appears to be a date
8 there? Could I have you read that date?

9 THE COURT OFFICER (Redacted): (Interpretation) Witness, look at the top of the
10 document.

11 THE WITNESS: (Interpretation) Yes, I can see it.

12 MR IVERSON: Okay. I'll try to make this easier for everybody.

13 Q. Does it appear to say 20 December 2002 on the left-hand side of the page? Is that
14 what you're seeing as well, sir?

15 A. Yes, that is correct.

16 Q. And on the right-hand side of the page you have a "Bangui" and then the date,
17 which is very difficult to make out, and I'm not going to wager a guess as to what that
18 says. It says possibly "Dec," and I can't even be sure of that. Does that look about right
19 to you, sir?

20 A. I have not had the opportunity to read through this entire document. All I can see
21 here is the part bearing "subject" and I do not know where this may have happened.

22 I don't know the commune, I don't know what territory. I don't know if this happened in
23 the capital city. I have no clue.

24 Q. Okay. And we'll get to that. I see that you're anxious to get to that, but right now
25 we're just looking at the dates, if that's okay with you, sir? My next question has to do

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1 with the "to" and "from" lines. This appears to be from the colonel in charge of the
2 "sapeurs," engineers, to Brigadier-General and Chief of Staff of the armies; is that right,
3 sir?

4 A. I can see that the recipient is the Brigadier-General, Chief of General Staff of the
5 army in Bangui.

6 MR IVERSON: Okay. And if I could ask the court officer to show the main body and
7 the text of the memo.

8 Q. And again, sir, if I could ask you to read out the memo.

9 A. "I have the honour to report on the following: One week before the events of
10 25 October 2002 took place, the Fire Brigade Battalion moved its former base to Camp Béal
11 where its headquarters is set up following the building of the barracks. Only the
12 technical adviser's office remained behind in order to monitor the said construction work.
13 When Bemba's troops occupied the entire support sector, they forced open the internal
14 doors of the adviser's office and took with them the printer, the photocopying machine,
15 some first-aid medication and some co-operation documents. It was the Chief of General
16 Staff of the Fire Brigade and some elements who established the said facts as having
17 occurred. Chief of General Staff, Cabinet." And the to the right, "Daniel Gbakela."

18 Q. Sir, do you remember when this happened?

19 A. I am not aware of anything whatsoever relating to this document, be it the office
20 mentioned or the location to which the office was moved. (Redacted) went to or
21 knew that office. You see, we did not have the time to get to know about this office in
22 Camp Béal. You may want to put your questions to the author of this document. I
23 know absolutely nothing about this document.

24 PRESIDING JUDGE STEINER: Court officer, please turn very briefly into private session.

25 *(Private session at 12.37 p.m.) Reclassified as Open session

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

2 PRESIDING JUDGE STEINER: (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted) Do you understand that, sir?

7 THE WITNESS: (Interpretation) Thank you very much, Madam President, for calling
8 me to order. I had gone somewhat astray.

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

10 (Open session at 12.39 p.m.)

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

12 MR IVERSON:

13 Q. Sir, so you were never made aware of these allegations made by this Central African
14 colonel?

15 A. Which colonel are you alluding to and what did he say?

16 Q. Sir, I please ask you to pay attention. We just read a memo - you did - from a
17 colonel, a Central African colonel, alleging that elements of Bemba forced entry and took
18 things from the Central African authorities, the same authority that you claim was in
19 charge of you. So I'm just asking you, were you ever made aware of these things that the
20 Central African colonel said about Bemba's elements?

21 A. I know nothing of all that. The commander in charge of the troops is also not
22 aware of all these things. All that transpired, you may want to know, happened in a
23 context where the troops were merged with the other troops from the other side. And
24 during the clashes they did not have the time to go about committing the types of offences
25 that have been mentioned in this document, so I am not aware of all these things.

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1 Q. So, according to you, no one would have time to, for instance, learn how to ride a
2 bike or drink beer around a table? Nobody would have time for that type of thing, sir?

3 A. Mr Prosecutor, when someone arrives at a location for the very first time, that
4 person does not know the environment, and if that person were to hear bullets flying over
5 Camp Béal and landing at the chief's residence, while those who were at the residence of
6 the chief fought, or fired back, and their shots will fly over and land in the enemy camp,
7 while other shots came from other directions, believe me, no one had the time even to take
8 a soda or buy some cigarettes. Each soldier was positioned and remained at that position
9 according to the instructions of his leaders, up until the end of the battle.

10 Q. Now, apparently this memo was written later in December. Did you ever hear
11 about this from your so-called commander, General Mazi?

12 A. He did not tell me any such thing as relating to the information and I never heard
13 mention of it.

14 Q. Sir, just to understand further your testimony about not having enough time to do
15 things, is it your testimony that from the beginning of the operation until the end you
16 were only engaged in battle and didn't have time to do anything else? Is that a fair
17 assessment of what you're trying to tell us?

18 A. That is correct. However, with regard to Camp Béal, we did not have a single
19 minute to ourselves. As we advanced, whenever we were idle people will take up
20 positions at a specific station and the orders were that troops do not go left or right and
21 those orders were very clear.

22 Q. Well, however then did Mr or Lieutenant Bomengo have the time to commit crimes
23 and pillage if that's true what you just said?

24 A. Once again, let me repeat what I said about that lieutenant. At the end of the
25 fighting at PK4, the operations commander deemed it proper to set up a commission

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1 made up of Central African authorities and the authorities who had crossed over with a
2 view to recovering all the property that had been abandoned by the rebels. That is when
3 he fell into that trap and was arrested, but by that time we had already advanced and we
4 were further on.

5 Q. Did anyone from the commission ever speak to you, sir?

6 A. The operations commander and his deputies came to brief us. They gave that
7 briefing to all the officers on the same day, one day after the morale chat with the troops,
8 and they made their statements in public, not in secret.

9 Q. And would that have been 31 October according to you, sir, 2002?

10 A. The offences for which Lieutenant Bomengo was charged took place on the 31st.

11 MR IVERSON: Could I ask the court officer to please display CAR-OTP-0042-0243, and
12 it is a public document and it's number 10 on the Prosecution's list.

13 Q. Sir, are you able to see the document?

14 A. Yes, I can see the document.

15 Q. Now, it's not entirely clear what the date is, but can we agree that it looks like it's
16 around mid-December 2002, sir?

17 A. I can see here that this document was drafted in the month of December.

18 Q. Could I have you read the main body of the text? If the court officer could just
19 scroll down to show the main body of the text and if I could have you do the same
20 exercise and read that, if you would, sir?

21 A. "Notice to hierarchical superiors. According to information gathered from two
22 drivers of public transportation vehicles coming from Douala, it appears that
23 Banyamulengue elements based in Bossembélé are carrying out body searches and
24 searching luggages as well as goods. Under threat of weapons, they are also collecting
25 any money and property that they choose to.

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1 Dissatisfied with these acts of violence, some drivers have abandoned their vehicles on the
2 spot and returned to Bangui. They have put together a group of representatives with a
3 view to meet the President of the Republic, because the Banyamulengue are saying that
4 after Patassé the next is Bemba. These people are preparing to go on strike if the USP
5 troops continue to stop them from meeting the Head of State to serve the purpose for
6 which it is intended," full stop.

7 Q. So we can conclude that the individuals referred to as "Banyamulengue" and were
8 accused of taking money considered that Mr Bemba, or Bemba, is their boss, is in charge
9 of them; right?

10 A. The word "Banyamulengue" does not mean soldiers. Even civilians who were in
11 Bangui were also called "Banyamulengue." According to our Central African brothers all
12 Congolese were to be known as "Banyamulengue," so one cannot say that all
13 Banyamulengue were soldiers.

14 Q. Sir, can you explain - if you know this, and I don't know that you do - why a civilian
15 Congolese citizen living in CAR would talk about Mr Bemba being after Mr Patassé?

16 A. If this statement had been made by Congolese civilians I would probably be in a
17 position to provide you with an answer, but I was a soldier and I'm not aware of all these
18 things. We had no contact with civilians. And by the way, when I read this document,
19 I see that it is captioned "Information." I never heard mention of this document.
20 I believe that it is only the author of this document who can speak to its content. I have
21 no knowledge whatsoever of this document.

22 Q. Well, and I'm not asking about the document as much as I'm asking about the
23 contents in the document, the document talks about Bossembélé, it talks about
24 Banyamulengue elements, so it seems to me that you would be the person - the very
25 person - to talk to about this document; is that right?

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1 A. With all due respect to the Judges, I can say that there's no soldier in this world who
2 goes to fight in a country, I don't think such a soldier would continue to stay in that
3 country eternally. Regarding the Bossembélé battle, the day after, all the soldiers had to
4 walk some ways off, a few kilometres, and they stayed there. That place we called
5 Bossembélé remained in the hands of police officers and some of the soldiers who were
6 conducting mopping-up operations. Everything that happened in Bossembélé, and the
7 soldiers who were there, they don't know.

8 MR IVERSON: Could I ask the court officer to please display CAR-OTP-0042-0246,
9 number 11 on the Prosecution list of documents, and it is public.

10 Q. Sir, are you able to see this document on your screen?

11 A. Yes, I can see this document just fine.

12 Q. And this is from 12 December 2002; do you see that date, sir?

13 A. Here I just see the date on which the letter was received, the 16th.

14 Q. Okay. And if you look above that, in the top left corner, you'll see the date
15 12 December 2002. Could you confirm that you see that date?

16 A. Oh, yes, I can see that date. The 12th, I can see that date.

17 Q. Okay. And this document is from Central African intelligence, right? Something
18 you said you had access to; is that right?

19 A. I came under the command of the one who was giving orders to us, and if the
20 intelligence service had news the chief was entitled to arrest the guilty party or reprimand
21 that person. I do know that.

22 Q. Okay. Could I have you read out the text of the memo, please?

23 A. Text. "According to intelligence gathered from inhabitants of the Yembi II
24 neighbourhood (Begoua) on 11 December 2002 at 1800 hours, it would appear that a
25 number of Jean-Pierre Bemba's soldiers, who are out of control based in that

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1 neighbourhood, have fled the battle-field along the road between Damara and Bossembélé,
2 and these soldiers continue to engage in acts of violence and abuse, looting people's goods.
3 This report has been prepared for any and all useful purposes."

4 Q. Now, despite having access to Central African intelligence which, according to you,
5 you didn't know this information; is that right?

6 A. The question about the information that I see here, the person in the best position to
7 answer this question is the commander himself, the commander of operations, because the
8 other soldiers remained available to him, to protect him. He was the one who was to use
9 them for other purposes. I had been there before. I'm not aware of all this information.

10 Q. Sir, is it hot in the room where you are right now? Is the air conditioning working?

11 A. The electricity went out this morning and they are going to do the repairs once we're
12 over. Right now it is raining here.

13 Q. Okay. So the room is hot? I mean, that would explain why you're sweating a lot,
14 is that right, sir? The air conditioning isn't working?

15 PRESIDING JUDGE STEINER: Mr Iverson, do you want me to ask the court officer that
16 is in the field about the air conditioning?

17 MR IVERSON: Well, of course I would, Madam President, and I don't intend to trespass
18 on your terrain. I just saw him several times wiping his brow, so the question had to do
19 with the demeanour of the witness, and that's why I was asking initially, and his answer
20 then waded into your territory, of course, so I'll -- I'm completely in your hands with
21 regard to that.

22 PRESIDING JUDGE STEINER: I think our court officer can maybe contact Mr Rojas and
23 asks the question, and we can move forward with the testimony.

24 (Pause in proceedings)

25 THE COURT OFFICER: Madam President, I've just talked to Mr Rojas, and it appears

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1 that indeed air conditioning is not working very well in the container at this moment.

2 MR IVERSON:

3 Q. Sir?

4 A. Yes, I can hear you. I can hear you, Mr Prosecutor.

5 Q. Sir, can you just hold on one moment? We're having an audio problem.

6 PRESIDING JUDGE STEINER: Mr Rojas?

7 THE COURT OFFICER (Redacted): (Interpretation) Yes, your Honour, I can hear you.

8 PRESIDING JUDGE STEINER: We have some noises coming from your room; is that
9 correct?

10 THE COURT OFFICER (Redacted): (Interpretation) No, there are no noises other than the
11 telephone, the air conditioning which is not working very well, and I had lost the
12 interpretation in French, but --

13 THE INTERPRETER: Inaudible.

14 THE COURT OFFICER (Redacted): (Interpretation) Now it's working just fine.

15 PRESIDING JUDGE STEINER: Mr Iverson, let's try to continue.

16 MR IVERSON:

17 Q. Sir, it appears that, although you were called "ALC," that the Central African
18 authorities refer to the ALC either as "Banyamulengue" or "Jean-Pierre Bemba's men," is
19 that right? Is that how it worked?

20 A. "Banyamulengue" here means one thing, but they live in the DRC. However, in the
21 Central African Republic for them it was a way of identifying any person, be the person a
22 civilian or a child. Any person from the DRC to their mind was a Banyamulengue.

23 Q. And what about reference to "Jean-Pierre Bemba's men"? Did you hear that often
24 when they were referring to the ALC?

25 A. Well, for this question perhaps you could say for civilians, but the word didn't apply

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1 to us, the soldiers.

2 Q. Okay, so I just want to understand what you mean by that. So if for instance we
3 were to listen to a speech of then President Patassé at the time and if he were to refer to
4 "Jean-Pierre Bemba's men," he was actually talking about Congolese civilians? Is that
5 what you're saying, sir?

6 A. He was the supreme commander of the country. He could say whatever he
7 thought was necessary, but myself I did not hear all of that because I was with the friends.
8 We were together.

9 MR IVERSON: Again I'm not sure if I'm understanding what you're saying, or if it's
10 interpretation, or if we need to go into closed session, so I'm going to request a closed
11 session briefly, or excuse me private session, Madam President, briefly just to try to
12 understand what the witness is trying to say here.

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

14 *(Private session at 1.20 p.m.) Reclassified as Open session

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

16 MR IVERSON:

17 Q. Sir, when you say, "I did not hear all of that because I was with friends. We were
18 together," what do you mean by that?

19 A. What I've just said now is -- is what? What do you mean?

20 Q. I'm just -- I'm going to repeat your answer here, if it makes sense. "He was the
21 supreme commander of the country. He could say whatever he thought was necessary,
22 but myself I did not hear all of that because I was with friends. We were together." I'm
23 trying to make sense of that. We're asking -- I'm asking what do you mean by that, sir?

24 A. Well, I didn't mean my friends. That's not what I meant. President Patassé was
25 the President of the Republic. If he said, as the Prosecutor said, he is the boss, but (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. Okay. So you mean by "friends" Central African brothers, colleagues, is that what
5 you're saying, sir? The other people from Central African units? I think I'll give you an
6 opportunity to clarify, but -- well, we're almost ready for the break.

7 A. (No interpretation)

8 MR IVERSON: Okay. Could I ask the court officer to please display

9 CAR-OTP-0042-0255, and it's a public document. It's 45 on the list of documents and it is
10 a public document which can be displayed in open session.

11 PRESIDING JUDGE STEINER: Mr Iverson, can we turn back into open session?

12 MR IVERSON: I'd like to request that, yes, Madam President.

13 PRESIDING JUDGE STEINER: Court officer, please.

14 (Open session at 1.25 p.m.)

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

16 MR IVERSON:

17 Q. Okay, sir. So this message appears to be from Bangui on 7 March 2003, does that
18 look right to you?

19 A. Judging by what is written here, that is correct. That's right.

20 Q. Sir, could I have you go ahead and read the text of the message, please?

21 A. Yes. "By way of message number 01/2. To.Miss.BLI from 04/04/2003 - Stop - Chief
22 of Boali gendarmerie detachment hereby reports - Stop - On 03/03/2003 at approximately
23 1500 hours - Stop - Congolese friends on a vehicle, Volvo - Stop - from Bangui heading
24 towards Bossangoa, or Bozoum - Stop - open fire on USP elements based at Boali
25 check-point. One USP soldier by the name of Zelba was forced to remove his

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1 clothes - Stop - A pair of Ranger boots and a rocket were looted - Stop - Badly beat up a
2 number of people - Stop - including Mokoboyen Mathias who was evacuated to the health
3 centre at that locality - Stop - The local population is very upset and boiling
4 over - Stop - Number of Congolese men estimated at 40 to 50 - Stop."

5 PRESIDING JUDGE STEINER: Mr Iverson, we'll have to turn to the questions after the
6 break.

7 MR IVERSON: Thank you, Madam President.

8 PRESIDING JUDGE STEINER: Mr Witness, we now have our lunch-break. Today we'll
9 have a session in the afternoon, from 3 to 5. That means that you have time to have
10 lunch, take some rest. We will suspend now and resume at 3 o'clock.

11 The hearing is suspended.

12 THE COURT USHER: All rise.

13 (Recess taken at 1.29 p.m.)

14 (Upon resuming in open session at 3.03 p.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

17 PRESIDING JUDGE STEINER: Good afternoon and welcome back.

18 Welcome back, Mr Witness.

19 THE WITNESS: (Interpretation) Thank you, Madam President.

20 PRESIDING JUDGE STEINER: Did you manage to take some rest during the
21 lunch-break?

22 THE WITNESS: (Interpretation) Yes, I was able to get some rest and to eat well.

23 PRESIDING JUDGE STEINER: Then I will give the floor back to the Prosecution, who
24 will continue questioning you.

25 Mr Iverson, you have the floor.

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1 MR IVERSON: Thank you, Madam President.

2 Q. Sir, I'd like to just continue where we had left off and that is with document

3 CAR-OTP-0042-0255.

4 Could I ask that that document please be displayed and it is a public document.

5 Sir, are you able to see the document on your screen?

6 A. Yes, I can see the document.

7 Q. And you've already read it and I'm not going to ask you to read it again, but doesn't

8 this document indicate that there were some serious problems between the ALC and the

9 USP here?

10 A. That is what one can understand from reading this letter.

11 Q. And it also shows, doesn't it, the inability of the USP to control the actions of the

12 ALC?

13 A. That is not correct.

14 Q. So, sir, are you saying that the USP wanted the ALC to open fire on them, disrobe

15 them and steal their things?

16 A. (No audible response)

17 PRESIDING JUDGE STEINER: Court officer, the image is frozen. Could you please

18 check what happened.

19 We need to be very, very patient.

20 (Pause in proceedings)

21 PRESIDING JUDGE STEINER: Mr Witness, can you hear us?

22 THE WITNESS: (Interpretation) Yes, I can hear you clearly.

23 PRESIDING JUDGE STEINER: Mr Iverson, could you please repeat your last question.

24 MR IVERSON: Certainly, Madam President.

25 Q. Are you saying that the USP wanted the ALC to open fire on them, disrobe them

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1 and steal their things?

2 A. That is not correct. We were together with most of their friends and, even when we
3 came back, we returned with some of them until we got to the big city.

4 Q. Sir, would you agree that this tends to show that the USP being (indiscernible) in
5 charge of the ALC?

6 A. When the operations commander, whom we referred to as "the operations
7 commander," in his capacity as a military officer of the CAR, well, you see, that person
8 had the power and the authority to arrest and try him and try people. When we also
9 noticed that the operations commander was assisted by General Bombayake, who was in
10 charge of that unit known as "the USP," then we must say that if such an event had taken
11 place the perpetrators should have been persecuted -- prosecuted, rather.
12 Let me add that some soldiers along the Bozoum road, as the document indicates, did not
13 know those troops who were there. In fact, it is said that the troops from Bozoum and
14 Bossangoa, that is what the document says without any further detail.
15 What I want to say is that, when we were returning, we did not all come together. Those
16 who came from Bossangoa simply went through, but those who came from Bozoum were
17 our Central African friends who came along with us on the same road.
18 In any event I know nothing about this particular document, because the person in charge
19 of the USP was at the same location as the operations commander until the end of the
20 events.

21 MR IVERSON: Could I ask the court officer to please display CAR-OTP-0037-0092,
22 document 43 on the list of documents, and this document is confidential and I'd also like
23 to request to go into private session, Madam President.

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

25 *(Private session at 3.17 p.m.) Reclassified as Open session

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

2 MR IVERSON:

3 Q. Sir, are you able to see the document on the screen?

4 A. Yes, I can see the document, but it is barely legible. The ink is murky and the
5 document is difficult to read.

6 Q. I will definitely grant you that, sir, this document is difficult to read, and I do ask for
7 your patience, because I am going to ask you to read what you can of it, what you can
8 make out.

9 (Redacted)

10 (Redacted)

11 A. (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 A. (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 MR IVERSON: Okay. Could I ask the court officer to please display page 0096 of the
8 same document.

9 PRESIDING JUDGE STEINER: Yes, Mr Haynes?

10 MR HAYNES: Just before we do, it seems that the witness's request to me was quite a
11 reasonable one. Can the Prosecution give a date to this document they've put to him?

12 PRESIDING JUDGE STEINER: Mr Iverson?

13 MR IVERSON: Well, I certainly would put a date if the author would have put a date,
14 but that's the nature of evidence. It comes to us sometimes in forms that we work with
15 what we get. That goes to the weight of the evidence.

16 MR HAYNES: So the answer's "No," I take it?

17 PRESIDING JUDGE STEINER: It was just for the record, wasn't it, Mr Haynes?

18 MR HAYNES: Your Honour reads my mind sometimes.

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

20 MR IVERSON: Thank you, Madam President.

21 Could I ask the court officer to please display 0096 of the same document.

22 PRESIDING JUDGE STEINER: I don't have 0096.

23 MR IVERSON:

24 Q. Sir, the last message compared to this one was a walk in the park. I'm going to ask
25 you to try to read the top portion, and this is a very difficult task. If you say you can't do

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1 it, I'll understand, but I'd like you to try to read the top portion of this document if you
2 could, sir.

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 THE INTERPRETER: Sorry, the interpreter missed a bit.

22 MR IVERSON: (Interpretation)

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 (Redacted)

3 Q. (Redacted)

4 (Redacted)

5 A. (Redacted)

6 (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 A. (Redacted)

11 MR IVERSON: Okay, maybe it would be more helpful if I show you what I mean.

12 Could I ask the court officer to please display CAR-DEF-0001-0127, and it is document 39
13 on the Prosecution's list of documents and it is a public document.

14 PRESIDING JUDGE STEINER: Mr Iverson, I'm really sorry to interrupt you, but before
15 you change the subject, I would like to ask the witness to read another paragraph of the
16 same document, if you don't mind.

17 MR IVERSON: By all means, Madam President.

18 PRESIDING JUDGE STEINER: So I would like the page 0098 to be put on the screen of
19 this very same document that we were discussing.

20 Mr Witness, this is a little bit better. Could you please read for us this last paragraph of
21 this information?

22 THE WITNESS: (Interpretation) (Redacted)

23 PRESIDING JUDGE STEINER: (Redacted)

24 (Redacted)

25 THE WITNESS: (Interpretation) (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 PRESIDING JUDGE STEINER: (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 THE WITNESS: (Interpretation) (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 PRESIDING JUDGE STEINER: (Redacted)
- 15 (Redacted)
- 16 THE WITNESS: (Interpretation) (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 PRESIDING JUDGE STEINER: I'm not sure I fully understood what you meant but, in

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1 any case, Mr Iverson, you have the floor.

2 MR IVERSON: Thank you, Madam President, and I would like to come back to this
3 document, but at this point I'd like to talk about another issue, or ask questions rather.
4 Could I please have the court officer display document number 39 on the Prosecution's list
5 of documents, a public document, and I can give the ERN if necessary?

6 PRESIDING JUDGE STEINER: It is good for the record, Mr Iverson.

7 MR IVERSON: I'll give it again: CAR-DEF-0001-0127.

8 Q. Sir, this is an ALC document from 2001 and on its face doesn't have a direct
9 connection to what we're talking about, but I want to ask you questions about it. (Redacted)
10 (Redacted)

11 A. (Redacted)

12 (Redacted)

13 Q. (Redacted)

14 (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 Q. Could I ask you just to read those three short paragraphs, sir?

19 A. "To all units. The commander-in-chief of the ALC and the Chief of the General
20 Staff ALC will be absent during a certain period from the headquarters in Gbadolite will
21 be in the east of the country.

22 During this period, the Chief of the General Staff of the ALC will be replaced by Colonel
23 Bitanihirwa Kamara, the commander of the operational sector, north Équateur.

24 He will ensure that all decisions of the hierarchy of the ALC will be implemented to a
25 consistency within the General Staff of the ALC discipline, morale and the good running

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1 of work during the different units -- in the different units of the ALC.

2 Copy ..." -- I just wanted to read "Copy G1, G2, G3, G4 and logistic base" and signed by the
3 Chiefs of Staff or the Chief of General Staff of the ALC.

4 Q. So essentially the commander-in-chief, Mr Bemba, or General Bemba, and General
5 Amuli were going to be out of town for a while and they went to the trouble of formally
6 appointing a commander to assume command in their absence; right?

7 A. Only one person wrote this. The Chief of General Staff of the ALC who wrote this
8 to indicate that the high authorities would not be there, that he, the Chief of the General
9 Staff, wrote this in order to check that morale was still high amongst the military.

10 Q. Now, I know in English we call these "assumption of command orders." Is there a
11 term in French for assumption of command orders, sir, or -- I'm sorry, that was not a good
12 question. Is there a similar term in your vernacular - your (Redacted) vernacular - for
13 assumption of command orders?

14 A. I think so. I think these terms are universal. In other words, when work is
15 handed over to someone else the path that he should follow is indicated, and that's
16 indicated in this letter and that can be a temporary assumption of command. In such a
17 case, there needs to be a document that sets out the orders.

18 Q. And these assumption of command orders kind of show that the ALC wasn't just
19 some disorganised rebel unit; right?

20 A. This demonstrates that there was a line to be followed. As the military authority
21 would be away, they had to find someone who would replace them according to the
22 orders.

23 PRESIDING JUDGE STEINER: Mr Iverson, we are still in private session. Are we to
24 continue in private session?

25 MR IVERSON: You read my mind, Madam President, and I was just going to ask --

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1 PRESIDING JUDGE STEINER: I am reading minds today.

2 MR IVERSON: -- if we could go into public session. Thank you.

3 PRESIDING JUDGE STEINER: Court officer, please.

4 (Open session at 3.59 p.m.)

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

6 MR IVERSON:

7 Q. Sir, and these assumption of command orders also show that in a way the ALC was
8 quite sophisticated; right?

9 A. I wouldn't say that it was sophisticated. I don't really understand what you mean
10 by that, but what I would say is that it was orderly.

11 Q. Very well, it was orderly. And the ALC operated with some kind of military
12 doctrine in mind; correct?

13 A. Yes, that's right.

14 Q. So considering the MLC or ALC's level of sophistication, or orderliness, when
15 Mr Bemba purportedly put Echo Brigade under the command of Central African
16 authorities, certainly with the ALC's level of sophistication, something would have been
17 reduced to writing; correct?

18 A. If he could have written, he wouldn't have sent me that letter. He could only have
19 sent that letter to my superior officer, but in any case there are some things that go on in
20 an environment of emergency, but this question doesn't apply to my echelon. I cannot
21 answer that question, but in my view, if there had been a letter, such a letter wouldn't
22 have been sent to me. It would have been sent to the commander above me and, in view
23 of the state of emergency, well, I don't know whether any such letter existed.

24 Q. Sir, how many soldiers total from the ALC were present in the CAR over the course
25 of the entire period, August -- or excuse me, October to March?

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1 A. Well, I wasn't the commander of all these soldiers that were on the other side. If
2 what you're asking me is about the number of people (Redacted) I can give you an answer.

3 Q. Okay, well I'm just going to put a number to you. Say 1,800 to 2,000 soldiers were
4 present over a given time during the five-month period, do you know how many soldiers
5 the ALC had in total?

6 A. Prosecutor, I was not the commander of the brigade and I was not in charge or even
7 the commander of the operations on the other side, but if what you are asking me relates
8 to the battalion that the commander led I am in a position to answer, but I cannot give you
9 an answer to such a general question.

10 Q. Okay. I'll move on, sir. Did -- now, the ALC had a Code of Conduct, is that right,
11 sir?

12 A. Yes, in every army, in all armies, even the FARDC, we all have a Code of Conduct.

13 Q. And what was contained in the ALC Code of Conduct, sir?

14 A. The Code of Conduct for ALC contained military regulations in a simplified format
15 so as to help each soldier with his own conduct. For instance, if you perpetrate an
16 unlawful deed that you will have to go before the courts and you already know what the
17 possible penalties for that would be. For instance, if you plunder populations, or if you
18 beat somebody in the population, or if there are rapes or other violations such as deserting
19 during combat, or acts of indiscipline, or if you desert a sentry point, well, all the
20 measures are set out that help soldiers individually to set his standards of behaviour both
21 during war and during times of peace.

22 Q. And the ALC Code of Conduct was supposed to apply to soldiers in the CAR;
23 correct?

24 A. This was the code which can also be referred to as military rules, well, these
25 are -- this is an organised army and most rules and regulations are universal. There can

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1 be some minor differences in terms of the law, but military rules tend to be universal on
2 our continent.

3 Q. Sir, did the ALC Code of Conduct apply to ALC soldiers in the CAR?

4 A. What I say is this: The code and the military regulations are universal. They were
5 governed by the military rules of their army, but all these rules are in fact identical,
6 whether they're those that apply under the Code of Conduct or the military rules. People
7 involved in either of these two cases will be speaking in the same language.

8 The Code of Conduct is what is referred to elsewhere as the military rules or regulations.

9 Q. Sir, it really is a very straightforward question. Did the ALC Code of Conduct
10 apply to the ALC soldiers in CAR?

11 A. Yes. Yes. In fact, that is where the Code of Conduct had to be very stringently
12 applied.

13 Q. Okay. And ALC soldiers in the CAR were subject to the military jurisdiction of the
14 ALC in Gbadolite; right?

15 A. No. The soldiers who were in the Central African Republic were placed under the
16 command of the Central African authorities and that is why the commander of all of the
17 soldiers of the ALC and the FACA troops was a Central African officer and he was the one
18 who had the powers over all of the soldiers from the highest officers in the ALC right
19 down to the rank and file. Gbadolite had no say and had no orders to give to soldiers
20 who were in the Central African Republic.

21 Q. Okay, sir. You are of course aware that seven ALC soldiers who allegedly
22 committed crimes in CAR were tried, convicted and sentenced in Gbadolite in a court
23 martial, so that shows that the ALC had military jurisdiction and that they practised that
24 jurisdiction in Gbadolite; right?

25 A. Any soldier who had infringed the rules, or been involved in misconduct, they were

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1 the ones who were brought to trial.

2 Q. Right. So if any ALC soldier committed a crime in the CAR, that person was
3 subject to trial by court martial in Gbadolite; can we agree on that?

4 THE INTERPRETER: The Lingala booth says that there is a technical problem in the
5 booth. One of the machines does not appear to be working in the Lingala booth.

6 PRESIDING JUDGE STEINER: I ask the interpreter is that the case that the witness is not
7 receiving the proper interpretation?

8 THE INTERPRETER: There is a problem with one of the consoles in the interpretation
9 booth for Lingala here at the Court.

10 PRESIDING JUDGE STEINER: Let's wait a little bit.

11 (Pause in proceedings)

12 THE COURT OFFICER (Redacted): Yes, we can hear you.

13 PRESIDING JUDGE STEINER: Mr Witness, can you hear us?

14 THE WITNESS: (Interpretation) Yes, I can hear you clearly.

15 PRESIDING JUDGE STEINER: Thank you very much, our technicians and for the
16 patience of the parties and participants.

17 Mr Iverson, you have the floor.

18 MR IVERSON: Thank you very much, Madam President.

19 Q. Sir, I'll just repeat the question. If any ALC soldier committed a crime in the CAR,
20 that person was subject to trial by court martial in Gbadolite; is that right?

21 A. Yes, but that depended on the particular case.

22 Q. So according to you, are there other cases?

23 A. There were more minor cases such as a soldiers who didn't want to go on guard
24 duty, or who was insolent towards his senior officer, but that type of soldier would be
25 arrested on the spot, and every time the infringement was thought to be serious, then the

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1 case could be transferred and that was in one of the powers of the commander; the
2 operations commander.

3 Q. Okay, are you referring to the power of Colonel Moustapha, that he had power to
4 deal with lower level soldier misconduct at his level?

5 A. If we mention operations commander, well, we are not referring to Commander
6 Moustapha. Commander Moustapha was the deputy in charge of operations. When
7 we refer to operations commander, we are talking about his senior officer.

8 Q. Okay. Well, can I just ask you to use the names? Who are you talking about, sir?

9 A. The operations commander was General Mazi.

10 Q. Sir, are you saying that General Mazi was vested with the authority to discipline
11 ALC soldiers?

12 A. Yes, all of them - he, himself, and his deputies - all had the power to discipline the
13 soldiers.

14 Q. Okay. So can we agree that if an ALC soldier committed a purely military offence,
15 such as desertion or violating a lawful order, that those crimes could never be prosecuted
16 in a civilian court because they are simply not civilian crimes?

17 A. A court martial is not a civilian court, and I was not present, so I can't answer your
18 question, but a court martial was used by superior officers of the ALC, but it's very
19 difficult to try civilians in a court martial and soldiers can be tried in a court martial
20 because then one can discover if they are telling the truth or lying.

21 Q. Okay. There was never an ALC soldier who was ever court-martialled in the CAR,
22 was there?

23 A. Trying a soldier who has committed a serious offence is in the power of the
24 operations commander and his deputies, as was agreed between them. They were able
25 to decide where the soldier should be tried for the offence he had committed, but I was

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1 not privy to their arrangements.

2 When there were cases of indiscipline by an ALC soldier, they were held in Bangui.

3 Even Lieutenant Bomengo, before being tried, he was held in the Central Prison in Bangui.

4 As for the rest, this all depended on the decision of the commander of the operations and

5 his deputies, but I don't know what procedure they followed when deciding to send

6 someone to a court martial or holding them in Bangui. Only the commander himself

7 would know what procedure to follow. That would have been part of the arrangements

8 they had made between them.

9 Q. Okay. We're kind of coming full circle here, sir. What other cases of indiscipline
10 or crimes were there?

11 A. The offence committed by Bomengo was known to all. He was arrested and he was
12 tried. Mbokani also. I come back to what I said, which is that only the commanders
13 who were responsible in the Central African Republic, they had agreed as to
14 how -- whether a soldier would be dealt with in the Central African Republic or sent to a
15 court martial. They were in the best place to make the best decision regarding to these
16 infringements, deciding whether somebody should be held in CAR or sent elsewhere.

17 Where there was the battalion commander, if there were cases of indiscipline for example,
18 then the commander could correct the soldier, the same with insubordination, but in the
19 case of a serious offence it could not be the battalion commander who took action. He
20 could only arrest the soldier and send them to General Mazi, or his services. Only they
21 would know what should be done in such cases. That's how things happened.

22 Q. Okay. So this is how I understand and tell me if I'm wrong here. So you're saying
23 that there were no other cases of indiscipline except for the two individuals you named,
24 but yet there were proceedings that dealt with cases of indiscipline. Both things cannot
25 be true, so what really happened, sir?

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- 1 A. With all the respect that I have for the lawyers working for the Office of the
2 Prosecutor, if soldiers are involved in an exchange, if there's some indiscipline then there
3 can be a meeting, an officer can come and there is the soldier there. What can one do
4 with him? He can be held in detention somewhere.
- 5 And there were small errors which could be punished by the battalion commander. The
6 battalion commander can punish a soldier within the battalion, and I am saying exactly
7 what the commander did on the other side. There were a lot of people. There were also
8 a lot of commanders and I cannot know everything that happened everywhere. The only
9 thing I retained is what I've said to you.
- 10 For the -- for those who came back late, or somebody who didn't obey orders given by his
11 superior officer, small acts which could be dealt with by the battalion commander, who
12 would be able to deal with this problem at his own level. However, in the case of serious
13 acts, it would be the commander of operations who would be best placed to see what
14 punishment could be awarded to this soldier for the infringement he had committed.
- 15 Q. Okay. And this, I don't know, may be a bit too complex, but let me ask you: Would
16 you agree then that a soldier who commits desertion or violates his duty to obey a lawful
17 order may be subject to prosecution from his own army, but he probably couldn't be
18 prosecuted under another military code because he wouldn't have a duty to that military
19 code, or to that authority? Does that make sense to you, sir?
- 20 A. There are a lot of things in the Code of Conduct. If a soldier does not turn up for
21 duty in the morning the code declares him to be absent, but if he were to turn up again at
22 2 o'clock, if it's somebody of a lower rank in the platoon, well, he'll be taken to the
23 company commander, he will be asked where he's been until this time of the afternoon.
24 If his replies are unsatisfactory his case will be transferred to the battalion commander,
25 but if this soldier arrived at 2 o'clock and didn't start work, well, what would happen on

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1 the other side, we used to check three times a day; in the morning, at 2 o'clock and then at
2 night, at 1400 and at 1900. Before 2000, the commander took the roll call. If a soldier
3 was missing all day in the morning, it would be announced that he had to report to the
4 commander of operations to explain why he had not been present for the whole day.

5 Q. Okay. But, sir, ultimately if a CAR authority gave you an order and you didn't
6 follow it, that authority wouldn't really have recourse to do anything about it; right?
7 They couldn't create consequences to ensure that you obeyed an order if you're not subject
8 to their military code?

9 A. I would ask counsel to repeat his question because I'm afraid I did not understand.
10 Thank you.

11 Q. Well, ultimately if the ALC is subject to the ALC Code of Conduct and not subject to
12 any kind of CAR military code, then desertion, disobeying a lawful order, many other
13 crimes, the CAR authorities simply wouldn't have any kind of authority to pursue - even
14 if they wanted to - that soldier and create consequences for not following an order; right?

15 A. Mr Iverson, I believe I have explained myself clearly. Before starting to work
16 together with our brothers from the Central African Republic, there was a discussion of
17 ethics and morality during which the Code of Conduct was explained to us and we had
18 agreed that the primary authority having power with regard to orders was a person who
19 was introduced to us and his two deputies. At that point, if a soldier or an officer did not
20 obey orders, if it's not somebody from the General Staff, it's somebody belonging to the
21 battalion. If the battalion commander examines the level of indiscipline, he can transfer
22 him to the authority of the commander of operations, who held all of the power needed to
23 punish this soldier to send him for trial, depending on the level of the offence. And I
24 even went further and I said -- I explained how the commander of the operations and his
25 deputies could agree on whether someone was to be held in Bangui or whether he should

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1 be transferred to a court martial, but I don't know about that because my job was simply
2 to be a military officer. If somebody committed an offence that went beyond me, I
3 arrested him and transferred him to the commander of operations.

4 Q. Okay, and did that ever happen? Did somebody commit an offence that went
5 beyond you? Did you arrest him?

6 A. In the case of absence of Mbokani, I arrested him and I transferred him to the
7 commander of operations, because he had been absent for the whole morning, so I took
8 him and transferred him. He spent the whole night in detention and then he was freed
9 from detention. Because we saw that this type of conduct could not be continued, he
10 was sent to the other side and he was sent before a court martial where sentencing was
11 much more severe.

12 Q. Sir, your memory seems to be good on some things - some things you even provide
13 times, which is uncommon in this case - but hazy on others. For instance, you don't seem
14 to remember the date or even the month that you were in Bossembélé; is that right, sir?

15 A. It's true that I've forgotten the date on which I was in Bossembélé. I can't
16 remember the date any more.

17 Q. And you remember that Mazi gave the battalion commander a Thuraya; right?

18 A. Indeed, it was so.

19 Q. And you're sure that you're not mistaken about that, sir?

20 A. The operations commander gave a Thuraya system to his deputy.

21 Q. Didn't the deputy receive the Thuraya from someone else, sir?

22 A. As far as I'm concerned, whether he receives the set from his superior officer or from
23 somewhere else, what counts for me is that the Central African authorities placed there,
24 whom I had to respect at all times, well, it's quite normal for a battalion commander, if he
25 has to work and if there is no radio communication or phonic communication, that he

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1 have -- and if he has to report on the situation, well, the only way was to have this
2 telephone equipment so that he could inform the commander.

3 MR IVERSON: Could I ask the court officer to please display document 47 on the
4 Prosecution list of documents, CAR-OTP-0056-0414, and it is confidential. And could I
5 ask you to zoom in on the top left corner of those numbers, please.

6 Q. Sir, if the battalion commander really received a Thuraya from General Mazi, you
7 would be able to recognise that number, wouldn't you?

8 A. (Redacted)

9 (Redacted)

10 Q. Sir, could you just take a look at those numbers and see if you recognise any of
11 them?

12 A. Why should I lie? If I saw a number that I didn't recognise, I can't give you the
13 number. I don't want to lie on this.

14 Q. No one's asking you to lie, sir. I'm asking if you recognise any of those numbers.
15 Please take a look.

16 A. With all the respect that I have for you, sir, I have forgotten these numbers. I
17 cannot recall them.

18 MR IVERSON: Very well. I think we've reached the end of the questioning today and
19 we'll continue tomorrow.

20 Thank you, Madam President. Thank you, your Honours, and thank you, sir.

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

22 Mr Witness, it is enough for today. You probably are tired and need to take some rest.
23 We will adjourn for today and resume tomorrow morning at 9 sharp.

24 I thank very much the Prosecution team, the legal representatives of victims, the Defence
25 team, Mr Jean-Pierre Bemba Gombo. I thank very much our interpreters, our court

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1 reporters. I thank them for much for allowing us to sit for extended hours today in order
2 to compensate yesterday's failure of the system.

3 Thank you very much, Mr Rojas.

4 THE COURT OFFICER (Redacted): (Interpretation) Thank you.

5 PRESIDING JUDGE STEINER: Mr Witness -- sorry. Mr Witness, thank you very much
6 and this hearing is adjourned.

7 THE COURT OFFICER: All rise.

8 (The hearing ends in open session at 4.59 p.m.)

9 CORRECTIONS REPORT

10 The Court Interpretation and Translation Section has made the following corrections
11 in the transcript:

12 *Page 29 line 22

13 "BT.Baboua from 5 December 2002 ..." Is corrected by "BT.Baboua message of
14 5 December 2002 ..."

15 *Page 30 lines 3 to 5

16 "...and toll booths, Yaloke and Bossembélé, full of goods that have been
17 recovered - Stop - At this date, no vehicles ..." -- correction, "Traffic is not envisaged along
18 this road..." Is corrected by "... and toll offices, Yaloke and Bossembélé, full of goods that
19 have been recovered - Stop - At this time, no vehicles ..." -- correction, no traffic has been
20 seen along this road..."

21 RECLASSIFICATION REPORT

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

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

24