

Pursuant to Trial Chamber III's Order on redactions, ICC-01/05-01/08-3315-Conf, dated 15 January 2016, redactions have been applied into the public version of the transcript.

Closing Oral Statements

(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 Hearing for the Closing Oral Statements
- 7 Wednesday, 12 November 2014
- 8 (The hearing starts in open session at 9.35 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 everyone.
- 13 Could please court officer call the case.
- 14 THE COURT OFFICER: Good morning. Yes, Madam President.
- 15 Situation in the Central African Republic, in the case of The Prosecutor versus
- 16 Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.
- 17 And for the record we are in open session.
- 18 PRESIDING JUDGE STEINER: Thank you very much.
- 19 I would like to welcome the Prosecution team, legal representatives of victims, the
- 20 Defence team, Mr Jean-Pierre Bemba Gombo. Good morning, welcome our
- 21 interpreters, our court reporters.
- 22 I first -- before we start, I would like to ask the teams to introduce themselves for the
- 23 record, starting by the Prosecution, please.
- 24 MR BADIBANGA: (Interpretation) Good morning, your Honours. Today
- 25 representing the OTP to provide a -- closing arguments in this case the Prosecutor,

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1 Ms Fatou Bensouda, is represented by the following people: To my left
2 Horejah Bala-Gaye, assistant trial lawyer; Mr Thomas Bifwoli, associate trial lawyer;
3 Eric Iverson, trial lawyer; Shkelzen Zeneli, legal advisor; Massimo Scaliotti, trial
4 lawyer; Sanyu Ndagire, legal assistant; and Sylvie Vidinha, case manager. I am
5 Jean-Jacques Badibanga, senior trial lawyer, once again, representing the Prosecutor,
6 Ms Fatou Bensouda.

7 PRESIDING JUDGE STEINER: Legal representative, please.

8 MS DOUZIMA LAWSON: (Interpretation) Good morning, your Honours. I am
9 Marie-Edith Douzima Lawson, I am the legal representative of the victims in this case.
10 Today I can count on the assistance of Célestin Nzala, legal assistant; Virginie Roche;
11 and Carine Pineau, legal assistants here in The Hague and who also serve as case
12 managers. Thank you.

13 PRESIDING JUDGE STEINER: Mr Haynes.

14 MR HAYNES: Good morning, your Honour. And good morning to everybody in
15 and around the courtroom. Today Mr Jean-Pierre Bemba is represented by me,
16 Peter Haynes, his lead counsel; to my immediate right my co-counsel Kate Gibson;
17 and Melinda Taylor; and behind me our three legal assistants, Natacha Lebaindre,
18 Cécile Lecolle and Cindy Josseran.

19 PRESIDING JUDGE STEINER: Thank you very much.

20 To begin, I would like to take this opportunity first to remember Maître Zarambaud,
21 legal representative of victims, who passed away on 16 January 2014. Maître
22 Zarambaud was an exceptional lawyer whose dedication to acting for the victims in
23 this case was unwavering. His commitment to these victims and to international
24 justice means that his presence in the courtroom is sadly missed.

25 We also remember Maître Nkwebe Liriss, the original lead counsel for Mr Bemba's

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Defence team, who passed away on 26 February 2012. His legal insight is missed by the Court. And the Chamber would like to express again its deep sorrow for the loss of such a good lawyer.

Both these men made important contributions to the proceedings which have led us today -- to today and we are grateful for their work.

I would now like to briefly recall the proceedings before this Chamber which commenced almost four years ago on 22 November 2010. Since then, the Chamber has sat for 322 days, hearing 77 witnesses for 304 days and holding 17 status conferences. The Chamber has issued a 1,186 written decisions and orders and 277 oral decisions. 733 items have been admitted as evidence in this case.

In line with its duty to ensure the publicity of the proceedings in full respect for the rights of the accused and with due regard for the protection of witness -- of victims, witnesses and confidential information, the Chamber has ordered that 620 items be classified as public, with or without redactions, and have authorised that 113 items remain confidential.

We have heard from 40 Prosecution witnesses, 34 witnesses for Mr Bemba, 2 Chamber witnesses and 2 witnesses presented by legal representative of victims.

Victims have had an important role to play in this trial and the Chamber has granted 5,229 persons the status of victims authorised to participate in the proceedings. The majority of the victims are natural persons but the Chamber also admitted 14 organisations or institutions. Sixteen individuals called to testify by the Prosecution had dual status as victims and witnesses. The Chamber also authorised two additional victims to give evidence as witnesses during the trial and invited three further victims to present their views and concerns in person.

This has been deeply significant in terms of fully involving victims in international

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1 justice process and we thank all the victims for their participation in the proceedings.
2 The Chamber's decision 3035 initially declared the close of evidence on 7 April 2014.
3 The legal representative of victims and the Prosecution filed their closing briefs on
4 2 June 2014. The Defence closing brief was filed on 25 August 2014. The responses
5 from legal representative of victims and Prosecution were received on 15 September
6 and the reply from the Defence was filed on 29 September.
7 Since then there has been a limited reopening of evidence from 22 to 24 October 2014
8 in accordance with Chamber's decision 3154. Additional submissions in relation to
9 this limited reopening of evidence were filed by Prosecution and legal representatives
10 of victims on 31 October with the Defence submission being filed on 7 November.
11 The Chamber notes that this submission was filed two minutes after the filing time
12 prescribed in Regulation 33(2) of the Regulations but the Chamber considered it was
13 filed within the deadline fixed by the Chamber.
14 Therefore today we advance to the next stage in the proceedings as we prepare to
15 hear the final oral submissions of the parties and participants to this hearing in
16 accordance with Rule 141(2) of the Rules.
17 The Chamber takes note of the fact that this Rule refers to closing statements by the
18 Prosecution and Defence. However, and as said above, this Chamber has always
19 benefited from the views and observations brought to this trial by participating
20 victims through their legal representatives.
21 For that reason, the Chamber deemed it appropriate to allow the legal representative
22 to present final submissions on behalf of the victims here represented and authorised
23 to participate in the proceedings. Since such presentation is not in any way
24 inconsistent with the rights of the accused, therefore, the legal representative is
25 allowed to present the victim's final submissions in accordance with Article 68(3) of

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1 the Statute.

2 Pursuant to Chamber's decision 3191 of 4 November 2014, we will begin today by
3 hearing from the Prosecution, who will present to the Court for three hours its final
4 submissions. Maître Douzima Lawson will then take the floor for one and a half
5 hours before the Defence delivers its final submissions also for three hours.

6 The parties and participants are reminded that time limits have been allocated and
7 that they ought to observe these limits as far as possible in order to ensure the
8 efficient delivery of the final oral submissions. There is little flexibility in terms of
9 time and therefore I want to stress that, in order to ensure fairness to all participants,
10 strict adherence to the time limits provided for is essential.

11 The Chamber would appreciate if in final oral submissions the parties and
12 participants focus on the key issues of the case and explain any passages in the
13 closing briefs which require further clarification. Further, the Chamber reiterates
14 once again that the parties and the participants shall limit their statements to issues
15 arising from evidence admitted in the Bemba case and in their written closing briefs
16 and shall refrain from discussing any issues arising out of the ongoing proceedings in
17 the case ICC-01/05-01/13, unless in relation, if necessary, in relation to relevant
18 evidence that has been admitted in the Bemba case.

19 The Chamber may ask the parties and participant any questions in order to seek
20 clarification or any additional information relating to the final written and oral
21 submissions. The Chamber wishes to ensure that this final stage of the proceedings
22 provides all the information necessary and thus asks for complete yet concise answers
23 to these questions.

24 It is now time to hand over to the parties and participants -- and participant and allow
25 them to begin giving their final oral submissions. Firstly, the Prosecution, I want to

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- 1 remind you again that you have three hours to present your final oral submissions.
- 2 Just for information of the parties, participant and the public, the Chamber will sit
- 3 today and tomorrow for three sessions of one and a half hours each, in the morning
- 4 with a half an hour break and one and a half hour in the afternoon.
- 5 Mr Badibanga, if there are no questions, further questions, you have the floor.
- 6 MR BADIBANGA: (Interpretation) Thank you, your Honour, for this final
- 7 opportunity to make our views known before the Honourable Bench. The
- 8 Prosecution intends to use the three hours that have been allocated to us for
- 9 presentation of our closing arguments.
- 10 Your Honours, we are before you today to ask for justice, for justice to be done on
- 11 behalf of the victims, we are calling upon you to find Jean-Pierre Bemba guilty of the
- 12 suffering endured by the people of the Central African Republic.
- 13 The evidence is before you, your Honours, all the evidence, the evidence that between
- 14 October 2002 and March 2003, the civilian population of the Central African Republic
- 15 was subjected to the worst possible barbaric acts at the hands of Jean-Pierre Bemba's
- 16 soldiers, the evidence that Jean-Pierre Bemba is responsible and must bear
- 17 responsibility for the crimes of rape, looting and murder, these crimes committed by
- 18 his own soldiers.
- 19 The proof is on the record that during the entire period of the conflict, the soldiers
- 20 who committed these atrocities were under the authority of Jean-Pierre Bemba and
- 21 under his effective control. The evidence is there, your Honours. Jean-Pierre
- 22 Bemba knew from the very outset that his soldiers were committing these horrible
- 23 crimes, that Jean-Pierre Bemba had the power, the authority and the means to prevent
- 24 these crimes from occurring or at the very least to punish the perpetrators and he
- 25 deliberately chose not to do so.

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1 In this case the Prosecution has proven beyond all reasonable doubt that Jean-Pierre
2 Bemba is guilty of not having proper suitable control over his forces in the meaning of
3 Article 28(a) of the Rome Statute.

4 Your Honours, this case is the first case that has come before the International
5 Criminal Court in which a decision shall be made on the basis of command
6 responsibility, the responsibility of military leaders. Your decision shall set
7 jurisprudence, and the case of Jean-Pierre Bemba will allow you to establish what the
8 true position of military chiefs is within or on the scale of criminal responsibility for
9 crimes committed by their subordinates. Command responsibility is not a minor
10 mode of responsibility and must not be considered as such.

11 Military commanders are the first to benefit from crimes committed by their troops.

12 In this case Jean-Pierre Bemba's search for absolute power in the Democratic Republic
13 of the Congo led him to establish a military force of more than 20,000 men. This
14 gave rise to a movement that was controlled by Jean-Pierre Bemba, led by him, for
15 him, by him. The movement belonged to him. Jean-Pierre Bemba used his army as
16 a personal tool and as a bargaining card, a bargaining chip, so that he could become a
17 major player within politics within the DRC.

18 In 1996, when he started an armed insurrection with the aim of overthrowing the
19 government of President Kabila, who was governing in Kinshasa at the time, by 1999,
20 Jean-Pierre Bemba, leader of the MLC, controlled the entire Équateur province within
21 the DRC. This was an area larger than France.

22 Jean-Pierre Bemba had an army of 20,000 men, but he paid no wages to the men. To
23 buy their loyalty, he allowed them to live off of the civilian population to do as they
24 will.

25 We heard a witness tell us that an MLC soldier used a particular expression,

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1 "Article 15." This is an expression that is not used in the Central African Republic.
2 This is a very Congolese expression that means manage for yourself, do what you
3 have to do to survive, to attain better living conditions, for example. And for an
4 MLC soldier who was involved in this operation, that meant live off the local
5 population, steal their belongings, abuse the girls and women. It was Witness 119
6 who told us this. For the MLC and Jean-Pierre Bemba, Article 15 worked. That
7 system worked. The soldiers looted and violated everyone along their way.
8 Jean-Pierre Bemba himself was able to become vice president in the transitional
9 government set up after the inter-Congolese political negotiations. He made his
10 ambition the top priority and didn't care about his undisciplined troops.
11 We are of the belief that Jean-Pierre Bemba must accept the greatest responsibility for
12 these crimes. This case allows you to make a message clear to say that each time that
13 a military leader sends armed men, soldiers or militia into a military operation and
14 civilians are targeted, that person must be held responsible and is the most
15 responsible.
16 This case is also the first case that has come before the International Criminal Court in
17 which the vast majority of crimes were sexual in nature. This is a unique
18 opportunity for you, your Honours, to send a message to tell the entire world that
19 women, particularly women, cannot be considered to be spoils that soldiers are
20 entitled to during an armed conflict. You can tell the world that these barbaric acts
21 violating the intimacy of a person cannot be tolerated by humanity and must come to
22 an end.
23 In the Central African Republic between October 2002 and March 2003 and as was the
24 case in many other places in the world, MLC soldiers, MLC soldiers with the consent
25 of their superiors thought that the women and sometimes men were nothing more

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1 than spoils of war that they were entitled to. They must be told that this is not the
2 case. How can this message be passed along? By finding their military chief
3 Jean-Pierre Bemba guilty.

4 What happened in the CAR was a campaign of violence over a long period of time.

5 The Prosecutor has provided evidence of rape, looting, murder. We have shown

6 how Jean-Pierre Bemba's troops behaved during the time frame in question and in the

7 places mentioned in the DCC. The time frame goes from 26 October 2002 or around

8 that date to 15 March 2003. And a great many towns and cities of the Central

9 African Republic have been clearly mentioned and we will be referring back to these

10 various places throughout the course of the day.

11 Following the practice established in the Lubanga case, the Prosecution argues that a

12 campaign of crimes occurred. The incidents that occurred in the places and during

13 the period of time mentioned in the DCC must all be considered. The language used

14 in the DCC was clear. The specific incidents mentioned were examples, but do not

15 in any way represent all the crimes that occurred on a widespread basis.

16 Furthermore, your Honour, you would have noticed that during the transmission of

17 the pre-trial brief, particularly the updated version of the elements of evidence on

18 15 January 2010, Defence was notified of the additional incidents that the OTP would

19 be relying on. In this case we mentioned a number of incidents by way of example

20 and yet several other crimes were committed and that is why we believe that the

21 entire period will be covered in dealing with the charges that Mr Jean-Pierre Bemba

22 faces.

23 The Prosecution case, including several filings before you, does contain evidence that

24 Jean-Pierre Bemba is guilty beyond a reasonable doubt. During this hearing, and

25 within the time frames provided to the OTP, we shall briefly recall the highlights of

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1 this case in two chapters: Chapter 1 will refer to crimes committed by MLC soldiers
2 in the Central African Republic, between October 2002 and March 2003; chapter 2 will
3 focus on Jean-Pierre Bemba's responsibility as superior commander for crimes
4 committed by his soldiers. The third chapter will cover three points: One, the
5 context of events that occurred in October 2002. I will be addressing that aspect,
6 your Honours; the second aspect will address sexual crimes in particular, and my
7 colleague Horejah Bala-Gaye, will be dealing with that; and the third aspect, relating
8 to pillaging and murder of civilian populations, will be handled by learned colleague,
9 Thomas Bifwoli.

10 Then we will deal with the issue of responsibility and, in that case, Eric Iverson will
11 address the Court on the position of Jean-Pierre Bemba in his capacity as military
12 commander and the failure of his troops -- or, rather, on the failure to control his
13 troops that were effectively under his control.

14 Then I will address the Court again to assert that Jean-Pierre Bemba knew or had
15 every reason to know that these crimes were being committed or were going to be
16 committed.

17 My learned colleague, Scaliotti, will also address the Court and assert that Jean-Pierre
18 Bemba did not take all necessary measures to stop or punish those who are
19 responsible for those crimes. And then we will submit our final conclusions, your
20 Honour.

21 Madam President, let me briefly address the context of this case.

22 The events before you in this case occurred within the context of a military
23 intervention of Jean-Pierre Bemba's troops in the Central African Republic. The
24 purpose of their intervention was to attempt to foil an attempted coup d'état by the
25 former chief of staff of the Central African Army, General François Bozizé. General

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1 François Bozizé had just been dismissed from the army a few months earlier and,
2 because of that dismissal, he retreated northwards towards Chad, along with several
3 deserters from the national army.

4 General Bozizé and his troops then launched an attack from Chad and moved
5 towards Bangui reaching the capital city of Bangui on 25 October 2002 with a goal to
6 overthrow the sitting president Ange-Félix Patassé.

7 When they arrived in Bangui, they captured the northern neighborhoods of the city.

8 At the same time, and in the DRC, Jean-Pierre Bemba was then president of the MLC
9 and commander-in-chief of the armed wing of the MLC, known as the ALC, the army
10 for the liberation of the Congo.

11 Jean-Pierre Bemba created the MLC in 1998. He was a hands-on
12 commander-in-chief who gave orders to officers on the field despite the existence of a
13 well-defined command chain. Similarly he had full control on all military matters
14 relating to the MLCs and took decisions relating to the deployment of troops.

15 Early in the morning of 25 October 2002, François Bozizé's forces moved toward
16 Bangui after capturing PK12. They went south and quickly came within one
17 kilometre of the residence of President Ange-Félix Patassé. As they advanced as -- as
18 François Bozizé's troops advanced, President Patassé called on Jean-Pierre Bemba to
19 support him, and Jean-Pierre Bemba's forces had already played a similarly role in the
20 Central African Republic in 2001, when they were invited to quell a similar rebellion,
21 and during that first intervention there were also cases of sexual violence, pillaging
22 and murder.

23 Jean-Pierre Bemba accepted to help again Ange-Félix Patassé, but decided unilaterally
24 and single-handedly without consulting his chief of staff to commit the MLC troops to
25 the Central African Republic. He ordered the deployment of a brigade composing

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1 two MLC battalions, that is Poudrier B and 28th battalion to the Central African
2 Republic.

3 Those brigade, which was made up of two battalions, was placed under the command
4 of Colonel Mustapha Mukiza, whom we will be referring to as Colonel Mustapha.
5 Those two battalions, namely Poudrier B and the 28th battalion, were led respectively
6 my by Major Kamisi and Major Seguin.

7 A few months later, that is in January 2003, we must recall that Jean-Pierre Bemba
8 sent further reinforcement by way of the 5th battalion under the command of
9 Major Yves; therefore, at its highest, Colonel Mustapha's brigade was made up of
10 1,500 to 2,000 men.

11 On 26 October 2002, that is one day of President Patassé had called upon Jean-Pierre
12 Bemba, more than 500 troops of the MLC were deployed to the Central African
13 Republic territory battalion Poudrier B and the 28th battalion arrived from Zongo, a
14 town on the other side of the Oubangui River, which separates the Congo from the
15 Central African Republic.

16 According to Defence, the MLC soldiers did not arrive in the CAR before 30 October.

17 It is in the interest of the Defence to make that submission because it spares the
18 accused person, Jean-Pierre Bemba, of responsibility for several crimes that were
19 committed during the first days of the intervention of the MLC troops in the CAR.

20 In order to convince you that there were no MLC soldiers in the CAR before 30
21 October 2002, Defence has called several witnesses who achieved quite a -- an
22 extraordinary feat. In fact, most of them were unable to remember the dates on
23 which they joined the army or to even remember the date on which the rebellion
24 ended and when they returned to the new government in Kinshasa. Some of them
25 were not even able to remember the date of birth of their children, but they all

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1 remembered with great clarity the exact date on which the MLC soldiers arrived in
2 the Central African Republic.

3 More than ten years after the events those witnesses remember the dates so clearly
4 that they actually challenged the dates that was put forth by Jean-Pierre Bemba
5 himself in the official correspondences from him at the time.

6 Madam President, you will recall that in a letter, Jean-Pierre Bemba forwarded an
7 official letter to the secretary-general of the United Nations or to his representative
8 stating that his troops had arrived in the Central African Republic on 27 October.

9 The witnesses that were called before this Court told you, ten years later, that that
10 was an error and that their memory was better than what was contained in that letter.

11 Madam President, you can come only to one conclusion, namely that no credibility
12 can be extended to the testimony of these witnesses.

13 The Prosecution has demonstrated to you that as of 26 October 2002, MLC troops
14 were present in the Central African Republic and remained there till March 2003.

15 On 30 October 2002, the progressive deployment of troops came to an end with the
16 arrival of Colonel Mustapha, in Bangui, to take up the position of commander of the
17 brigade. While the MLC attack was moving towards the northern neighborhoods of
18 Bangui, the forces did not do anything to hide their identity. They recognised
19 Jean-Pierre Bemba as their leader and called him the saviour of the Central African
20 Republic.

21 Madam President, before I hand over to Horejah Bala-Gaye, my colleague, to address
22 the issue of crimes of a sexual nature, let me address an issue of language in this case.

23 The MLC forces were generally referred to as the Banyamulenge in the Central
24 African Republic. This is an expression or a word that is used by the Central African
25 people to identify Jean-Pierre Bemba's men. In fact, this word or expression

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1 "Banyamulenge" refers to an ethnic group based in eastern Congo. The Central
2 African people adopted that expression to refer to Jean-Pierre Bemba's soldiers and in
3 so doing, they were reflecting the fact that the MLC soldiers who came in 2001 came
4 from the east of the Democratic Republic of Congo, but it also bears testimony to the
5 fact that the Colonel Mustapha and most of his officers who were committed to the
6 2002 operation were people who hailed from that region and were of Banyamulenge
7 ethnicity.
8 By assimilation, therefore, the term or expression was extended to all MLC soldiers in
9 the Central African Republic, it is therefore important here to underscore the fact that
10 in this case when the expression "Banyamulenge" is used it is not in any manner
11 whatsoever in reference to an ethnic group within the Democratic Republic of Congo
12 known as the Banyamulenge, it is simply in relation to the Central Africans'
13 identification of the MLC troops for the purpose of identifying them.

14 That having been said, I now call on Horejah Bala-Gaye to now address the next point.

15 Thank you, your Honours.

16 MS BALA-GAYE: Good morning, Madam President. Good morning, your
17 Honours. We are here today to ask this Trial Chamber to deliver justice, justice for
18 the hundreds of victims who were also raped by Jean-Pierre Bemba's MLC troops
19 during the 2002/2003 conflict in the Central African Republic.

20 The Prosecution has proved beyond reasonable doubt that Bemba's men committed
21 large scale rapes throughout the Central African Republic and they did so as crimes
22 against humanity and as war crimes.

23 These armed MLC troops who were under the effective authority and control of
24 Jean-Pierre Bemba committed rape in the most brutal manner. They committed rape
25 against the most vulnerable victims of the conflict, defenseless men, women and

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1 children. MLC troops perpetrated rapes in all the areas under their control. They
2 committed rape in the localities within the capital of Bangui such as Boy-Rabé, Fough
3 and PK12. But they also committed rape throughout the Central African Republic as
4 they moved towards northern provincial towns and as they occupied formerly-held
5 territories by Bozizé's rebels.

6 Your Honours, along the Damara axis, MLC troops raped in locations such as PK22,
7 Sibut and Damara. Around along the Bossangoa and Bozoum axis, they committed
8 rape in towns such as Boali, Bossembélé, Bossangoa and Bozoum. And as they
9 retreated to the Democratic Republic of Congo, MLC troops also committed rape in
10 Mongoumba, where Bozizé's rebels had not even occupied during the conflict. They
11 raped civilians wherever they went.

12 Your Honours, the crime of rape is one of the most horrific crimes that one human
13 being can inflict upon another. It was a heinous crime of domination, of the
14 powerful over the powerless. It is crime that continues to endure long after the
15 physical act has stopped. It is a crime that deeply shocks the conscience of
16 humanity.

17 A single rape would have been shocking enough, and yet MLC troops raped several
18 hundred Central African victims openly and they did so without fear. The different
19 estimates from various sources all point to one conclusion, that MLC troops
20 committed rape through the Central African Republic in a widespread manner.

21 Prosecution Witness 6, Firmin Findiro, the Central African Prosecutor who opened
22 the national inquiry into the crimes committed in 2002 to 2003 estimated that out of
23 approximately 1,000 MLC victims, about 750 were rape victims.

24 The Prosecution gender expert, Dr André Tabo, who treated victims of sexual
25 violence during the 2002 conflict identified a total of 512 victims. This is in the

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- 1 limited geographical area of Bangui and the environs alone.
- 2 The statistics of widespread rapes are even more alarming when considered in terms
- 3 of the smaller localities in the Central African Republic. In the capital city of Bangui
- 4 alone, Bemba's men committed more than 90 rapes in Boy-Rabé and over 250 rapes in
- 5 PK12 alone. These figures, however, must be considered in light of the
- 6 underreporting of sexual violence crimes in the Central African Republic. This is
- 7 due to stigma, discrimination and ostracism. For instance, Prosecution Witness 119
- 8 stated that, quote, "In most cases people were ashamed. They were ashamed to talk
- 9 about the events, particularly the men. They were not very willing to talk about
- 10 what happened," end quote.
- 11 Similarly, Prosecution Witness 69 testified that victims, quote, "feel shame about
- 12 recounting what was done to them," end quote.
- 13 Dr Tabo noted that during the conflict, quote, "attackers enjoyed total impunity whilst
- 14 victims were reduced to silence," end quote.
- 15 Rape is a crime that requires immense strength and courage for victims to overcome
- 16 the silencing effect of this most intimate violation of the human being.
- 17 During the course of this three-year trial, your Honours heard in this very courtroom
- 18 harrowing stories from victims who were subjected to very personal questions in a
- 19 strange and foreign court. They did so in order to tell the world about the brutal
- 20 crimes they suffered at the hands of Bemba's men.
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 The fact that the rapes committed by the MLC troops were widespread is evident
17 from the families and communities that were torn apart as a result. For example, in
18 November 2002, approximately one week after Bemba's men arrived in her
19 neighbourhood of PK12, Prosecution Witness 22 was raped by three MLC men inside
20 her home. At the time of the rape she was already four months pregnant. She
21 contracted the HIV virus from her rapists. This has been established because she
22 testified that prior to the rape and as a result of her pregnancy, she had medical tests
23 and all the results were negative. During this time her fiancé was away. Following
24 the rape, she suffered a miscarriage and she even contemplated suicide. Her fiancé
25 also abandoned her.

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1 (Redacted)

2 this case such as Witnesses 23, 29, 68, 69, 79, 80, 81, 82, 87 and Victim 1 were internally
3 consistent, clear and compelling accounts. Based on their evidence, it is no
4 exaggeration to say that their lives were torn apart by the rapes committed by
5 Bemba's men.

6 How did the Central African victims know that their perpetrators were Bemba's MLC
7 troops? Because they were recognizable by language, the control of the area where
8 the crimes occurred, their attire and self-identification. It is beyond reasonable
9 doubt that Bemba's men were the perpetrators of the brutal rapes.

10 They were recognized as MLC troops or, quote, "Banyamulenge", unquote, as they
11 were known in the Central African Republic by the hundreds of victims that they
12 violently attacked. The rapes were committed in the areas under their control.

13 And in addition, your Honours heard testimony that nationals of the Central African
14 Republic speak the Sango language and that Bemba's forces spoke Lingala. Lingala
15 is a language that is recognized by victims and witnesses from the Central African
16 Republic.

17 Both Prosecution and Defence linguistic experts stated categorically that
18 Sango-speaking Central African nationals could identify Bemba's troops by the
19 language they spoke based on their interactions with Congolese migrants living in the
20 Central African Republic or through music or trade.

21 The Central African Republic citizens could identify Bemba's men even when they
22 spoke the little French that they could. This is because the Congolese accent is
23 different from that of the Central African Republic accent.

24 The fact that Bemba's forces were also recognizable and distinguished by their attire is
25 well documented in a series of photographs that were taken contemporaneously of

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1 the MLC troops.

2 Some of the witnesses were also able to identify Bemba's men as their attackers since

3 his MLC troops boasted about their identities and about their president. Their

4 president was not Patassé. It was Jean-Pierre Bemba.

5 I will now address your Honours on how MLC troops committed rapes as crimes

6 against humanity and as war crimes. These contextual elements have already been

7 established beyond reasonable doubt as detailed in the Prosecution's closing brief.

8 Rape was an essential and inherent part of the widespread MLC attack that was

9 directed against the civilian population in the CAR.

10 In addition, as their modus operandi demonstrates, Bemba's men knew that they

11 were committing rape as part of a widespread attack. They committed rape in the

12 context of and in association with the armed conflict, that is, after they dislodged

13 Bozizé's rebels and took control of an area. As a result, MLC troops were also aware

14 of the factual circumstances that established the existence of an armed conflict.

15 How did MLC troops commit rape during the 2002 to 2003 conflict in the CAR?

16 In each area under their control, MLC troops organised themselves into small groups

17 of three to four men on average. They conducted house-to-house operations as they

18 raped and pillaged simultaneously. They also murdered civilians as punishment for

19 resisting their attacks or for supporting Bozizé's rebels.

20 MLC troops raped their victims at gun-point anywhere and at any time. They raped

21 women, girls and men with authority. They raped minors as young as 8 or 9 years

22 old. They raped whomever they wanted.

23 They raped at night and in broad daylight; in homes, compounds and private spaces;

24 they raped on the streets, in the fields and in public as civilians fled for their lives

25 away from the violence and combat.

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1 Prosecution Witness 38 testified that MLC troops committed public gang rapes of
2 young girls at their Begoua School Base in Bangui. This is corroborated by
3 testimonies from other witnesses such as Prosecution Witness 63 and 178 as well as
4 documentary evidence such as an Amnesty International report.
5 The MLC troops also used the deserted PK12 police station as a rape theatre where
6 they victimized many young girls.
7 You heard testimony that different groups of Bemba's men engaged in repeated and
8 multiple rapes of the same victims on a given day. It is striking that throughout the
9 course of this trial we rarely came across a victim that was raped by only one MLC
10 perpetrator, which would have been cruel enough.
11 The common pattern of Bemba's men was for two or three perpetrators to rape the
12 same defenseless victim during the same incident, but there were also victims who
13 were raped by more than two or three MLC perpetrators during the same incident.
14 Your Honours recall that Victim 1 testified that on 5 March 2003 she was raped twice
15 by Bemba's men in Mongoumba. She was raped in her anus, vagina and even in her
16 mouth. She was first raped by two MLC perpetrators in public under a tree next to
17 the river. As she was being raped, other MLC men cheered and shot their weapons
18 in the air. They did this to encourage their fellow rapists. A few hours later, Victim
19 1 was again raped in public by 12 out of 20 MLC men that were present. Twelve of
20 Bemba's men took turns to rape her that day.
21 MLC troops committed widespread rapes with complete impunity during the conflict
22 and they did so in areas under their control.
23 MLC troops raped victims in front of their family members. They sometimes forced
24 one family member to rape another. Sons were sometimes forced to rape their
25 mothers in front of their fathers. MLC troops raped wives in front of their husbands.

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1 They raped children in front of their parents. This was how Jean-Pierre Bemba's
2 MLC troops carried out their rape campaign in the Central African Republic.
3 Witness testimonies demonstrated that the MLC had an organisational policy to
4 commit a widespread attack against a civilian population. The MLC troops did this
5 by carrying out regular, organised and planned attacks that followed the consistent
6 pattern of group operations previously described.
7 Victims were subjected to cruel, inhumane and humiliating attacks with the aim of
8 punishing them for their support of Bozizé's rebel. MLC troops instilled a climate of
9 fear with the hope of effectively destabilising the enemy.
10 Prosecution Witness 213, an MLC insider, told your Honours that MLC troops
11 understood that their hierarchy had given them license to commit the crimes against
12 the Central African Republic population.
13 MLC troops were told that they had no wives, children or relatives in the Central
14 African Republic where they could kill and destroy. The MLC troops did just that.
15 MLC troops committed rape as a key part of their attack against a civilian population.
16 The effect of this policy was to victimize the civilian population and render them
17 powerless. This was particularly evident from the MLC's rape of men with authority,
18 in plain view, in order to send a message that they had absolute power, that the MLC
19 troops were in complete control and the formerly powerful were now powerless.
20 Your Honours, let me tell you how Bemba's MLC troops committed horrific acts of
21 rape as a weapon of war during the 2002 to 2003 conflict in CAR.
22 The massive rapes were not just sexually motivated as gender crimes. They were
23 crimes of domination and humiliation directed against women and against men with
24 authority.
25 Women were raped systematically to assert dominance and to shatter their resistance.

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1 Men were raped in public to destroy their capacity to lead and protect.
2 The findings of expert witness Dr Tabo, based on scientific evidence and interviews
3 conducted with hundreds of CAR victims after the conflict, highlighted four
4 motivations for the rapes committed by Bemba's MLC troops: One, victims were
5 seen as defenseless and therefore equivalent to war booty or the spoils of war; two,
6 rape was seen as a form of sexual release; three, victims were punished for allegedly
7 supporting the enemy simply because they lived in former rebel-held territories; and
8 four, to destabilize enemy troops by raping their loved ones and their neighbours.
9 Dr Tabo explained that rape was used as a weapon of war to punish women who
10 resisted sexual advances by MLC troops and also as a deliberate tactic to humiliate
11 men and demonstrate their powerlessness to protect their families. He testified that
12 the rape of a man during conflict is to humiliate and punish as it also humiliates
13 family members and people close to him.
14 Your Honours have heard other independent evidence that supports MLC's use of
15 rape as a weapon of war against the CAR victims. Prosecution Witnesses 23 and 69
16 were among the male community leaders who were selectively targeted and raped by
17 Bemba's men. They were raped in front of their family members or in public in plain
18 view of their community. These community leaders lost their standing and pride in
19 the community and at home.
20 Prosecution Witness 23 testified that in early November 2002 MLC troops arrived at
21 his neighbourhood in Bangui. When they found out that he was a man with
22 authority, the MLC troops who spoke a little bit of French told him that people like
23 him were, quote, "instigators of the rebellion against President Patassé," end quote.
24 They told him that he, quote, "had to be punished for that," end quote. As a
25 consequence, three of Bemba's men raped him in turn for hours out in public.

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1 During the same incident MLC troops also raped his wife and children. He told
2 your Honours that his second wife said to him, quote, "You are no longer a man.
3 You are a woman like myself, so I cannot live with you. I have to leave you." End
4 quote.
5 Prosecution Witness 69 was also a man with authority within his neighbourhood.
6 Bemba's troops raped him and his wife on the same day. This Chamber heard that
7 towards the end of November 2006 (sic), six MLC men entered Witness 69's home.
8 They dragged his wife outside of the kitchen and threw her to the floor. They then
9 took her to another room in the house where four of them raped her.
10 Witness 69 explained that, quote, "If your wife is assaulted and raped before your
11 very eyes, what can you say? It was horrible. It was unbearable..." End quote.
12 The two other MLC troops then turned to Witness 69 himself and raped him orally
13 and anally. Bemba's men did that to show him that he could not defend himself or
14 his wife.
15 Witness 69 was mocked and stigmatised by people in his community. He told your
16 Honours that he had lost his dignity. The MLC troops raped him in order to destroy
17 his authority within his neighbourhood. They knew of his position of authority
18 because of a flag post in front of his house and an insignia on his lapel.
19 The MLC troops did not even spare society's most vulnerable group: The children.
20 Prosecution Witness 82, who was about 12 years old at the time, was the youngest
21 rape victim to testify before this Chamber. She told your Honours that MLC troops
22 came to their home where she was with her family. Two of Bemba's men raped her.
23 Although she tried to run away from them, they seized her by force. They had
24 batons which they used to injure her knees and her legs. She testified that both MLC
25 perpetrators, quote, "penetrated my vagina with their penis and it was for that reason

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- 1 that I was bleeding."
- 2 Each perpetrator slung his weapons over his shoulders while he raped Witness 82.
- 3 She explained that, quote, "When they took me, they really assaulted me sexually very
- 4 violently. They took me by force and they put my arms behind me. They bent me
- 5 over and they did these horrific things to me and that's the reason why I ended up
- 6 with these terrible injuries." End quote.
- 7 Witness 82 was still a virgin when Bemba's men violently raped her. As a result of
- 8 the rape, she sustained many injuries in her vagina which caused her to bleed. She
- 9 testified that because of her rape, "I am no longer able to associate with the other girls.
- 10 Everybody makes fun of me." End quote.
- 11 Prosecution Witness 42 also told your Honours that two armed MLC men raped his
- 12 ten year old daughter one Saturday afternoon in November 2002. A large group of
- 13 MLC troops arrived at his home. Witness 42 heard his daughter screaming, quote,
- 14 "Papa, they are taking me away," end quote. And she also screamed, quote, "Papa,
- 15 they are undressing me," end quote. Witness 42 stated, however, that "I was
- 16 powerless." End quote.
- 17 He explained that, quote, "On that day she was wearing underpants. They tore it off
- 18 and after her rape you could see blood running down her legs and also blood on the
- 19 dress she was wearing that day ... the blood was running out from the female part of
- 20 her body." End quote.
- 21 These children, like so many others who were raped by Bemba's men, were
- 22 stigmatised and taunted at school and around their communities.
- 23 Prosecution Witness 42 testified that his ten year old daughter could no longer go to
- 24 school because other students made fun of her and called her, quote,
- 25 "Banyamulenge's wife" unquote.

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1 She had to drop out of school and as a result, her father is saddened by the fact that
2 she has been denied the opportunity to make something of herself.

3 Prosecution Witness 79 told your Honours that she had to hide the fact that her
4 daughter, who was only 11 years old at the time, was raped by Bemba's men because
5 otherwise she would never find a husband in their Muslim community. Instead,
6 Witness 79 only admitted to her own rape and she resorted to splitting her medication
7 secretly with her daughter.

8 Your Honours, the Prosecution has established all the elements to prove beyond
9 reasonable doubt that Bemba's men committed the widespread and brutal rapes as
10 crimes against humanity and as war crimes during the 2002 to 2003 conflict.

11 (Redacted)

12 troops raped their victims in areas under their military control and in the coercive
13 environment that was inherent in the armed conflict.

14 MLC troops intended to sexually penetrate their victims and Bemba's men knew that
15 they did so by using force and under the threat of coercion. They assisted each other
16 to rape their victims not only by their mere presence but also by using physical force,
17 coercion and the threat of additional force. In addition, minors are simply incapable
18 of giving consent, genuine consent.

19 Bemba's men knew and committed rape as part of a widespread attack directed
20 against the civilian population in the CAR. They were aware of the factual
21 circumstances that established the existence of the armed conflict and they knew that
22 they were committing large-scale rapes in the context of and in association with this
23 armed conflict.

24 (Redacted)

25 that time, had the courage to travel to this court and tell your Honours about their

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1 traumatic experiences. The Chamber was able to judge each witness's demeanour
2 and testimony firsthand.

3 It is an understatement to say that the lives of individual victims, their families and
4 the society as a whole were destroyed by the brutal and widespread rapes.

5 Why should your Honours believe the testimonies you've heard regarding
6 widespread rapes committed by Bemba's men in the CAR? Because it is beyond
7 reasonable doubt that numerous Central African victims were raped by Bemba's men
8 in the circumstances that they described as many of the independent witnesses have
9 said.

10 The Defence did not raise any material inconsistencies that affect the credibility and
11 reliability of the victim witness testimonies. Nevertheless, the Defence has invited
12 (Redacted)

13 her are part of a conspiracy plot to concoct testimony against their client.

14 To believe such a fallacy, your Honours would have to imagine that long before the
15 victims even knew that Jean-Pierre Bemba had been arrested and charged at the
16 International Criminal Court, they engaged in a sophisticated scheme that involved
17 telling strangely similar accounts to those reported contemporaneously during the
18 events which the Defence say never happened.

19 This Chamber should see that argument for what it really is: An implausible and
20 outlandish claim. Frankly, it would be absurd for victim witnesses to concoct
21 testimony considering that during and throughout the conflict in 2002 to 2003 there
22 were contemporaneous reports identifying MLC troops as the perpetrators of the
23 widespread rapes.

24 MLC troops themselves admitted to committing widespread rape. For instance,
25 documentary evidence from the MLC archives records an MLC soldier stating that

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1 their brothers in the Poudrier B battalion had systematically raped the CAR civilian
2 population.

3 Bemba's men, including their commanders, raped hundreds of Central African
4 victims. They infected some of them with the HIV virus and they died subsequently.
5 They openly admitted to committing widespread rapes in the presence of their
6 commanders.

7 For instance, along the PK12 road to Damara, an MLC perpetrator named
8 Gondele (phon) was notorious for targeting and raping only children under the age of
9 10 because he believed that raping little girls would cure him of the HIV virus. He
10 discussed this openly and in the presence of at least one MLC commander. Gondele
11 was allowed to rape and infect little girls freely.

12 You also heard testimony that MLC troops on the Bossangoa-Bozoum axis, that is the
13 28th battalion and the 5th battalion, committed widespread acts of rape in the CAR.

14 The MLC's own contemporaneous intelligence reports, as the testimony of
15 Prosecution Witness 33 shows, recorded the widespread rapes amongst -- widespread
16 rapes were amongst the crimes that MLC troops committed in the Central African
17 Republic.

18 In addition, the CAR national inquiry into crimes was conducted in 2004, that is, long
19 before 2008 when Jean-Pierre Bemba had been arrested and charged. That inquiry
20 also identified Bemba's men as the perpetrators of the extensive rapes that occurred
21 during the 2002 to 2003 conflict.

22 (Redacted)

23 these heinous rapes who have endured so much and have nothing to gain by
24 testifying, these witnesses would rather put themselves at risk and subject themselves
25 to very personal questions in a court far away from home.

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1 Your Honours, men and women do not come to court to reveal the most intimate
2 details about their personal lives under the detailed scrutiny of cross-examination and
3 yet remain consistent, compelling and clear in their accounts of victimisation.

4 These victim witnesses had similar accounts of the brutal rapes committed by
5 Bemba's men regardless of where they came from, whether it was within the capital
6 city of Bangui or other far away provincial towns throughout the CAR. Their
7 accounts are corroborated by direct testimonies from non-victim witnesses of rape
8 such as Prosecution Witness 119.

9 She told your Honours about an incident that occurred in Boy-Rabé towards the end
10 of October 2002. She clearly witnessed two of Bemba's men raping two little girls
11 while a group of armed MLC men stood by and awaited their turn to rape the little
12 girls. The girls later told her that they were 12 and 13 years old.

13 The testimonies of Prosecution witnesses are also corroborated by similar accounts
14 from independent sources. These are various sources such as the contemporaneous
15 testimonies gathered by local and international press and non-governmental
16 organisation reports, which all reported the widespread rapes against numerous
17 victims and identified Bemba's men as the perpetrators.

18 Your Honours, these accounts of rapes are just a few illustrations of the terror of rape
19 unleashed by Bemba's men against hundreds of Central African Republic civilians.

20 We are seeking justice today on behalf of all the rape victims in this case and
21 countless other victims in the Central African Republic.

22 I will now give the floor to Mr Thomas Bifwoli to address the crimes of pillaging and
23 murder, unless we need to break because of the time.

24 Thank you, your Honours.

25 PRESIDING JUDGE STEINER: Thank you very much, Ms Bala-Gaye. Since we

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1 have only one and a half minutes, I suggest that we go into our half an hour break

2 and resume at 11.30 with Mr Bifwoli presenting his submissions.

3 The hearing is suspended.

4 THE COURT USHER: All rise.

5 (Recess taken at 11.00 a.m.)

6 (Upon resuming in open session at 11.31 a.m.)

7 THE COURT USHER: All rise.

8 Please be seated.

9 PRESIDING JUDGE STEINER: Welcome back. We will now proceed with

10 Prosecution's presentation of its final submissions, and I give the floor to Mr Bifwoli.

11 MR BIFWOLI: Thank you, your Honours. I will now address you on how the MLC

12 troops committed the war crime of pillaging during their 2002/2003 CAR intervention.

13 Pillaging was a key feature of the large-scale crimes committed by MLC troops during

14 their 2002/2003 CAR intervention. MLC troops pillaged in each and every location

15 that was under their occupation and control in the Central African Republic.

16 The pillaging was both organised and on a grand scale.

17 The MLC troops pillaged items from ordinary people, the military, the government

18 and even churches. No person or entity was spared. After gaining control of a

19 location, the MLC troops went from house to house. They entered people's homes

20 by force and took away their belongings. Anyone who resisted was beaten, raped

21 and murdered.

22 MLC troops after looting transported pillaged items using vehicles given to them for

23 military operations by the CAR authorities or vehicles pillaged from private

24 individuals or companies by the MLC.

25 Sometimes MLC troops transported looted properties on their heads, shoulders, by

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1 push carts and vehicles to their bases. At other times they forced civilians to
2 transport the pillaged items.
3 From their bases, the MLC transported the pillaged items to the shores of the River
4 Oubangui, from where these pillaged items were subsequently transported to the
5 Democratic Republic of Congo, the DRC.
6 Which items were pillaged by the MLC troops in the CAR? Almost any item
7 however mundane was pillaged: vehicles, foam mattresses, utensils, mobile phones,
8 radios, clothes, motorcycles, shoes, freezers and many others.
9 Your Honours, these are just a few examples of the items that the MLC troops
10 pillaged while they were in the Central African Republic. However, as
11 demonstrated by the evidence on record, the MLC troops pillaged many items on
12 large scale from many people in the CAR during their five-month intervention.
13 From whom did the MLC pillage? The MLC troops pillaged from anyone and
14 everyone, including the CAR civilians that they were meant to protect and the CAR
15 soldiers that they were meant to coordinate with. Even properties of ministers in
16 President Patasse's government were pillaged as well.
17 Prosecution witnesses such as Witness 38, 63, 209, 169 and legal representative of
18 victim witnesses, such as Victim 1 and Victim 2, all testified how the MLC troops
19 pillaged from them and other CAR civilians during the conflict period.
20 Bemba's men also pillaged from the CAR military which they had come to reinforce.
21 They pillaged their officers at Camp Beal as well as uniforms and weapons of 30 CAR
22 soldiers whom they undressed and disarmed. As Prosecution Witness 31 testified,
23 the MLC troops pillaged all weapons and musical instruments that belonged to the
24 CAR military from the support battalion in Bangui.
25 Victim 1 testified that -- testified how the MLC troops even pillaged many items from

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1 the Catholic bishop, priest and nuns in Mongoumba. These items included vehicles,
2 utensils, money, a cross and even a cassock.

3 Prosecution Witness 173 testified how the MLC troops also pillaged motorcycles,
4 trucks, cotton, spare parts and equipment from a private company called SOCADA
5 Cotton Company in Bossangoa. They also pillaged other items from a Japanese
6 company in Bozoum.

7 Even senior government officials shared the same fate as the ordinary citizens of the
8 CAR. For example, the MLC troops occupied and pillaged the home of
9 Mr Sorongope, a former minister in Patassé's government.

10 Your Honours, let me now address you on when the pillaging started. The MLC
11 troops started pillaging immediately after their arrival in the Central African Republic.

12 Prosecution Witness 31 testified that MLC troops started looting even before they
13 launched an attack against Bozizé forces on 27 October 2002.

14 A few hours after their arrival and after they launched an attack against Bozizé forces
15 in Bangui, the MLC troops were recorded on video loading many pillaged items onto
16 vehicles. In the same video, a civilian woman is shown complaining that the MLC
17 troops had just pillaged her home. This video was admitted as evidence in this case.

18 The Prosecution also tendered into evidence a media report, "devoir de mémoire"
19 indicating that on 26 to 27 October 2002, the MLC troops were already pillaging 36
20 villas in Bangui.

21 On 30 October 2002, seven MLC soldiers were arrested in Bangui. The arrest of these
22 soldiers together with the other evidence on record confirms that immediately upon
23 their arrival in the Central African Republic the MLC troops engaged in massive
24 pillaging that even caught the attention of their commander-in-chief in Gbadolite in
25 the DRC.

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1 Let me now turn to the areas that were pillaged by the MLC. The pillaging did not
2 stop with the arrest of the seven MLC soldiers. Instead it was widespread and
3 continued throughout the entire conflict period. MLC troops pillaged in all the areas
4 that were under their control, such as Bangui, PK12, Damara, Sibut, Boali, Bossangoa,
5 Bozoum, Bossembelé, Bossempélé and many others.

6 Moreover, as was the case with other crimes committed by the MLC troops at the
7 time, the looting started with the MLC occupation of these areas, it continued during
8 their occupation and ended with their departure from these areas.

9 Your Honours, let me now address you on how the MLC troops conducted
10 widespread pillaging. The MLC troops were organised in their pillaging. After
11 shelling a particular area, they conducted a mop-up operation. They moved from
12 house to house, threatening people with their guns and taking their belongings.
13 They did not ask for permission from the owners of the properties to take them away.
14 Where the owners resisted, the MLC troops used force and even murder to quell
15 resistance.

16 In cases where there were women or girls in the houses during the pillaging, they
17 were raped. Many witnesses, such as Prosecution Witness 22, 23, 29, 68, 69, 87,
18 testified how the MLC pillaged their properties and raped them during the same
19 incident.

20 What was the scale of MLC pillaging? The MLC troops committed pillaging on a
21 large scale. Prosecution Witness 63 testified that in Damara, and I quote, "... there
22 wasn't a single shop that went unlooted, and all churches, practically all of them,
23 whether Catholic or Protestant, were plundered. Practically every single house in
24 Damara was looted ..."

25 Another Prosecution Witness, Witness 38, testified that the house occupied by the

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1 MLC force commander in the CAR at PK12 was full of pillaged items. He testified
2 that the goods in that house, and I quote, "... almost amounted to the contents of a
3 supermarket." All of these pillaged items were eventually transported by the MLC
4 troops to the DRC.
5 Prosecution Witnesses 63, 169, and 178, who went to various places occupied by the
6 MLC troops during the conflict, all testified that MLC troops committed large-scale
7 pillaging that was replicated in all the areas they occupied and controlled.
8 What did the MLC do with the pillaged items? Your Honours, the MLC troops
9 distributed pillaged items amongst themselves. Valuable items such as vehicles
10 went to the commanders like Mustapha, while items of less value such as household
11 appliances were given to foot soldiers.
12 After sharing out pillaged items amongst themselves, the MLC troops sold items of
13 less value to the CAR local population.
14 For instance, Prosecution Witness 42 was forced to buy a radio from MLC troops,
15 which they later came and took away without refunding him.
16 Prosecution Witness 63 saw MLC troops selling mobile phones at a price of 1,000 to
17 1,500 Central African francs. He also testified that at times the MLC troops simply
18 exchanged these pillaged phones for drinks.
19 Prosecution Witnesses 169, 173 and 178 testified that pillaged items were sold on
20 behalf of Mustapha and other MLC soldiers. They knew that these items were
21 pillaged from the CAR civilians.
22 How did the MLC transport the pillaged items? The MLC transported pillaged
23 items on the ground, over water and in the air. That was how organised the MLC
24 pillaging scheme was.
25 They used trucks, buses and vehicles looted by them or given to them by the CAR

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1 authorities to transport the looted items within the CAR.

2 As Prosecution Witness 81 and 23 testified, at times the MLC troops transported

3 pillaged items by carrying them on their heads, shoulders and by using push carts.

4 And at other times they forced CAR civilians to carry the pillaged items as they did to

5 Victim 1.

6 Whereas items of lesser value were sold in the Central African Republic, valuable

7 items were subsequently transported by the MLC to the DRC. These items were first

8 transported by trucks and vehicles to the banks of River Oubangui. From there they

9 were loaded on the ferry, canoes or boats and transported across the river to Zongo.

10 Some of them were sold in Zongo while others were transported all the way to the

11 MLC headquarters, Gbadolite, where Mr Jean-Pierre Bemba was based.

12 As Prosecution Witness 169 testified, Mustapha, the man in charge of MLC forces in

13 the CAR at the time, crossed with two vehicles to the DRC. One vehicle was

14 pillaged from the Moroccan embassy and another from a CAR civilian. MLC

15 battalion commanders Yves, Seguin and Kamisi all crossed to the DRC with pillaged

16 vehicles as well.

17 Victim 1 also explained how the looted items were transported to the riverbank and

18 piled there for onward -- onward transportation to the DRC.

19 The evidence is corroborated by Prosecution Witness 33, who testified that vehicles

20 were pillaged in -- that were pillaged in the CAR were transported to Gbadolite via

21 Zongo. He also testified that Bemba distributed these looted vehicles to some MLC

22 officials in Gbadolite.

23 Apart from using vehicles and trucks to transport, transport pillaged items to the

24 DRC, the MLC also transported other items such as motorcycles and generators using

25 a plane or a helicopter from Damara to the DRC as the testimony of Prosecution

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- 1 Witness 209 demonstrates.
- 2 Let me now turn you on the Mongoumba incident.
- 3 The one time that the Central African soldiers attempted to prevent MLC troops from
- 4 transporting pillaged items to the DRC, the MLC troops, with Bemba's permission,
- 5 retaliated by attacking Mongoumba a few days later.
- 6 Prosecution Witnesses 169 and 173 testified that Mongoumba was attacked by MLC
- 7 troops because the CAR military prevented Mustapha's wife from crossing to the
- 8 DRC with pillaged items. As a result, Mongoumba residents were subjected to
- 9 large-scale pillaging and other crimes from the MLC troops.
- 10 In Mongoumba, MLC troops pillaged homes, churches and even the gendarmerie
- 11 base as demonstrated by the evidence of Victim 1.
- 12 Your Honours, the evidence on record proves beyond reasonable doubt that the MLC
- 13 troops committed large-scale pillaging during their five-month intervention in the
- 14 CAR. Prosecution witnesses such as Witness 22, 23, 29, 47, 69, 169, 173, 178, and
- 15 legal representative for victim witnesses such as Victim 1 and Victim 2 all testified
- 16 that MLC pillaged massively.
- 17 A national inquiry commissioned by the Central African Republic government found
- 18 that MLC troops committed pillaging on a large scale.
- 19 The seven MLC troops who were arrested admitted that their fellow soldiers had
- 20 pillaged in the CAR.
- 21 Radio France International as well as local radio station Radio Ndeke Luka all
- 22 provided contemporaneous reports that MLC troops committed large-scale pillaging.
- 23 What impact did the MLC pillaging have on CAR civilians? Pillaging by the MLC
- 24 troops had a devastating impact on both the CAR civilians as well as on the CAR as a
- 25 whole.

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1 Witnesses testified that they were never compensated neither by the MLC nor by
2 anyone else for their pillaged items. They also testified that their pillaged items were
3 never returned.

4 As Prosecution Witness 23 testified, "... They took everything from us and that meant
5 I had nothing. I was somebody who had a lot, but they took everything from me
6 and I was left with nothing." End of quote.

7 As a result of MLC pillaging, most CAR civilians were reduced to beggars and
8 paupers as their properties and lifetime savings were taken away by MLC troops.

9 Most testified that they could no longer provide for their basic needs such as food and
10 Medicare after the conflict.

11 Moreover, an additional burden of buying new clothes, utensils, appliances and other
12 basic items was placed on the victims of pillaging who are already struggling to make
13 ends meet.

14 The burden placed on CAR civilians as a result of the large-scale MLC pillaging is
15 simply overwhelming.

16 Let me now address you on Defence arguments, they are essentially two: First, the
17 Defence argues that it was Bozizé's rebels disguised as MLC troops who pillaged
18 from the CAR civilians. The evidence proves beyond reasonable doubt that it was
19 the MLC troops who pillaged.

20 Prosecution Witnesses 169, 173 and 178 amongst many other witnesses testified that
21 they knew Mustapha, MLC commanders as well as other MLC troops. They

22 explained how pillaged items were sold on behalf of Mustapha and other MLC

23 commanders such as Seguin, Yves and Kamisi. They also explained how pillaged

24 items were transported across to the DRC on behalf of the MLC troops. These

25 witnesses were in a position to distinguish between the MLC troops. They were also

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1 able to personally identify specific MLC perpetrators that were implicated in the
2 large-scale pillaging.
3 Prosecution Witness 33, a senior MLC official, testified that he knew that Mustapha
4 pillaged trucks from the CAR, which he subsequently rented out to transport
5 individuals in the DRC. He also testified that other pillaged vehicles from the CAR
6 were transported all the way to the Coca-Cola warehouse in Gbadolite where they
7 were later distributed to MLC officials by Bemba.
8 If it was Bozizé rebels pretending to be MLC forces to committed the pillaging, they
9 were carrying their subterfuge to self-defeating levels by transporting the proceeds to
10 Gbadolite to be distributed by Bemba.
11 The reality is that the Defence theory is false and untenable. Only MLC troops
12 would pillage items and transport them all the way to the DRC. Moreover, Bozizé
13 rebels were never based in the DRC at any time before, during or after the conflict.
14 Prosecution Witness 33 was in a position to know if the MLC troops in the CAR took
15 part in pillaging or not. He testified that they did. His evidence is compelling.
16 Moreover, witnesses testified that the MLC troops that Bemba addressed at PK12
17 were the same troops that pillaged from the CAR civilians.
18 This evidence, considered together with other evidence on record, proves beyond
19 reasonable doubt that it was the MLC troops who committed large-scale pillaging
20 during their 2002/2003 CAR intervention.
21 Let me now address you on the second argument for the Defence. In an attempt to
22 justify pillaging by the MLC troops whilst at the same time denying that MLC troops
23 committed pillaging, the Defence argues that the pillaged items were appropriated
24 for military necessity. This Defence assertion is contradicted by the evidence on
25 record.

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1 As Prosecution Witness 178 explained, the pillaged items were appropriated by the
2 MLC troops for private or personal use as opposed to military necessity.

3 In addition, the MLC pillaged on a scale -- on a large scale and pillaged items that are
4 beyond the scope of the doctrine of military necessity.

5 For instance, MLC troops pillaged a cross and a cassock from the bishop of Mbaiki in
6 Mongoumba. They also pillaged children's bicycles and computer games from the
7 house of Prosecution Witness 108.

8 Your Honours, how is the bishop's cross or cassock or children's bicycles and
9 computer games necessary for military operations? How?

10 Moreover, after pillaging from the CAR civilians, some pillaged items were sold by
11 the MLC troops to civilians in the CAR while others were transported to the DRC
12 where they were sold or kept for personal use by the MLC troops. If these items
13 were appropriated as a result of military necessity, why were they sold or transported
14 to the DRC to be used by the MLC troops after the conflict?

15 Moreover, neither Bozizé forces nor any other armed group was ever present in
16 Mongoumba during the conflict period. The MLC troops simply crossed from the
17 DRC into Mongoumba one day. They attacked civilians, pillaged their belongings
18 and returned to the DRC. In fact, the conflict was hundreds of kilometres away from
19 Mongoumba.

20 Again, the Defence fails to offer any reasonable explanation of how looting in
21 Mongoumba can be justified on the ground of military necessity in such
22 circumstances.

23 Your Honours, I will now proceed to address you on murder. I will now proceed to
24 address you on murder both as a war crime and crime against humanity.

25 During their 2002-to-2003 CAR intervention, the MLC troops committed murder as

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1 war crimes and as crimes against humanity against the CAR civilians.
2 Bemba's men committed multiple acts of murder as part of a widespread attack
3 against the CAR civilian population. They killed civilians in the areas under their
4 control and occupation.
5 The civilian population was the primary target of the MLC attack. In cases where
6 civilians resisted pillaging or rape, the MLC responded with force and sometimes
7 killed them as punishment. In other instances, MLC troops also killed civilians that
8 they termed as Bozizé supporters.
9 The dossier of the CAR national proceedings approximated that out of 203 victims, 37
10 murders were committed in Bangui alone by Bemba's MLC troops.
11 In which areas were civilians killed by the MLC? The MLC troops killed civilians in
12 areas such as Bangui and PK12 and as they moved throughout the CAR in locations
13 such as PK22, Sibut, Damara and Mongoumba.
14 Your Honours, the MLC attack on CAR civilians was pursuant to or in furtherance of
15 an organisation plan or policy. The MLC troops committed murder as part of the
16 MLC's organisational policy, which was to subject civilian population to cruel,
17 inhumane and humiliating attacks with the aim of pushing -- or punishing them for
18 the support of Bozizé's rebels.
19 Murder was instrumental in instilling fear in CAR civilians. The MLC troops also
20 murdered civilians as punishment for resisting their attacks.
21 The MLC attack of CAR civilians was widespread. The attack was directed against a
22 large number of civilians either across a large geographical area or in a small
23 geographical area. The Prosecution proved both in this case.
24 The victims were concentrated in several small geographical areas as well as across a
25 large geographical area in the CAR. The multiple acts of rape, murder and pillaging

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1 by the MLC troops in Bangui and PK12 is sufficient to establish the existence of an
2 attack.

3 In addition, the multiple acts of murder committed in Bangui and PK12, Mongoumba,
4 Bossangoa, Damara, Bossembelé, Sibut and Bozoum considered cumulatively meet
5 the threshold for an attack.

6 The MLC attack against the CAR civilians was widespread. The MLC troops killed
7 many people in Bangui as they fled, leaving their bodies decomposing out in the open.
8 For example, at Lycée Boganda, Mandaba and Boy-Rabé.

9 Prosecution Witness 63, who followed the MLC troops during the CAR conflict,
10 testified that at the Lycée Miskine Road alone Bemba's men killed approximately five
11 people.

12 Prosecution Witness 87 testified that the MLC troops murdered her brother. Witness
13 87 testified that three MLC troops entered their house at night. Her brother was in
14 the house. Two MLC troops remained in the living room as one went to the room
15 where the motorbike was. Her brother followed the MLC soldier who was in the
16 room where the motorbike was. In that room an argument ensued between Witness
17 87's brother and the MLC soldier. She could hear her brother say "No, no" while
18 arguing with the MLC soldier who was in the room where the motorbike was.

19 At that time Witness 87 was at the rear door -- at the rear door of their house. The
20 door had spaces in it and therefore she could see the people inside the house. She
21 testified that MLC soldier wanted to take the motorbike, but her brother resisted. He
22 was shot three times in the chest by the MLC soldier whom she saw come out of the
23 room after the shooting. The MLC soldier who shot her brother joined others who
24 were in the living room and together they left.

25 The forensic report confirms that Witness 87's brother was shot three times in the

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1 chest. Witness 87's brother was killed by the MLC troops in his house. He was
2 killed because he resisted the MLC troops from pillaging their motorbike.

3 Moreover, the FIDH tallied dozens of civilian deaths and rape victims which were
4 committed by the MLC troops in Bangui.

5 In PK12, the MLC troops killed civilians as well. The MLC troops arrived in PK12 on
6 30 October 2002. At this time all enemy forces had abandoned the area. Bemba's
7 men committed large-scale rape, murder and pillaging against numerous civilian
8 victims.

9 As a result on 1 November 2002, the PK12 civilians protested the continuing and
10 widespread MLC attack. Prosecution Witness 69 testified that the MLC troops
11 murdered his sister in PK12 area. Witness 69 testified that he was at his home with
12 his sister who was a traitor.

13 MLC soldiers came to their home and demanded money from his sister, who resisted.
14 His sister had 800,000 Central African francs on her tied on her waist. MLC troops
15 wrestled her to the ground and took the money from her. In addition, they shot her
16 in the head, killing her instantly.

17 When Witness 69 started to cry, another MLC soldier punched him on the face and hit
18 him in the left eye. He also hit him on the leg as well. Witness 69 explained how he
19 saw the brain of his sister scattered on the ground. He testified that the MLC troops
20 killed her, and I quote, "... like an animal. Like a dog ..." end of quote.

21 After killing Witness 69's sister and taking her money, the MLC troops simply walked
22 away abandoning the body there. Witness 69's sister was killed like a dog because
23 she refused to give her hard earned money to the MLC.

24 Prosecution Witness 213 testified that he visited PK12 in the company of Mr Bemba.

25 Witness 213 testified that Bemba personally observed the corpses of civilian victims

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1 murdered by his troops.

2 Prosecution Witness 38 testified that civilians were shot because they resisted

3 pillaging by MLC troops or were termed as rebels. For instance, a duck breeder was

4 shot in the forehead for resisting the pillaging of his ducks. This incident is

5 corroborated by Prosecution Witnesses 23, 73 and 112.

6 Prosecution Witness 112 testified that he assisted with the burial of many civilians

7 who had been killed by the MLC troops.

8 Prosecution Witness 69 testified that there was no confusion between civilians and

9 soldiers, yet MLC troops killed many civilians in Begoua. This is corroborated by

10 Prosecution Witness 178 who testified that MLC troops killed several people around

11 the Begoua school and that they were buried in a mass grave.

12 He testified that the Red Cross exhumed these bodies a year later and gave them a

13 decent burial.

14 The MLC troops and their commanders took part in the commission of murder as

15 well. Prosecution Witness 178 testified that Coup-Par-Coup and Ben-el-Aden were

16 known for killing civilians. For instance, he testified Ben-el-Aden killed many

17 civilians at PK12.

18 Prosecution Witness 63 testified that he had MLC Commander Cercueil ordering the

19 execution of civilians after his brother Mapao was skilled. Civilians went to MLC

20 base to enquire about missing children or relatives, but they were informed that they

21 had -- they were -- they had taken on a journey. Witness 178 explained that this

22 meant that those individuals had been killed.

23 The MLC troops boasted openly about killing civilians. For example, Dragula, one

24 of Mustapha's drivers, was notorious for killing civilians openly. Witness 178

25 testified that one day a smiling Mustapha told Dragula that he was committing, and I

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1 quote, "too much", end of quote, meaning killings.

2 Prosecution Witness 173 testified that as the MLC troops withdrew on 15 March 2003,

3 in Bangui's Sango quartier, an MLC soldier shot and killed a child who had resisted

4 his attempt to pillage bread at the Ysimandji market. This murder happened directly

5 in front of the MLC battalion commander, Yves.

6 The MLC troops themselves informed Witness 178 of widespread killings they had

7 committed. Witness 178 testified that he was told by an MLC perpetrator who took

8 part in the operation that the people in the mass grave were killed by the MLC troops.

9 He explained that the people in the mass grave around the mosque were killed

10 around 5 or 7 November 2002.

11 The MLC troops committed multiple acts of murder in PK22 and Damara as well.

12 For instance, the MLC commander, René Eboma, showed Witness 178 a mass grave

13 on the Damara road where 32 civilians were buried.

14 Prosecution Witness 209 testified that civilians were killed by the MLC troops

15 including at their headquarters in Damara. Prosecution Witness 63 corroborates the

16 killings of civilians, including Chadians, whom the MLC troops considered Bozizé

17 supporters.

18 Prosecution Witness 6 testified that there were many cases of individuals that were

19 arrested by MLC troops and then executed after being held in a makeshift prison in

20 Damara. Civilians went to the MLC base to inquire about missing children or

21 relatives, but they were informed that they had been taken on a journey. However,

22 the MLC troops knew that they had already killed those individuals.

23 The civilians in Bossangoa were not spared as well as the home town of General

24 Bozizé, civilians in Bossangoa were generally targeted for their perceived support of

25 the rebels. Many civilians were killed as MLC troops took revenge upon the local

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- 1 population.
- 2 Prosecution Witness 169 testified that he saw more than 100 dead civilian bodies
- 3 dressed in djellabas, which was typically worn by Muslims, on the roadside in front
- 4 of the court and at the Bossangoa market as well.
- 5 Witness 169 also saw the body of an Imam at the market and was told by an MLC
- 6 soldier that they killed him because he supported Bozizé's rebels. This is
- 7 corroborated by the news reports that the government of Chad expressed concerns
- 8 about the multiple acts of rape, murder and pillaging of Chadians in Bossangoa in
- 9 other parts of the CAR.
- 10 In Bossembelé Prosecution Witness 6 testified that he witnessed the killing of a person
- 11 at an MLC checkpoint at the entrance of Bossembelé. He also testified that the CAR
- 12 national investigations revealed that MLC troops committed widespread murder in
- 13 Bossembelé.
- 14 Witness 169 also testified that MLC troops told him that they killed the Imam and
- 15 other Muslims in Bossembelé.
- 16 Prosecution Witness 178 testified that Captain René, one of Mustapha's deputies was
- 17 killed near Bossembelé. Adolphe Domingez, an MLC soldier, told Witness 178 that
- 18 Mustapha gave an order to shoot anything that moved and take revenge for René's
- 19 death.
- 20 According to Witness 178, this was a terrible thing. It was a terrible thing for the
- 21 civilian population in Bossembelé, Bozoum and Bossangoa because they were shot
- 22 indiscriminately by the MLC troops who were revenging the death of René Eboma.
- 23 In Mongoumba, Victim 1 testified that Bemba's men entered a Muslim's man
- 24 compound and demanded his sheep. He refused and so they shot him several times
- 25 with their weapons. The MLC then proceeded to finish killing him by cutting off his

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1 penis and stuffing it in his mouth. Victim 1 saw everything with her own eyes.
2 She saw him bleeding and then she saw him die. After murdering him, the MLC
3 troops pillaged his sheep. The man was later buried at the main cemetery.
4 Victim 1 also testified that having killed the Muslim man, the MLC troops then
5 entered his neighbour's house. There was a lady holding a baby in the house. They
6 demanded from her a new foam mattress which was in the house. When she
7 refused to give it over to them, Bemba's men killed her and pillaged the foam
8 mattress. They took other items of furniture too before leaving the house.
9 Your Honours, murder as a crime against humanity is established by its commission
10 within the context of the widespread attack against the civilian population. The
11 murders committed by perpetrators were not random. Murder was an inherent part
12 of the attack and in some cases further enabled the commission of rape and pillaging.
13 And it instilled a climate of fear among the civilian population.
14 In addition, the MLC troops specifically targeted and killed supporters of Bozizé's
15 rebels in the course of their attack.
16 The MLC troops knew that their individual acts were part of a broader attack directed
17 against the civilian population. In accordance with Article 30(3), this requirement is
18 satisfied when the MLC perpetrator is aware of the existence of the widespread attack
19 and knew that his actions were part of this attack.
20 Your Honours, the above evidence proves beyond reasonable doubt that the MLC
21 troops committed murder as a war crime and as a crime against humanity during
22 their 2002-to-2003 CAR intervention.
23 I will now turn over to my colleague, Mr Eric Iverson.
24 Thank you.
25 MR IVERSON: Good afternoon, Madam President. Good afternoon, your

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1 Honours.

2 Article 28(a) of the Rome Statute establishes grounds of criminal responsibility for
3 military commanders and articulates the ICC's law on command responsibility.

4 Command responsibility is a mode of criminal liability essential to the efficacy and
5 functioning of international humanitarian law, which regulates the conduct of
6 hostilities during times of armed conflict.

7 Military commanders have immense destructive forces under their control including
8 soldiers who have the capacity to commit horrible acts of violence and military
9 commanders hold the power to ensure that their forces understand their legal
10 obligations and observe them during the conduct of hostilities.

11 If commanders do not ensure that their forces obey the law, if they do not carefully
12 supervise their subordinates, international humanitarian law cannot be effective.

13 The role of a commander in maintain discipline, disseminating the law and punishing
14 those responsible for violations of the law is of paramount importance to respect for
15 IHL, the protection of the civilian population and to prevent the serious crimes that
16 fall under this Court's jurisdiction.

17 The failure of a commander to meet his or her duty to prevent subordinates from
18 committing crimes or punishing those responsible for crimes requires that the failing
19 commander be held accountable.

20 Article 28(a) has five legal elements. The Chamber must be convinced beyond
21 reasonable doubt that: One, Bemba was effectively acting as a military commander;
22 two, that the forces that committed the charged crimes were under Bemba's effective
23 authority and control; three, that Bemba either knew or, owing to circumstances at the
24 time, should have known that his forces were committing or about to commit such
25 crimes; four, Bemba failed to take all necessary and reasonable measures within his

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1 power to prevent or repress the commission of crimes or to submit the matter to the
2 competent authorities for investigation and prosecution; and five, Bemba's failure to
3 properly exercise control over his forces resulted in the commission of the charged
4 crimes.

5 My colleagues, Mr Badibanga and Mr Scaliotti, will address Bemba's knowledge and
6 his failure to take measures. I will address the issue of Bemba's effective authority
7 and control over the forces that committed the charged crimes. This element is
8 commonly referred to as "effective control", and I will refer to it as such.

9 Effective control is understood as a commander's material ability to prevent
10 subordinates from committing crimes, repress the commission of crimes, or submit
11 the matter of crimes to competent authorities for investigation and prosecution. The
12 exercise of effective control depends on the existence of a superior subordinate
13 relationship between the commander and the perpetrators of the crimes.

14 In order to determine whether the legal element of effective control has been proven,
15 courts have looked to a number of relevant factors or indicia of the commander's
16 material ability to prevent and punish the crimes of subordinates. These factors
17 include, among others: The power to issue orders; the ability to ensure that orders
18 are carried out; the position of the superior within the structure of the group, and his
19 or her tasks; the ability to order those under his or her command to engage in
20 hostilities and to withdraw them from where hostilities are taking place; the power to
21 promote, replace or remove subordinates; and the capacity to discipline subordinates,
22 including initiating punishment or investigations and making reports to competent
23 authorities.

24 Bemba had all of those powers. Bemba's material ability to prevent and punish
25 crimes is most clearly established by his orders to investigate crimes in the CAR, his

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1 orders to arrest individuals in the CAR and his orders to court martial crimes which
2 took place in the CAR.

3 Bemba was the president of the Mouvement de Liberation du Congo or MLC. And
4 under Article 12 of the MLC Statute, Bemba was the commander-in-chief of the
5 Armee de Liberation du Congo. Bemba's military rank was the highest rank in the
6 MLC, division general. As the commander-in-chief, he exercised both de jure and de
7 facto control over all military matters and operations of the MLC.

8 Your Honours will recall Prosecution Witnesses 15 and 36, who testified that the
9 accused made all military decisions within the MLC, even the most minor ones,
10 leaving only their implementation to the MLC army chief of staff.

11 Bemba's decisions were never subject to discussion. He required the military wing
12 of the movement to report to him. Prosecution Witnesses 36, 15 and 33 were in
13 unique positions to have personal knowledge of Bemba's actions and inactions.

14 They all testified that Bemba established direct contact with his troops on the ground.
15 He did this by using various short and long-range communication devices. As the
16 commander-in-chief, he would often bypass the military chain of command and issue
17 orders directly to commanders in the field. His orders were dutifully obeyed. The
18 army chief of staff reported back to him and merely implemented his decisions. The
19 military wing was Bemba's fiefdom.

20 Your Honours will recall the testimony of Prosecution Witness 36 stating that Bemba
21 decided when to, quote, "go to war", unquote, or when to, quote, "open fire", unquote,
22 or when to move one platoon from one place to another.

23 Bemba publicly stated his position of authority over military matters. In his book, *Le*
24 *choix de la liberte*, he explained his ability to communicate orders to the MLC's
25 battalion while it was in Bangui in 2001. Bemba gave very specific tactical

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1 instructions to his forces about what ground they needed to hold in Bangui. There is
2 no suggestion anywhere in the evidence of this case that Bemba's use of
3 communications differed in the 2002/2003 CAR armed conflict.
4 Bemba's account of his orders found in his book are consistent with the testimony
5 your Honours heard about 2002 and 2003. Prosecution Witness 33 stated that Bemba
6 would go, quote, "... into the tiniest detail concerning strategic, operational and
7 tactical matters." Unquote.
8 Prosecution Witnesses 36, 15 and 33 testified that the appointment, promotion,
9 replacement, or removal of MLC officers and soldiers was also Bemba's prerogative.
10 No one else could make appointments of military officials within the MLC. A few
11 months before the commencement of the CAR 2002/2003 military operation, Bemba
12 signalled his intent to promote by decree dozens of MLC officers. In particular, the
13 army chief of staff Amuli, was promoted to the rank of division general. And
14 Mustapha Mukiza Gabby, the field commander in the CAR military operation, to the
15 rank of colonel.
16 Bemba pinned their new ranges on their epaulettes himself in March 2003 after the
17 conclusion of the CAR armed conflict. Bemba's promotions of his officers
18 demonstrated his ongoing approval of their actions in the CAR.
19 Bemba monitored and authorised the distribution and use of MLC logistics, including
20 weapons and ammunition. Prosecution Witness 36 told your Honours that not a
21 single bullet could be taken out of the warehouse to any location without Bemba's
22 authorisation. MLC communication logbooks, which your Honours have, show
23 Mustapha's requests to the MLC chief of staff and to Bemba for weapons and
24 ammunition.
25 Bemba had the authority to discipline his troops. He established a code of conduct

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1 for his troops. He could impose sanctions, including the death penalty.

2 Prosecution Witness 33 testified that Bemba exercised the power to arrest members of
3 the MLC.

4 Bemba established an MLC judicial system in the territory under MLC control, and he
5 could refer criminal matters to courts martial and start investigations. This is
6 evident from Bemba's statements, in his letters to - letters that have already been
7 mentioned, I'll mention them again - the Special Representative of the UN Secretary
8 General in the CAR and another letter to the president of FIDH, a human rights
9 organisation.

10 From those letters, it is clear that Bemba is in control of his troops. He stated plainly
11 that he ordered arrests and investigations of members of his forces in the CAR.

12 The Defence would like this Chamber to believe that the accused, a military
13 commander who personally and carefully monitored and controlled his bullets in the
14 warehouse, simply lent an entire brigade comprised of three battalions of his army to
15 the CAR authorities, that he put this brigade at their disposal, put no conditions on its
16 use, and then relinquished control over his troops for the duration of the entire
17 conflict.

18 This claim is not only implausible and illogical, but more importantly it's contradicted
19 by the evidence on the record. The evidence establishes that the accused maintained
20 authority and control over the MLC troops deployed to the CAR.

21 First of all, Prosecution Witnesses 36 and 33, people who were close to the accused at
22 the time of the events, testified that Bemba alone made the decision to send his troops
23 to the CAR. Prosecution Witnesses 36 and 213 further clarified that the army chief of
24 staff was not consulted and that it was Bemba who decided which units would be
25 deployed to the CAR.

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1 Additionally Bemba's orders to the MLC troops during the CAR operation were
2 obeyed. Prosecution Witness 213, someone very close to the accused, was adamant
3 that, quote, "All the orders were carried out." Unquote. And you know that Bemba
4 made, ordered arrests. Those arrests were carried out. Those orders were carried
5 out.

6 The same witness, Prosecution Witness 213, testified that Bemba ordered the
7 withdrawal of the MLC troops from the CAR. His testimony is confirmed by a
8 number of documents.

9 On 20 January 2003, Bemba issued a press statement announcing that the official
10 withdrawal of the MLC troops from the CAR would begin on 15 February 2003.

11 Now, it didn't actually happen that way, but he issued a press release announcing the
12 withdrawal.

13 In an interview with a newspaper, Jeune Afrique L'intelligent, on 4 May 2003, Bemba
14 confirmed that he had withdrawn his troops. The withdrawal underscores Bemba's
15 authority and control over his troops.

16 President Patassé had requested the MLC troops' intervention to put down General
17 Bozizé's coup d'état. It was therefore crucial to keep president -- for President

18 Patassé to keep those troops in the CAR to defend him against the rebel forces
19 attempting to take his power. Not surprisingly, President Patassé appealed to

20 Bemba to have the MLC troops remain in the CAR. Bemba however, as reported by
21 a press article, on 21 February 2003, turned down Patassé's request. Bemba publicly
22 took credit for with withdrawal of the MLC troops telling Radio France International,
23 quote, "... for us the decision taken to withdraw is clear and irrevocable ... everyone

24 must take his responsibility. We have our own problems here in Congo." Unquote.

25 It is not a coincidence that as soon as the MLC troops withdrew in March 2003 they

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1 left a vacuum in which General Bozizé immediately took power.

2 Bemba's decision about the MLC troops' withdrawal shows who had authority and

3 control over those troops. It was not Patassé. It was Bemba alone who ordered the

4 withdrawal of the MLC troops and they followed his order.

5 On 14 February 2003, just prior to the scheduled withdrawal, in an interview again

6 with Radio France International, the accused verified the manner in which the

7 withdrawal would proceed, he gave details about the locations through which the

8 withdrawal would take place and the number of troops. He was clearly in control of

9 that process.

10 Why would Bemba make such statements to the press if these troops weren't

11 subordinate to him? Your Honours, the facts speak for themselves. Bemba never

12 relinquished control. Bemba's public statements at the time of the events clearly

13 shows that the Defence theory that CAR authorities had control simply has no merit.

14 If Bemba had not been in control of the MLC troops, then every time he was

15 confronted with a journalist's questions about allegations of crimes committed by

16 those troops, he would have denied responsibility and referred any inquiry from the

17 press or international observers to the very authorities that he now purports to have

18 had control.

19 Why should Bemba have taken responsibility for controversial matters over his -- that

20 were beyond his authority and control? The answer is simple. At the time of the

21 conflict in 2002 and 2003, there were no criminal proceedings in sight against Bemba.

22 There was no reason not to tell the truth. That is why the accused never said a word

23 to suggest that the CAR authorities were in charge of his troops.

24 In a phone conversation with Radio France International, on 4 November 2002,

25 Bemba was faced with allegations of crimes committed by his men in the CAR. He

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1 acknowledged control over those men. His reaction was that if his troops had truly
2 committed any abuses, they would have been arrested and subjected to the MLC
3 justice system. No mention was made of any authority by President Patassé or any
4 other CAR official.

5 Bemba wrote letters plainly stating that he was in control. Your Honours have those
6 letters. In one letter he wrote to the Special Representative of the UN Secretary
7 General in the CAR, in that letter he confirmed having ordered the arrest of eight
8 MLC soldiers in Bangui who disobeyed the orders that he issued to both officers and
9 men before they left for the CAR.

10 In another letter, the accused informed the president of FIDH that he had launched a
11 commission of inquiry to investigate the allegations of human rights violations by the
12 MLC. In this letter he again spoke of his orders to arrest eight MLC soldiers.

13 So let's look at what actually happened. Your Honours know from those letters, also
14 from Mondonga's investigative report and the Bomengo court martial dossier that
15 Bemba dispatched five of his officers to investigate alleged crimes in Bangui. They
16 arrested seven, not eight, MLC soldiers for petty theft in Bangui pursuant to Bemba's
17 orders.

18 This shows that Bemba had the ability to stop crimes from being committed by taking
19 soldiers out of the fight. He could have them arrested and brought back to the DRC.
20 He retained the authority to issue orders to his troops in the CAR and those orders
21 were obeyed. He said "Arrest them," and it happened.

22 Your Honours know that from the court martial dossier and the Zongo inquiry report
23 that Bemba court martialled the seven soldiers. They were court martialled but
24 genuine justice was not the aim of Bemba. The seven soldiers never served their full
25 sentences. The fact that they were court martialled clearly shows Bemba's material

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1 ability to punish conduct that occurred in the CAR.

2 Now let's take a second example of Bemba's ability to order investigations. Bemba

3 established a commission of inquiry with the mandate to investigate crimes of pillage

4 and rape, but the commission, without explanation, only pretended to investigate the

5 crime of pillage. The commission was sent to Zongo in the DRC, right across the

6 river from Bangui, for a few days at the end of December 2002.

7 The investigative report submitted to the accused is unequivocal in stating that

8 Bemba ordered the opening of an inquiry and referred the matter to the court martial

9 to establish responsibility and punish the perpetrators.

10 A third example shows that Bemba was well-resourced to conduct investigations. In

11 February 2003, Bemba dispatched several MLC men in his helicopter to Sibut, in the

12 Central African Republic, to film question -- questions asked of Sibut residents. This

13 was meant to address allegations made by Radio France International and was a piece

14 of propaganda. And though Bemba was capable of rendering genuine investigations

15 and prosecutions, again, none of Bemba's actions aimed to achieve actual justice but,

16 rather, whitewash the allegations of crimes. So he had the power, but the shame of

17 the matter is that he didn't effectively use that power to stop any of the serious crimes

18 that were happening in the CAR.

19 Before addressing the operational command exercised by the accused during the

20 MLC military operation in the CAR, the Prosecution stresses that the evidence

21 considered so far is sufficient to establish beyond reasonable doubt that the accused

22 had effective authority and control over his troops.

23 A military commander who has the authority to deploy his troops and withdraw

24 them at any point in time, a commander who has the ability to order the arrest of his

25 deployed soldiers and have his orders carried out, a commander who has the

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1 authority to order investigations, order courts martial is a commander who has the
2 material ability to prevent and punish the commission of crimes by his deployed
3 troops. And that is effective control.

4 The law requires proof of Bemba's material ability to prevent and punish crimes.

5 The Chamber has that proof. The exercise of operational command is not a
6 dispositive legal requirement under Article 28(a) but, rather, it is one factor among
7 many to be considered by the Chamber.

8 The evidence shows that the accused retained operational command over his troops
9 during the duration of the conflict. Bemba's orders covered all aspects of the MLC's
10 engagement in the CAR. Bemba's orders included instructions to the troops to
11 progress or maintain their positions or to perform specific tasks. Bemba's
12 operational control was made possible by the detailed information that he had
13 available about the events in the CAR. Bemba, from his headquarters in Gbadolite
14 had better information and a better understanding of those events in the CAR than
15 the CAR military authorities themselves, according to the testimony of Witness
16 CHM1.

17 The same witness explained to the Chamber how this could happen. The accused
18 forces were fighting on the ground and were therefore able to know the enemy and
19 the terrain and convey information to Bemba that was necessary for him to make
20 decisions.

21 He was constantly informed of the operations, down to the most minuscule details.

22 He even had a detailed map of the CAR updated with the most recent intelligence in
23 his office in Gbadolite.

24 This information from the field enabled Bemba to direct operations in the CAR. One
25 example is Bemba's orders to MLC troops to attack the town of Damara.

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1 Prosecution Witness 178 testified that Colonel Mustapha received the order from the
2 accused when he was at PK12, just north of Bangui. Upon receipt of Bemba's call
3 Colonel Mustapha gathered the MLC officers on the ground and informed them that,
4 quote, "The chairman just called. We have to attack." unquote.
5 During other operations, Bemba ordered the MLC troops to advance to Bozoum and
6 Bossembelé. The troops executed those orders moving to these locations and
7 reporting back on their progress. And the MLC communication logbooks report
8 those movements.
9 The Chamber will recall the testimony of Prosecution Witness 213. He was firm and
10 clear in stating that, quote, "The command was in the hands of Jean-Pierre
11 Bemba." unquote.
12 Based on his account, all of the orders relating to the CAR operations came from
13 Bemba. There was nothing that Colonel Mustapha could do without first referring
14 to Bemba. If troops were to move forward or stay in the same position, it was Bemba
15 who gave that kind of order.
16 The testimony of Prosecution Witness 213 is consistent with and corroborated by
17 other witnesses close to Colonel Mustapha in the CAR. Based on their personal
18 observation and knowledge, Prosecution Witnesses 169 and 178 testified that
19 Mustapha received instructions from Bemba and Mustapha, in turn, passed those
20 instructions on to the MLC troops. Mustapha did not have any commanding officer
21 other than Bemba.
22 Prosecution Witness 36 confirmed that during the CAR operations, Mustapha and the
23 CAR authorities could make suggestions or provide advice, but only Bemba could
24 make decisions about the movement of his troops or the choice of units to deploy to
25 the field.

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1 Prosecution Witness 213 told the Chamber that the CAR officers had no power over
2 the MLC troops because the person who controlled them was Bemba.
3 President Patassé was powerless over the MLC. He was limited to merely
4 complaining to Bemba about their behaviour and crimes they committed in the CAR.
5 The Defence invites your Honours to believe that the distance between Gbadolite and
6 the theatre of combat in the CAR was too remote for Bemba's effective control over
7 his forces, but your Honours know from the messages in the communication logbooks
8 the distance did not prevent effective radio communication.
9 Your Honours will recall that the accused effectively controlled the Équateur province
10 in DRC, which is a territory larger than the country of France. The distance
11 separating his troops in the CAR was far shorter than many of the locations where
12 MLC forces operated in the DRC, unquestionably under Bemba's command.
13 Bangui is approximately 280 kilometres away from Gbadolite, whereas Isiro, where
14 MLC engaged in military operations under Bemba's authority and control, through
15 radio communication as well, is approximately 800 kilometres away; in other words,
16 directing a military operation in the CAR was not any different than directing
17 operations in the DRC, which was a common occurrence for Bemba. Radiowaves do
18 not need visas to cross borders.
19 For communications, Bemba relied on Thuraya satellite phone and high-frequency
20 long-range radio, what was sometimes referred to as a "phonie". The evidence of
21 several Prosecution witnesses who could repeatedly - repeatedly - observe Bemba
22 using those devices is confirmed by the documentary evidence on the record. The
23 communication logbooks demonstrate that the MLC units in the CAR were able to
24 communicate with the army chief of staff, Amuli, and Bemba in Gbadolite. And the
25 Thuraya records show that Bemba's communication with Colonel Mustapha and

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1 several Central African telephone numbers and other Thurayas for a 39-day period,
2 from 4 February 2003 until the end of the conflict, 15 March 2003.
3 From 4 February to 15 March, Bemba called Mustapha 126 times on the Thuraya.
4 Seventy of those calls lasted one minute or longer. And in that 39-day period,
5 Bemba had 26 calls with Mustapha lasting over five minutes, some as long as 13 or 18
6 minutes. A lot of information can be passed in 18 minutes.
7 The MLC battalion commanders and CAR also had Thuraya phones. During this
8 period, Bemba also placed 139 calls to individuals with CAR mobile or landline
9 numbers. It is not a coincidence that before and during attacks such as the 14
10 February 2003 attack in Sibut the frequency of Bemba's calls to Mustapha and other
11 Thuraya numbers in the CAR increased significantly.
12 Through his Thuraya Bemba directed the attacks. From 12 to 14 February, Bemba
13 called Thuraya numbers, in general, 86 times. Under similar circumstances, on 4 and
14 5 March, the day before and the day of the MLC attack on the village of Mongoumba,
15 Bemba called Mustapha and other Thuraya numbers 20 times and when he couldn't
16 connect he would persistently call until he connected.
17 It is clear based on the Thuraya records that Bemba frequently contacted his
18 commanders and other individuals in the CAR. The purpose of Bemba's calls to
19 Mustapha and clarified by the abundant testimonial evidence, and it was to give
20 orders and obtain information.
21 At least eight Prosecution witnesses had personal knowledge independent from each
22 other of the nature of these phone calls. Three of these witnesses were located in the
23 CAR at the time of the events, and all had direct personal knowledge of Mustapha's
24 communications with Bemba via the Thuraya. Five witnesses based in Gbadolite
25 also had direct personal knowledge of Bemba's orders to Mustapha via the Thuraya.

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1 All eight witnesses establish that Bemba gave Mustapha operational orders to attack,
2 to withdraw, and to move MLC troops within the CAR. Indeed, as Prosecution
3 Witness 213 testified, Mustapha had to get Bemba's permission to move even a single
4 kilometre.

5 The testimonies and the Thuraya records read together lead only to one reasonable
6 conclusion: Bemba relayed operational orders to Mustapha via the Thuraya during
7 the CAR conflict. He had operational control.

8 Bemba's operational command is also evident in the withdrawal of the MLC troops
9 from the CAR. Your Chamber will recall Prosecution Witness 15's testimony. He
10 testified that Bemba kept French officials informed, kilometre-by-kilometre, during
11 the withdrawal of his troops. Clearly, Bemba could only be in a position to do this
12 because he personally supervised the withdrawal of the troops. Once again,
13 corroboration of the testimonial evidence is offered by the immutable Thuraya
14 records.

15 Consistent with Prosecution Witness 15's testimony, the records show that from 10 to
16 17 March 2003, during the week of the MLC's withdrawal from the CAR, Bemba
17 contacted his brigade commander, Mustapha, 60 times. During that same period,
18 Bemba also contacted French numbers 20 times and CAR numbers 19 times. All of
19 this shows that what Prosecution Witness 15 told this Chamber is credible. The
20 records back him up.

21 Moreover, the MLC communication logbooks disclosed by the Defence show that
22 Bemba maintained constant communication with his MLC troops in the CAR.
23 Bemba received situation reports on several aspects of the operation. Some reports
24 requested his intervention and instructions. Communication was not an obstacle to
25 Bemba's exercise of authority and control.

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1 Many of the messages in the communication logbooks ended with phrases such as,
2 quote, "Nothing further. Awaiting your orders." unquote. And, quote, "We have
3 faith in the hierarchy." unquote. And, quote, "At your command." unquote.
4 These are not things that you say to somebody who doesn't have control over you.
5 One doesn't say, "Awaiting your orders" if they don't expect orders to come.
6 The reports and the communication logbooks show the extent to which Bemba was
7 informed and involved in the operations.
8 Another episode is emblematic of Bemba's exercise of control over the MLC troops in
9 CAR. As Prosecution Witness 36 and Court Witness CHM1 testified, the Central
10 African army or FACA chief of staff had to travel to Gbadolite during the conflict to
11 report on the development of the operations and to submit a request to Bemba. The
12 request was for the MLC troops to move further north in the CAR, to meet the enemy.
13 This shows that the CAR military authorities had little-to-no influence over the MLC
14 troops, let alone effective control. They could not even move those troops to
15 continue the operation without Bemba's prior authorisation.
16 Prosecution Witness 213 confirmed that the CAR officers had no power over the MLC
17 soldiers. After all, according to Prosecution Witness 36, quote, "The CAR soldiers
18 who had remained loyal to President Patassé were not even able to hold control of
19 one single road." unquote.
20 How could they have control over the MLC troops when they couldn't control their
21 own units, many of which deserted en masse to join Bozizé?
22 And also they shared no operational or doctrine familiarity, radio frequencies or in
23 most cases a common language. Accordingly, President Patassé and the CAR
24 authorities had no authority to sanction the MLC troops in the CAR. Bemba was the
25 only person effectively acting as a military commander who had the requisite

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1 authority and control to prevent and punish the horrendous crimes of his troops, but

2 he failed to do so, though he knew about the crimes.

3 My colleague, Mr Badibanga, will now speak to Bemba's knowledge of the crimes of

4 his forces. Thank you.

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

6 I see now that it's exactly 1 o'clock. It's time for us to suspend the hearing and we

7 will resume at 2.30 in the afternoon.

8 The hearing is suspended.

9 THE COURT USHER: All rise.

10 (Recess taken at 1.00 p.m.)

11 (Upon resuming in open session at 2.44 p.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

14 PRESIDING JUDGE STEINER: Good afternoon and welcome back.

15 The Chamber received a request from the Prosecution, and according to this request, the

16 Prosecution is asking for the Chamber to authorise an additional 30 minutes for the

17 Prosecution final submissions.

18 In the beginning of this hearing we said that there was little room for flexibility. I should

19 have said no room. But since I said that there was a little room for flexibility, the Chamber

20 decided to grant the Prosecution request. And of course, if need be, Defence will be given

21 the same extra time for its final submissions if necessary.

22 So I'll give back the floor to Maître Badibanga.

23 MR BADIBANGA: (Interpretation) Good afternoon, Madam President, your Honours.

24 Thank you very much for your indulgence. The Prosecution will do everything possible not

25 to exceed the additional time that you have granted.

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1 I will now deal with the issue of Bemba's knowledge.

2 PRESIDING JUDGE STEINER: Sorry to interrupt, Maître Badibanga. The Chamber is
3 authorising the 30 additional minutes, but the Chamber also needs to inform parties and
4 participants that because of this additional 30 minutes, the Chamber will extend the sitting
5 hours in half an hour. So the hearing will be adjourned at 4.30, instead of 4 o'clock. Sorry
6 to interrupt you.

7 MR BADIBANGA: (Interpretation) Thank you, your Honour.

8 It has been established in the record that Jean-Pierre Bemba knew or, owing to the
9 circumstances at the time, should have known that his subordinates were committing or were
10 going to commit -- to commit one or several of the crimes set out under Articles 6 to 8 of the
11 Statute. This has been established beyond all reasonable doubt.

12 He knew or should have known that his forces were going to adopt, were in the
13 course of adopting or had adopted a conduct constituting the crimes mentioned
14 above.

15 The Defence claims that Jean-Pierre Bemba had only limited knowledge of the crimes
16 perpetrated by his troops. In support of that position, the Defence describes the
17 information available to Bemba, and I quote, "general and unfounded rumours," end
18 of quote.

19 Still, according to the Defence, those rumours did not identify the ALC troops who
20 had perpetrated the crimes. According to the Defence, the rumours did not identify
21 the victims of the crimes specifically and did not provide any information about the
22 locations where the crimes were committed. This argument, your Honours, is an
23 erroneous interpretation of the evidence on record.

24 Jean-Pierre Bemba was perfectly aware of the crimes which had been committed or
25 were going to be committed by his men in the Central African Republic. The most

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1 relevant evidence of the fact that knowledge -- that Jean-Pierre Bemba had knowledge
2 of the crimes comes from himself or from the internal archives of the MLC.

3 In a letter to the president of the International Federation for Human Rights,
4 Jean-Pierre Bemba stated that he had sent a commission of inquiry to Bangui as early
5 as 30 October 2002 following the allegations of crimes committed by MLC soldiers.

6 Those are the words of Jean-Pierre Bemba.

7 Contrary to what the Defence thesis claims, these allegations must have been more
8 substantive than the general and unfounded rumours to justify the dispatch of a
9 commission of inquiry. Not only must this information have been substantive or

10 substantial, but the information must have reached Jean-Pierre Bemba well before 30

11 October 2002, unless one imagines that Jean-Pierre Bemba received the information on

12 the crimes in the course of a single morning, he set up a commission, the commission

13 left DRC to travel to Bangui, the investigation was carried out immediately, and the

14 soldiers suspected of pillaging arrested at 11 a.m. that same morning. That is

15 because we are aware, Madam President, on the basis of the dossier filed by the

16 Defence that the arrest -- the arrest took place on 30 October 2002 at 11 a.m. That is

17 what the Defence would like to have us believe.

18 The commission of inquiry led by Colonel Mondonga submitted its report on 27

19 November 2002.

20 The report confirms that ALC soldiers committed pillaging. Seven soldiers were arrested on

21 30 October and brought before the Gbadolite court martial. In the course of their questioning,

22 the accused persons recounted the large-scale pillaging of the property of members of the

23 civilian population by their colleagues. They stated that three vehicles filled with pillaged

24 property were handed over to Commander Mustapha. They referred to a rape committed by

25 a soldier of the Poudrier B battalion.

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1 All this information is included in Colonel Mondonga's report. The information was made
2 available to Jean-Pierre Bemba and confirms what the press has reported and which the
3 Defence has described as general and unfounded rumours.
4 On 27 November 2002, that is one month after the beginning of the intervention in the
5 CAR, Jean-Pierre Bemba was in possession of that information and during the four
6 months that followed, he did nothing to put an end to the crimes.
7 One month later, that is, in December and specifically from 26 to 28 December 2002,
8 an MLC delegation travelled to Zongo. The report prepared on 17 January 2003 by
9 the secretary -- by the national secretary of justice of the MLC, that is the equivalent of
10 the minister of justice, points out that it was the MLC president, Jean-Pierre Bemba,
11 who ordered an investigation in Zongo on the pillaging in the CAR. The report also
12 mentions that MLC troops were accused by RFI of rapes and pillaging and that the
13 investigation in Zongo was ordered in response to those allegations.
14 The next presenter, my learned colleague, Mr Scaliotti, will analyse the conclusions
15 and methodology of this report, but I can already tell you that the report is additional
16 evidence that as early as November 2002, Jean-Pierre Bemba was aware of the
17 accusations against his soldiers. Otherwise one would not be able to understand
18 why he would decide to send a delegation to Zongo to investigate if he was not
19 aware.
20 Throughout the oppression in the CAR, Jean-Pierre Bemba was kept abreast of the
21 crimes committed by his men, and this was done by several sources that he trusted.
22 And I'm referring here to his closest collaborators.
23 Prosecution Witness P-36 discussed the conduct of the troops with Jean-Pierre Bemba and he
24 even suggested to him that some of the officers deployed to the CAR should be replaced in
25 vain.

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1 Prosecution Witness P-45 also took part in discussions with Jean-Pierre Bemba and senior
2 officials of the MLC. In the course of those discussions, the accused person was informed of
3 the negative effects that the intervention in the CAR had on the image of the MLC.
4 Some senior officials of the MLC proposed the immediate withdrawal of the troops
5 deployed in the CAR because the attitude adopted by Jean-Pierre Bemba to deny the
6 crimes was untenable in the eyes of the international community.
7 During a trip to Bangui, P-45 heard members of the Central African population
8 complain of rapes, murders, and pillaging perpetrated by MLC troops. As soon as
9 he returned to Bangui in January 2003, P-45 informed Jean-Pierre Bemba of this, and
10 the latter merely described this information as propaganda orchestrated by France
11 through media houses such as RFI.
12 The evidence in this case shows that the MLC was a well-organised movement.
13 Jean-Pierre Bemba, the founder and leader of the MLC, had set up well-structured
14 mechanisms through which he was kept permanently informed of the actions and
15 conduct of his troops.
16 He had two civilian intelligence services and one military intelligence service, and
17 through those services he was able to learn about everything. One of those civilian
18 intelligence services, that is the bureau of internal security, had informers in the CAR
19 and information from these sources was included in reports addressed directly to
20 Jean-Pierre Bemba. And I stress the word directly to Jean-Pierre Bemba.
21 According to the testimony of P-33, this Chamber heard how Jean-Pierre Bemba was
22 informed about the situation in the CAR regarding the abuses committed. The
23 complaints of the population were mentioned, but the names of the officers
24 commanding the troops, including Colonel Mustapha, were said to be also involved
25 in the pillaging.

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1 All this information, which was detailed and coming from internal sources of the
2 MLC, corroborated what the Defence would like to describe as general and
3 unfounded rumours widely covered by the press.

4 On 4 January 2003 at the height of the intervention of his troops in the CAR,
5 Jean-Pierre Bemba wrote to General Lamine Cissé and he was the special
6 representative of the Secretary-General of the United Nations in Bangui.

7 In that letter Jean-Pierre Bemba admits in his own words that the intervention of the MLC in
8 the CAR resulted in negative reactions. He described the information as propaganda by
9 those who are opposed to the MLC. He asked the United Nations to participate in the
10 setting up of an investigation to shed light on the conduct of his troops in the CAR.

11 Your Honours, the truth is not to be doubted. Either Jean-Pierre Bemba was only
12 aware of general and unfounded rumours, and in this case there was no reason for
13 him to contact the Secretary-General of the United Nations, or he addressed a
14 correspondence to the United Nations Secretary-General or his representative,
15 because the information he received was serious and of great concern.

16 He cannot seriously claim that the due diligence was done by contacting the United
17 Nations and at the same time saying that the information was frivolous.

18 This issue will be dealt with in detail by the presenter after me.

19 Now, regarding the media coverage of the conflict, and this is what the Defence
20 describes as rumours, Jean-Pierre Bemba described that media coverage as
21 propaganda led by France. The international press extensively covered the conflict
22 in the CAR between October 2002 and March 2003, particularly RFI, BBC and the
23 Voice of America.

24 This media -- these media houses are from very different horizons and have very different
25 editorial policies and all of them reported on rapes, pillaging and acts of violence perpetrated

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1 by MLC soldiers, which contradicts the idea that it was propaganda instigated by France.
2 Throughout the five months of the conflict, several victims were interviewed and
3 gave precise accounts of what they suffered. You have media clippings and extracts
4 from the early days of the intervention of the MLC in October 2002 until their
5 departure from the CAR in March 2002 -- 2003.
6 The victims systematically pointed a finger at Jean-Pierre Bemba's men known as
7 Banyamulenge as the perpetrators of the crimes. The names of certain soldiers and
8 officers were mentioned. Several Prosecution witnesses, such as P-33, P-36, P-45 and
9 P-213, who were all in Gbadolite at the time of the events, heard about the crimes
10 perpetrated by MLC soldiers through the media. Jean-Pierre Bemba was also in
11 Gbadolite during that period. And as Witnesses 36, 44 and 45 have stated here
12 before you, during the entire conflict and during the period of the rebellion,
13 Jean-Pierre Bemba listened to the radio and watched television thanks to the satellite
14 dishes at his disposal and to his knowledge of English.
15 As he himself says in his correspondence to the United Nations and FIDH, Jean-Pierre
16 Bemba heard the accusations against his movement in the press. But the media was
17 not the only independent source to report on the crimes attributable to Jean-Pierre
18 Bemba's men.
19 In his letter of 20 February 2003 to the president of the International Federation for Human
20 Rights, FIDH, Jean-Pierre Bemba reacted to a report published by FIDH a few days earlier,
21 that is, 13 February. In that letter of 20 February 2003, Bemba acknowledged having learnt
22 about the serious accusations against his men in the FIDH report. This report is in the case
23 record. It is a public report and it is entitled War Crimes in the Central African Republic.
24 When the Elephants Fight, the Grass Suffers.
25 In this report, the authors do not deal with rumours. It is the result of an

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1 investigation mission, including members of the mission who are lawyers, and the
2 report includes the objectives and methodology, including visits to hospitals and
3 meetings with the victims as well as meetings with local authorities, representatives
4 of international organisations and the NGOs. The NGOs are mentioned in the report.
5 The incidents and locations are described in a precise manner. A list of the crimes
6 attributable to the Banyamulenge is included, and there is an analysis of the liability,
7 the criminal liability of Bemba. So these are certainly not rumours.
8 Jean-Pierre Bemba was certainly informed at the very latest on 20 February 2003. No
9 measure was taken. In that report detailed accounts of rapes, pillaging and murders
10 are presented in the words of the victims themselves.
11 The ages and initials of the victims are provided. A little girl who was a victim of
12 rape is identified by her first name and the dates and location are included.
13 The information provided is sometimes so specific that the residents of a victim and
14 his or her immediate surroundings can be easily identified. With this report,
15 Jean-Pierre Bemba had at his disposal, if that had not already been the case, all the
16 information necessary to carry out a serious investigation. With all the information
17 at his disposal in his capacity as a military commander, he could easily find out which
18 units of his army were stationed in the locations mentioned in the report.
19 As an example, let me read the statement of a witness in the FIDH report, and I quote:
20 The initials of the witness are ED. "I am 17 years old. I live behind a Total gas
21 station, villa 36, in Bangui. I was there, as were numerous other persons on 30
22 October 2002 when they arrived. I was there with numerous other persons. There
23 were 26 of us in total. One of the attackers asked me for jewelry in Lingala. I said
24 that I did not have any. I was very afraid. I thought maybe if I told them that I had
25 a child it might protect me, so I told them. He took a wooden rod and penetrated me,

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1 shoved it into my vagina. He twisted it. Then he stopped. Then three other men
2 raped me, one after the other on the floor of the girls' room. I was crying. I was in
3 pain and was bleeding."

4 Between 13 February 2003, the date of the publication of the report and 20 February,
5 Jean-Pierre Bemba did not do anything. Given all the evidence that I have mentioned, no
6 credibility can be given to the thesis of the Defence. And it is instead established that
7 Jean-Pierre Bemba was aware that his troops committed those crimes of rape and murders.
8 The Chamber informed the parties that in accordance with Article 52 of the
9 Regulations of the Court, the legal characterisation can be modified. The
10 Prosecution states that we have established beyond reasonable doubt that Jean-Pierre
11 Bemba knew or should have known that his troops committed or were going to
12 commit crimes. And to talk about the measures that he should have taken when the
13 crimes were committed, I will hand over the floor now to my learned colleague,
14 Massimo Scaliotti. Thank you.

15 MR SCALIOTTI: Madam President, your Honours. The evidence proves beyond
16 reasonable doubt that despite his material ability to act, Jean-Pierre Bemba failed to take all
17 necessary and reasonable measures within his power to prevent the crimes, repress the crimes
18 and submit matters to competent authorities for investigation and Prosecution.
19 The Rome Statute is clear in this regard. It doesn't request the Prosecution to prove a
20 breach of all the three duties of prevention, repression, and submission for a military
21 commander to be held responsible under Article 28. The three duties are in the
22 alternative. However, in this case, the evidence proves beyond a reasonable doubt
23 that Jean-Pierre Bemba breached each of the three duties.
24 According to the Defence, in light of all relevant circumstances, the accused made genuine
25 good faith efforts to take measures. The Defence's position, however, is contradicted by the

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1 evidence presented at trial. First of all, the accused failed to take necessary and reasonable
2 measures within his power to prevent the commission of crimes. According to the law, the
3 person effectively acting as a military commander, in order to prevent crimes, should apply
4 measures including at least that its forces are adequately trained in international
5 humanitarian law, that his orders comply with international humanitarian law and are
6 calculated to ensure compliance with international humanitarian law. The disciplinary
7 measures to prevent commission of crimes are taken and that reports from subordinates are
8 submitted confirming that military operations were carried out in accordance with
9 international humanitarian law.

10 The two legal elements of authority and control and the duty to take all necessary
11 reasonable measures are interrelated in the sense that any assessment as to whether
12 necessary and reasonable measures were taken will depend on the degree of
13 authority and control exercised by a commander.

14 In light of the absolute authority and control over his troops in Central African
15 Republic, Jean-Pierre Bemba had available all the means that I just mentioned to
16 prevent the commission of crimes by his troops. Nevertheless, he failed to take those
17 measures.

18 As General Opande, the Prosecution military expert, explained to the Chamber,
19 training is crucial. There is a clear link between training soldiers and preventing
20 crimes. There is no evidence in this case that the MLC forces received sufficient
21 training in international humanitarian law. Rather, the training provided to the
22 MLC troops aimed at quickly turning people recruited in MLC-controlled territory
23 into soldiers. However, as Prosecution Witnesses 32 and 45 testified, international
24 humanitarian law was not part of that training.

25 The MLC had the code of conduct setting out some basic disciplinary rules.

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1 However, that document was completely inadequate to ensure any compliance with
2 international humanitarian law.

3 As Prosecution Witness 33 explained, the code was not widely disseminated within
4 the MLC, was not known or understood by the MLC forces. The code was in French,
5 a language that most low-ranked soldiers did not understand. Nevertheless,
6 according to Prosecution Witness 15, the accused never ordered its translation into
7 Lingala, the language that his soldiers spoke.

8 As Prosecution Witness 33 admitted, there were members of the MLC who did not
9 even know of the existence of a document attempting to regulate their behaviour but,
10 apart from this, the code failed to set even the most basic principles of international
11 humanitarian law.

12 Just a few examples. The code did not contain any rule regarding the distinction
13 between civilians and combatants. The code only mentioned two prohibition about
14 civilians, murder of a civilian and abuse or assault of a civilian.

15 The code failed to set any rules concerning the distinction between civilian objects
16 and military objectives. It did not prohibit attacks against civilian objects and it did
17 not define what military objectives are.

18 Protection of detainees and civilian property was another issue with the code. It is
19 emblematic that this code permitted the execution of detainees. Simply, it had to be
20 authorised.

21 Also the code allowed for the taking of war booty. It did not verify that, although
22 military equipment of the enemy and public property may be seized if required by
23 imperative military necessity, but this does not apply to private property, the taking
24 of private property is a crime, the crime of pillage. But the code is silent in that
25 regard. If this were the rules that the MLC troops had to comply with, if this was the

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document that the accused enforced to ensure appropriate behaviour by his troops during conflict, it's not surprising that the MLC troops, once deployed to the Central African Republic, committed large-scale crimes.

Another key aspect of crime prevention is the issuance of clear orders calculated to ensure compliance with international humanitarian law.

The Prosecution military expert, General Opande, explained to the Chamber that, to the contrary, ambiguous order from a commander can lead to a disaster. Based on the evidence in this case, stating that Jean-Pierre Bemba failed to issue clear and effective orders to ensure compliance with international humanitarian law would be a euphemism.

As Prosecution Witness 213 testified, this is what the accused told his troops in Zongo right before they were deployed to the Central African Republic. Quote, "We have prepared you to go into the Central African Republic. Over there you don't have any fathers, mothers, older brothers, younger brothers. Your task is the one I have entrusted to you. According to the information we have enemy is wearing civilian clothing. Anyone you encounter on the battlefield is an enemy." end of quote.

It should be noted that Prosecution Witness 213's testimony is not an isolated piece of evidence. Prosecution Witness 47, who did not know Prosecution Witness 213, and could not have known of his testimony, stated that one MLC officer gave a similar order to his troops shortly after Jean-Pierre Bemba gave the initial order in Zongo.

Again, no surprise that the MLC troops once deployed committed massive crimes in Central African Republic.

As we have already heard, Jean-Pierre Bemba had all the means available to issue orders from Gbadolite to his troops in Central African Republic.

It would have been easy for him to issue orders to his commanders and troops

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1 imposing respect for international humanitarian law, putting an end to the
2 commission of crimes, but he failed to do so. He chose to reject the reports alleging
3 crimes committed by his troops. He labelled those reports as political propaganda
4 especially spread by the French. It was a clear message to his troops that there will
5 be no consequences for their crimes.
6 Despite being informed throughout the conflict of crimes committed by his troops,
7 the accused failed to apply preventive disciplinary measures.
8 The MLC troops were deployed to the CAR in October 2002 and it took only a few
9 days for Jean-Pierre Bemba to know that his troops were committing crimes. That's
10 why on 30 October 2002, just a few days after the arrival of the first MLC troops in
11 Bangui, Jean-Pierre Bemba launched an investigation and ordered the arrest of seven
12 MLC soldiers, because he had been informed that his forces were already committing
13 crimes.
14 On 2 November 2002, as Prosecution Witness 213 stated, Jean-Pierre Bemba met with
15 President Patassé and was further informed of crimes committed by his MLC troops.
16 While travelling by car to PK12 and PK22, the accused could personally see the
17 consequences of those crimes. Even then the accused did not take any genuine
18 necessary and reasonable measure.
19 The accused's attitude towards his troops behaviour created the climate that clearly
20 tolerated the commission of crimes. As Prosecution Witness 213 explained, MLC
21 troops were speaking openly about rapes committed by MLC in the Central African
22 Republic because they knew that nothing would happen, no punishment, no sanction
23 would be imposed on them.
24 Impunity was applied to pillage as well. As P-213 explained, once a town or locality
25 was occupied in the Democratic Republic of Congo, MLC troops were entitled to loot

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1 civilian property for one day, and the code of conduct would only apply after that
2 day of permitted looting. This rule applied to the DRC. But in a foreign country
3 like the CAR, the pillage continued even after the first day of occupation.
4 An incident is emblematic as it shows Jean-Pierre's attitude with regard to the
5 prevention of crimes. This incident is the attack in Mongoumba in March 2003.
6 March 2003, at that point in time the conflict in Central African Republic had been
7 ongoing for months, months during which the accused had received detailed specific
8 reports about crimes committed by his troops.
9 Nevertheless, the accused ordered Colonel Mustapha to wipe out Mongoumba.
10 Based on the testimony of Prosecution Witness 169, these were the words of
11 Jean-Pierre Bemba to Colonel Mustapha. That order was a clear signal to the MLC
12 troops that all their previous criminal activity in Central African Republic was
13 approved by the MLC leadership. The incident proves that the accused gave his
14 forces further license to commit rape, pillage and murder.
15 Let us turn now to the measures that the accused took to repress the crimes
16 committed by his troops. While discussing the accused's authority and control, we
17 have explained that Jean-Pierre Bemba in his capacity as MLC commander-in-chief
18 had the ability to implement several measures, including disciplinary and
19 investigatory measures. These measures would have been adequate to repress the
20 crimes committed by his troops.
21 As we have heard, Jean-Pierre Bemba had the power to order investigations. He had
22 the power to arrest, to order the arrest, the detention, the dismissal of his soldiers.
23 He had the power to convene courts martial within the MLC justice system. And as
24 the evidence in the record shows, he had the ability to have these measures
25 implemented quickly.

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1 The Chamber will recall the testimony of Defence Witness 48. He said that the
2 justice system in MLC controlled territory was not perfect, but still it was fully
3 functioning and capable of rendering justice.

4 Nevertheless, with all these measures available, Jean-Pierre Bemba failed to repress
5 the crimes committed by his troops. The evidence shows that he didn't stop ongoing
6 crimes from continuing to be committed. He did not conduct any proper
7 investigation. The perpetrators of the massive crimes were not identified, were not
8 punished.

9 The Defence attempts to portray the few measures taken by the accused as necessary
10 and reasonable measures. However, just a superficial scrutiny will show that none
11 of the actions taken by the accused can constitute a measure to repress crimes under
12 Article 28(a).

13 During the entire conflict and the subsequent period only two processes were
14 undertaken by Jean-Pierre Bemba with the apparent purpose to repress the MLC
15 crimes.

16 The first is the investigation launched by the accused on 30 October 2002. As explained by
17 Prosecution Witness 45, the pressure from the international community was high and the
18 accused had to do something. Therefore he ordered a commission of inquiry to go to Bangui.
19 The commission was led by Colonel Mondonga. The mandate was to investigate allegations
20 of pillage committed by the MLC troops.

21 The accused also ordered the arrest of seven MLC soldiers. Their arrest was quickly
22 executed.

23 The collection of that -- of evidence by the commission was limited to the statements
24 given by the seven suspects, nothing else. The seven accused were charged with
25 violations of order, robbery and attempted extortion of goods including 10 litres of

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1 petrol, some aspirin, 60 euros, a bottle of perfume, three compact discs and two
2 mobile phones. On 7 December 2002, the seven accused were brought before the
3 court martial in Gbadolite. They were tried and convicted. They received
4 sentences ranging from 3 to 24 months.

5 Neither the investigation nor the trial constitute a reasonable measure under Article
6 28. Both the investigation and the trial were seriously flawed.

7 As established by ICTY jurisprudence, a superior fulfils his duty to punish the
8 perpetrators if an effective investigation is conducted with a view to establishing the
9 facts. This was not the case for the investigation ordered by the accused.

10 The investigation was flawed for several evident reasons: No Central African victim
11 or witness was interviewed; no MLC soldiers were interviewed apart from the seven
12 suspects; no physical evidence was collected; no crime scene was visited; the
13 responsibility of commanders was not investigated; the most serious crimes of rape
14 and murder were not investigated; the suspects were not represented by counsel
15 during the questioning.

16 But the lack of any genuine intention to take measures to address the crimes is also shown by
17 the fact that a report about the investigation was finally drafted and sent both to the MLC
18 chief of staff and to the accused on 27 November 2002. The report contained the record of
19 the questionings of the suspect who mentioned several times systematic rape and pillage
20 committed by the MLC troops in CAR.

21 It is out of question that a commander who seriously intended to establish the facts
22 would have ordered further investigation into those allegations. Jean-Pierre Bemba
23 completely ignored those allegations. He took no action.

24 Turning to the Gbadolite trial, it is remarkable that despite allegations of massive
25 MLC crimes, including rape, pillaging and murder, only seven low rank soldiers were

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1 prosecuted and tried for pillaging a few goods. Ordering such a trial and then
2 claiming that allegations of crimes had been addressed was a completely inadequate
3 measure to repress the crimes.

4 In addition, the Gbadolite trial was seriously flawed as well. For example, the
5 accused were notified just three hours ahead of the trial. No witnesses testified.
6 No evidence was presented. The seven accused were convicted merely on the basis
7 of their statements that denied the charges.

8 The judges, except for one, lacked legal training and independence as they were
9 military officer under the accused's orders within the MLC military chain of
10 command. And interestingly, it took only 38 days from the deployment of the
11 commission to Bangui to complete the investigation and have the seven soldiers
12 convicted, 38 days. But the only objective was to convict someone to please the
13 international community and to permit to Jean-Pierre Bemba to wash his hands of the
14 matter.

15 As Prosecution Witness 15 explained, the trial was a show for the international media.
16 In fact, as confirmed by Prosecution Witnesses 45 and 213, after the trial was over and
17 the international attention faded, Jean-Pierre Bemba ordered the release of the seven
18 soldiers before they served entirely their sentences.

19 The second process undertaken by the accused was an investigation into pillaged in
20 Zongo, DRC. Between 26 and 28 December 2002, pursuant to Jean-Pierre Bemba's
21 order, a commission of inquiry was sent to Zongo to investigate allegations of pillage.
22 The scope of the investigation was extremely limited. It didn't go beyond the area of
23 Zongo. Eight prominent MLC officials in Zongo were interviewed about pillaging.
24 Again, nothing else was done. No MLC soldiers were interviewed. No investigator
25 crossed the Oubangui river to go to Bangui, which was just 1 kilometre away, to

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1 investigate in the CAR, to interview victims, to visit hospitals and morgues, to
2 interview MLC officers and soldiers. None of these steps were taken.
3 No surprise that such an investigation produced no evidence of pillage or other
4 crimes. Its findings are implausible, unreliable. The investigation had such a
5 limited scope that it could not establish the truth. But the findings show what the
6 real objective of the investigation was. The commission did not simply state that no
7 evidence establishing pillage by MLC soldiers was found in Zongo. The commission
8 went far beyond and concluded that allegation of crimes were simply due to
9 propaganda spread by Central African opponents and by France, who were hostile to
10 the MLC intervention and to President Patassé. This investigation was a clear
11 attempt to whitewash the MLC crimes in CAR.
12 We have analysed the two actions taken by Jean-Pierre Bemba. The evidence shows that
13 neither action was intended to repress the crimes. The evidence shows that the accused used
14 the powers available to him to establish sham investigations and prosecutions to pretend that
15 he had addressed the crimes.
16 In terms of measures, the third duty of a commander is the duty of submission to
17 competent authorities for investigation and Prosecution.
18 Jean-Pierre Bemba was the competent authority. He had the material ability to arrest,
19 investigate and prosecute. Therefore, he would not have fulfilled his obligations by
20 simply submitting the matter to another authority.
21 We have already mentioned the letter that Jean-Pierre Bemba sent to General Cissé.
22 Just a superficial analysis will show that this letter was not a submission at all.
23 General Cissé and the UN were not a competent authority under Article 28.
24 On 20 February 2003, Jean-Pierre Bemba wrote another letter. This letter was
25 addressed to FIDH President Kaba. It was a response to the report that FIDH had

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1 just published. Jean-Pierre Bemba had received and read that report.

2 In this letter the accused offered his availability to cooperate with FIDH. It was

3 however another empty gesture as demonstrated by the fact that none of his

4 intentions were ever carried out.

5 Now, there is no need to insist that FIDH, an NGO in the field of human rights, was

6 not a competent authority. Again, so the letter was not a submission. But what

7 is -- what is interesting about this letter is that the accused, who had done absolutely

8 nothing to repress or to address rape and murder, pretended to have addressed the

9 FIDH allegations of rape, pillage and murder. And he pretended by mentioning and

10 relying once again on the Bangui investigation on pillage led by Colonel Mondonga,

11 the subsequent Gbadolite trial and his letter to General Cissé.

12 Jean-Pierre Bemba's intention not to investigate and prosecute his forces for the

13 crimes committed in CAR is more than evident.

14 In short, the evidence in the record is compelling and establishes beyond a reasonable

15 doubt that Jean-Pierre Bemba failed to take necessary and reasonable measures within

16 his power to repress the crimes committed by his troops.

17 Article 28(a) establishes criminal responsibility of commanders for crimes committed

18 by their subordinates, quote "As a result of his or her failure to exercise control

19 properly over his or her forces." end of quote.

20 The Prosecution submits that this language is an articulation that criminal

21 responsibility, under the Statute, arises as a result of the accused's failure to exercise

22 effective control and not that the crimes themselves are a result thereof. As a matter

23 of fact, the accused's failure to prevent crimes cannot be neutral or irrelevant, vis-à-vis

24 the nature of the crimes.

25 The Prosecution has proved this element beyond a reasonable doubt. The fact that

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1 the accused failed to exercise control properly is shown by the extent to which he
2 failed to take measures to prevent and repress the crimes.

3 Madam President, I will now turn to my colleague, Mr Badibanga, for a short
4 conclusion. Thank you for your attention.

5 PRESIDING JUDGE STEINER: Maître Badibanga, very short conclusion.

6 MR BADIBANGA: (Interpretation) Extremely short, Madam President. And I thank you.

7 To conclude, Madam President, it is the position of the OTP that the responsibility of
8 Jean-Pierre Bemba for the crimes committed by his forces in the CAR is a textbook case, it is a
9 typical case of command responsibility. You cannot find any other case wherein a
10 commander or superior officer would have had much more authority than Jean-Pierre Bemba.
11 He had control over everything. He intervened in all matters and he took decisions about
12 everything.

13 Jean-Pierre Bemba's Defence was -- choose to be coherent and consistent. It may
14 argue that he took all the measures to sanction soldiers who committed the crisis, and
15 in such case it would have been necessary for Jean-Pierre Bemba to have authority
16 and effective control over those troops, or the Defence could argue that he did not
17 have authority or control over his troops, in which case he would not have been able
18 to take the necessary measures to sanction his troops. It is one or the other. He
19 cannot have it both ways.

20 Jean-Pierre Bemba's culpability beyond reasonable doubt has been established by the
21 evidence before you in this case. Jean-Pierre Bemba gave the green light to his
22 troops to commit, on a large scale, rape, murder and pillage against Central African
23 people. These crimes were executed simply because Jean-Pierre Bemba allowed that
24 to happen.

25 The Chamber must find Jean-Pierre Bemba responsible for the crimes committed by

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1 his troops in the CAR who were subordinated to him and who he failed to control
2 according to the requirements.

3 The experience of the Central African community during that period should never
4 again happen. Humanity shall no longer condone or tolerate this type of tolerance
5 of these types of crimes. And a firm conviction will be the only possible answer to
6 these crimes committed under the authority of Jean-Pierre Bemba. Therefore, we ask
7 you to find Jean-Pierre Bemba guilty of as charged in this case; namely, for murder
8 constituting a crime against humanity, rape constituting a crime against humanity,
9 murder constituting a war crime, or a crime against humanity, rather, murder
10 constituting a war crime, rape constituting a war crime and pillaging constituting a
11 war crime.

12 Thank you, Madam President, on behalf of the Prosecution.

13 PRESIDING JUDGE STEINER: Thank you very much to Maître Badibanga and the
14 Prosecution team, who concluded its final submissions.

15 We are now giving the floor to legal representative of victims, Maître Douzima Lawson, who
16 was allocated one-and-a-half hour. So we still have one hour hearing, and you have the floor,
17 Maître Douzima.

18 MS DOUZIMA LAWSON: (Interpretation) Thank you, your Honour. Your Honours, our
19 remarks will be made by three people in actual fact. First of all, one of our legal assistants
20 will begin. She will be first to take the floor, Ms Carine Pineau. She will explain the
21 contribution that the legal representatives of victims have made. Then one of our legal
22 assistants from the field will be explaining the fate of the victims in this case, and I will be the
23 last person to speak, and I will conclude and will provide a further discussion of the various
24 topics that we have examined during this trial. And I will set out in detail the views and
25 concerns of the victims throughout the entire --

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1 PRESIDING JUDGE STEINER: I'm sorry to interrupt you, Maître Douzima. Not all
2 members of the teams, be it Prosecution team, legal representatives team, or Defence team are
3 allowed to take the floor and to address the Chamber. According to Rules and Regulations,
4 the person needs to be qualified, to figure in the list of counsel, so my question is whether the
5 assistants that you are now informing the Chamber would take the floor, if these assistants
6 qualify for being included in the list of counsel? Otherwise I'm afraid we'll have
7 representation problem here.

8 MS DOUZIMA LAWSON: (Interpretation) Thank you, your Honour. All of the teams are
9 bound by the Rules of Professional Secrecy. And in previous cases legal assistants did
10 address the Court during final submissions, and that is the jurisprudence that I am relying on,
11 and that is why I thought that our legal assistants, bound by the Rules of Professional Secrecy,
12 and who have attended the entire trial, would be in a position to address the Court.

13 PRESIDING JUDGE STEINER: We, Maître Douzima, understand your point. We know
14 that legal assistants are bound by the Rules of Confidentiality, that they have attended the
15 entire trial. The question that I put here is whether these assistants can appear before the
16 Chamber, or can address the Chamber if they are not yet qualified to be included in list of
17 counsel. This is a procedural problem and needs to be addressed. The Chamber was not in
18 advance informed, otherwise we could have avoided having this discussion in public session.
19 (Trial Chamber confers)

20 PRESIDING JUDGE STEINER: Yes, Maître Douzima, we have here some difficulties. Since
21 in other -- in other occasions the Chamber has already -- this Chamber, at least, has already
22 stated that in order to address the Chamber the person needs to prove the qualifications to be
23 included in the list of counsel, or to be considered as an assistant to counsel with at least eight
24 years' experience, eight -- at the end, eight or ten years' experience, previous experience.
25 We of course don't want to create any difficulties for the presentation of the victims'

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1 views and concerns, but the Chamber is forced to recognise that your assistants, they
2 have no standing before the Court in order to address the Chamber in final
3 submissions, even if we are dealing with views and concerns, victims' views and
4 concerns.

5 So my question is would you like to have a brief suspension in order to discuss with your
6 team what -- what to do in these circumstances, or would you be prepared to assume yourself
7 the task of the presentation of your final submissions?

8 MS DOUZIMA LAWSON: (Interpretation) Your Honour, I certainly understand what you
9 have said, and you're quite right. I would like to provide one additional item of information.
10 Mr Nzala is on the list of counsel. So he will be in a position to address the Court to speak to
11 the expectations of victims. I thank you. And if you agree, I will now give him the floor so
12 that he can say a few words about the expectations of the victims. Thank you.

13 PRESIDING JUDGE STEINER: Mr Nzala, you have the floor. It has just been confirmed
14 that you figure in the list of counsel and you are most welcome before the Chamber.

15 MR NZALA: (Interpretation) Thank you, your Honour. Thank you for allowing me to
16 address the Honourable Bench.

17 Your Honours, I am Célestin Nzala and I am from Bangui. I am a legal assistant
18 working in the field, working with a colleague, Mr Mbuga (phon), and we are
19 working with Marie-Edith Douzima in the field in Bangui.

20 My task was to provide information to the victims and make them aware of proceedings
21 before the Court. I was also tasked to take note of their views and concerns and pass them
22 on to the legal representative of victims here in The Hague so that these views and concerns
23 could then be submitted to the Court.

24 As I carried out these tasks, I was able to be close to the victims, work with them
25 closely, because my task was to visit them, listen to them, provide them with advice

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1 on occasion, and thus I think I can say that I am in a good position to express their
2 expectations of this Court as part of this trial.
3 Your Honours, I met with victims in the field, and they told me their stories, stories
4 that they had experienced despite themselves that began on 26 October 2002,
5 experiences that continued up until 15 March 2003, experiences that still go on and
6 will continue up until the day that the ruling is handed down in this case.
7 Your Honours, I will be giving this presentation regarding the victims and their
8 expectations, and this presentation must be seen against a broader backdrop, namely,
9 the fight against impunity. This is an ideal that the Court pursues. This is a task
10 that the States Parties have entrusted the Court with. They have asked the Court to
11 see to it that the worst criminals of the world be brought to justice before this Court.
12 And this particular trial, the participation of the victims in this trial is a step forward,
13 and we see that a great many changes are occurring in this particular field. It is up
14 to this Court, working to meet this vocation, to strike the right balance, and in this
15 regard my presentation regarding the expectations of the victims will, I hope, help the
16 Bench better understand the case and come to a decision.
17 This presentation bears mainly upon the need of the victims to have their stories
18 recognised, their need for assistance, their need for justice, the pillars of this being the
19 statement of guilt of the accused.
20 Your Honours, the events that the victims experienced in the Central African
21 Republic led to a disaster without precedent within the population of that country in
22 general terms. And in more specific terms, the victims of the crimes that have been
23 charged, the charged crimes, and you see the victims find themselves still enduring
24 incredible suffering.
25 Who are the victims? Well, these are the people who have suffered serious prejudice because

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1 of the crimes that come within your jurisdiction.

2 I'm also speaking of corporate bodies that lost possessions, goods during the events.

3 In all there are 5,229 victims who have been authorised to take part in these

4 proceedings and I want to talk about them.

5 This trial, your Honours, is the moment of truth for the victims, the truth about the

6 crimes committed by the MLC troops in the Central African Republic when they

7 intervened militarily between 26 October 2002 and 15 March 2003.

8 The victims want explanations about what happened and they are expressing this

9 wish through me, and they would like to see how the accused person is reacting to

10 the charges.

11 The victims wish to sound the alarm, to speak out against impunity, the atrocities that

12 they still suffer from today.

13 Exactly what suffering am I speaking of? Your Honours, I'm speaking of the suffering that

14 has resulted from the crimes of rape, murder and looting. No matter whether they are

15 deemed to be crimes against humanity or war crimes.

16 Your Honours, as the Banyamulenge swept in from the Democratic Republic of the

17 Congo and invaded the Central African Republic, it was as if a tsunami had swept

18 over the land causing desolation throughout the entire population. In particular I

19 wish to speak out against the massive crimes that occurred.

20 As for rape, rape was by far the most common crime. The victims of this particular

21 crime suffered tremendously in their very flesh and also because of the emotional and

22 social harm that they suffered.

23 The victims still remember what happened to them when we meet with them in the

24 field. Your Honours, in my country, the Central African Republic, sexual matters are

25 taboo and a woman's anatomy is not exposed to just anyone. That would be a form

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1 of dishonour. But the rapes committed by the Banyamulenge, as they were referred
2 to in my country, the barbaric acts of rape, rapes of children, of both sexes, of men, of
3 women, sometimes in public, the victims were treated as toys to play with and thus
4 the victims lost all their dignity, all their humanity. They felt that they were shamed.
5 The victims are still suffering the aftermath of the rapes, the stigmata, the marriages that have
6 broken down, rejection, the contagious diseases that some of them have died from, may they
7 rest in peace. Their lives have been utterly destroyed.
8 Some victims when they were raped lost unborn children or unwanted children were born as
9 an outcome of these rapes.
10 In some cases women were rejected by their families or were subjected to ridicule by
11 the community. That suffering is tremendous and constitute a veritable moral and
12 psychological assault upon the victims.
13 Your Honours, I would like to stress that the Trust Fund for victims has provided
14 assistance to rape victims in this case. Unfortunately, the projects that were begun
15 for people who fall into this category were not actually carried out and rightly so.
16 The dangerous situation, the circumstances in the CAR, because of the new conflict
17 that broke out on 24 March 2002 is such that the projects could not be carried out.
18 The victims still require assistance. Even though they are now finding themselves in
19 the midst of armed conflict, they find themselves completely at a loss. They have
20 absolutely nothing to fall back on.
21 If I could say a few words now, your Honours, about the murders, the families who
22 were -- who suffered so much because their family members were killed by the
23 Banyamulenge. Some lost the breadwinner of the family or the breadwinner of the
24 entire community. Some victims are doubly suffering because they have not even
25 been able to locate the corps of the victim. In our culture when someone passes

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1 away and it is not possible to find the body, the suffering is very deep indeed.

2 As for the looting, the looting forced many victims into extreme utter poverty for the

3 Banyamulenge had taken away everything that they owned, anything that had

4 monetary value.

5 The victims' hope that humanity will realise exactly what atrocities occurred, that

6 they were subject to, as we begin this new millennium dedicated to human

7 development and improvement of living conditions. The victims call upon all of

8 humanity to provide assistance and help to these victims.

9 Your Honours, it is because of the suffering I have described here, it is because of the

10 suffering that the victims are so determined to take part in this trial. Today, they want their

11 stories to be told no matter what may happen.

12 Your Honours, what do the victims expect? Let me say they have waited a very long

13 time. Now, of course, the trial began four years ago on 22 November 2010. The

14 victims remember another date, namely, the date on which the Banyamulenge

15 withdrew from the country, 15 March 2003. That is when their hopes for assistance

16 began. Their hopes have been lessened because they still are awaiting justice.

17 They hope to obtain what they deserve, namely, recognition of what happened to

18 them, the reality of their accounts so that they can ask for reparations from the

19 accused because of the great harm he has done to them. The improvement of living

20 conditions for the victims depends on this. Let us hope that their patience will not

21 have been in vain.

22 Your Honours, I wish to stress that as the victims have waited over so many years,

23 other events have occurred; in particular, the new conflict in the CAR has broken out.

24 The victims in this case find themselves victims once again. Some have been raped.

25 Others lost the few possessions that they still had because of looting. Because of the

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1 dangerous situation in the CAR, only a few victims in Bangui have been able to report
2 their difficulties to us.

3 Your Honours, the victims have told us that if the decision in this case had been
4 handed down earlier, this is -- would have prevented the crisis that once again has
5 cost them so much. If the decision had been handed down earlier, there would have
6 been a deterrent effect. But better late than never. The decision that the Court will
7 be making soon, after hearing our submissions, will respond to the long and difficult
8 wait that the victims have undergone.

9 If the accused is found guilty, justice shall be done and the expectations of the victims
10 will be met and the decision will set jurisprudence for the entire world. I thank you,
11 your Honours.

12 PRESIDING JUDGE STEINER: Thank you very much. Maître Douzima, I would like to ask
13 whether you prefer to make use of the half an hour that we still have or taking into account
14 these difficulties that we regret very much?

15 (Interpretation) I'm very sorry, Ms Pineau.

16 (Speaking English) if you prefer to continue tomorrow morning as you have organised
17 yourself to -- to do.

18 MS DOUZIMA LAWSON: (Interpretation) Thank you, your Honour. I am ready and I
19 leave it in your hands.

20 PRESIDING JUDGE STEINER: Maître Douzima, if you tell us that you are ready, we could
21 then proceed since our interpreters, court reporters were kind enough to grant us extra half an
22 hour so we could advance proceedings.

23 In that case, you have the floor, Maître.

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

25 Your Honours, as the legal representative of victims, I am pleased to address the

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- 1 Court and set out the views and concerns of the victims that I represent.
- 2 Your Honours, between November 2010 and November 2014, that is nearly four
- 3 years -- for nearly four years this trial has been underway before the Bench. As
- 4 Mr Zarambaud said at the very beginning of the trial in November 2010, and I quote,
- 5 "The night of the victims -- of the mercenaries, of the self-proclaimed general,
- 6 Jean-Claude Bemba, did not only continue until the night of October 2002 to
- 7 March 2003, the period of time mentioned in the document containing the charges, a
- 8 period of six months. That night lasted from March 2003 up until the important day
- 9 of 22 November 20, that is today, but that night will continue for the entire duration
- 10 of this trial, that is, for a few months and maybe even a few years, and he was not
- 11 incorrect.
- 12 He went onto say this, "It is after justice would have been rendered that the victims
- 13 will be able to begin the process of rebuilding to the extent possible. This is neither a
- 14 reproach nor a regret. Quite on the contrary. Slowness is part of justice, so long as
- 15 everything does not become mired with -- there are thousands of victims, and the
- 16 delay is due to the volume of work that has to be done," end of quote.
- 17 On that same date I said this, and I quote, "The hope of finally coming to the truth
- 18 about what happened, about the atrocities that the people of the Central African
- 19 Republic were subjected to, from October 2002 to March 2003, this hope is born once
- 20 again." And this hope is born once again, it's today during this hearing to hear final
- 21 submissions.
- 22 Once again, let us consider the victims and the truth about what happened during that time
- 23 and of course, the truth that is needed for the Chamber so that they can come to their decision.
- 24 Today the silence has been broken. And in particular my thoughts go out to victim V1,
- 25 Makiandakama Pulchérie, who was the victim of repeated rapes and who was beaten by

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1 several MLC men, who came before this Chamber and was so courageous as to give her
2 testimony. She said that she had lost her entire humanity, her dignity, and that she wanted
3 to tell the Judges and the entire world, and these are her very words, to tell the world what
4 she had endured.

5 I also wish to remind the Court that the CAR had experienced internal conflict with
6 its fair share of murders and destruction. However, the presumed perpetrators were
7 never put on trial and thus they were never held responsible for their actions.

8 What's more, in most cases they were given an amnesty and thus impunity reined.

9 In 2001, the MLC troops had gone into part of Bangui to help put down an attempted
10 coup d'état, and they engaged in systematic looting and even rape. The presumed
11 perpetrators of these crimes have gone unpunished.

12 One year later, namely, late in October 2002, these Congolese mercenaries did not
13 hesitate to return in a similar context and commit horrific crimes in our country over a
14 period of five months victimizing the civilian population that still remember what
15 happened.

16 These crimes reached an unprecedented threshold and are unacceptable to humanity
17 in general and the victims in particular.

18 The victims of these atrocities once again are thirsty for the truth. They seek justice.

19 The State of the Central African Republic tried to render justice to the victims but was
20 unable to do so because of its inability to prosecute the alleged perpetrators. That is
21 why they turned to the International Criminal Court to seek and to obtain justice.

22 The people of the Central African Republic, in general, and victims who may or may
23 not have been authorised to participate in these proceedings are impatiently waiting
24 for the judgment that you will hand down in this case. They hope, Madam President,
25 that this judgment will dissuade warlords who will henceforth become aware of their

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responsibilities, as such, in cases where those under their authority were to commit crisis falling within the jurisdiction of the ICC.

Madam President, as you said at the beginning of these hearings, today I stand here representing 5,229 victims who have been admitted to participate in these proceedings. The exceptionally high number of victims admitted to this case, as compared to other cases before the ICC, does bear testimony to the very scope of the nature of crimes committed in the Central African Republic, be it in terms of their seriousness or the wide scale nature of those crimes.

May I recall that in the first case, that is the Lubanga case, 129 victims were admitted, whereas for Katanga 353 victims were admitted to the proceedings.

The participation of the legal representative in these proceedings made it possible for the interests of the victims to be best represented in that the representative actively participated in the hearings putting into force, therefore, the true mandate of the representatives.

I therefore, Madam President, believe that I have the mandate to speak and I have the benefit of speaking the language of the victims, to be part of their culture and to understand their language as provided for in paragraph 11 of your decision of 10 November 2010 in relation to legal representatives for victims in this trial.

Therefore, I'm in a position to submit that the matters raised during the trial, as well as evidence adduced before this Court, does confirm and corroborate the stories of the victims whom I represent through what was mentioned in their applications and as well as a reflection of our regular meetings on the ground.

Article 68(3) of the Rome Statute grants victims the right to participate when their personal interests are concerned. In my capacity as legal representative of victims, I was therefore able to actively participate in these proceedings during the hearing

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1 before your Chamber.

2 As you mentioned a short while ago, I was in this regard accordingly authorised to
3 interview the majority of witnesses, including victims and experts who were called by
4 the Prosecution, by the Defence and by the Chamber. During the trial I also
5 produced into evidence material that was admitted by the Chamber. I also
6 confirmed the relevance and accuracy of some of the evidence that was provided
7 before the Court.

8 In fact, in its decision of 11 July 2008, filing 1432, paragraph 14, the Appeals Chamber
9 in the Lubanga case referred to the possibility for victims to adduce evidence
10 pertaining to the guilt or innocence of the accused person as well as to challenge the
11 admissibility of evidence during the trial.

12 The Chamber, as you recalled, authorised legal representatives to represent five
13 victims who appeared, two of whom were victims and five -- or two who were
14 victims and two -- and three others who exposed their preoccupations.

15 The idea here is that these people at the time of the facts in this case lived in the
16 physical area identified in the DCC. They constantly narrated their story and
17 described the events that they had experienced within their community and therefore
18 shed light for the benefit of the Chamber on their knowledge of the contextual
19 situation of the events.

20 Their statements or testimonies were corroborated by those of other witnesses.

21 Madam President, without seeking to revisit the entire context within which this case
22 unfolded, I would simply want to very briefly revisit some of the events as
23 understood from the viewpoint of the victims whom I represent.

24 In 2002, General Bozizé, the former general chief of staff of the Central African army
25 went into rebellion taking along with him a major part of the FACA troops. In

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1 October 2002 he attempted a coup d'état by which he intended to overthrow
2 President Patassé. The rebels came from the north of the country and moved
3 towards the -- towards Bangui, the capital of Central African Republic, but they were
4 stopped at the 44th district of Bangui by FACA troops who had remained loyal to
5 President Patassé.
6 President Patassé, having lost confidence in his army, which then did not have resources and
7 part of which had gone into rebellion, President Patassé, I was saying then, felt diminished in
8 his authority and therefore called on Jean-Pierre Bemba, president of the MLC, namely, the
9 Mouvement de libération du Congo, to assist by providing military reinforcement through the
10 military wing of his movement, that is, the ALC, the Armée de libération du Congo.
11 That is how it happened that around 26 October 2002 Jean-Pierre Bemba sent some
12 1,500 troops to Bangui. They crossed the Oubangui river, which is a natural
13 boundary between the Central African Republic and the Democratic Republic of the
14 Congo. They crossed from Zongo to Bangui. These troops were deployed on
15 positions occupied by Bozizé's troops to the north of Bangui and in other towns to the
16 north of the country.
17 The ALC troops did not find the enemies, but rather than protect the population,
18 those mercenaries who were ordinarily referred to, as you have been told several
19 times, as the Banyamulenge, organised themselves into groups to wreak havoc in the
20 towns and cities and villages which they had taken over without any fighting from
21 the Banyamulenge.
22 In all areas that they occupied between 26 October 2002 or thereabouts to 15
23 March 2003, the Banyamulenge, bearing their weapons, attacked civilian populations,
24 invaded homes and some institutions such as churches, schools, NGO head offices
25 and systematically pillaged those facilities and physically dealt with all those whom

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1 they came across by committing acts of rape and violence without consideration to
2 age, gender and state of health of the victims. It was in fact a blind operation of all
3 things that happened at all times and in all places.

4 The ALC soldiers did not hesitate to stop or to kill anyone who resisted them and
5 they went on to pillage items that were regularly sent over to the Congo through the
6 Oubangui river.

7 We know that these troops were active in Bangui, in Gobongo, in Combattant, Fouh,
8 Boy-Rabé, 36 villas, Miskine, Benz-vi, Kpeténé, Fatima, Ouango, Kilometre 5.

9 Around Bangui, they wreaked havoc in Begoua, around PK10, PK11, PK12, Kossi, Yembi I,
10 Yembi II, PK13, otherwise known as the cattle market, Ngola, PK12, which was a combination
11 of the towns of Liton and Nzako. They also wreaked havoc in Bimbo, which included
12 Guitangola neighbourhood and Mboko, Bimon and Ndangala villages.

13 The troops were also active in other towns of the CAR such as Damara, Sibut, Boali,
14 Bossembelé, Yaloké, Bossemptéle, Bozoum, Bossangoa, Mogoumba and Zinga.

15 Madam President, your Honours, let me now address the charges in this case. Let us
16 recall that in its decision of 15 June 2002 Pre-Trial Chamber II confirmed two charges
17 against the accused - murder and rape - and three crime -- three war crimes - murder,
18 rape and pillaging.

19 When it comes to crimes against humanity, the decision of the Pre-Trial Chamber was
20 that there was sufficient reason to believe that rape and murder constituting crimes
21 against humanity had been committed within the context of a generalised attack
22 against a civilian population from 26 October 2002 or thereabouts to 15 March 2003.

23 Regarding attacks, the issue is one of behaviour or conduct towards the civilian
24 population in regard to the acts covered by Article 7(1) of the Rome Statute. The
25 widespread nature actually refers to the widespread nature of the attack and the

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1 number of persons that were targeted during the attack.

2 The scope of the attack can therefore be determined in terms of the duration of the

3 attack but also in terms of the geographical scope of the nature of the hostilities.

4 That is why, because of its duration and because of the geographical layout, the attack

5 to which the Central African population was subjected is indeed widespread in the

6 meaning of Article 7(1) of the Rome Statute.

7 OTP witnesses as well as witnesses called by the witnesses -- by the representative

8 of -- the legal representatives as well as documentary evidence confirms the fact that

9 the attacks were indeed widespread in all the areas mentioned above and that the

10 attacks were carried out massively and repeatedly and collectively with serious

11 gravity and targeting a great number of victims.

12 May I add in passing that it is not all victims who apply to participate in these

13 proceedings. There are many victims of rape, like Mr Nzala said a short while ago,

14 who because of the taboo that goes with sexual crimes in the Central African Republic,

15 for that reason many rape victims preferred not to come forward.

16 When it comes to civilian population, we are referring to people who do not actively

17 participate in the fighting during the commission of those crises. It has been

18 established in this case that the victims of the rape and murder committed by the

19 MLC troops were attacked at their homes, in their houses, in their compounds, or

20 while they were escaping from the fighting in which they did not participate and that

21 whenever they were attempting to protect their property, that is when those acts

22 occurred.

23 Turning now to crimes against humanity, murder. Pre-trial Chamber -- Trial

24 Chamber I -- II, rather, established that a crime is constituted when it is proven that an

25 individual by an action or omission has caused the death of one or several persons.

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1 The death of the victim must be a result of the accused person's conduct to the extent
2 that a causation link is established between the conduct and the result.
3 For example, victim Witness 23 stated during his interview as follows: "The
4 Banyamulenge killed many people." That witness went on to talk about the murder
5 of someone by a Banyamulenge simply because of a duck. This corroborates the
6 statement by Witness 38 to the effect that a number of people -- that a man was killed
7 by a Banyamulenge, by a bullet to his head when he was taking care of his duck.
8 Several other witnesses before your Chamber have talked about crimes of murder and
9 attempted murder committed by MLC soldiers. Children were killed. Women
10 were murdered. Men were killed. Even pregnant women were killed, dying from
11 their wounds, from torture and from machete wounds, all killings by use of other
12 types of weapons and firearms.
13 Madam President, I will not repeat the numerous cases that have already been
14 mentioned in my submissions.
15 Turning to rape. Rape has been defined as any act of penetration committed by
16 force. Several witness testimonies and dual status victims have corroborated various
17 narrations by many victims who have been identified to participate in the
18 proceedings. Their stories dovetail with the details that have been narrated by those
19 who experienced these atrocities, rape of children, rape of women, rape of men, rape
20 of women -- pregnant women, rape of young and virgin boys and girls in the
21 presence of their family members, in the presence of members of the community, rape
22 of village chiefs and all of that with violence and brutality, in which case the victims
23 were totally powerless, repeated cases of rape by several rapists which amounts
24 indeed to sexual enslavement and sequestration. In fact it did happen that the
25 Banyamulenge would even ask a son to rape his own mother.

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1 So what I was saying is that even men were not spared. One of the witnesses here
2 was a man. He told us that he had been raped by three Banyamulenge in the
3 presence of his family members and his wife, and members of his family were also
4 raped.

5 Another witness talked about a collective rape by three Banyamulenges, and that
6 victim also was present when three of his or her children were raped in his or her
7 house.

8 There have been several cases of collective rape, and these were told to the Court by
9 various witnesses. Witness P-119 witnessed collective rape of two young girls, 12
10 and 13 years old in a canal by numerous Banyamulenge who raped her one after the
11 other using force and because of their weapons, whereas these two victims were still
12 virgins.

13 Witness P-47 witnessed the collective rape of women and children at the port in
14 Bangui when the Banyamulenge were crossing over. He explained that at the port,
15 at the river port, the Banyamulenge used force and the butt of their guns to rape
16 women. He went on to say that these soldiers raped the women one after the other.
17 Witness P-1 -- P-69 rather testified about the collective rape of his wife in his presence,
18 and he was sodomized.

19 At this level let me also recall evidence relating to the testimony of expert Witness
20 P-229, a psychiatrist in the CAR, namely, Dr Tabo, who mentioned the crime of rape
21 during the conflicts, the armed conflict in the Central African Republic between 2002
22 and 2003. In his expert report he pointed out that a multidisciplinary team of
23 psychologists, lawyers, social workers and doctors travelled through the various
24 localities affected by the armed conflict to identify victims of sexual violence in the
25 main. That expert report highlighted the modus operandi of the Banyamulenge

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1 relating to these rapes and also indicated that most of these crimes took place in the
2 homes of the victims or at the time of their flight.

3 The rape may have involved several victims and may have been done by several
4 aggressors and even several times. That report also mentions several cases of
5 sodomy.

6 At this juncture, Madam President, before I look into the issue of war crimes, I am
7 mindful of the time, and I hope that I can stop here. Thank you.

8 PRESIDING JUDGE STEINER: Thank you very much, Maître Douzima. We have now to
9 adjourn. We had almost two-hour session. It was thanks to the generosity of our
10 interpreters and court reporters. I thank very much the Prosecution team, Legal
11 Representative of Victims, the Defence team, Mr Jean-Pierre Bemba Gombo. Thanks to our
12 interpreters, court reporters.

13 We will adjourn for today and resume tomorrow morning at 9.30 in the morning.

14 The hearing is adjourned.

15 THE COURT USHER: All rise.

16 (The hearing ends in open session at 4.27 p.m.)

17 RECLASSIFICATION REPORT

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19 dated 15 January 2016, redactions have been applied into the public version of the
20 transcript.