

1 International Criminal Court
2 Trial Chamber III - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and
6 Judge Kuniko Ozaki
7 Trial Hearing
8 Monday, 22 November 2010
9 (The hearing starts in open session at 2.33 p.m.)
10 THE COURT USHER: All rise. The International Criminal Court is now in session.
11 Please be seated.
12 THE COURT OFFICER: Good morning, Madam President, your Honours. We are in
13 open session.
14 PRESIDING JUDGE STEINER: Good afternoon. First, while starting this first session
15 on the Bemba -- the case of the Prosecution against Mr Jean-Pierre Bemba Gombo,
16 pursuant to Rule 137(3) of the Rules of Procedure and Evidence, the Chamber has decided
17 to authorise the media to take pictures and/or audio visual recordings at the beginning of
18 this opening of the case. So, therefore, the representatives of the media are authorised to
19 take these pictures inside the courtroom for three minutes. The court officer, please.
20 (Pause in proceedings)
21 PRESIDING JUDGE STEINER: Mr Court Officer, please could you call the case.
22 THE COURT OFFICER: Yes, Madam President. Situation in the Central African
23 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, case reference
24 ICC-01/05-01/08.
25 PRESIDING JUDGE STEINER: Thank you very much. On behalf of my colleagues,

1 Judge Joyce Aluoch on my right and Judge Kuniko Ozaki on my left, I would like to
2 welcome you all, parties and participants, to this -- to the opening session of the case of
3 The Prosecutor against Mr Jean-Pierre Bemba Gombo. I would like to welcome
4 Mr Bemba as well. We will start asking the parties and participants to introduce
5 themselves and their teams, and I will start with the Prosecution. I presume
6 Mr Moreno-Ocampo will make the proper presentation of the Prosecution's team. You
7 have the floor.

8 MR MORENO-OCAMPO: Thank you, Madam President. The Office of the Prosecutor
9 will be represented in this case by: Madam Fatou Bensouda, the Deputy Prosecutor; Ms
10 Petra Kneuer, senior trial lawyer; Massimo Scaliotti, trial lawyer; Jean-Jacques Badibanga,
11 trial lawyer; Emeric Rogier, senior situation analyst; Ibrahim Yillah, trial lawyer;
12 Christopher Campbell, who is an associate analyst and is in charge of the infograph;
13 Frédérique Besse, the case manager of the case; and in the opening the Prosecutor
14 himself - myself - I will represent the office.

15 PRESIDING JUDGE STEINER: Thank you very much, Mr Moreno-Ocampo. Welcome,
16 Deputy Prosecutor Ms Bensouda.
17 Now, I call upon the legal representatives of the victims participating in the trial, starting
18 by Mr Zarambaud - it's the first time we have or we receive Mr Zarambaud in this
19 hearing - and then Ms Douzima to introduce yourselves. Mr Zarambaud.

20 MR ZARAMBAUD: (Interpretation) Your Honour, I am Mr Zarambaud, from the Bar
21 of the Central African Republic. I am one of the representatives of the victims, and
22 indeed this is the first time that I have appeared before this Court. Thank you.

23 PRESIDING JUDGE STEINER: You are welcome before this Chamber, Mr Zarambaud.
24 Maître Douzima.

25 MS DOUZIMA-LAWSON: (Interpretation) I am Marie-Edith Douzima-Lawson, legal

1 representative of the victims in this case.

2 PRESIDING JUDGE STEINER: Thank you, Ms Douzima. The Chamber wants to
3 remind you all that, in accordance with Article 68(3) of the Rome Statute, the Court shall
4 permit the victims to present their views and concerns at stages of the proceedings
5 determined to be appropriate by the Chamber and in a manner which is not prejudicial to,
6 or inconsistent with, the rights of the Defence to a fair and impartial trial.

7 In this trial, we have had an unprecedented large number of applications for victims'
8 participation. So far, the Chamber has authorised to participate at this stage of the trial
9 759 victims. However, still a large number of applications for participation - to be more
10 precise 653 applications - are pending a decision by the Chamber.

11 As the parties have the right to make observations in relation to each application for
12 participation and as the applications were submitted to the Chamber in sets on a rolling
13 basis, the Defence observations in relation to the two last sets of applications (the seventh
14 and the eighth transmission) are due to be submitted by 26 November and 8 December
15 2010.

16 Those applications for participation still pending were nonetheless received within the
17 time limits set by the Chamber of 15 September 2010 (decision 875 of 7 September).

18 As some of those applications may be later granted participating status, the Chamber has
19 decided (and this is decision 1020 of 19 November 2010) that it is appropriate under these
20 exceptional circumstances to allow them to be represented at the commencement of the
21 trial pending a decision on their applications for participation. They will therefore be
22 allowed to make opening statements, if they so wish. Their statements will not be
23 considered for any purpose as evidence, and they will not be allowed to participate in the
24 questioning of witnesses.

25 Therefore, Ms Paolina Massidda, as principal counsel from the Office of Public Counsel

1 for Victims, appears today in Court on behalf of the applicants in this trial; the applicants
2 whose applications are still pending a decision of the Chamber.

3 Ms Massidda, can you please introduce yourself and, if the case, your team.

4 THE INTERPRETER: Message from the English booth: If the Presiding Judge could
5 slow down, please, for the interpreters.

6 MS MASSIDDA: Good afternoon, your Honours. The Office of Public Counsel for
7 Victims today is represented by: Ms Caroline Walter; and I am Paolina Massidda,
8 principal counsel.

9 PRESIDING JUDGE STEINER: Thank you very much. And now, finally, I give the
10 floor for the Defence of Mr Jean-Pierre Bemba Gombo. Maître Liriss, are you coming to
11 introduce yourself and your team? You have the floor, please.

12 MR LIRISS: (Interpretation) Your Honour, honourable Judges, the Defence team of
13 Mr Jean-Pierre Bemba will be represented by: Mr Kilolo, associate counsel; Mr Peter
14 Haynes, also associate counsel; Mr Nick Kaufman, legal consultant; Mr Jean-Jacques
15 Kabongo, case manager; Ms Kate Gibson, legal adviser; and myself, principal counsel, I
16 will be making the opening remarks.

17 PRESIDING JUDGE STEINER: Thank you very much, Maître Liriss. Finally, I notice
18 the presence of Madam Registrar, Ms Silvana Arbia. So I invite you please to introduce
19 yourself and if the case of the representatives of the Registry.

20 MS ARBIA: Madam President, your Honours. I am here. I am present in my capacity
21 as Registrar and some of the team of the Registrar permanent place in Court but today, at
22 the opening, of course, it's a day that suggests to me to be present and I'm privileged to be
23 there. I'm assisted by the legal officer, Cyril Laucci.

24 PRESIDING JUDGE STEINER: Thank you very much. As for the object of the present
25 hearing, the opening hearing, we will firstly follow the terms of Article 64(8)(a) of the

1 Rome Statute. In accordance with that provision, the Trial Chamber shall first read to the
2 accused the charges previously confirmed by Pre-Trial Chamber II, and satisfy itself that
3 the accused understands the nature of the charges.

4 In doing this, the Trial Chamber shall afford the accused the opportunity to make an
5 admission of guilt, in accordance with Article 65 of the Statute, or to plead not guilty.

6 The Chamber, however, wants to stress that at this point, this is not in any sense
7 compulsory to the accused. Mr Jean-Pierre Bemba Gombo can, of course, remain entirely
8 silent, as allowed by Article 67(1)(g) of the Statute.

9 To make sure that the rights of the accused are protected, the Chamber would like to ask
10 first the Defence of Mr Bemba whether you have explained to Mr Bemba the nature of the
11 charges he is facing in this Court.

12 We are sure, Maître Liriss, that you have done this, but we need you to confirm that you
13 have fully explained the charges to Mr Bemba and you have made sure that he
14 understands them.

15 Mr Liriss, did you explain in detail to Mr Jean-Pierre Bemba Gombo the charges he is
16 facing before this Court?

17 MR LIRISS: (Interpretation) Your Honour, the entire Defence team and Mr Jean-Pierre
18 Bemba Gombo have had more than seven sessions together to analyse each one of the
19 charges made against him, and believe me, he has certainly understood what this is all
20 about.

21 PRESIDING JUDGE STEINER: Thank you, Maître Liriss. Can you answer whether
22 Mr Bemba has received a copy of the decision confirming the charges, in a language he
23 understood?

24 MR LIRISS: (Interpretation) I can confirm, ma'am. I can confirm that.

25 PRESIDING JUDGE STEINER: Have you discussed with your client, Maître Liriss, the

1 content of that document and his rights under the Statute?

2 MR LIRISS: (Interpretation) Yes, your Honour.

3 PRESIDING JUDGE STEINER: And finally, Maître Liriss, before proceeding any further,
4 the Chamber would like to ask you whether you have explained to your client the right he
5 has to remain silent, on the one hand, and the right to plead guilty or not guilty on the
6 other hand; did you explain that to Mr Bemba?

7 MR LIRISS: (Interpretation) I can confirm so, your Honour.

8 PRESIDING JUDGE STEINER: Thank you, Mr Liriss.

9 Therefore, the Chamber, in order to fulfil its obligations under Article 64(8)(a) of the
10 Statute, asks the court officer to read out to the accused the charges against him as
11 confirmed by Pre-Trial Chamber II in the decision of 15 June 2009, decision number 424.

12 Read it, please, one-by-one. Court officer.

13 THE COURT OFFICER: Yes, your Honour.

14 First charge: On 15 June 2009, Pre-Trial Chamber II confirmed that there were
15 substantial grounds to believe that Mr Jean-Pierre Bemba Gombo is criminally responsible
16 within the meaning of Article 28(a) of the Statute for the following charges:

17 Murder, constituting a crime against humanity (count 7) within the meaning of Article
18 7(1)(a) of the Statute.

19 PRESIDING JUDGE STEINER: Just court officer, please, I will ask first.

20 Maître Liriss, is your client now ready to confirm whether he heard the charges, he
21 understood the charge, and whether he wants to remain silent, or would like to plead
22 guilty or not guilty?

23 MR LIRISS: (Interpretation) He has certainly heard, and he wishes to plead not guilty.

24 PRESIDING JUDGE STEINER: He wants to do it through his Defence counsel?

25 MR LIRISS: (Interpretation) Yes. He is entitled to do so. Exactly.

- 1 PRESIDING JUDGE STEINER: Through you, his legal counsel.
- 2 MR LIRISS: (Interpretation) Through me. He is pleading not guilty.
- 3 PRESIDING JUDGE STEINER: Thank you, Maître Liriss.
- 4 Please read the second count against Mr Bemba.
- 5 THE COURT OFFICER: Yes, your Honour. On 15 June 2009, Pre-Trial Chamber II
- 6 confirmed that there were substantial grounds to believe that Mr Jean-Pierre Bemba
- 7 Gombo is criminally responsible within the meaning of Article 28(a) of the Statute for the
- 8 following charge:
- 9 Rape, constituting a crime against humanity (count 1) within the meaning of Article 7(1)(g)
- 10 of the Statute.
- 11 PRESIDING JUDGE STEINER: Thank you. Maître Liriss, on behalf of your client, can
- 12 you confirm to the Chamber that Mr Bemba has understood the second charge and
- 13 whether he wants to remain silent, or would like to plead guilty or not guilty?
- 14 MR LIRISS: (Interpretation) Your Honour, Mr Bemba has certainly understood this
- 15 charge and he pleads, through me, not guilty.
- 16 PRESIDING JUDGE STEINER: Thank you, Maître Liriss.
- 17 Court officer, please read the third charge.
- 18 THE COURT OFFICER: On 15 June 2009, Pre-Trial Chamber II confirmed that there
- 19 were substantial grounds to believe that Mr Jean-Pierre Bemba Gombo is criminally
- 20 responsible within the meaning of Article 28(a) of the Statute for the following charge:
- 21 Murder constituting a war crime (count 6) within the meaning of Article 8(2)(c)(i) of the
- 22 Statute.
- 23 PRESIDING JUDGE STEINER: Thank you.
- 24 Maître Liriss, could you please confirm to the Chamber, please, that your client, Mr
- 25 Bemba, has understood the third charge and whether he wants to remain silent, or would

1 he like to plead guilty or not guilty.

2 MR LIRISS: (Interpretation) Your Honour, Mr Bemba has completely understood the
3 third charge and he pleads not guilty.

4 PRESIDING JUDGE STEINER: Thank you.

5 Mr Court officer, could you please read out the fourth count against Mr Bemba.

6 THE COURT OFFICER: On 15 June 2009, Pre-Trial Chamber II confirmed that there
7 were substantial grounds to believe that Mr Jean-Pierre Bemba Gombo is criminally
8 responsible within the meaning of Article 28(a) of the Statute for the following charge:
9 Rape constituting a war crime (count 2), punishable within the meaning of
10 Article 8(2)(e)(vi) of the Statute.

11 PRESIDING JUDGE STEINER: Thank you. Maître Liriss, could you please confirm
12 with the Chamber that your client has understood the fourth charge and whether he
13 wants to remain silent, or to plead guilty or not guilty.

14 MR LIRISS: (Interpretation) Your Honour, the fourth charge was entirely understood
15 by Mr Jean-Pierre Bemba Gombo, and he pleads not guilty.

16 PRESIDING JUDGE STEINER: Thank you, sir.

17 Court officer, could you please read out the fifth count against Mr Jean-Pierre Bemba
18 Gombo.

19 THE COURT OFFICER: On 15 June 2009, Pre-Trial Chamber II confirmed that there
20 were substantial grounds to believe that Mr Jean-Pierre Bemba Gombo is criminally
21 responsible within the meaning of Article 28(a) of the Statute for the following charge:
22 Pillaging constituting a war crime (count 8) within the meaning of Article 8(2)(e)(v) of the
23 Statute.

24 PRESIDING JUDGE STEINER: Thank you very much.

25 Maître Liriss, could you please confirm to the Chamber that Mr Bemba has understood

1 the meaning of the fifth charge and whether he wants to remain silent, or would he like to
2 plead guilty or not guilty.

3 MR LIRISS: (Interpretation) Your Honour, through me, Mr Jean-Pierre Bemba Gombo
4 confirms what I have said regarding the earlier charge; that is to say, he has certainly
5 understood the charge and he pleads not guilty.

6 PRESIDING JUDGE STEINER: Thank you, Mr Liriss.

7 Court officer, we are going to proceed, and according to the agenda for this opening
8 hearing, we are going to give the floor to the Prosecution. I would like the confirmation
9 that Mr Moreno-Ocampo is going to take the floor, and we are going to listen to the
10 opening statements of the Prosecutor.

11 The Chamber would like to remind you that in accordance with the oral decision taken by
12 the Chamber in the status conference held on 21 November 2010, the Prosecution was
13 afforded a maximum of 90 minutes for the presentation of its opening statements, and I
14 would like to use this opportunity to remind the representatives of the parties and
15 participants that because we have interpretation in this session, that we are supposed to
16 speak slower than normal and to give a pause after the end of each sentence.

17 Mr Moreno-Ocampo, you have the floor, please.

18 MR MORENO-OCAMPO: Thank you, Madam President, your Honours. The
19 Prosecution will prove, beyond reasonable doubt, that Jean-Pierre Bemba Gombo is
20 criminally responsible for crimes against humanity and war crimes committed against
21 civilians of the Central African Republic by forces under his effective authority and
22 control between October 2002 and March 2003.

23 The evidence will show that the crimes against the Central African Republic citizens were
24 not isolated incidents; they were committed by Bemba troops in a widespread and
25 organised manner. Small platoons were organised. Groups of three or four soldiers

1 invaded houses one-by-one; they stole all the possessions that could be carried off and
2 raped the women, girls and elders, regardless of the age.
3 When the civilians resisted, when they received rape and pillaging, they were killed. As
4 we say, they were not isolated incidents. These were some of the main tactics of the
5 Jean-Pierre Bemba troops in the Central African Republic campaign during 2002/2003.
6 The goal, eliminating any chance of a new rebellion by destroying communities they
7 perceived as an enemy.
8 In accordance with Article 54(1)(b), the Prosecution has to take into account the nature of
9 the crimes; in particular, where it involves sexual violence, gender violence or violence
10 against children. All these dimensions are at the heart of the crimes committed by
11 Jean-Pierre Bemba troops. The nature of the crimes committed by Jean-Pierre Bemba
12 was unspeakable.
13 Jean-Pierre Bemba troops stole from the poor people of one of the poorest countries in the
14 world. The massive rapes were not just sexually motivated; as gender crimes, they were
15 crimes of domination and humiliation directed against women, but also directed against
16 men with authority. These crimes spread terror and devastated communities by means
17 of the cheapest weapon and most available ammunition.
18 Women were raped systematically to assert dominance and to shatter resistance. Men
19 were raped in public to destroy their authority, their capacity to lead.
20 The Prosecution is not, is not alleging that Jean-Pierre Bemba ordered his troops to
21 commit these crimes. The Prosecution submits that Jean-Pierre Bemba is responsible for
22 these crimes as a result of his knowing failure to control the troops he commanded.
23 Bemba, Jean-Pierre Bemba, the top commander of the MLC troops, gave licence to his
24 troops to attack the civilians. He decided not to prevent, not to repress, not to punish the
25 massive rapes, pillage and murder campaign implemented by his subordinates.

1 The Prosecution will submit that, as their superiors, Jean-Pierre Bemba is even more
2 responsible than the direct perpetrators, his subordinates. A commander that lets his
3 troops carry out such criminal tactics is hundreds of times more dangerous than any
4 single rapist. Jean-Pierre Bemba knowingly let the 1,500 armed men he commanded and
5 controlled commit hundreds of rapes, hundreds of pillages.

6 Command responsibility means that the commander owns the actions of his troops.
7 Different than a single rapist, Bemba's weapon was not a gun, it was his army.
8 Jean-Pierre Bemba's body was his army. The result of his knowingly lack of control was
9 the rape of hundreds of civilians.

10 Madam President, your Honours, this trial is an opportunity. This is the first trial before
11 the International Criminal Court that concerns command responsibility. Like any other
12 criminal court, this Chamber will decide Jean-Pierre Bemba's individual criminal
13 responsibility but the preventative aspect of this trial, its forward-looking aspect, has no
14 precedent.

15 Unlike any other Court, the International Criminal Court's decision will influence the
16 behaviour of thousands of military commanders from 114 States Parties. The
17 International Criminal Court's decision will enforce a law adopted by States Parties and
18 make a difference. The difference between a military commander and a criminal is
19 respect for the law.

20 The responsibility of the superiors and the subordinates in a hierarchical organisation
21 such as an army has been discussed all over the world since ancient times. It was
22 referred to in the famous Sun Tzu Chinese army manual dating back 500 years before
23 Christ. It was also discussed in the Islamic law, and Hugo Grotius in 1625 referred to it
24 in his famous "The Law of War and Peace."

25 During the Twentieth Century, the concept acquired legal gravitas. It was developed as

1 a basis of criminal liability by the military tribunals after the Second World War.
2 Additional Protocol 1 of 1977 to the Geneva Conventions refers to the responsibility of the
3 superior. National jurisdictions also began to recognise it and the jurisprudence of the
4 ICTY and ICTR further refined and specified it.
5 Finally, the Rome Statute consolidated customary international law on the topic and
6 specified its dimensions. It does not introduce a new and separate liability of the
7 superior into international law. It's not a new crime. Rather, the Rome Statute carefully
8 defined superior responsibility as an alternative mode of liability for international
9 offences.
10 The Rome Statute ensures a basic principle of criminal law, the individual responsibility
11 of the superior should be established. No one can be punished for a wrongful act unless
12 the act is attributable to him or her.
13 Article 28 carefully defines when a military commander or a superior who has effective
14 authority and control can be criminally accountable for acts and omissions in exercising
15 his power. Article 28 only permits a finding of liability by a superior for an act of a
16 subordinate if that act can be attributed to the superior under specific conditions.
17 In accordance with this principle and the Pre-Trial Chamber III decision confirming the
18 charges for trial, the Prosecution will prove the elements required by the law to this
19 specific case, in this specific case.
20 The evidence will show that the charged crimes were committed by the MLC troops and
21 that Mr Jean-Pierre Bemba was their military commander with effective authority and
22 control over the troops who committed these crimes.
23 Mr Jean-Pierre Bemba does not only command the militia called the MLC; he owns it.
24 He is the owner of the militia. He created it to gain political and economic power. He
25 financed it and deployed it. Mr Jean-Pierre Bemba retained his effective authority and

1 control over the MLC troops throughout the 2002/2003 intervention in the Central African
2 Republic. He ordered the deployment of the troops and he ordered their withdrawal.
3 He issued orders that were complied with to appoint, promote, demote, dismiss, as well
4 as arrest, detain and release MLC commanders.

5 The evidence will show that Mr Jean-Pierre Bemba had the power to prevent and repress
6 the commission of crimes by his troops. The first way to prevent and repress crimes is by
7 providing clear orders not to commit the crimes; in this case, widespread attacks against
8 civilians. Jean-Pierre Bemba did not -- did no such thing.

9 The Chamber will hear a witness who will testify how Jean-Pierre Bemba briefed his MLC
10 forces immediately before their deployment into the Central African Republic, telling
11 them, and I quote, Mr Jean-Pierre Bemba said to his troops, "You are going to the Central
12 African Republic which is not your country. In that country, there are no parents, or big
13 brothers or little brothers, or any of your family. When you get there, do the job that I'm
14 asking you to do. Anyone, anyone you encounter in the combat zone will be an enemy."
15 Mr Jean-Pierre Bemba will say, "Anyone you encounter in the combat zones will be an
16 enemy, because I received information that the enemy is wearing civilian clothing." This
17 was the instruction provided by Mr Bemba and his troops followed this idea. Another
18 witness will explain to you how the soldiers believed Mr Jean-Pierre Bemba gave them
19 carte blanche.

20 These orders clearly shows a commander who knowingly decides not to prevent the
21 commission of crimes against civilians. Indeed, Bemba gave licence to his troops to treat
22 as enemy combatants extended families in their homes, children, women, the elderly.

23 Peculiar to the Jean-Pierre Bemba case is that the failure to prevent and punish is integral
24 to and confirms the licence he gave his troops to attack the civilians.

25 Through the evidence presented, the Court will be able to view Bemba's failure to educate

1 or punish his troops in the context of his choice not to keep his troops in line respecting
2 the law and in this way guaranteeing that the laws of war would be followed.

3 The evidence will show that Mr Jean-Pierre Bemba was well aware that MLC troops were
4 committing and were about to commit crimes. The evidence will show that Jean-Pierre
5 Bemba was in steady communication with his commanders. He received civilian
6 complaints about his soldiers when he visited the Central African Republic.

7 In early November, and in a public speech in the Central African Republic, Jean-Pierre
8 Bemba recognised the existence of reports of widespread criminal activity committed by
9 the MLC. Jean-Pierre Bemba also knows, because the international media put him on
10 notice. Journalists directly informed him of these abuses and, as the evidence will
11 establish, Jean-Pierre Bemba never claimed ignorance. Instead, he dismissed the reports
12 as untrue, denying them and claiming innocence on behalf of himself and his troops.

13 And another evidence of Mr Bemba's knowledge is his request to the United Nations to
14 investigate the abuses that he never followed up. Instead, after the UN agreed with him
15 to help him investigate, he never followed up, but instead he organised sham trials
16 against few soldiers for petty crimes unrelated with the offences described aiming to
17 cover up the crimes committed. Madam Bensouda and Ms Kneuer will follow with the
18 opening of the Prosecutor's Office.

19 MS BENSOU DA: Thank you. Madam President, your Honours.

20 During the armed conflict in Central African Republic, or the CAR, between October 2002
21 and March 2003, the accused Jean-Pierre Bemba deployed military forces known as the
22 Mouvement de Libération du Congo, or the MLC, in support of then-President Ange-Félix
23 Patassé against a coup d'état from rebels led by Patassé's former army chief of staff,
24 François Bozizé. During this five-month intervention, the MLC's movement in the
25 Central African Republic was accompanied by repeated widespread and brutal rapes,

1 murders and pillaging of civilians, committed as the troops progressed into and then
2 retreated from the Central African Republic. These crimes commenced when MLC
3 forces took complete control of the targeted areas, after dislodging Bozizé's rebels. They
4 continued for as long as the MLC forces remained in occupation of those areas, and they
5 ceased immediately after MLC forces withdrew from those areas.

6 In the upcoming months, the Prosecution will prove the following elements of the
7 charges:

8 First, the crimes themselves. You will hear from the survivors and witnesses to the
9 crimes, both Central African Republic civilians and military witnesses. Approximately
10 18 witnesses will testify specifically about the rapes, pillaging and murders of civilians in
11 the Central African Republic. Their evidence will establish beyond reasonable doubt that
12 these crimes took place; that they were knowingly and wilfully committed. The
13 Prosecution will describe the crimes themselves in greater detail later in this opening
14 statement. The crime pattern will show how well-organised the attack against the
15 civilian population was.

16 The crimes were committed against civilians. The victims of these crimes, Madam
17 President, were not soldiers. They were civilians. The accused told his soldiers in
18 advance that they were not to distinguish between military and civilian persons.

19 Witness 213, a former MLC insider, will testify that Bemba briefed his MLC forces in
20 Zongo immediately before their deployment into the Central African Republic. The
21 Prosecutor quoted his statement a few moments ago. I would like to repeat it:

22 "You're going to the Central African Republic," he told them, "which is not your country.

23 In that country, there are no parents or big brothers or little brothers or any of your family.

24 When you get there, do the job that I am asking you to do. Anyone you encounter in the
25 combat zones will be an enemy because I've received information that the enemy is

1 wearing civilian clothing."

2 In fact the crimes, Madam President, were directed against anyone that the soldiers
3 encountered in the combat zone -- that the soldiers encountered in the Central African
4 Republic. They were committed against children, the elderly, persons in their homes,
5 local government leaders, women, men, families.

6 The crimes were committed by Jean-Pierre Bemba's troops. You will hear that Bemba
7 was the founder and President of the MLC, a movement that he created to gain power and
8 money. It is a movement with its own private army .and Bemba is not just a leader. He
9 was the owner --

10 PRESIDING JUDGE STEINER: If I may interrupt you, this Chamber will not allow any
11 kind of manifestation coming from the audience. If this manifestation continues to come,
12 the Chamber will order the court officers to empty the upper part of the galleries.

13 I am sorry, Ms Bensouda, you can proceed.

14 MS BENSOUUDA: Thank you, Madam President. Madam President, you will hear that
15 Bemba was the founder and President of the MLC, a movement that he created to gain
16 power and money. It is a movement with its own private army. And Bemba is not just
17 a leader. He was the owner and commander-in-chief of this private army, consisting of
18 approximately 20,000 soldiers. As MLC commander of his army, he sent approximately
19 1,500 troops across the border from the Democratic Republic of the Congo, or DRC, into
20 the Central African Republic to fight on behalf of Patassé.

21 The crimes started in late October 2002 and within a day -- within a day or two of the
22 MLC's arrival, across the Ubangi River into Bangui. Within a few days of their arrival,
23 there were reports of widespread rapes, pillaging and murders. As the MLC troops
24 moved deeper into the country and overcame the opposing forces, the commission of
25 crimes against the Central African Republic civilian population followed their progress.

1 The evidence will show a clear correlation between MLC movements and the commission
2 of rapes, of murders and pillaging. Indeed, in the locations where some of the crimes
3 were committed, no other troops were present as the MLC had captured the locations and
4 had sole control over these areas.

5 But the evidence that the crimes were committed by MLC soldiers is not dependent solely
6 on the correlation between the MLC military progression and success and the increasing
7 incidence of crime.

8 In the Central African Republic, people speak Sango. Civilian victims and witnesses
9 from the Central African Republic will testify that their attackers spoke Lingala; a
10 language that they could recognise, but one that is spoken in the Democratic Republic of
11 the Congo and not in the Central African Republic.

12 Some witnesses will testify that the MLC soldiers were recognisable by their attire, which
13 distinguished them from the Central African Republic soldiers. Some witnesses will also
14 testify that their attackers boasted about their identities. For example, some attackers
15 said that their victims should thank Bemba for the opportunity to have sex with Central
16 African Republic women.

17 Other witnesses will testify that they saw MLC troops crossing the Ubangi River into the
18 Democratic Republic of the Congo with their pillaged properties. These witnesses will
19 inform the Court about the steady, public and highly visible movements by the MLC
20 soldiers of pillaged goods along the road from the Central African Republic to Zongo, on
21 the border between the Central African Republic and the Democratic Republic of the
22 Congo. Soldiers carried goods, they drove pillaged cars, and these cars, heaped with
23 stolen property, they drove them to Bangui and then ferried the goods across the Ubangi
24 River.

25 Madam President, the crimes were committed in the context of an armed conflict. The

1 evidence will show that the crimes occurred and in the context of the armed conflict
2 between governmental and rebel forces in Central African Republic.
3 Madam President, the crimes were widespread and highly organised. They were not
4 confined to a single location; they occurred whenever MLC soldiers progressed, and they
5 had the official blessing of the MLC hierarchy. Soldiers raped civilians in front of their
6 MLC commanders. Looted goods were stored on the MLC bases, sometimes at the
7 residence of MLC commanders, and together with their commanders, MLC soldiers
8 organised the transportation of these pillaged items into the Democratic Republic of the
9 Congo.

10 Madam President, with your kind permission, I would like to invite Petra Kneuer, senior
11 trial lawyer, to do part of the opening statement.

12 MS KNEUER: Madam President, your Honours. The evidence will show that
13 Jean-Pierre Bemba is criminally responsible under Article 28(a) of the Rome Statute.
14 First, he was the commander-in-chief and had effective authority and control over his
15 troops. In addition to the existing traditional command structure and hierarchy, the
16 evidence will show that Bemba, in fact, maintained hands on, immediate, direct control
17 over the soldiers, commanding and sometimes even circumventing the lower
18 commanders subordinate to him. The Defence may perhaps claim that Jean-Pierre
19 Bemba did not, in fact, have authority and control, either that control was in the hands of
20 his subordinates or that the MLC troops were subject to the then Central African Republic
21 President Patassé's control and authority.

22 If so, the evidence of Bemba's direct involvement, his orders to his troops, and his controls
23 of their conduct in the Central African Republic will refute the first possible line of
24 defence.

25 Instead, your Honours, the Defence (sic) will establish that Bemba exercised control over

1 all military matters and operations and that he had full control over all MLC military units
2 which operated in the Central African Republic in 2002 and 2003.
3 He appointed the military commander for the operations. He made the decision to order
4 MLC troops to go to the Central African Republic, and briefed them before they left.
5 Bemba visited the field. He met with his troops and civilians. Bemba received
6 continuous reports of what happened. Throughout the operations Bemba retained
7 dominant control over his MLC troops, reinforcing them if he deemed it necessary, and
8 withdrawing them at his discretion.
9 Indeed, Jean-Pierre Bemba himself confirmed his sole authority over his MLC militia in at
10 least one statement to the media. Also, Patassé did not have control over the MLC
11 soldiers. Although the evidence relating to Patassé will establish his presence in the
12 Central African Republic, this did not affect Bemba's authority and/or control over MLC
13 troops.
14 Patassé requested MLC troops and supported them, but he never could command, or
15 assume control over them. The evidence will show, Madam President, your Honours,
16 that Jean-Pierre Bemba defined military operational objectives including strategic
17 planning, deployment, weapons used and conduct of operations on a technical and
18 military level.
19 If Patassé or his forces requested specific military operations, the MLC commander of the
20 operations in the Central African Republic would not agree unless the accused expressly
21 consented.
22 In addition, Patassé had no control over their activities off the battlefield.
23 Jean-Pierre Bemba had knowledge of the crimes. The accused visited his troops in
24 Bangui in early November 2002, and in a public speech acknowledged the reports of
25 widespread criminal activities.

1 He also had in place a systematic reporting mechanism and he received regular reports of
2 the MLC activities and operations in the Central African Republic in 2002/2003.
3 Bemba was in constant and direct contact with his field commanders through various
4 communication devices such as radio, walkie-talkies, satellite phones, Thurayas and
5 facsimile machines.
6 The international media also heavily reported on the crimes in the Central African
7 Republic. The evidence will show that Radio France Internationale, British Broadcasting
8 Corporation, Voice of America, Agence France Press, Le Citoyen, for example, extensively
9 broadcasted MLC troops' abuses, especially rapes and pillaging. Journalists also directly
10 informed the accused of these abuses. Further, as the evidence will establish, Bemba
11 never claimed ignorance. He instead dismissed the reports as untrue, claiming
12 innocence on behalf of himself and his troops. Jean-Pierre Bemba had the capacity to
13 prevent, repress or punish and, your Honours, he failed to do anything.
14 The accused had a structure in place to prevent, repress or punish. The evidence will
15 show that he failed not because of incapacity but because he did not want to take serious
16 actions. Bemba promulgated a code of conduct for the MLC which was applicable to all
17 MLC soldiers and military disciplines, but witnesses 33, 36 and 45 will tell this Court that
18 MLC soldiers were not aware of the existence and the contents of the code of conduct.
19 The code was not properly disseminated within the MLC movement. In fact, your
20 Honours, it was inaccessible to most of the MLC soldiers because it was written in French
21 and not Lingala, the language of the MLC army.
22 The accused chose not to disseminate the code, not to train his soldiers in respect of the
23 life and property of civilians. Particularly in advance of his military engagement, the
24 accused failed to pay due regard to law in his operational decision-making during the
25 2002/2003 CAR military operation.

1 He failed to issue clear and effective orders, to ensure that crimes were not committed.

2 To the contrary, when Jean-Pierre Bemba instructed his troops immediately prior to the

3 Central African Republic deployment, he did not remind them of the laws of war.

4 Instead, he knowingly told them that anyone in the Central African Republic will be an

5 enemy, that any -- that the enemy is wearing civilian clothing, that they were not to

6 distinguish between civilians and combatants and that they should view them as the

7 same.

8 After the crimes were committed, the evidence will further show that Bemba was to be

9 seen as caring, as wanting to act, but the Court will see that the steps he took were in fact a

10 sham.

11 He heard complaints early in November 2002 from residents of Bangui about the crimes

12 committed by his troops and, in response, he professed concern and willingness to act, but

13 he did nothing. He did not follow up, he did not conduct training, and he did not

14 demand serious investigations.

15 Moreover, Bemba established a military judicial system within the MLC. The MLC had a

16 disciplinary board that conducted hearings and issued punishment for breaches of the

17 code, except for, among other things, murder, theft and rape, which were referred to a

18 court martial. Bemba used his powers to issue various military decrees, which included

19 ensuring the implementation of sanctions issued by the disciplinary board. The accused

20 controlled his judicial system and personally appointed military judges. Bemba had

21 unfettered ability to unilaterally request, discipline, retain, arrest, investigate and

22 prosecute MLC soldiers.

23 After evidence was presented by nongovernmental organisations and the media, Bemba

24 purported to convene an investigative commission in December 2002, which resulted in a

25 court martial proceeding. But the commission's actions were irrelevant in relation to the

1 crimes committed and their scale.

2 Only a handful of persons were charged. No civilian victims in the Central African
3 Republic were called as witnesses, and the offenders, convicted of petty theft, were not
4 seriously punished. The trials were concluded in December 2002. None of the soldiers
5 was tried for rapes.

6 Witness 45 will describe MLC's trial proceedings in Gbadolite generally. He will tell the
7 Court that the trials were a sham. An illustration, as an illustration, your Honours, he
8 referred to the MLC trials regarding crimes against civilians in Mambasa, Democratic
9 Republic of the Congo. In that case too the crimes were limited to insubordination,
10 attempted extortion and robbery. The sentences delivered were disproportionately low;
11 but even with that, as Witness 45 will tell this Court, some of the MLC commanders were
12 promoted shortly after and the accused pardoned the convicted MLC commanders.

13 Even more telling is your Honours will hear from Witness 45 that Bemba informed the
14 MLC soldiers prior to the commencement of the trial that it was a show trial, designated
15 to satisfy the demands of the international community.

16 The fallacious justice efforts signalled, in addition to knowledge of the allegations, that the
17 accused had the capacity to prevent, repress and punish. They also signalled that Bemba
18 would not exercise that capacity and that the serious crimes were not to be prevented,
19 repressed or punished. By his invocation of justice, the evidence will show that Bemba
20 only covered up MLC crimes.

21 Your Honours, the evidence will also show that after a couple of months of criminality,
22 the accused referred the matter to a United Nations representative but took no further
23 steps, provided no information to the representative, and washed his hands of the matter.

24 The UN acknowledged receipt and wrote to the accused, indicating its availability to
25 assist. Despite Bemba's acknowledgment of receipt of this letter, he did not provide

1 information or followed up on the UN's offer to assist with investigations.
2 That reflects again, your Honours, the capacity to take steps and the failure to do so
3 effectively.
4 Thus, the evidence in this case will establish that Bemba, as a commander-in-chief of the
5 MLC, sent approximately 1,500 soldiers in civilians areas of the Central African Republic
6 with expressed and implied knowledge to ignore any crimes against civilians. He made
7 no efforts to train his troops on the law of war and the acceptable law for practices of
8 soldiers. He ignored or discounted specific complaints about serious crimes committed
9 by his soldiers. He made no efforts to punish or to refer the matter to appropriate
10 authorities.
11 The evidence, in short, will show that Bemba, as commander-in-chief of the MLC, is
12 criminally responsible by his affirmative decisions and failures for thousands of serious
13 crimes committed against innocent civilian non-combatants.
14 This, in a nutshell, is the case that the Prosecution will present.
15 The Prosecution anticipates that it will call as witnesses 18 persons who were victimised
16 or witnessed the victimisation of others. It will call 13 insiders to testify about the
17 activities of the MLC and an expert to testify about military command structure and
18 command responsibility.
19 The Prosecution will also present five overview witnesses who shall provided evidence on
20 the contextual elements of the crimes charged. Additionally, three more experts will
21 testify on rape, as a weapon of war, its impact on civilians in the Central African Republic
22 and provide linguistic expertise.
23 The Prosecution will now explain in greater detail who the accused is, how he organised
24 his MLC and why he sent his troops into the Central African Republic in 2002/2003 to
25 assist the then President Patassé.

1 The Prosecution will describe in greater detail the crimes and explain why those crimes of
2 the gravest nature, committed with his knowledge, under his command require
3 prosecution before the International Criminal Court.

4 The Prosecution will explain the MLC structure, and how that structure and his decision
5 that his troops would commit crimes with impunity, made him responsible for his troops'
6 actions.

7 First, who is the accused. Your Honours, Jean-Pierre Bemba is the son of Jeannot Bemba
8 Saolona, a close confidant of the former President of the Democratic Republic of Congo
9 Mobutu Sese Seko. Bemba's father was one of the most powerful figures in the Mobutu
10 regime and an enormously wealthy businessman.

11 During the Mobutu regime, Bemba's family was closely connected to the government. In
12 May 1997, however, Mobutu's government was overthrown. In 1998, one year later, the
13 accused established a private militia, the Armée de Liberation du Congo, also called ALC,
14 in opposition to the new government led by the then President Laurent-Desire Kabila.

15 In 1999, Bemba transformed his private militia into a hierarchically organised movement
16 with a political and military wing, the MLC, which he based in the Equateur Province an
17 area rich in mineral resources; in particular, gold.

18 The MLC was formalised through the adoption of a Statute that specifically conferred
19 enormous power on Bemba himself. The accused became by statute both the president
20 and the commander-in-chief of the MLC. As of 13 July 2002, Bemba awarded himself the
21 rank of general. As supreme commander of the MLC, the statute neither contemplates
22 Bemba's removal, nor his replacement.

23 Witness 213, an insider who had been with Bemba since he established the MLC, stated,
24 and I quote: "Bemba started a rebel movement for his own interests not to liberate the
25 Republic of Congo, but for himself." His statement further said, "I understand Bemba

1 because I lived with him for a number of years. When we were at war, he did not give a
2 damn. I'm telling you this so you understand how Bemba operates. That's when I
3 realised that the man was a gold digger. It was then that I understood that this man
4 would let us die here. He was not thinking about our supplies, he was sacrificing us."
5 Bemba structured the military wing of the MLC along conventional army lines. He was
6 the top commander. The MLC had a hierarchically-organised military structure with an
7 Etat major and other structures found in conventional armies. The MLC was made up of
8 soldiers from several ethnic groups from the DRC, including an ethnic group called
9 Banyamulengue. That group is significant, your Honours. The evidence will show that
10 many victims identified their attackers as Banyamulengue. And your Honours will also
11 hear witnesses describe generically the attackers as "Banyamulengue."
12 Notably, the evidence will show the impressive organisational capabilities of this private
13 militia. Within 24 hours of Patassé's request - and I repeat, Madam President and your
14 Honours - within only 24 hours Bemba mobilised, equipped and deployed two battalions
15 from the Democratic Republic of Congo across the border to the Central African Republic.
16 Bemba ordered the deployment of the Poudrier B Battalion and 28th Battalion and
17 appointed General Moustapha Mukiza as the commander for the Central African
18 Republic operations.
19 Upon receiving orders from the accused, the MLC forces moved quickly and efficiently
20 across the international border formed by the Ubangi River. Since there were no bridges
21 on the wide river, the two battalions floated across by boat bringing enough weapons and
22 ammunition to sustain them in combat for days.
23 When did the MLC ends up being deployed to the Central African Republic? Bemba
24 sent his troops there to help the president of that country. As previously mentioned,
25 then President Patassé faced the rebellion led by his army Chief of Staff Francois Bozizé.

1 Bozizé, whose base of support lay in and around Bangui, led his forces to Bangui in an
2 effort to unseat Patassé.

3 In response, Patassé mobilised the CAR national army, known as the Force Armée
4 Centrafricaines, or FACA, and other forces including the Unité de Sécurité Présidentielle,
5 or USP, to launch a counter-offensive.

6 To strengthen his counter-offensive, Patassé asked Bemba to assist in defending him.

7 The MLC was superior in military strength to the FACA in personal numbers as well as in
8 weaponry. In addition, as Patassé would later explain, he could not trust his own army
9 to defend him, which is why he called his, and I quote, "St Jean-Pierre Bemba" to assist
10 him.

11 Why did the accused intervene on Patassé's behalf? Because his control of Equateur
12 required that the CAR remain in the hands of friendly troops. His political and economic
13 survival depended in large on security guarantees from that government.

14 Bemba's military and political base in Equateur shares a border with the Central African
15 Republic. The Central African Republic capital, Bangui, lies just across the river from
16 Equateur Province. For strategic reasons, Bemba needed to secure the alliance of the
17 Central African Republic.

18 PRESIDING JUDGE STEINER: Sorry, Ms Kneuer. The court officer wants to just let the
19 parties and participants know that some slides would be displayed during your
20 presentation and -- for instance, the Bench was not aware. So I would ask, please, the
21 court officer to make this announcement.

22 THE COURT OFFICER: Yes, Madam President. Actually, I have noticed that the slide
23 show has already started; and if parties and participants wish to see the slide show, they
24 just have to push on the button "PC1" next to their computers in order to see the slide
25 shows.

1 Thank you very much.

2 PRESIDING JUDGE STEINER: Thank you, court officer. Sorry for the interruption.

3 MS KNEUER: Thank you, Madam President. For strategic reasons, Bemba needed to
4 secure the alliance of the Central African Republic to deter potential attacks from the
5 Democratic Republic of Congo government that otherwise might come at him from the
6 Central African Republic.

7 In 1998, the MLC faced an unexpected attack from former DRC President Laurent Kabila,
8 who had secured transit rights from the Central African Republic government in order to
9 attack Bemba's MLC troops from the rear. This incident motivated Bemba to forge a
10 strong alliance with Patassé so as to maintain control of and secure their shared border.

11 The accused also needed the Central African Republic to continue receiving supplies in
12 Equateur Province, DRC, through the Central African Republic including overland and by
13 air through Bangui airport. Bemba also used Bangui as a secure route for his travel
14 abroad.

15 Because Bemba needed an ally in the Central African Republic to sustain his own power,
16 he forged a personal and political relationship with the then president. He and Patassé
17 exchanged visits. Bemba referred to Patassé as "father" and Patassé referred to Bemba as
18 his son. And Bemba viewed any threat to Patassé's political survival as a threat to his
19 own political survival. It is against this background, your Honours, that the accused
20 twice intervened in the Central African Republic, first in 2001 and again in October 2002,
21 when Patassé's presidency was under threat.

22 And because Bemba needed Patassé's presence to sustain his own power, his assistance on
23 Patassé's behalf exceeded that of a military force to help rout a military resistance. He
24 also directed the MLC to target the civilian population to punish them for their perceived
25 support for the rebels and to discourage further rebel efforts. There was a strategic

1 objective to these crimes. The evidence will show that the crimes committed by the MLC
2 troops were not incidental. It was permitted as a military tactic.

3 Finally, your Honours, at its heart this case is about crimes, widespread, organised and
4 devastating crimes; crimes committed against the CAR civilian population.

5 The MLC attacks against civilians were widespread. In all the locations in which they
6 deployed, MLC troops targeted Central African Republic civilians on a large scale,
7 committing rapes, murder and pillaging. At this time I refer your Honours to the
8 presentation - the visual presentation - of the Prosecution.

9 These locations included Bangui, Fou, Boy-Rabé, Gabongo, PK12, PK13, PK22, Damara,
10 Sibut, Bossembélé, Bossempaté, Bozoum, Bossangoa and Mongoumba.

11 The slide that your Honours see right now is a computerised map of the Central African
12 Republic. The map illustrates the locations in which MLC soldiers committed crimes
13 against civilians, the types of crimes they committed, as well as the dates of commission of
14 these crimes. MLC troops were in total control of these areas, the only force operating in
15 those areas, at times indicated on the map.

16 The evidence will be clear, your Honours. MLC troops were the direct perpetrators of
17 the crimes alleged.

18 The attacks by MLC soldiers against civilians in the Central African Republic also
19 followed a distinct pattern and were typically conducted in an organised manner. They
20 targeted former rebel-held territories. The evidence will show that MLC troops used a
21 door-to-door system of attack in Bangui, PK12, Mongoumba and other former rebel-held
22 areas.

23 MLC forces organised themselves into small groups of around four soldiers for the
24 purpose of going from house-to-house to rape, pillage and kill civilians with captured
25 localities. As to the crime themselves, first the Court will hear many witnesses and

1 victims talk about rapes, and those rapes were horrific. MLC forces used rape as a
2 military tactic.

3 The evidence will show that MLC forces engaged in gang rapes as well as repeated and
4 multiple rapes perpetrated by different groups of MLC soldiers against the same victims
5 on a given day. They committed rape anywhere, any time, against any women, girls or
6 elderly people, as well as against men with authority. They did it at night, or in broad
7 daylight, in homes, in compounds, on the streets, in the fields, in public and in private.
8 They raped civilians in the presence of MLC commanders and, as Witness 87 will testify,
9 your Honours, MLC commanders themselves even actively participated in these rapes.

10 These multiple witnesses will tell the Court about the variety of ways in which MLC
11 troops raped them; single, multiple and repeated rapes, the aggravating circumstances of
12 the rapes, and the targeted nature of the rapes. The message behind these rapes was
13 particularly evident from MLC's targeted and selective rape of men: Men in positions of
14 authority, community leaders and protectors of their communities. They specifically
15 searched for community leaders who they raped in front of their family, or in public.

16 These community leaders lost their standing and pride in the community. Some of them
17 were deserted by their wives because of the shame and humiliation caused by the MLC's
18 rapes.

19 When civilians were raped, family members were watched -- were forced to watch at
20 gunpoint. The evidence of Witness 23 provides a clear illustration, your Honours.

21 Witness 23, a father, a husband and a community leader, identified himself to the MLC
22 soldiers as the representative of his village. They replied, and I quote, "Right, you are
23 exactly the kind of person we are looking for because you protect the rebels." Targeting
24 him specifically, they raped him publicly, in front of his family.

25 Afterwards, MLC soldiers then raped his wife in his presence. His daughter, a minor,

1 was also raped until she passed out. This evidence will demonstrate the nature, gravity
2 and severity of MLC troops attacks against civilians.

3 Madam President, your Honours. The evidence will also establish a destructive pattern
4 of pillaging that, like rape, was a key feature of MLC's operation in the Central African
5 Republic. Pillaging was also widespread and executed systematically. The MLC took
6 advantage of the CAR conflict in 2002/2003 as an opportunity for MLC soldiers to acquire
7 material gain and to enrich the MLC rebel group as a whole.

8 In a highly organised manner MLC troops pillaged civilians' possessions in every location
9 in which they were deployed. They pillaged civilians' possessions: Furniture,
10 mattresses, electronic equipment and other appliances, cars, et cetera. They pillaged in
11 broad daylight without impunity. They pillaged in the presence of MLC commanders
12 who also participated in and directed the pillaging.

13 Pillaging was well-organised in a manner which reflects its deployment as an
14 organisational policy of the MLC. MLC forces established storage facilities, including the
15 field commander's house, as well as their army bases, for housing pillaged items.

16 Together with their commanders, the MLC pillagers organised the transportation of their
17 stolen items to the Democratic Republic of Congo.

18 MLC forces drove vehicles overloaded with pillaged items to the DRC. Bemba then
19 distributed pillaged vehicles from the Central African Republic among senior MLC
20 military personnel in Gbadolite, Democratic Republic of Congo. The accused did not
21 stop the pillaging. In fact, your Honours will also hear how Bemba ordered his military,
22 his soldiers, to launch a retaliatory attack on Mongoumba because Central African
23 Republic forces, protecting their nationals, had prevented MLC soldiers from transporting
24 pillaged items to the Democratic Republic of Congo.

25 Bemba's conduct approved and institutionalised pillaging by MLC forces. It

1 emboldened his subordinates to engage in and distribute items pillaged from the Central
2 African Republic civilians and, lastly, the evidence will establish that MLC forces
3 murdered civilians.

4 These killings also followed a pattern. They killed civilians who resisted rape, physical
5 violence and pillaging. They killed them sometimes as part of a single attack or a series
6 of attacks.

7 The murders of civilians was widespread. MLC forces engaged in mass killings of
8 civilians in difference locations in which they deployed in the Central African Republic.
9 They killed civilians indiscriminately. Witness 209 will describe for the Court how MLC
10 troops beheaded civilians and displayed their heads along main roads. Witness 6 will
11 testify about two mass graves containing remains of civilians killed by MLC soldiers.
12 Other victims and witnesses will also testify about MLC killings of civilians in various
13 locations in the Central African Republic.

14 At the end of the case, the Prosecution will have proven all the crimes committed against
15 civilians, committed by MLC forces under the effective authority and control of the
16 accused Jean-Pierre Bemba.

17 The evidence will establish all the elements for the Court to find that Bemba failed to
18 provide clear orders to his troops not to attack civilians, failed to train his soldiers in
19 international humanitarian law, failed to set up a reporting and enforcement mechanism
20 to monitor and prevent crimes, sent them in as unpaid armed troops who could be
21 expected to pillage, tolerated the crimes and dismissed the public reports, failed to
22 investigate and punish, issued a retaliatory strike against Central African Republic forces
23 who interfered with the MLC's commissions of crimes and, finally, rewarded his troops
24 for their crimes.

25 As a result of his failure, thousands of civilians were victimised and traumatised in the

1 most cruel manner by the MLC's lawless criminality. Based on this evidence, your
2 Honours, the Prosecution will ask the Court to find Jean-Pierre Bemba guilty beyond a
3 reasonable doubt of the charged crimes.

4 Madam President, your Honours, I will now defer to the Deputy Prosecutor who will
5 conclude the Prosecution's opening statement. Thank you very much.

6 MS BENSOUDA: Madam President, your Honour. This is the Prosecution's case that
7 will prove Jean-Pierre Bemba's responsibility for the crimes alleged.

8 In conclusion, we come back to where we started. These are the most serious crimes
9 committed against innocent civilians by troops under Bemba's control. Bemba's decision
10 to send those troops to commit crimes against civilians, his failure to live up to his
11 responsibility as a commander, is criminal.

12 The Prosecution recalls statements made by the Defence in previous submissions to this
13 Court that criminal liability based on command responsibility is not significant. It does
14 not show personal culpability. It is, at most, negligence. But Madam President, this
15 dismissal of the seriousness of the charges is contrary to the Rome Statute, a Statute which
16 punishes commanders because of the great harm that they can cause by their failure to
17 require that their troops act lawfully by their tolerance of criminality. The dismissal of
18 the suggestion of his personal, moral liability is also contrary to the facts that will be
19 proven in this case.

20 The evidence will show that Bemba chose to not exercise proper command authority and
21 control over his soldiers. He chose to not prevent the crimes because these crimes
22 furthered his goals.

23 The merciless and relentless pillaging impressed upon the civilians in the affected region
24 that they must pay a great financial price for Bozizé's rebellion. The vicious rapes of men,
25 and women, of children, of the elderly, of pregnant women, rapes committed forcibly in

1 the presence of the victims' families, or in public, were not for personal sexual pleasure.
2 They were designed to dominate and to humiliate, to destroy people and families and
3 communities. The murders of people who resisted, who refused to submit to
4 victimisation, show their powerlessness. Together, the crimes would weaken the ability
5 or the determination of the people to support a future action against Patassé.
6 Bemba is not being charged because somebody must be held accountable and that, years
7 after the events, the Prosecution cannot identify the soldiers who personally committed
8 the rapes, the pillaging or the murders. Bemba is here because he sent his troops in with
9 licence to violate the laws of war, and destroy civilian communities. He is here because
10 he instructed his troops not to distinguish between civilians and combatants. He is here
11 because he did not train his troops, either in advance or after he was told of their crimes.
12 He is here because he did not ensure that his subordinate commanders controlled their
13 troops. He is here, Madam President, because commanders have at their disposal
14 hundreds and thousands of soldiers whose capacity to commit grave crimes is
15 unquestioned. He, like other commanders, had a duty under the Rome Statute to take
16 steps so that his soldiers would not commit these grave crimes.
17 And, Madam President, your Honours, he is here because of the victims, because they
18 deserve justice. The Prosecution is acting in the name of the Central African Republic
19 victims, those who died and those who survived, those who are plagued by memories of
20 horrors, and those who are HIV infected.
21 We are also presenting this case in the name of citizens from 114 States Parties to the
22 Rome Statute, which have committed to support this Court in prosecuting crimes which
23 shock to conscience of humanity.
24 Madam President, your Honours, this is a difficult case to present, a difficult case to hear.
25 The Prosecution will rely on witnesses who have been victims, and has taken courage -- it

1 has taken courage for them to come forward. Not only have they been raped and
2 violated, subject to degrading and humiliating treatment, but the very crimes committed
3 against them have made them outcasts in their own community.

4 As a continuing legacy of those crimes, many continue to be deprived in some instances of
5 family life, community support. Some are sick with AIDS. Jean-Pierre Bemba's victims
6 were discriminated against to show their powerlessness, abused in horrible ways by his
7 soldiers, and cast aside. He let it happen. He did nothing. This trial will recognise
8 their suffering and empower them, transforming their accounts of rape and their
9 experiences of violation into evidence that will allow Jean-Pierre Bemba to be held
10 responsible for what he did. But this trial, this provision of international justice, is not
11 just a means to recognise the crimes they endured; it will empower them today. Their
12 painful experience of rape and humiliation will become evidence against Jean-Pierre
13 Bemba. The judicial process will now follow its course. The Prosecution hopes that the
14 whole of the international community, Madam President, beyond this courtroom will also
15 play its part for the victims. They need attention. They need medical treatment and
16 they need assistance now.

17 Thank you Madam President. Thank you, your Honours.

18 PRESIDING JUDGE STEINER: Thank you, Mr Prosecutor, Madam Deputy Prosecutor,
19 Ms Kneuer, for the presentation, the opening statements on behalf of the Prosecution in
20 this case.

21 I wanted to inform that there has been a problem in the beginning with the transcripts,
22 English and French transcripts, that is going to be corrected in the final edited version, in
23 relation to the reading of the charges on murder as crime against humanity, and as a war
24 crime. The problems with the transcripts will be corrected.

25 We have only five minutes, and because we need to give a break to our brave interpreters,

1 so I'm going to suspend this hearing for half-an-hour, and we'll be back at 5 o'clock to
2 continue with the opening statements for this hearing. So, the hearing is suspended for
3 30 minutes.

4 THE COURT USHER: All rise.

5 (Recess taken at 4.23 p.m.)

6 (Upon resuming in open session at 5.04 p.m.)

7 THE COURT USHER: All rise. Please be seated.

8 PRESIDING JUDGE STEINER: So we are resuming this opening session on the case of
9 The Prosecution against Mr Jean-Pierre Bemba Gombo.

10 Now the Chamber is going to give the floor to the legal representatives of victims
11 authorised to participate in this phase of the trial to express their views and concerns in
12 accordance with Article 68(3) of the Statute. I would like to remind the legal
13 representatives that in accordance with the oral decision taken by the Chamber at the
14 status conference held on 21 October 2010, the legal representatives were afforded the
15 maximum of one hour to be shared between both of them for the presentation of opening
16 statements.

17 As well in accordance with decision 1020 issued by the Chamber on 19 November 2010,
18 the Office of Public Counsel for Victims is authorised to make an opening statement on
19 behalf of the applicants for victims' participation in this trial. Those applications are still
20 pending review by the Chamber.

21 In accordance with Regulation 54(a) of the regulations of the Court, the Chamber has
22 decided that representatives of the OPCV will have a maximum of 15 minutes to make an
23 opening statement. So I will give the floor to legal representatives and to OPCV to see
24 how they are going to share this one hour and 15 minutes among them. So legal
25 representatives, Maître Zarambaud, Ms Douzima and Ms Massidda, you have the floor.

1 MR ZARAMBAUD: (Interpretation) Madam President, your Honours, I am
2 participating for the first time in a hearing of the International Criminal Court, and I
3 would like to thank the Court and the Prosecutor for the important work that has been
4 done and which has led to the commencement of this trial.
5 I have a thought for my colleague Gungai Wanfu (phon) who was a legal representative of
6 victims here and he died while coming back from a meeting to meet with victims in Sibut.
7 That having been said, as the saying goes, no matter how long the night is, the day will
8 always break.
9 The night of the victims of the mercenaries of the self-proclaimed General Jean-Claude
10 Bemba (sic) did not only continue until the night of October 2002 to March 2003, it also
11 lasted from March 2003 to this important day of 22 November 2010; that is, today. But
12 that night will continue for the entire duration of this trial; that is, for a few months and
13 maybe even a few years.
14 It is after justice would have been rendered that the victims will be able to begin the
15 process of rebuilding to the extent possible. This is neither a reproach, nor a regret,
16 and slowness is part of justice so long as everything does not come -- become mired.
17 There are thousands of victims, and this delay is due to the volume of work that has to be
18 done.
19 Everyone knows Jean-Pierre Bemba Gombo, who is a warlord and who created a state at
20 the southern border of the Central African Republic. He was at the same time the
21 executive branch, the legislative branch and the judicial branch of that state. He is
22 vice-president of the republic and also senator of the country. Everybody knows the
23 country from which he came, where he came from, and where the mercenaries came from
24 to come to the Central African Republic.
25 Everyone knows the Democratic Republic of Congo, that some people refer to as a

1 geological scandal because of the mineral riches. This is a country of more than
2 2.4 million square kilometres with its millions of inhabitants. Everyone also knows that
3 country because it is also the country of Patrice Émery Lumumba who was a great hero in
4 the course of unity and fraternity in Africa.
5 But how many people know the victims, these poor small traders, the poor small farmers
6 who are simply represented by numbers in this courtroom? Who knows those women
7 who were raped sometimes in the presence of husbands and their children? Who knows
8 them?
9 The Republic of Central Africa is also little known. Today it is difficult to have someone
10 understand where the Central African Republic is located. Sometimes you have to say
11 that that is the country of Jean-Bedel Bokassa and then people know what it is, but this is
12 also the country of Barthelemy Boganda.
13 Barthelemy Boganda was also a great hero of the cause of unity and fraternity in Africa.
14 He was not as well-known internationally as Patrick Lumumba, probably because he died
15 before the independence of his country.
16 And so, in a nutshell, the Central African Republic is bordered to the north by the
17 Republic of Chad, to the east by the Republic of Sudan, to the west by Cameroon and to
18 the south by the Democratic Republic of Congo and Congo.
19 The fact that mercenaries came from the Democratic Republic of the Congo, that is from
20 the country of Patrice Émery Lumumba, to perpetrate massacres and cause distress in the
21 Republic of Central Africa - that is, the republic of Barthelemy Boganda - this is a great
22 insult to that great defender of African fraternity. This is a great insult to the fraternity
23 that has always united the two neighbouring countries of the Democratic Republic of
24 Congo and the Central African Republic. That cannot be tolerated.
25 At the current stage of the proceedings, the reality of the crimes that were perpetrated

1 cannot be in dispute. There were women raped, there was pillaging and there were
2 massacres. These are facts that are intangible.

3 Obviously, we may well be asked to produce witnesses, and when a woman will say you
4 were raped -- that I was raped in front of my children and husband, they will be told that
5 these are relatives, and so this cannot be accepted. You have to have medical certificates,
6 and so on, to prove that there is rape.

7 In case, in cases of rapes, the women are asked to produce so many details that sometimes
8 they prefer to stay quiet, to suffer and lose their dignity, but I believe that that will not be
9 the case at this international tribunal.

10 From October 2002 to March 2003, the self-proclaimed general, Jean-Pierre Gombo,
11 travelled on several occasions to the Central African Republic where he discussed with
12 President Ange-Félix Patassé, who had invited him more than once to travel to Sibut, and
13 that is one of the locations where those acts of violence took place.

14 Nevertheless, he claims not to know anything about what happened. He says that he
15 was not informed. So I am saying that four questions might arise: First of all, during
16 the period under review, the Democratic Republic of Congo itself was partially occupied
17 by foreign armies and mercenaries from other countries. Why is it then that Jean-Pierre
18 Bemba, who is a general, had not sent his troops to fight against those mercenaries
19 occupying his own country rather than send them to the Republic of Central Africa, and
20 for what purpose?

21 The second question that arises is as follows: Not being the leader of a state that is
22 internationally recognised, in what capacity and for what purpose did he send
23 mercenaries, because this is how we must refer to them, to the CAR?

24 Thirdly, did he make the effort, that is by reading the CAR constitution or asking
25 President Ange-Félix Patassé, who says he invited him to that country, did he ask him the

1 question to know whether the president of a country had the authority to call an army
2 into his country to fight a war without an authorisation from the country's parliament? I
3 do not believe so.

4 Fourthly, the self-proclaimed general Jean-Pierre Bemba Gombo does not deny having
5 travelled to the CAR. He does not deny having discussed several times with the then
6 President Ange-Félix Patassé.

7 Now, given that there were acts of violence, when he was discussing with the President,
8 didn't he at least discuss the situation that was prevailing? He didn't think about that?
9 Are we to suppose that when he met with President Patassé he only discussed the rain
10 and the good weather? The Court will have to know that.

11 Madam President, your Honours. I am saying that we will obtain answers to those
12 questions thanks to your jurisdiction and by obtaining questions, or rather answers, to
13 those questions I have absolutely no doubt that you will render justice to the people who
14 were the victims of those horrible acts, and you will make it possible not only for those
15 people to rebuild their lives, only for central Africa to have justice rendered, but you will
16 make it possible to humanity, and specifically Africa, to make sure that those who want to
17 continue in this path should know that impunity is no longer allowed, and if people
18 continue to perpetrate such acts they will find themselves also before the International
19 Criminal Court and they will be punished.

20 It is because of that that the victims will follow the proceedings with all the trust and
21 confidence inspired by the probative evidence and information in these proceedings that
22 will make it possible to render justice to the victims. Thank you.

23 PRESIDING JUDGE STEINER: (Interpretation) Your microphone, counsel.

24 MS DOUZIMA-LAWSON: (Interpretation) Madam President, your Honours, I believe
25 we can say today that the hour of truth has arrived. There is a new hope to finally know

1 the truth about what happened and about the atrocities to which the Central African
2 people were subjected to during the period October 2002 to March 2003.

3 Yes, two years after the arrest of the accused, and after at least three postponements of this
4 trial, there are great expectations for those victims who were physically injured. This is
5 an historic moment for them. I can tell you that the CAR, a post-conflict country, had of
6 course prior to that experienced internal armed conflict leading to murders and the
7 destruction of property. However, the perpetrators, even though investigated, were
8 never held responsible for their acts and, in fact, they were granted amnesty.

9 In 2001, just one year before the ICP -- ICC became operational, that is before the entry
10 into force of the Rome Statute in July 2002, the MLC troops had already perpetrated acts
11 in part of Bangui, that is the capital of the CAR, to crush an attempted coup d'état with
12 systematic pillaging as a consequence. The perpetrators were never held responsible and
13 this is how come one year after that the Congolese mercenaries once again came -- once
14 again came to the CAR and committed abominable crimes which will be remembered by
15 the Central Africans forever, because the people of that country are known to be peaceful,
16 inoffensive, welcoming and hospitable.

17 Let me give you a brief background of the situation. In October 2002, the then President
18 of the CAR, Ange-Félix Patassé, faced with an attempted coup d'état, conducted or carried
19 out by the rebellion of his Chief of Staff, appealed to Jean-Pierre Bemba to provide him
20 with military assistance. Jean-Pierre Bemba, who was then the president and
21 commander-in-chief of the Congolese Liberation Movement, known as the MLC, which
22 was a rebel movement, sent his troops to him, commonly known as the Banyamulengue.
23 These troops penetrated into the capital Bangui after crossing the Ubangi River, which
24 was not secured at the time, before advancing into the other towns in the country.

25 After having reconquered the areas occupied by the Central African rebels, the Congolese

1 mercenaries organised themselves into groups and engaged in the acts that are the subject
2 of the current proceedings. These were widespread and systematic attacks against the
3 civilian population within a context of an armed conflict. That is not in dispute. In fact,
4 Central African civilians were shot in cold blood, or their throats slit because they tried to
5 resist the pillaging of their property, of the property, or the property of their close ones, or
6 simply because they were suspected of supporting the Central African rebels. Others
7 saw their close family members abducted forever. This means that they were not able to
8 bury their own people and this is very painful for those of us Africans.

9 The pillaging was automatic and was carried out from house to house. Even at places
10 where people were killed they took away everything that they could find, even domestic
11 animals, and whatever they could not take away they destroyed.

12 Rape is a great part of the charges against Jean-Pierre Bemba. Frequently, collective
13 rapes were carried out against women and children. Even those who were menstruating.
14 Rape was carried out on children, and even elderly people, and these also included men
15 which had not happened before in our country.

16 This happened in public and these acts were accompanied by threats, and weapons were
17 sometimes used as instruments of rape. Rape was used as a true weapon of war with a
18 purpose of intimidating, humiliating, terrifying and punishing the members of the civilian
19 population suspected by those demons of complicity with the Central African rebels.

20 These crimes had devastating effects within the Central African Republic and caused great
21 distress in general and specifically for the victims who will suffer the after-effects for their
22 entire lives. In fact, the victims of rape are mostly vulnerable people. They are rejected
23 by the society because they are considered as having been soiled. They are stigmatised,
24 traumatised and many of them were infected and later died. Some of them even
25 committed suicide.

1 In Africa in general, and in central Africa in particular, the death of the family head is an
2 enormous loss because the head of the household is usually responsible for more than a
3 dozen people including minors who are now left to their own devices on the streets
4 because they are precocious victims. The victims of the pillaging saw the fruits of several
5 years of work disappear in a single day, making them even poorer than they had already
6 been.

7 Madam President, the victims that we represent, and who have been admitted to take part
8 in these proceedings, are parties to the proceedings. Their interests are concerned
9 because they suffered prejudice as a result of the crimes charged against the accused.

10 It is in fact the existence of the victims which justifies the prosecution and that is why the
11 Rome Statute gives pride of place to the rights of victims. The inability of the Central
12 African courts to prosecute the alleged perpetrators of those crimes, despite the clear will
13 of the Central African Republic, had made those victims afraid that they will never receive
14 justice. Fortunately, the International Criminal Court is here.

15 This trial will therefore lead to great hope, particularly since this is the trial of someone
16 who is considered as very powerful and still known as a warlord. It is indeed high time
17 to put an end to the impunity of those who believe that they are above the law, who
18 believe that they are untouchable, for one reason or the other. This will be a great event
19 which will certainly appeal to the conscience of the big and powerful who do not have
20 any respect for human beings.

21 Jean-Pierre Bemba is accused of having acted as a military commander within the
22 meaning of Article 28 of the Rome Statute, which governs the ICC. In effect, it has been
23 broadly established that the accused person occupied a position of commander-in-chief
24 and President of the MLC troops. This became known through the statements of
25 witnesses, but also through interviews given by the accused himself, who stated his own

1 position within the MLC, and this information was disseminated through several
2 documents published nationally and internationally and which made mention of that
3 position. It was also clearly mentioned in internal documents.
4 Because of his strategic and decisive position as General, Commander-in-Chief and
5 President of the MLC, the individual responsibility of the accused person as a military
6 leader is in fact in play. It cannot be otherwise, given that one of his commanders told
7 his troops, "You do not have any relatives. You do not have any wives. You are going
8 there, that is to the Central African Republic, and you will destroy everything. This is
9 war. Jean-Pierre Bemba sent you to kill and to have fun."
10 Crimes were committed on a large scale by those soldiers, leaving the population of the
11 Central African Republic in a state of total desperation. These were serious crimes
12 committed against civilians who did not do anything. They did not take part in fighting
13 that did not involve them and, furthermore, the civilians did not do anything to their
14 attackers.
15 All the victims have stated that the MLC troops, which were easily identifiable because of
16 their language, their accent, and in fact those soldiers themselves introduced themselves
17 to their victims as such and were even courageous enough to explain the purpose of their
18 mission.
19 Jean-Pierre Bemba must therefore be held responsible for his acts and for his crimes before
20 the International Criminal Court and particularly before the people of the Central African
21 Republic, which is attached to justice and peace. Thank you.
22 MS MASSIDDA: (Interpretation) Madam President, Honourable Judges, today I am
23 addressing you on behalf of the applicants in the proceedings against Mr Jean-Pierre
24 Bemba Gombo. I am speaking to you in the name of those who are still waiting for a
25 decision on their status in this affair, persons who have been authorised to express their

1 views and concerns given the exceptional circumstances that didn't make it possible for
2 the Chamber to rule on their application before the beginning of the trial.

3 I will therefore speak in their names and will try to convey as faithfully as possible their
4 stories and their desires.

5 In the course of my presentation I will simply refer to them as victims, and I will be using
6 this word in the broad sense of the term, since the events that unfolded between
7 October 2002 and March 2003 affected practically the entire population of the Central
8 African Republic.

9 To break with one's silence, to a large extent this is what the victims that I represent today
10 aspire to, to break with one's silence and to break the silence of the world with regard to
11 the terrible events that they were confronted with. Silence as an obstacle to justice,
12 having a voice as the first step towards establishing the truth and towards gaining access
13 to justice;

14 to break with one's silence, to liberate oneself and to construct a support system
15 within one's community in order to exist in spite of the weight of the past, to break with
16 one's silence in order to be heard and to make known the injustices one suffered and so as
17 to share one's experiences; to break with one's silence in order to finally understand that
18 what took place cannot be excused, cannot be justified, and in so doing no doubts should
19 be left and there should be no ambiguity about the nature of the crimes committed.

20 One should cry out that such things should not happen again. There should be no new
21 victims of this kind to break with one's silence and to emphasise the words and acts to
22 identify the crimes that correspond to the suffering and to the damage that victims
23 suffered. One should thus provide an answer to what happened.

24 The victims that I represent will all bear witness to -- in light of the events that affected
25 them, to the nature of the particularly cruel crimes they were the victims of, but they will

1 also bear witness to the widespread nature of these crimes. They were widespread with
2 regard to the scope of the attacks, and the nature of the crimes was widespread.
3 They were widespread in a geographical sense. They covered all the areas from Bangui
4 to the ends of the city, PK12, PK22, the Fou neighbourhood, the Boy-Rabé neighbourhood.
5 They were committed from Ngota to Ngale to Mongoumba in Boale, in Bossemptélé,
6 Bossembélé, Bozoum, and in Sibut. These crimes were numerically significant because
7 entire families were affected, entire communities were affected as well. There was no
8 exception. These crimes were widespread and had no limits when it comes to the age of
9 the victims and their sex. These crimes had no limits with regard to the vulnerability of
10 some of these victims.

11 And, finally, these crimes were widespread in terms of the nature of the crimes
12 perpetrated. The victims were affected in their humanity, and their moral, physical and
13 material well-being was affected. Their houses were looted, pillaged, destroyed and
14 nothing was left to them. Sometimes they were occupied for a day, three days, for two
15 weeks, for four months, and even the most insignificant item was taken away from their
16 houses. Everything that could be used was pillaged or destroyed: beds, furniture, chairs,
17 tables, roofing, the frame, door frames, window frames, shoes, clothes, foodstuff, vehicles,
18 cars, motorbikes, push chairs, bicycles, tricycles, certain sums of money, their savings that
19 was to serve for the survival of their family. Their cattle was decimated. Their shops
20 and revenue from their shops was stolen, as well as their drinks. Everything was
21 pillaged and destroyed and sometimes burnt: their goods, their bags of cassava, rice, corn,
22 their bags of smoked fish, or smoked meats, their palm oil, their baggage, their straw bags
23 that they used when they were on the roads in returning from voyages or when they were
24 in the market, all these items were stolen.

25 The perpetrators entered their houses, their shops, their fields, their farms, their

1 concessions, their churches, the schools, their markets, their hospitals, medical centres and
2 ports. Some of the victims had to carry their own goods that had been stolen by the
3 Banyamulengue. Often they had to transport these goods that were to serve for their
4 survival, but that were also to serve as booty for the troops involved, and they had to
5 transport them in the direction of the Democratic Republic of Congo, to the banks of the
6 river.

7 Apart from being humiliated by being taken hostage and used as a labour force, they also
8 suffered moral and physical suffering and material damage. This pillaging was often
9 accompanied by damage inflicted on their morale, by physical damage, by insults, verbal
10 aggression. Their dignity was insulted; they were wounded and tortured.

11 Other victims saw their sons, their daughters, their mothers, their fathers, their uncles,
12 their aunts, their neighbours, their brothers, their sisters, shot down in cold blood. They
13 would have their affairs looted; then they would be killed; killed, then looted, tortured,
14 shot down, raped, assassinated. Some of these victims were abandoned, were stripped
15 of their clothing, left on the roads after having lost everything. All they could dress
16 themselves in was their courage and a scrap of dignity that they tried to grab on to.

17 The pillage perpetrated, whether accompanied by destruction or torture, by murder or
18 rape, when it didn't end terribly, made the victims relive this situation perpetually. After
19 years of efforts, of privations and of work, they had finally managed to construct their
20 own house, to amass certain savings, to feed themselves and their families, but they were
21 then left without anything and had to rebuild everything.

22 Many could not reconstruct their lives and were thus obliged to rent make-shift
23 accommodation. They had to move out, and sometimes they had to move to
24 neighbouring villages, sometimes to other countries. Sometimes they had to go very far
25 from their very own country in order to try and forget what had happened to them and to

1 forget the sentiment of lost security. The victims were surprised in their houses at night
2 or while asleep, during the day at market, in fields, while pursuing their daily commercial
3 activities, or when returning from other parts of the country; or men from the Cameroon
4 or from Congo, after having obtained goods that they were to resell in Bangui, they were
5 surprised by rivers, in ports. They were arrested in their cars, while on their boats.
6 They were surprised on the way to school or in the school itself. They were sometimes
7 arrested, sometimes abducted, illegally confined.
8 Some were liberated and managed to flee. They spent many weeks and months fleeing,
9 hiding in the bush. They were exhausted, ill and wounded. Some never returned, and
10 there were doubts and there was concern about how they had been affected by these
11 events and, as a result, their families couldn't find peace. Men, women and children thus
12 disappeared, and this has been going on for over eight years. Numerous persons were
13 victims of sexual violence and with no regard for age.
14 There were victims of collective rape, repetitive rape, and these acts of rape would be
15 committed in public, in the street, before their fathers, mothers, sons and daughters;
16 before their brothers, before their sisters. They would be hit, pillaged and raped, taken
17 away sometimes to the other side of the -- to other bank of the river of Congo.
18 They would be used as women for soldiers; they would be reduced to a state of sexual
19 slavery and forced to prostitute themselves. They would lose their virginity, they would
20 be made pregnant, sodomised. They would then be abandoned by their husbands,
21 deprived of their children, of their family, family-in-law. They would be confined to
22 silence, forced to lie, to hide and to deal with the situation on their own.
23 Hundreds of women, but also men were humiliated. They were humiliated in the face of
24 their families and in the face of soldiers. They'd be infected by maladies, contaminated.
25 The body would be so shocked that there were cases of miscarriage and babies would be

1 lost.

2 Many of the victims have difficulty in rebuilding their life. They have not enough money
3 for medical care. Some have died as a result of a lack of medical care and they haven't
4 managed to resist the shock and the pain that they suffered. They haven't managed to
5 resist the wounds, the void and this feeling of absence. Others grow weaker by the day.
6 The traumatism that is linked to what they lived is still part of their daily lives. There is
7 not a single victim that hasn't been affected by the events that were experienced about
8 eight years ago.

9 From 2002 to 2003, not a single victim can talk about these events without clenching his or
10 her teeth or without shedding a tear. It would be erroneous to say that the victims have
11 no expectations; however, their expectations are legitimate and they are the expectations
12 of any individual with regard to a court of justice.

13 They expect for justice to be rendered, for justice to be independent, impartial, transparent
14 and effective. They expect to be listened to and to have the rights of the participants
15 respected. They expect protective and restorative justice that can establish the truth of
16 the crimes that were committed.

17 The complexity of the scenarios, of the experiences of each and every victim, will lead the
18 Court to realise that it isn't confronted just with shadows from the past but also with the
19 weight of heavy shadows that numerous victims still trail behind them and will trail in
20 the future, and this is related in part to the absences that are felt, to the voids that they feel,
21 to the suffering that is inscribed in the memories of these victims and in their bodies.

22 It is also linked to illnesses that numerous victims trail behind them like a veil that do not
23 only affect their present and their future, but also the place that they have within their
24 community and their capacity to communicate or to integrate within a group, where
25 having a voice or speaking up is sometimes identical with being stigmatised or results in

1 stigmatisation.

2 Therefore, there have been crimes committed in the past and these crimes have a

3 significant echo in the present and a weight that it is difficult to avoid in the future. If

4 the choice of victims to request participation in the proceedings is an individual choice

5 above all, which allows each and every victim through the intermediary of their counsel

6 to tell part of their story and share part of their knowledge of the events, the choice to

7 participate is also sometimes a group experience. It reunites neighbours and families

8 that can sometimes be separated by a wall of silence.

9 Therefore, I wish that the submissions of the legal representatives in these proceedings

10 will convey to the participants and to the Chamber and make it possible for the Chamber

11 to meet the challenge and to listen to these victims who will reflect the individual

12 preoccupations that they have.

13 We all have to bear in mind that the story that we are going to try and tell in these

14 proceedings doesn't just reflect the past, but it's also a path that leads into the future and

15 into the present. Let us remember that during these proceedings it is the victims that

16 will be at the heart of the proceedings and they are the sad reason for the proceedings,

17 and their heartbeat will accompany every stage.

18 Therefore, behind the legal and technical terms used, that each participant will have to

19 become familiar with, let's not forget that there are hundreds of children, women and men

20 who have expectations and who are following the development of these proceedings very

21 carefully.

22 The victims that I represent today thank you for the possibility of participating in these

23 proceedings and for having their voices heard, to be able to tell you their truths, their

24 concerns and their opinions.

25 This concludes, Madam President and your Honourable Judges, my opening statement.

1 PRESIDING JUDGE STEINER: Maître Liriss, if I may ask you, since you are given in
2 accordance with --

3 MR LIRISS: Excuse me. I can't hear you.

4 PRESIDING JUDGE STEINER: You, the Defence team of Mr Jean-Pierre Bemba Gombo,
5 was given as well one-and-a-half hours, 90 minutes, to make its opening statements in
6 accordance with the oral decision taken by the Chamber in the status conference held on
7 21 October 2010.

8 You won't have today one-and-a-half hours, so the Chamber asks you whether you prefer
9 to start today and finish your opening statement tomorrow or whether you prefer to refer
10 your opening statements for the session to take place tomorrow? It is your option,
11 Maître Liriss.

12 MR LIRISS: (Interpretation) Madam President, Honourable Judges, we will start with
13 our opening statement today and, perhaps with a little luck, we will complete it today.
14 Madam President, your Honours, I would have liked it if the opposing parties when
15 referring to my client referred to him either as "the accused" or as "Mr Jean-Pierre Bemba,"
16 and not as "Bemba." It seems to me that this would show more respect. There's not a
17 single criminal anywhere in the world, even if he had committed the worst sort of crimes
18 and was convicted, who wouldn't have the right to being respected even when the
19 sentence was being handed down.

20 If this were customary in other cases -- well, as far as Jean-Pierre Bemba's Defence is
21 concerned at least, we are against referring to him in such inelegant terms.

22 Madam President, your Honours, when the sky is full of clouds and there is a cold wind
23 blowing, one says that there are substantial grounds to think that in an hour's time or
24 during the daytime it will rain; but when the sun is high up in the sky and there is no
25 wind at all, one says there is evidence beyond all reasonable doubt, so in the following

1 minutes there will be no rain. That is the criteria. That is the standard of evidence that
2 your Chamber has to apply in accordance with the relevant provisions of the Statute.
3 This is why I will not respond to the speech and to the reasons presented by the victims'
4 legal representatives, because you won't be judging this case on the basis of emotion, but
5 on the basis of evidence and I have mentioned the criteria that are applicable.
6 I know Maître Zarambaud, my friend, I have known him for a long time. It's quite
7 natural, he's an experienced, a seasoned lawyer; he's had this case for a while, and what
8 he has done to date is extraordinary, but unfortunately he was -- his pleadings weren't
9 relevant to the case. He has only been informed with the case.
10 I've known him for a long time, as I said, in Central Africa. One of us was in Central
11 African, the other in the Congo and we were in charge of a basketball team. And for
12 your knowledge, my team would always beat his team.
13 Madam President, your Honours, the charges against Mr Bemba have absolutely no basis.
14 Unless I am mistaken, €42 million were necessary apparently to conduct for at least five
15 years an investigation into the crimes allegedly committed by Mr Jean-Pierre Bemba, and
16 it is for the taxpayer, for international taxpayers and for the State Parties, to pay this sum.
17 What can we note? To date, there's been a partial investigation, a botched investigation,
18 which provides the Judges with none of the things that they have the right to expect; that
19 is to say, it doesn't provide the Judges with evidence beyond any reasonable doubt. I
20 said a botched investigation, and this was the conclusion reached by the Court when the
21 relevant Chamber dismissed a request by the Prosecution to issue an arrest warrant for
22 Mr Bemba. So this is the first disavowal. There wasn't sufficient evidence. It was
23 necessary to use a trick to solve this problem. And allegedly, it was said Mr Bemba was
24 preparing to flee, so this is the first disavowal.
25 It is since 2008 that the Defence has been requesting the alleged evidence in vain, this

1 evidence that shows that Mr Jean-Pierre Bemba was preparing to flee.
2 I said botched investigation. When Mr Jean-Pierre Bemba was arrested, the Prosecution
3 didn't have recourse to more than 22 witnesses to prove the existence of a thousand cases
4 of rape that were allegedly committed to prove the destruction of the entire economy of
5 the Central African Republic, and the transfer of all the goods from this economy to the
6 DRC.
7 I said it was a botched investigation. During the confirmation of charges, the Pre-Trial
8 Chamber was led to sending the Prosecution back home to do their homework again.
9 Not -- it was -- the alleged crime was not that of co-participation. Bemba did not commit
10 direct crimes. It would appear that if such crimes occurred it was not Article 25(3)(a) that
11 should be used but, rather, responsibility set out under 28(a), Article 28(a); namely, Bemba
12 did not individually commit crimes as co-perpetrator together with Patassé. Rather, it
13 would be -- it would appear that he has been accused, according to the judges who
14 prepared the ruling, it would appear that he has been accused of negligence in his
15 command, and that he allowed for the risk of crime.
16 Second disallowance: I said that this investigation was partial. Now, the Prosecution
17 did not respect the decision taken by the Pre-Trial Chamber. The Prosecution wrote
18 down, black and white, saying that in their opinion it was the shared responsibility of
19 co-perpetration under 25(3)(a) with Mr Patassé that was the relevant provision, and it was
20 only as an alternative that the Prosecution was making arguments on the basis of
21 command responsibility.
22 If one were to follow this particular line of argument, the Prosecution should have then
23 charged the co-perpetrator, Patassé, but imagine the surprise of the Defence, and indeed
24 of the entire world, when we heard the same gentleman, the Prosecutor, speaking through
25 his assistant, the highly distinguished Ms Bensouda, state to the press that there was no

1 incriminating evidence with regard to Mr Patassé.

2 You speak of an investigation, but one might think that the Prosecution would come to its
3 senses, and the Prosecution would no longer investigate matters except on the basis of
4 command responsibility. But the Central African military hierarchy, nor any of the
5 witnesses who they heard and who said they commanded troops in the Central African
6 Republic, were chosen to be heard by this Court as a witness.

7 A few moments ago the Prosecution mentioned Mukiza. Mukiza. Why isn't he here?
8 He is the one who led the troops. Several other Central African commanders took part in
9 this infamous war. Another high-ranked general stated, with regard to documents that
10 we shall produce, that he said, "I am the one who led the MLC troops from the beginning
11 right to the very end." He stated this in a document and why is he not here?

12 Command responsibility implies that it is the responsibility of the person who has the
13 actual command and effective control, the command and the control, not just one or the
14 other, but both command and control. This person bears the responsibility. Thus, it is
15 crucial for this Court to hear from the various links in the chain of command. Instead of
16 calling people from the chain of command to the witness box, people who admit that they
17 had been part of the chain of command, instead of doing this the Prosecution has
18 completely ignored them.

19 The Prosecution prefers to focus on secondary witnesses of secondary importance to
20 target Mr Jean-Pierre Bemba, who was more than *2,000 kilometres away from the
21 battlefield, and all his former collaborators within the MLC, who today are high-ranked
22 officials within the regime of Mr Kabila, who is the political opponent of Mr Jean-Pierre
23 Bemba. This really casts doubt on the credibility, not just of the investigation, but also
24 and above all when these people - and we shall demonstrate this - in a particular time,
25 these people denied all these crimes.

1 The very moment when the Prosecution specifically recognised that the legitimate
2 government of the Central African Republic had brought together troops from different
3 countries, and from different groups, Libya, the Sudan, the armed forces of the Central
4 African Republic, the special presidential unit of the Central African Republic, Djibouti,
5 the supplétif Meskine, the supplétif of mercenary Barril, et cetera, and those troops, those
6 groups, worked together as a single army coordinated by a single person.
7 Those were the terms used by the Prosecutor. As soon as that was recognised that those
8 troops were working together, coming under the single uniform of the Central African
9 Republic, using vehicles from the Central African Republic, using equipment from them,
10 receiving funds from the public purse and from the Central African authorities, would it
11 not be normal, your Honours, would it not be normal for the Central African command
12 structure, which was heard by the Prosecution and who were identified by the
13 Prosecution, would it be not be normal for them to be called to the witness box to give
14 testimony and to demonstrate even just as witnesses? So if that were the case, then you
15 would know who truly exercised effective command and control over the troops.
16 Honourable Judges, your Honours, is it not the duty of an organ of this august assembly,
17 which has an obligation under the Statute to carry out proceedings, both in light of
18 incriminating and exonerating material, in an equal, in a fair fashion? Can we say that
19 this investigation has been legitimate?
20 The Defence understands the Prosecution's difficulty. *The Prosecution can no longer
21 bring witnesses before the Court that they heard under Article 25(3)(a), establishing
22 co-perpetration and establishing the contributions of each one of the persons, in particular
23 of the Central African Government and thus, of Mr Patassé. The Prosecution can no longer
24 do so under Article 28, because if they tried that it would be difficult to establish the
25 command responsibility of Mr Bemba as commander-in-chief of the MLC. They would

1 not be in a position to establish that it was Mr Bemba who had control and
2 command - effective control and command - over all those troops.

3 Let us recall that before the untimely interventions of Mr Bozizé, in the course of Central
4 African justice, a position had been taken with regard to both domestic and international
5 law. Command responsibility fell to the supreme commander of the army of the Central
6 African Republic and, in accordance with Article 14 of the constitution, that was the head
7 of the FACA, the army of the Central African Republic, and at the time those forces were
8 referred to as the loyalist forces.

9 Madam President, Honourable Judges, your task is to ensure that the truth is
10 demonstrated. You have the power and you have the jurisdiction to summon anyone,
11 any and all people who -- any person who was part of the chain of command.

12 May I continue? Any person who was within the chain of command to decide which
13 person command responsibility -- which person had true command responsibility.

14 I do not doubt for a moment that you will hesitate in using your vast authority to do so.

15 Madam President, Honourable Judges, the strategy that the Prosecution has taken may
16 seem odd and, with regard to the accused it seems to be the extension of an initial strategy
17 that did not succeed, namely, getting Mr Bemba physically out of the country and
18 ensuring his departure from the Congolese political scene, and Human Rights Watch
19 clearly demonstrated this in its report and this is seen in the very files of the report.

20 Forty-two per cent of all voters in the Democratic Republic of the Congo support
21 Mr Jean-Pierre Bemba, and in accordance with the laws of that country, he should enjoy
22 the tasks -- or, he should have the position of leader of the opposition. But there's
23 something even more subtle going on here. It would appear he is being set off to the
24 sidelines when it comes to the upcoming election, and the Prosecution is falling into this
25 trap without even realising it. We must play close attention to unscrupulous politicians

1 who are using the Court in appearance to achieve justice, but in actual fact to do away,
2 politically speaking, with one of their opponents.

3 What can we learn, your Honours, what can we learn from the recent history of the
4 Democratic Republic of the Congo when it comes to the MLC? The MLC was not a
5 private militia, as my learned friends opposite would give you to understand, nor was the
6 MLC a rebellion on the day that it came back to the Central African Republic on
7 30 October 2002, nor was the intervention based on mere negotiations or horse trading, so
8 to speak, between two people, one who was referred to as Papa and the other as my son,
9 very respectful terms that are used in Africa. The Defence shall demonstrate to you that
10 the MLC was an authority recognised by the United Nations, by the African Union, by
11 the -- by SADAC, the Southern Africa States Community, the Central African Union, and
12 the entire international community, with all the attributes of a legitimate government, like
13 the RCD authority that was occupying Eastern Congo and like the authority that was
14 pompously and incorrectly called The Government of the Centre of the Republic in actual
15 terms.

16 In actual fact, as soon as the Rwandan and Ugandan forces overthrew these forces led by
17 Laurent-Désiré Kabila, as soon as Marshal Mobutu was overthrown by these troops and
18 after the father died, Kabila senior, and then after the -- you see, his son took over. He
19 was automatically brought forward, and now Joseph Kabila is the President. But since
20 that time, since this event, there has been no legitimate government in the Congo. That is
21 why there is this -- these rebellions have come about. To end these wars there was, under
22 the auspices of the United Nations, an agreement, an agreement called the Lusaka
23 Accords, signed in July 1999.

24 Now, these agreements set out specifically that the three parties had the very stage status,
25 identical status, that all three parties had the responsibilities that are generally recognised

1 of a government in the territory that it occupies, in particular the safety of borders. Thus,
2 in 2002 it was not a rebellion or a rebel force that deployed a private militia into the
3 Central African Republic. It was an authority recognised by the international
4 community.
5 Furthermore, this deployment was not conducted because Mr Bemba and Mr Patassé
6 wanted it to be done. It came after a resolution, a resolution by the African Union whose
7 leaders met in Khartoum, and then the resolution was endorsed in Libya by the Security
8 Council -- correction, by the Security and Peace Council of the African Union, which was
9 called the Central Organ for the Prevention and Settlement of Conflicts. That was the
10 name of that body at that time, and that was the case for EUFOR, the EUFOR force in
11 Chad, the FINUL force in Lebanon, the NATO operation. It all had to do with the
12 status -- Statutes of the African Union and the resolution that prohibited any taking of
13 power by force, resolution 1999 of Algiers.
14 So what law applies to such operations, particularly when it comes to command? Is it
15 not Article 5 and Article 6 of the draft articles of the International Law Commission that
16 were adopted at the 46th Session of the United Nations? That is why, your Honours, the
17 Defence shall strive, with all due respect, to show you and to argue that if these provisions
18 apply to all States, to all regional institutions and to all people equally, and not whether a
19 country is poor or rich. What was good in Serbia, well, it follows thus that the same
20 thing should hold true elsewhere. But in Africa, well, in Africa it is the heads of
21 government who seem to be responsible for crime after intervention as part of a resolution
22 taken by a regional institution.
23 With all due respect, we call upon you to decide and to why the precedents from
24 international courts having to do with Nicaragua, Bosnia Herzegovina, the Behrami case,
25 Behrami versus France and Germany, a ruling that came down from the European Court

1 of Human Rights, the case pitting the Democratic Republic of the Congo against Uganda,
2 why is it that Article 5 and 6 do not apply in this case? I'm speaking of these draft
3 articles from the Human Rights Commission that were adopted at the 46th Session of the
4 United Nations which deal with command responsibility.

5 When a State or a group declares Article 6 and calls upon another State or another body,
6 and that State that has been called upon takes action following the -- takes action under
7 the prerogatives of, why are these actions deemed to be imputable to the country that has
8 benefited from the assistance, with all due respect? We shall call upon you and ask you
9 to determine, to decide, why.

10 If the governments of countries concerned by the crimes of rape that were committed in
11 the Congo by -- in the Congo by troops that were working within the framework of the
12 MONUC operations, why is it that the governments of those troops were not called upon,
13 because the constitution of their countries means -- are such that they are deemed to be
14 the leaders of the armies.

15 And why is it that when it comes to the case of Mr Jean-Pierre Bemba, who took action
16 within a regional setting, within a regional framework, why is it that one must refer to the
17 constitution of the MLC to say that the effective command and control fell to him, and this
18 pursuant to Article 36?

19 In this regard, the Defence challenges the Prosecution to provide evidence beyond any
20 reasonable doubt that the CAR discarded all its military sovereignty and allowed
21 Mr Bemba to take over, so to speak, and that the army of the Central African Republic, the
22 FACA, or the Libyans, or be it the USP, or any other troops that were there, why are they
23 saying that all these troops came under the command of Mr Bemba?

24 *We challenge the Prosecution, and by way of this same mode of evidence, we challenge
25 the Prosecution to prove that Mr Bemba was able to command operations in the field from

1 a distance of more than 2,000 kilometres. While he was in Gbadolite, how could he
2 have commanded or ordered various operations in the field at Bossembelé or in Damara,
3 or all the various other towns that were cited earlier. Or in Sibut, a place that he was not
4 familiar with? The same Prosecution says that Mr Bemba has only basic military training,
5 yet the Prosecution tells us that we are dealing with a new Shaka Zulu or a new Napoleon.
6 At this opportunity, I would like to quote the words of a senior military official from the
7 CAR, and he himself was speaking to the MLC. And I would also like to quote the
8 senior trial lawyer, the distinguished Massimo Scaliotti, and I quote, "The troops were
9 placed under the orders of the chief of state. At the time, they received instructions
10 directly from the office of the president."
11 Obviously, this is not to be tendered into evidence, but Madam President, your Honours,
12 I had a lot of problems hearing from the Prosecution orders that were allegedly given by
13 Mr Bemba through a person who in fact was unidentified, and these orders were as
14 follows: "Go to the Central African Republic. You have no relatives, spouses, allies,
15 and so on. Go there and kill even the civilians. Do not make any distinction."
16 To begin with, this statement has not been corroborated. Furthermore, I understand the
17 rule of law that requires people to be tried at their place of residence because that person
18 is known, the customs are known, the relationships are known.
19 Do you know, Madam President, do you know, your Honours, that Mr Bemba is Nbaka
20 through his father? Do you know that the Nbakas are one of the tribes of the Central
21 African Republic? Do you know, your Honours, that Bemba's mother is from the
22 Monzombo tribe in Libenge opposite Mongoumba? And do you think then Mr Bemba
23 would ask people to go and kill his own brothers? You can ask that question during
24 your deliberations or if you conduct your own investigation. Ask that question to any
25 African, any African.

1 Let us not go very far. Let me go back to my friend, Zarambaud. He is from the Central
2 African Republic. But another colleague of mine who is Congolese, Mr Abanga Kapa
3 (phon), and who is president of the Court of Appeal of Kinshasa, how did he come to be
4 Congolese? These are people who are living together, who know each other and who
5 meet each other from Zongo every day. These are people who are the brothers of
6 Mr Bemba. Is he going to ask them to go and kill them? *There were Mgbakas and
7 Mbambis amongst his soldiers.

8 An expert will tell you the difference between Mbambi and the famous language that you
9 are proudly talking about here, which is Sango, an expert that we are going to
10 call. Is this the person who would decide to send soldiers to kill his own brothers?
11 Madam President, your Honours, I believe that I have in fact come to the end of my
12 statement. However, I would simply wish to conclude with the following: The only
13 time that Mr Bemba had the opportunity to address the Court, this is what he said, "I want
14 to be tried not only to demonstrate my innocence, but also to clear my name in the eyes of
15 the entire world, my wife, my family and my father." He no longer has that father. His
16 father died while trying to visit his son. The only desire or the desire itself to clear his
17 name is of crucial importance today as the last pre-tribute that he would pay to Senator
18 Jeannot Bemba.

19 Madam President, your Honours, after the presentation of the Prosecution and the
20 Defence evidence, you will have only one thing to do: You shall acquit Jean-Pierre
21 Bemba Gombo. Thank you.

22 PRESIDING JUDGE STEINER: Thank you, Maître Liriss. So we come now to the end
23 of this first hearing with the opening statements made by the Prosecution, legal
24 representatives of victims, legal -- the Office of Public Counsel for Victims and the
25 Defence team.

1 First, before adjourning this hearing, I have two oral decisions to be issued. First, that
2 given that the decision on common legal representation, and on the applications for
3 victims to participate in proceedings was issued after the expiration of the seven day
4 deadline for the legal representatives to apply in writing to question the first witness - and
5 I refer to decision 807, paragraph (h) of the disposition part - the Chamber authorises the
6 legal representatives of victims to make an oral application if they wish to question
7 Witness 38 following the questioning by the Prosecution.

8 The second decision deals with in-court protective measures for Witness 38, which is the
9 first witness to appear to testify before the Court.

10 On 6 July 2010, the Prosecutor filed a corrigendum to the Prosecution's request for
11 protective measures for Prosecution witnesses at trial in which it requested some in-court
12 protective measures for Witness 38 which were not sought in its initial request.

13 The Prosecution in its corrigendum did not inform the Chamber of Witness 38's consent to
14 the requested protective measures.

15 On 19 November 2010, the Chamber issued its confidential decision on in-court protective
16 measures (decision 1021). The Chamber notes Rule 87(1) of the Rules stating that the
17 Chamber shall seek to obtain whenever possible the consent of the person in respect of
18 whom the protective measures are sought prior to ordering the protective measure.

19 The Chamber notes that during the familiarisation process of Witness 38, which took place
20 last week, Witness 38 has been explained the meaning and the extent of individual
21 in-court protective measures. The Chamber has also been informed today of Witness 38's
22 consent to three protective measures requested by the Prosecution.

23 The Chamber is now in a position to grant in-court protective measures for Witness 38 as
24 it is convinced that these measures will enable him to continue living in his community
25 without fear of being identified, retraumatised, hurt or threatened. Therefore, and

1 pursuant to Article 68 (1) of the Rome Statute and Rule 87(c),(d) and(e) of the Rules of
2 Procedure and Evidence, the Chamber authorises the use of a pseudonym for Witness 38,
3 the distortion of his voice and image during his testimony.

4 In addition, the Chamber decides that evidence regarding the identity, or other
5 identifying information of Witness 38, should be given in private session at the beginning
6 of his testimony in accordance with the guidelines set out in the decision on directions for
7 the conduct of the proceedings, paragraph 33(e) of the public decision 1023.

8 Furthermore, the Chamber is aware that Witness 38 may refer to other protected and
9 vulnerable witnesses. In this respect, and as already stated at paragraph 37 of its
10 decision on 19 November 2010 (decision 1021) the Chamber reminds the Prosecution that
11 it is responsible for informing the Chamber of any other vulnerable witnesses to whom
12 Witness 38 may refer.

13 This information is to be given to the Chamber, the parties and participants in the
14 confidential list of sensitive information referred to at paragraph 23(f) of the decision on
15 directions for the conduct of the proceedings (public decision 1023).

16 Finally, the Chamber recalls paragraphs 28 to 30 of its decision on in-court protective
17 measures stating that these limited measures do not prevent the public to follow the
18 proceedings, thus respecting the principle of publicity according to Article 67(1) of the
19 Rome Statute.

20 Finally, turning to the issue of reparations, and in accordance with Rule 94 (2) of the
21 Rules of Procedure and Evidence, the Chamber asks the Registrar to provide notification
22 of any request for reparations received so far to Mr Bemba as soon as practicable.

23 We will now adjourn and resume tomorrow as scheduled at 2.30, with the appearance of
24 the first witness in this case, Witness 38. I would like to thank the parties and
25 participants to this hearing, the presence of representatives of the Registrar, the presence

1 of Mr Bemba and especially to thank our interpreters, court reporters, court officers, all for
2 being here and helping this session - this first session - on the opening of the case against
3 Mr Jean-Pierre Bemba to go in a smooth and respectful way.

4 This hearing is therefore adjourned and we resume tomorrow at 2.30 in the afternoon.

5 THE COURT USHER: All rise.

6 (The hearing ends in open session at 6.46 p.m.)

7 CORRECTIONS REPORT

8 The Court Interpretation and Translation Section has made the following corrections
9 in the transcript:

10 * Page 53: Line 20

11 “ more than 1,000 kilometres “ is corrected by “ more than 2,000 kilometres “

12 * Page 54: Line 20 to 25

13 “The Prosecution can present before the Court witnesses under Article 25(3)(a),
14 establishing co-perpetration and the contributions of each one of the persons, in particular
15 the participation of the Central African Government and Mr Patassé, but they cannot do
16 so since their investigation was based on Article 28, because if they tried that it would be
17 difficult to establish the command responsibility of Mr Bemba as commander-in-chief of
18 the MLC. “ is corrected by “The Prosecution can no longer bring witnesses before the
19 Court that they heard under Article 25(3)(a), establishing co-perpetration and establishing
20 the contributions of each one of the persons, in particular of the Central African
21 Government and thus, of Mr Patassé. The Prosecution can no longer do so under Article
22 28, because if they tried that it would be difficult to establish the command responsibility
23 of Mr Bemba as commander-in-chief of the MLC.”

24 * Page 58: Line 24 to Page 59 Line 5

25 “We challenge the Prosecution, and by way of this same mode of evidence, we

1 challenge the Prosecution to prove that Mr Bemba was able from a distance of more
2 than 2,000 kilometres to order operations be conducted. How could it have
3 commanded or ordered various operations in the field at Gbadolite or in Damara, or
4 all the various other towns that were cited earlier; a field or an area that he was not
5 familiar with? The same Prosecution says that Mr Bemba has only basic military
6 training, except the Prosecution tells us that we find ourselves before a Mr Shaka
7 Zulu or a new Napoleon “ is corrected by “We challenge the Prosecution, and by way
8 of this same mode of evidence, we challenge the Prosecution to prove that Mr Bemba
9 was able to command operations in the field from a distance of more than 2,000
10 kilometres. While he was in Gbadolite, how could he have commanded or ordered
11 various operations in the field at Bossembelé or in Damara, or all the various other
12 towns that were cited earlier. Or in Sibut, a place that he was not familiar with?
13 The same Prosecution says that Mr Bemba has only basic military training, yet the
14 Prosecution tells us that we are dealing with a new Shaka Zulu or a new Napoleon.”

15 * Page 60: Line 6 to 10

16 “They were Nbakas and Banguis from his -- amongst his soldiers.
17 An expert will tell you the difference between a Bangui and the famous language that
18 you are proudly talking about here, which is Sango, and this is an expert that we are
19 going to call “ is corrected by “There were Mgbakas and Mbambis amongst his
20 soldiers. An expert will tell you the difference between Mbambi and the famous
21 language that you are proudly talking about here, which is Sango, an expert that we
22 are going to call.”