

Trial Hearing
Witness: CAR-OTP-PPPP-0219

(Open Session)

ICC-01/05-01/08

1 International Criminal Court
2 Trial Chamber III - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and
6 Judge Kuniko Ozaki
7 Trial Hearing
8 Wednesday, 7 December 2011
9 (The hearing starts in open session at 9.47 a.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, your Honours, Madam President. We are in
13 open session.
14 PRESIDING JUDGE STEINER: Good morning. Could, please, court officer call the
15 case.
16 THE COURT OFFICER: Situation in the Central African Republic, in the case of The
17 Prosecutor versus Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.
18 PRESIDING JUDGE STEINER: Thank you very much. Good morning Prosecution
19 team, legal representatives of victims. Good morning Defence team, Mr Jean-Pierre
20 Bemba Gombo. Good morning interpreters and court reporters.
21 The Chamber apologises for the delay. We will continue today with the questioning of
22 Witness 219 but the Chamber was informed that the Prosecution wanted to raise a
23 procedural issue before the witness is brought into the courtroom. Ms Kneuer, you have
24 the floor.
25 MS KNEUER: Good morning, Madam President, your Honours. The Prosecution is

1 grateful to be given the opportunity to address the Chamber this morning and I will try to
2 do my utmost to be as brief as possible.

3 The issue I would like to address to your Honours is related to the objection raised
4 yesterday by the Defence and the subsequent email. I'm specifically referring to the
5 English transcript 197, page 60, lines 21 to 25 as well as to page 61, lines 18 until page 62,
6 line 2 in which the Defence challenged that the Prosecution used prior testimony of
7 Witness 213 and suggested that the Prosecution is developing a new practice and is in
8 contempt of court.

9 In addition, yesterday Defence counsel submitted via email at 16.16, an email to the
10 Chamber and the parties. The Defence was invited by your Honours to provide a
11 reference with regards to the prior testimony of Witness 213, and I'm referring to
12 transcript 197, page 70, lines 15 to 22. The Defence was not invited to make substantial
13 submissions. However, the Defence chose to make substantial submissions via email.
14 The Prosecution has quite often criticised this informal method, bypassing the former
15 record, and the Chamber expressed its disagreement with this email procedure the last
16 time in its decision 1981, paragraph 8.

17 The Defence is suggesting that the Prosecution is in contempt of court. This is incorrect,
18 Madam President, your Honours. The Defence is further suggesting that the Prosecution
19 is developing a new practice by questioning a witness about prior testimonies. This is
20 incorrect as well, and I will explain to your Honours why this is wrong:

21 First, the Prosecution acted in full compliance with decision 1974, paragraph 22, and an
22 oral ruling of your Honours, and I'm referring to transcript 56, page 23, line 3 to page 26,
23 line 22. It is a quite long oral ruling but, with your leave, I would just reiterate the most
24 relevant part, and I am quoting -- and before I do so, I may refresh the memory of parties
25 and participants, it was an oral ruling in the context of Witness 81.

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1 Now I quote: "It is the use of the word 'statement' rather than 'transcript evidence' that
2 appears to have caused the ambiguity. Following this morning's exchange as
3 summarised, the Chamber understands that the Defence is requesting a ruling from the
4 Chamber on the use of transcript evidence from this case. Taking into account the
5 practices of Trial Chambers I and II in the Lubanga and Katanga and Ngudjolo cases
6 respectively, the Chamber will, in principle, allow the use of witnesses' evidence
7 contained in the transcripts from this case on the condition that, firstly, the identity of the
8 witness who testified and whose evidence is being quoted is not revealed to the witness
9 who is being asked the questions, instead a pseudonym should be used; and, secondly,
10 that no other information that could lead to identifying the witness who previously
11 testified is revealed. Finally, the Chamber reserves its position to determine otherwise on
12 a case-by-case basis as appropriate."

13 In its ruling 1974, paragraph 22, the Chamber explicitly refers to Witnesses 65 and 213,
14 and therefore the Prosecution took advantage to put to the expert witness a quotation
15 from Witness 213's prior testimony. Nothing in decision 1981, from the Prosecution's
16 perspective, suggests that that ruling that deals specifically with ten documents is
17 superseding decision 1974 with regards to previous or prior testimony. In decision 1981
18 there is no specific ruling to that extent, that decision 1974, paragraph 22, is not any more
19 effective.

20 Secondly, there's also at least for the Prosecution no indirect hint either. To the contrary,
21 in its decision 1981, in paragraph 17, the Chamber recalls decision 1971, paragraph 22.

22 Also, if decision 1981 was supposed to supersede decision 1974 with regards to previous
23 testimony, it could have been expected that the Chamber consequently would have
24 shortened the time that was allocated to the Prosecution to examine the witness. The
25 Prosecution had requested four additional hours based on the fact that a number of

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1 witnesses have testified on issues - on military issues - that are relevant to put to the
2 expert witness. And based on that submission your Honours had granted the
3 Prosecution the four additional hours, ruling that it was -- the submission was
4 well-founded by the Prosecution.
5 But even if the Prosecution misunderstood each single decision and the interplay of both
6 decisions 1971 and 19 -- sorry, 1974 and 1981, the Prosecution acted at all times in good
7 faith. Therefore, the allegation of the Defence that the Prosecution is in contempt of court
8 is ill-founded, if not outrageous.
9 And I would like to reiterate both decisions deal with two distinct issues, and in particular
10 1981 is addressing ten documents, and the ten documents are the following: It's three
11 translations of the English log-book, and the ERN numbers are CAR-OTP-0066-0032, and
12 0036 as well as 0063; and the other documents are reports or code of conducts, and the
13 ERN numbers are CAR-OTP-0017-0351, CAR-DEF-0001-0161, CAR-OTP-0017-0358,
14 CAR-DEF-0001-0155, CAR-DEF-0002-0001 as well again two parts of the log-book
15 CAR-D04-0002-1514 as well as 1641.
16 Further, there is no prejudice at all to the Defence. As my colleague Mr Iverson has
17 already submitted yesterday, and I'm referring to transcript 1, line 7, page 61, lines 2 to 10,
18 the Defence is on notice. The Defence has been present during the proceedings. The
19 Defence had the opportunity to listen to the evidence of these witnesses and it is assumed
20 that the Defence took notice of the testimony of these witnesses.
21 It's unclear to the Prosecution what the Defence is requesting when they want to be put on
22 notice. I think it cannot mean that the Prosecution is obliged to share its questions before,
23 in advance of the examination of the witness. On the other hand, the Prosecution
24 submits that the Defence has an obligation and should act in good faith to be familiar with
25 the testimony and the evidence that is presented to your Honours during the entire course

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1 of the proceedings and it is expected that they are familiar with this evidence and prepare
2 for their examination.

3 In addition, the specific issue that the Prosecution addressed to Witness 213 was not only
4 mentioned by Witness 213, but also by numerous other witnesses; for example, Witness
5 38, Witness 40, Witness 73, just to give your Honours some examples.

6 Interestingly, as my colleague Mr Iverson mentioned already yesterday, the Defence is
7 changing its legal submission without reasonable justification. Initially, the Defence
8 requested that the testimony of Witness 219 should be moved to the end of all witnesses
9 called by the Prosecution, and their argument was that the expert witness should have an
10 opportunity to factor in prior testimony. They referred in particular to potential
11 contradictions, et cetera. Now, they're saying it's not possible any more. This is a
12 contradiction in their own argument and it is also disingenuous.

13 In addition, interestingly, if you read the submissions - the written submissions - of the
14 Defence carefully, on the topic of rescheduling of Witness 219's testimony, when they
15 submit to your Honours to move 219 towards the end, at no point in no filing do they
16 suggest that after the last witness, which is Witness 36, there should be any break, any
17 time, 30 days, 60 days, 90 days. So I don't think the submission of the Defence is
18 conclusive and is well-founded.

19 With regards to the allegation that the Prosecution is developing a new practice, I would
20 like to submit the following. Since the beginning of these proceedings, the parties and
21 participants, in particular Defence, are putting to the witnesses the testimony of other
22 witnesses. This happened with regards to crime-base witnesses, with insider witnesses,
23 as well as expert witnesses.

24 I would like to recall the testimony of Professor Samarin, as well as Mr Tabo. Both
25 witnesses were confronted with information that derives -- that derived from the

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1 testimony of other witnesses. So the Prosecution is not developing at all a new practice.

2 The Prosecution is applying the practice set by this Chamber.

3 And please allow me to give you an example. You may recall that, for example, Witness

4 119 mentioned the term "Article 15," and there were a number of other witnesses which

5 were questioned about this Article 15 and the last time it was your Honourable Judge

6 Aluoch who asked Witness 213 to elaborate on the meaning of Article 15.

7 So the Prosecution submits that decision 1981 and 1974 are addressing two distinct

8 issues, and that the Prosecution and the parties and participants under Ruling 1974 are

9 allowed to refer to prior testimony of witnesses. This would also be in line with your

10 Chamber's ruling that it has probative value, it is relevant to the case and it would help

11 determine the truth for the Chamber, and this is contained in your Honours' ruling 1974,

12 paragraph 22, first sentence.

13 Thank you very much, Madam President, your Honours.

14 PRESIDING JUDGE STEINER: Thank you, Ms Kneuer.

15 Mr Haynes, you have the floor.

16 MR HAYNES: I will be very brief. I wasn't quite sure where all that was going. So far

17 as we are concerned, the Chamber's position is consistent and clear. In relation to the

18 examination of its own expert witness, the Prosecution is entitled to put before him

19 materials which were considered by him in the preparation of his report of October 2010,

20 together with the transcripts of any witness whose statement he then considered.

21 Perfectly clear, so far as we are concerned, and that is the basis upon which we will

22 proceed.

23 I can only assume that Ms Kneuer's submission is an application for leave to appeal your

24 decisions, because your decisions are clear and, if the Prosecution now want to

25 circumnavigate them, the only method they can do that is by asking you for leave to

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1 appeal those decisions and go to the Appeals Chamber.

2 I am sorry if the sending of an email is regarded as discourteous. I rather thought it was
3 giving good notice of our position in relation to the further examination of this witness.
4 It's only five metres to walk across this room, but nobody did us the courtesy this morning
5 of saying they had anything to say to the Chamber. That's a practice I've always
6 indulged in, but there it is.

7 I have nothing more to say. It seems to us the Chamber's position is clear, consistent and
8 we will proceed on the assumption that that is the proper method of examination of an
9 expert witness by the party calling it; namely, in this case the Prosecution.

10 PRESIDING JUDGE STEINER: Thank you, Mr Haynes.

11 Ms Kneuer has raised some issues related to a -- what appear in the Prosecution's minds
12 as apparent inconsistencies among decisions, oral and written decisions of the Chamber.
13 The Chamber will address such issues for sure and try to clarify as much as possible the
14 Chamber's position on this issue in order to avoid further objections and responses during
15 the questioning of witnesses. This is what the Chamber has been trying to avoid since
16 the beginning of the oral presentation of evidence in this case.

17 The Chamber decides that the Chamber will suspend this hearing for 20 minutes, and
18 we'll resume at 10.30 in order to address the issues before we bring the witness in and in
19 the hope that with the clarifications that will be given we can proceed with the testimony
20 without further disputes.

21 So this hearing is suspended for 20 minutes.

22 THE COURT USHER: All rise.

23 (Recess taken at 10.10 a.m.)

24 (Upon resuming in open session at 10.42 a.m.)

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

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1 PRESIDING JUDGE STEINER: After listening to the issues raised by Ms Kneuer and the
2 response by Mr Haynes, the Chamber's ruling is as follows:
3 During the Prosecution's questioning of the witness yesterday, Mr Iverson asked the
4 expert witness to opine on testimony that was given in Court by a previous witness.
5 Mr Haynes objected, arguing that the Defence had not received adequate notice and that
6 such questioning was wholly inconsistent with decision 1981.
7 The Chamber ruled that the Prosecution would be permitted to put questions to the
8 witness based upon the testimony of those witnesses whose written statements were
9 referenced in General Opande's initial report, and here the Chamber is referring to
10 CAR-OTP-0065-0547 at pages CAR-OTP-0065-0551 and 0552, but not upon the testimony
11 of witnesses whose statements were not referenced in the report. Here I'm referring to
12 the expunged version of the English transcript 197 at page 60, line 17 to page 63, line 7.
13 After yesterday's hearing, upon the Chamber's instruction, the Defence sent the Chamber
14 an email in which it provided a transcript reference for the point at which the Defence had
15 alleged that the Prosecution had questioned General Opande on parts of Witness 213's
16 in-court testimony.
17 In addition, the Defence made two requests in its email. First, that any further references
18 made to trial transcripts during General Opande's questioning, the Prosecution should be
19 required to indicate the pseudonym of the witness whose testimony is referenced.
20 The Defence's second request was for the Prosecution to justify the use of transcripts as
21 opposed to the witness's written statements. The Defence reasserts its argument
22 regarding the suggested inconsistency with decision 1981 and argues that the Defence
23 would be prejudiced if General Opande were permitted to opine upon information
24 captured in transcripts that were not referenced in his report.
25 In relation to the first request made in the Defence's email of yesterday evening, the

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1 Chamber agrees with the Defence. It would be helpful if the Prosecution identified the
2 relevant witness or witnesses whose testimonies are being referenced. The Prosecution is
3 instructed to do so by reference to witness numbers.

4 Turning to the Defence's second request, the Chamber views this as an attempt to
5 relitigate the Chamber's oral rulings of yesterday regarding the scope of the Prosecution's
6 question of General Opande. As the Chamber stated in decision 1981 such substantive
7 requests should be made in Court or via a formal filing not via email. This ensures the
8 preservation of a complete record which is required under Article 64 (10) of the Statute.
9 While the Chamber appreciates the expediency of email communication, it should
10 ordinarily be reserved for administrative and procedural matters, rather than substantive
11 submissions.

12 Turning to the substance of the Defence's request, the Chamber declines to reconsider its
13 rulings of yesterday. To repeat: The Chamber ruled that the Prosecution would be
14 permitted to put questions to General Opande based on in-court testimony of those
15 witnesses whose written statements were analysed and/or referenced in his initial expert
16 report.

17 The Prosecution is not permitted to question General Opande on the basis of in-court
18 testimony of witnesses who were not referred to in General Opande's report. In the
19 Chamber's view, this ruling furthers the rationale behind decision 1981 which is to ensure
20 the Defence has adequate notice of the opinions General Opande will offer on the witness
21 stand. In the same line by restricting the Prosecution's questioning to those witnesses
22 whose statements were referred to or analysed in General Opande's report, the Chamber
23 is ensuring that the Defence is not prejudiced by General Opande giving new opinions for
24 the first time in court on topics that were not addressed in the expert report. Finally, the
25 Chamber will address the arguments raised by Ms Kneuer this morning.

1 First, the scope of decision 1974. Under yesterday's oral ruling, the Prosecution is not
2 entitled to question General Opande on the basis of Witness 213's in-court testimony
3 because Witness 213 was not referred to in General Opande's first expert report. That
4 said, the Chamber understands why the Prosecution might have understood, on the basis
5 of paragraph 22 of decision 1974, that it was entitled to question the witness on the basis
6 of Witness 213's in-court testimony.
7 However, the Chamber considers that paragraph 22 of decision 1974 is inapposite because
8 it deals with a completely separate issue from that which was addressed in the Chamber's
9 oral rulings of yesterday.
10 In paragraph 22 of decision 1974 the Chamber ruled on the Prosecution's request for
11 additional time to question the witness. While passing reference was made to Witness
12 213 and 65, the Chamber was not ruling on the Prosecution's ability to question General
13 Opande on the basis of the testimonies of Witness 213 and 65 given in court. Indeed, the
14 parties had not raised nor briefed this issue prior to the issuance of decision 1974. The
15 Chamber therefore did not rule upon it in the decision.
16 Second, the Chamber will address Ms Kneuer's argument regarding the Chamber's oral
17 decision in transcript 56. The Chamber has reviewed this decision briefly, and it appears
18 to be inapposite as well. In that oral decision, the Chamber was not ruling on the specific
19 issue that has now been raised, whether the Prosecution can ask questions to his expert
20 based on Witness 213's testimony. Rather, the Chamber was giving guidance on the
21 broader issue of the use of transcripts in questioning generally. It's also noted that in that
22 oral decision the Chamber specifically reserved its ability to amend its ruling on the use of
23 witnesses' transcripts as may be appropriate. The oral decision therefore is inapplicable
24 in this case. And I'm referring to transcript 56, on pages 28, line 10 to 32, line 21 when at
25 the end the Chamber states, "The Chamber reserves its position to determine otherwise on

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1 a case-by-case basis as appropriate."
2 Third, the Chamber will address the Prosecution's argument regarding the suggested
3 inconsistency between the manner in which General Opande is being questioned and the
4 manner in which previous Prosecution experts were questioned.
5 In the Chamber's view the situation of General Opande is entirely different. In relation to
6 the Prosecution's previous experts, there was no issue of late notice, which is what has
7 caused the dispute in relation to General Opande's testimony.
8 Further, in relation to the previous witnesses, the Defence did not raise any objection as to
9 the scope of the Prosecution's questioning. The Chamber was therefore not required to
10 intervene as it has been required to here.
11 Put differently, the Chamber's rulings in relation to the scope of General Opande's
12 questioning have been made necessary only because of the notice issue that has arisen in
13 relation to this witness, and are limited to that issue and this witness.
14 Finally, the Chamber wants to address the suggestion that there may have been bad faith
15 on the part of the Prosecution by questioning General Opande on the basis of Witness
16 213's testimony. The Chamber does not understand the Defence to be making such an
17 argument but, in any event, the Chamber finds no bad faith on the part of the Prosecution.
18 There have been several rulings on the issues of Witness 219's testimony, and the
19 Chamber acknowledges that the reading Prosecution gave to those decisions was a
20 reasonable one, albeit not the reading intended by the Chamber.
21 The Chamber therefore rejects any suggestion that the Prosecution may have been in
22 contempt of court when it put questions to General Opande that are the subject of the
23 present dispute.
24 To summarise: The Chamber's oral rulings of yesterday stand. The matter's now
25 clarified and we will proceed with the witness questioning on the basis of the Chamber's

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1 rulings of yesterday.

2 It's almost 11 o'clock. We are going to our half-an-hour break. It is due to our

3 interpreters that have been waiting for the Chamber's ruling to now. We will resume at

4 11.30 with the testimony of General Opande.

5 The hearing is suspended.

6 THE COURT USHER: All rise.

7 (Recess taken at 10.57 a.m.)

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

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

10 PRESIDING JUDGE STEINER: Welcome back, and I apologise again for the delay.

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

12 (The witness enters the courtroom)

13 WITNESS: CAR-OTP-PPPP-0219 (On former oath)

14 PRESIDING JUDGE STEINER: Mr Witness, good morning.

15 THE WITNESS: Good morning, your Honour.

16 PRESIDING JUDGE STEINER: On behalf of the Chamber, I apologise for making you

17 wait for so long. The Chamber had to decide upon procedural issues and only now we

18 are ready to continue listening to your testimony.

19 Mr Witness, I just need to remind you that you are still under oath. You understand

20 that?

21 THE WITNESS: I do understand that, your Honour.

22 PRESIDING JUDGE STEINER: Are you ready then to continue giving your testimony,

23 sir?

24 THE WITNESS: Your Honour, I'm ready to do that.

25 PRESIDING JUDGE STEINER: Mr Iverson, you have the floor.

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

2 QUESTIONED BY MR IVERSON: (Continuing)

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

4 A. Apart from the weather in the morning, which -- the rain, I think I'm fine.

5 Q. That's certainly a common complaint here, sir. I intend to finish with your
6 examination today, notwithstanding any other delays for procedural reasons, and the first
7 thing I wanted to ask you if you could do today was to assist the Chamber to understand
8 a few things about military tactics and strategy as it relates to command and control, and
9 for that purpose could I ask the court officer to please display a map and the ERN is
10 CAR-OTP-0030-0154?

11 THE COURT OFFICER: The document as referenced by counsel is available on the
12 screens by pressing the button "PC1" and it's a public document.

13 MR IVERSON: Could I ask the court officer please to just zoom in a little bit? It's
14 unfortunately not as clear on the computer screen as it is on the printout that I have. My
15 intent is to be able to see the road network.

16 Madam President, it appears that the copy on the computer screen really isn't -- won't be
17 useful, so I would ask that we use a paper copy if that's all right with the Chamber.

18 PRESIDING JUDGE STEINER: I think there is no problem. We have done it before,
19 unless the Defence has any reasonable objection?

20 MR HAYNES: It's not an objection, but the usual comment: Is there also a paper copy
21 that Mr Bemba could have a look at?

22 MR IVERSON: Yes, there is, Madam President.

23 Q. Sir, the map you have in front of you shows the cities in the Central African
24 Republic and to some extent the road network, and why I'd like you to look at this is
25 because I'd like to ask you in general were you able to discern what the Bozizé strategy

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1 was in taking the capital Bangui?

2 A. For Bozizé to have a psychological effect on the forces of Patassé, if he took Bangui,
3 which is the capital, and naturally Bangui would have better means of communication to
4 various -- or connected to various sectors of the country, once that goes then it meant that
5 he would probably starve the other areas, you call them districts or maybe regions, from
6 the seat of command, fuel maybe, the economic hub will be more or less, you know,
7 denied the rest of the forces which are deployed outside, government forces deployed
8 outside Bangui, and hence they would probably be demoralised and immediately or
9 thereafter give in to the new forces of Bozizé. That is what I would -- you know, I
10 assessed as the plausible reason why he was going in for Bangui.

11 Q. And what significance do you attach to being able to control the road networks
12 leading in and out of the capital city?

13 A. Being able to control the road networks means you are actually able now to go
14 wherever you want to go out of their capital city and you will be able to stop any attempt
15 by any forces coming from the outlying districts, who are trying to recapture the ground
16 that you already hold, which would naturally be Bangui if they were able to hold Bangui.

17 Q. When the Bozizé forces were repelled from Bangui and went north, how did the
18 MLC and other friendly forces to the Patassé government set up a defence around
19 Bangui?

20 A. In the documents and the evidence that I had, clearly stipulated that the MLC forces
21 crossed from the DRC, across the river, and they were able immediately to move into the
22 city, or the environs of the city, and having pushed any resistance, any minor resistance
23 that was there, they were now able to try and extend their control beyond Bangui.

24 And, if I remember well, they were moving towards a particular axis, towards the north,
25 northeast, northwest I think, Sibut and Bossangoa. In other words, they were pushing

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1 outside to try and ensure that the city is safe, they leave the city behind them, and they
2 move towards, you know, the countryside. That was their strategy.

3 Q. And in terms of the Bozizé strategy to choke off the road network leading to Bangui
4 to stop supplies, fuel, food from coming through, what do you -- what do you make of
5 that strategy from a military point of view?

6 A. Any military expedition which is unable to control the road networks, which has no
7 means of resupply, which is cornered into a smaller area will not succeed, and that is what
8 Bozizé was trying to do, ensuring that he himself would push the other forces into that
9 strategy whereby he will contain them and they will not be able to get, you know, the
10 necessary supplies. They will not be able to move and counter-attack his forces.

11 Similarly, the government forces and the MLC forces, once their push started in earnest,
12 they were also attempting -- they attempted to do exactly the opposite. In other words,
13 push Bozizé out of the capital city, push him, you know, to a corner to the north and push
14 him all the way, you know, back to probably where he came from, or his forces came from,
15 get him out of, you know, the country, deny him of any resupplies which would naturally
16 come from Bangui or any area which had the resources. So that was the tactic.

17 Q. And in positioning forces in Sibut and Bossangoa, Bossembélé and Bozoum, are you
18 saying that the MLC then were trying to counter Bozizé's strategy by cutting him off from
19 access to the capital, or am I understanding that incorrectly?

20 A. That's exactly what they were doing, but at the same time, once the Bozizé forces
21 started to fall back, the MLC forces then would have the ability to push him back while
22 they have all the support that they would get, the resupplies, you know, from Bangui.
23 Bozizé would not, you know, have the means to resupply his forces, but the MLC and the
24 government forces would be in a better position to get the resupplies, they have clear
25 axes (sic) and they push the Bozizé forces out of the capital city and its environ and they

1 could do it all the way to the border, the border of CAR and Chad. Looking at the axes
2 that the government and MLC forces were leading towards, the intention naturally points
3 that they were pushing him out, all the way out.

4 Q. Sir, that the MLC were able to locate various units of the brigade in these various
5 locations, Sibut, Damara, Bossembélé, Bossangoa and Bozoum at various times, does that
6 indicate to you anything about their ability to command and control those units?

7 A. Exactly. When a force is deployed to counter another force, you don't go as one
8 group. You will have the troops that are leading the assault and you will make sure that
9 they move forward, and as and when they push the enemy out they hold on to various
10 locations.

11 As a brigade, you would then ensure that your flanks and your front and sometimes even
12 your rear is made safe by deployment of various units into various localities, rather than
13 have them in one location, because if you put all your troops in one location you are
14 vulnerable to being attacked by the enemy and being rooted out, but if you put them in
15 various strategic locations, like what you have just said, then you are in a better position
16 to deal with the enemy in a way that he cannot surprise you because you have people in
17 the flanks, you have people in the front and sometimes you have people in the back -- in
18 the back.

19 Q. Sir, if the MLC forces receive an order to withdraw from their locations and return
20 to the Democratic Republic of the Congo, what does this allow the Bozizé forces to then
21 do?

22 A. If the Bozizé forces still had the means and the aim of countering the MLC forces
23 and the government forces, once a force like the MLC withdraws they'll have a reasonably
24 easy time to infiltrate their men, or counter-attack whatever forces that were left in the
25 country and overrun the country.

1 Q. Sir, do you have anything else to add that could assist the Chamber with regard to
2 use of the road networks and cities in terms of a strategy for command and control?

3 A. Use of the road gives the commander easy access to accomplish his mission. If
4 there are good road networks, he can deploy in far-flung areas easily and he can maintain
5 his troops deployed in various areas, resupply them, visit them, ensure that they are
6 properly deployed on the ground. It will also give them resources, because in some of
7 those cities or those areas there will be fuel, for example, you can buy fuel, you'll get water,
8 there are hostels which you could possibly use and I'm talking about traditional military
9 operation. The lines of communication are relatively good for you to accomplish your
10 mission. If you are fighting in an area where there are no road networks, it's a pretty
11 tough campaign; a campaign that brings you, narrows you down to probably just using
12 troops on the ground, in other words on their foot, but it will take longer, it will be
13 difficult to resupply them, the morale of the troops will suffer and of course succeeding,
14 especially if you are dealing with a guerrilla force countering you, because the guerrilla
15 forces know the ground much better than you, then you have a problem.

16 Q. And, sir, if a force is able to communicate at least at the battalion level via
17 long-range radio, what effect will that communication have on a commander's ability to
18 achieve command and control?

19 A. Battalions that have assured means of communication do much better in the
20 battle-field, because the battalion commander and the company commanders, platoon
21 commanders, are able to issue instructions that will be received instantly and the troops
22 will ensure that they accomplish whatever instructions that are given to them. If they
23 don't have the means of communication, then of course you'll have a problem in passing
24 down instructions and ensuring that the instructions are carried, you know, out.

25 Q. Sir, in your initial report - and the ERN number is CAR-OTP-0064-0547 - on page

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1 12 -- and before I ask this question, sir, would it be helpful for you to have the report in
2 front of you as we did yesterday?

3 A. It would help, because I wrote it a long time ago.

4 MR IVERSON: Could I please ask the court usher to retrieve the report, show it to the
5 Defence and then provide it to the expert?

6 Q. Sir, could I just ask you to review paragraph 31 on page 12? Sir, you state in
7 paragraph 31 that, starting with the second sentence, "The force lacked adequate and
8 reliable means of communications below the brigade level. The field commander and his
9 subordinates were therefore unable to exercise effective command and control of their
10 troops. The logistics to sustain the force was in the hands of Patassé and when released
11 it may not have reached in sufficient quantities those it was intended for." And my
12 question to you is if you were -- if you had additional information available to you about
13 those issues of communications and logistics, would you be willing to change your
14 conclusions based on additional information?

15 A. Exactly. For example, if I had a conversation with a brigade commander himself,
16 communication officers who would give me additional information that, "Yes, we had all
17 the radios that we needed," then there's no way I would have concluded that they had
18 difficulties in communication and logistics.

19 Q. Sir, you just described to the Chamber a little bit about the -- your reading of the
20 strategic and tactical situation on the ground facing the commanders, both Bozizé and
21 Mustapha Mukiza, the brigade commander. And going back to something you said
22 yesterday about the operational planning process, when a commander is devising a
23 strategy and setting out the parameters or his intent for how that operation will proceed,
24 is there a moment in time during the operational planning process where "rules of
25 engagement" is a term that is used, but rules of engagement are discussed and the rules

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1 governing the troops are -- is discussed?

2 A. Absolutely. When the staff are working for the commander to produce the
3 commander's orders that I was talking about which the commander will then issue to his
4 subordinate commanders all those things that you are talking about, rules of engagement,
5 the exploit of the mission, the -- how they are going to deal with, for example, IDPs is a
6 very important, you know, matter. Who will be responsible to ensure that IDPs, you
7 know, are taken care of. All that is included in this operational order, so that when the
8 commander issues his instruction he does not leave his commanders - subordinate
9 commanders - in no doubt at all what the rules of engagement are, who is the enemy.
10 Even if the troops already know that "We are going to fight the enemy who are Bozizé's"
11 or Bozizé knows that he's going to fight the enemy which is Patassé's, you know, forces,
12 the commander has to clearly identify who those enemies are because in a fluid situation,
13 if the troops cannot identify who the enemy is, there is a chance of killing innocent people,
14 or even killing your own people, or killing the troops that are supposed to be supporting
15 you because they are from a different organisation that you are not familiar with. So all
16 that is discussed and written down, and at the operational order group all those
17 information are clear by the commander to his subordinate commanders.

18 Q. Sir, I'd like to now move to a slightly different topic that involves information that is
19 generally passed from unit to unit, information that is passed from subordinate units to
20 higher units, and that may be in reports, or just -- or radio communications, or even in
21 person. Could you describe just in general what types of reports commonly occur
22 during combat situations?

23 A. There is this information, regular information, which is called sitrep, situation report.
24 That's what it means, situation report. The situation report is normally gathered and
25 written every day. Every 24 hours there will be a report from the lowest command to the

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1 highest command. The situation report in our area covers the following: It will cover
2 all operational matters that occurred. It will cover intelligence information that probably,
3 you know, has taken place within that area. It will include also logistics matters that
4 affect that particular unit, and this will go to the highest -- to the higher formation
5 headquarters so that they know what the troops have done over the 24-hour period. If
6 there are any casualties, those will be included, you know, in the sitrep. If there are any
7 gains, in other words their particular unit has moved beyond an area where they were the
8 night before or the day before, because an operation is an evolving -- it is not stagnant.
9 They're always moving forward, trying to recapture land which had been in the hands of
10 your enemy or whatever. So you have to inform your higher headquarters of what
11 you've done within 24 hours. That is the sitrep.

12 There will also be special reports which can be asked for from the higher formation
13 headquarters about specific issues, or specific plans, that the higher headquarters has for
14 the lower headquarters. They'll ask for those specific issues. Then the unit or the
15 headquarter that is being asked for those specific report will then generate the report and
16 then send it, you know, higher up. Sitrep will be sent from the lower to the higher, but
17 even the lower will ensure that the flanking units have got the same sitrep.

18 In other words, they will be -- you know, you'll give your flanking units so that they know
19 what you are doing and you also know what they're doing, sharing of information, the
20 person who has the responsibility, or once that sitrep very much so is the higher
21 headquarters, but the flanking units, your next door neighbours, you give them copies so
22 that they know what you are doing and they also give you, you know, copies.

23 Q. So essentially it's important for the commander to the left and to the right of you to
24 know what you're doing and it's also important for your higher commander to know the
25 situation in your unit; is that right?

1 A. Exactly, that is so.

2 Q. And in these sitreps you mentioned, is it common to mention the enemy situation
3 and also the friendly situation and what it -- what would be meant by that, if so?

4 A. Yes, you will -- in the sitrep you will address the enemy situation, what they have
5 done, where -- you know, where they are, what their intentions are if you know what their
6 intentions are, because it is the enemy which brings you to be in that locality where you
7 are.

8 You are all the time wanting to counter the enemy forces, be a step ahead of them, so if
9 you know what their situation is, the losses that they have suffered, or the intentions, their
10 intentions, then you are in a better position to deal with them or your higher formation
11 headquarters will counter, you know, their manoeuvres which may not be in your
12 immediate front. Then you have to look at your own forces, your situation and you give
13 the higher, you know, headquarters also your situation.

14 Like I said earlier on, if you lost men, you've lost equipment, because the battle is a place
15 where, you know, you will lose and you will need replenishment, you have to tell your
16 higher headquarters what has happened in your area so that they are in a position to plan
17 and help you, or replenish you.

18 Q. Sir, in the locations where you've deployed and had an opportunity to observe
19 irregular forces, do you know whether -- you say they mimicked many of the
20 conventional military doctrines. Do you know whether sitreps in particular were used
21 by the irregular forces that you observed?

22 A. In all the irregular forces I have observed, worked with closely, there's always a
23 sitrep. They always send sitreps.

24 Q. And this may be difficult for you to make a generalisation, but I want to ask and you
25 can certainly qualify it in any which way you would like, but compared to conventional

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1 military forces what was the relative sophistication of these irregular forces and their use
2 of situational reports?

3 A. It depended, and I'm talking about the ones I have, you know, observed. It
4 depended from one command to the other. I'll give you an example. SWAPO had
5 excellent staff work. Sitreps were actually, you know, sent out immaculately. And if
6 you did not know that this was SWAPO's plan - they called themselves, you know,
7 plan - you know, "sitrep" we would think this is just another battalion, another brigade of
8 regular forces.

9 You had other forces like the one I observed in Sierra Leone. It depended from who was
10 the commander. In some commands, sitreps were being sent. In some commands,
11 sitreps would be sent two/three days late, or sometimes only when the higher commander
12 would ask for a sitrep. He just assumed that things were normal.

13 Q. To what extent was the use of sitreps -- for example in Sierra Leone compared with
14 the SWAPO in Namibia, to what extent was that based on military doctrine and to what
15 extent was it based simply on leadership or leadership style?

16 A. Sitrep, or the use of sitrep, is a military doctrine that you will generate information
17 regularly and send it, you know, regularly from lower command to senior command.
18 The doing of it, ensuring that it is, you know, carried out, is what suffered, you know,
19 between the two forces I have talked about, you know, SWAPO and, you know, in Sierra
20 Leone.

21 In other words, in Sierra Leone they were lax. The forces were lax. And when I looked
22 into why this was so, it was because of command problems. Just as I said, there were
23 commanders who insisted that sitrep must be sent and they were sent, but there were
24 commanders - other commanders - who got away with it. That is where you -- then you
25 begin to, you know, see that one command has got a problem and the other command is

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1 relatively, you know, okay. That is what I'm trying to say.

2 Q. Drawing on your career experience, could you comment on what is the relative
3 importance of the concept of leadership to military commanders?

4 A. Leadership is one key strength in military command, chain of command. If you
5 have a good leader, if you have effective leaders, in a military chain of command then you
6 have less problems, less problems in carrying out your duties, less problems in discipline
7 and less problem in dealing with whatever situation, you know, you may come across.
8 If you have weak leadership, or leadership which is relaxed, leadership which cannot
9 portray their leadership by example and ensuring that those they lead follow their
10 example, then you have a problem in any military organisation, whether it is an African
11 military force, or a European military force, or an American military force.

12 Q. Going briefly back to reports, what about reporting of misconduct? Is there any
13 kind of -- could you determine whether there's any kind of normal process for reporting
14 misconduct, or discussing it within the command?

15 A. In the military scenarios, any misconduct which requires investigation or correction
16 or punishment will always be investigated and reported, reported to the commander, at
17 whatever level, and in most cases it is not only reported to the commander at that lower
18 level, or that level, and the commander higher up or below is not informed. They are
19 also informed, because that's how you correct mistakes.

20 If you as a battalion commander has got a problem of misconduct in your unit, it will
21 weigh very heavily on the performance of your duties if you have a battalion which has
22 many absentees, for example, AWOL, what we call AWOL, that points to you that you
23 have a discipline problem and you have to deal with it and these are reported regularly to
24 the brigade.

25 The brigade calls upon every battalion commander to report incidences of indiscipline.

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1 There are reports which are written at the end of every month how many soldiers were
2 AWOL; how many soldiers were accused of theft; how many soldiers, you know, were
3 accused of rape, or whatever, stealing. These are reported to the higher commander, the
4 brigade commander, and the brigade commander does not only look at, "Oh, yes,
5 battalion A had two, battalion 3 had five," and he does nothing about it. No, even if the
6 battalion commanders have taken the appropriate action to deal with those cases, the
7 higher commander will call upon those commanding officers "Those units have a certain
8 number of indiscipline," because they look at the trend and he will call upon them, you
9 know, to ensure that they correct, you know, those -- you know, the problems that they
10 have in the unit, or the brigade commander will go and visit those units and then talk to
11 the battalion commander and the officers and even the men and by doing so then you will
12 improve on to the overall discipline of your men.

13 If the men know that the brigade commander knows that corporal so-and-so who did, you
14 know, such-and-such a thing, has been punished, very few other corporals or privates,
15 you know, would do the same.

16 Q. Now, these different types of reports that you just mentioned, are they reports that
17 occur in combat situations as well as peacetime?

18 A. Wherever their soldiers are does not matter. The discipline of the troops in fact in
19 battle is expected even to be much better than in peacetime location, because soldiers who
20 are indiscipline in battle will never win you know, battles. They may be very good
21 fighters, they may be very good shots, but if they are indisciplined they'll create more
22 problem for the commanders than if they were back in peacetime location where you can
23 deal with them, you know, effectively without, you know, a lot of pressure.

24 So wherever the soldiers are deployed is immaterial. Soldiers are expected to behave the
25 same way like they would behave in peacetime location, or in battle, and commanders

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1 want to maintain that.

2 Q. So would the tempo of combat operations excuse a commander from reporting the
3 situation and sending sitreps, things of those -- things of that nature?

4 A. Not at all. In fact, it is even more important for you to send those reports in battle,
5 you know, scenarios much faster, much promptly. Not at all.

6 Q. Sir, in your career have you ever had to deal with allegations of misconduct
7 occurring within your chain of command or the unit over which you were a commander?

8 A. Yes, right from the platoon level to, you know, brigade, you know, level, I dealt with
9 cases of indiscipline, I dealt with cases of grave misconduct committed by, you know,
10 some of my troops, officers and men.

11 Q. Now, you talked about training in order to avoid misconduct in the first place, but if
12 it happens what are the tools available to a commander to address different types of
13 misconduct from the lowest level of misconduct to the highest level?

14 A. The lowest level of misconduct, misdemeanours, things like that, the commander
15 will call the soldier to what we call "summary trial."

16 Q. If I could just provide maybe a concrete example?

17 A. Okay.

18 Q. Failure to salute an officer, low-level disobedience of a non-commissioned officer,
19 things of that nature, all the way up to and including murder and rape, what are the
20 potential tools available to commanders to address those types of misconduct?

21 A. If for example I'm walking by and a soldier instead of saluting me he turns round
22 and looks the other side, I'm not going to let him get away with it. Straightaway I call
23 that soldier right in front of me and I say, "Look, did you see me?", straightaway and
24 naturally, if he is a cheeky soldier, he will say "No, sir, I didn't see you," but then, you
25 know, you don't just let him walk away. You say "For Christ's sake, you know what to

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1 do?" Even if he had saluted you now that you had call him, you will make him salute
2 you again, or if you think he is an idler you have the Military Police around, his sergeant
3 major or his corporal and tell the corporal, "Put him in jail for a couple of hours or
4 something like that." He will be marched off to jail for a couple -- you know, a couple of
5 hours and that will send a signal to him, all right?
6 Now, if there is a case of alleged maybe stealing from another soldier within a company or
7 a battalion, it will be investigated and the thieving soldier, if there is evidence that he
8 actually stole, he will be arraigned in front of his commanding officer, evidence will be
9 produced, he will be given a chance to explain what happened and the commanding
10 officer will weigh the case and if the commanding officer feels that there is enough
11 evidence to point that he actually stole money, or he, you know, accept "Yes, I stole the
12 money," the commanding officer has a set of punishment that he can give including jail
13 term for that particular soldier for thieving. If he's habitual, you know, thief, the
14 commanding officer has got, you know, the right to dismiss him from the service, send
15 him away, he loses his job. The commanding officer will give him that "I found you
16 guilty and you are going to be dismissed from the service," but you just don't dismiss him,
17 he walks out of the door and goes away. You send him to jail first and once he finishes
18 his jail term he's no longer on the job. So the commanding officer has ways of, you know,
19 dealing with that.
20 If it is a serious offence that the commanding officer cannot deal with, or a brigade
21 commander cannot deal with, like, you know, rape, killing, whether he has killed another
22 soldier or a civilian or whoever, which the commanding officer cannot deal with, then the
23 commanding officer will ask for an investigation by specialised, you know, people in a
24 specialised unit, to investigate this, and then a commanding officer will naturally
25 recommend that the soldier be court-martialled.

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1 There are cases which do not have to go to a civilian court, including, you know, murder.
2 Murder necessarily in the military necessarily need not go to a civilian court. It can be
3 adequately addressed within the military, you know, legal system, and if he is found
4 guilty the court that court-martials him will recommend whatever punishment that is
5 allowed within the laws of the land. The soldier has every, you know, opportunity to
6 defend himself, get the best lawyers within the country, or within the military, to defend
7 him, and if he's not satisfied with the finding of the court, in other words court-martial, he
8 can appeal to the highest court of the land where the military do not sit and the judges
9 will review that case and will either confirm or reduce the sentence or dismiss, you know,
10 the case. So in the military we have all available means to deal with offenders.

11 Q. There was a lot of information in your answer, sir, so I'm going to attempt to break it
12 down.

13 A. Sorry.

14 Q. No problem, and I think the goal of providing assistance to the Chamber I hope is
15 being accomplished. So I don't want to make you hesitate in giving answers like that at
16 all. Just one of the things, the last things you noted, so if it was within the legal power or
17 jurisdiction of the commander, one tool that could be available to a commander would be
18 to refer a case to court-martial; is that right?

19 A. That's correct.

20 Q. And just to go back to your -- the example of the soldier who is being insubordinate
21 and failed to salute an officer, for those of us who may not be -- understand military
22 culture, what is the importance of rank and the difference between officers and
23 non-commissioned officers and enlisted men and women, or regular soldiers?

24 A. The rank gives a commander the authority to do certain things. If you're a
25 lieutenant, it gives you authority to be in charge of a certain number of, you know,

1 soldiers. If you're a battalion commander, it gives you the authority to command a
2 battalion, if you a lieutenant-colonel for example, a lieutenant-colonel, or work on, you
3 know, the staff. It is a position of either command or staff, a position of respect, and a
4 position of authority. That's what the rank is all about. Some people complain that
5 rank segregates the military. It doesn't. If anything, it makes -- it's easier for men and
6 women in uniform to know who to go to when they need certain things to be done for
7 them, or who'd -- to follow their instructions, and also it gives those who have ranks the
8 command and control the units or the men and women put under their authority.
9 Now, you asked about commissioned officers and NCOs. NCOs is non-commissioned
10 officers. Non-commissioned officers can begin from corporal, you know, all the way to
11 Warrant Officer Class 1. Those are non--- in some armies, you know non-commissioned
12 officers really start from senior sergeant and above. Some armies, you know, say that,
13 but in other armies those who wear stripes here are non-commissioned officers. And the
14 private soldiers - ordinary soldiers - who have no rank except private, are not NCOs.
15 They are not in command. They probably are only in command of themselves, you
16 know, their body. Non-commissioned officers are the right-hand men of commanders in
17 dealing with rank and file, what we call rank and file. Rank and file is the
18 non-commissioned officers, the file ordinary soldiers. They are the men who train them,
19 model them and ordinary soldiers want to become an NCO, a non-commissioned officer.
20 They look at the corporal, they look at the sergeant, they look at the warrant officer as the
21 person they want to be.

22 Q. If you have such a situation where non-commissioned officers and privates or
23 soldiers that are below the rank of non-commissioned officer regard commissioned
24 officers as the person that they would like to be, what happens because of this rank
25 dynamic, what happens if a commissioned officer commits serious misconduct and other

1 soldiers know about it, does that have any impact on discipline?

2 A. It sends a very, very bad signal to the rank and file. If a commissioned officer, who
3 is supposed to be the commander himself, who is above all these ranks, is the one who is
4 committing, you know, offences, it sends a very, very wrong signal to the rank and file,
5 because the rank and file will follow, or they will say maybe "I can also get away with it. If
6 captain so-and-so can get away with stealing, I can also do it," and that's why in the
7 military chain of command the commanders take very serious, you know, note of any
8 infractions made by those who are higher up, officers.

9 Q. You talked about the rank dynamic and you also talked about the importance of
10 leading by example. If a captain, a company commander, tells his company "You must
11 have shiny boots. Your boots must always be polished," but then does not shine his
12 boots himself, what message does that send to his company?

13 A. It sends a very wrong signal to his company. "Why is he asking us to do what he
14 doesn't do himself?" In fact, his battalion commander or company commander, no, his
15 battalion commander should get a grip of that particular individual.
16 If he wants his soldiers to be smart, well, you know, groomed, trained, and he himself is
17 not leading by that example, that officer should be removed from that command. He has
18 a command on top of him who can do that right away. I have instances where I did just
19 that. I removed battalion commanders from command because they committed offences
20 which were not acceptable to me.

21 Q. And what if that same company commander said "You must always have shiny
22 boots no matter what the circumstances," but after he sees his soldiers not having shiny
23 boots on Mondays and Tuesdays he condones it and says, "Okay, not on Mondays and
24 Tuesdays," what effect does that have on discipline?

25 A. Again, it makes a joke of the kind of discipline that, you know, the company

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1 commander is trying to instill in his own unit. If the soldiers are supposed to shine their
2 boots every day and at the muster parade, because every day that company commander
3 should, you know, attend the muster parade from Monday to Friday, he wants to inspect
4 his soldiers and they must shine their boots. What excuse does he have to give, you
5 know, to condone Monday to Tuesday and then Wednesday to Thursday "Okay, you can,
6 you know, have dirty boots?"

7 Q. And I just used shiny boots as an example, but could that principle apply to
8 anything, having clean weapons, adhering to standards, obeying the law, being an
9 honourable soldier, things of that nature?

10 A. You give a very military, you know, example, shiny boots. The military always like
11 to shine boots, but that goes with everything that the military does. All the things that
12 you do, you must be systematic. It must be done constantly, whether it is shining boots
13 or overall look of a soldier, an officer. It has to be the same. The standards must remain
14 the same; not only shining boots and you leave other things, you know, to suffer.

15 Q. And, sir, going back just a few minutes ago, you talked about the power of a
16 commander to charge a soldier and to punish them and to weigh the facts of the case,
17 essentially describing a kind of judicial power that commanders have. Why is it
18 important to the military and to discipline that commanders have this type of judicial
19 power?

20 A. I do hear in the civilian connotation that justice delayed is justice what? Something
21 like that. In the military, instant discipline reminds soldiers that they are a little different
22 from everybody else, or different from when they were civilians outside. It keeps them
23 alert that if you make a mistake or if you deliberately commit an offence, your
24 commanding officer will not have to wait for somebody to come from wherever and
25 investigate at his own time, refer the case to a court which might say "Oh, we will deal

1 with you next year."

2 No, the commanding officer has that power to deal with the soldier straightaway if he's
3 got the evidence. If he's got -- he's got the power, you know, to deal with that, and that
4 sends a very good, you know -- it keeps the soldiers all the time alert and makes them
5 know that, "Look, the commanding officer is not irrational in dealing with this," but he
6 has the powers to deal with the case as and when that case -- that offence is committed
7 and he will dispense with it.

8 He will dispense with justice straightaway, because he can get the case within his
9 authority to investigate it quickly, get all the evidence that is available and the man will
10 come in front of him and he -- you know, his case will be listened to straightaway and
11 punishment, you know, given, or non-punishment. It is not only to punish. It is also to
12 ensure that justice is carried, you know, amongst the rank and file.

13 Q. Sir, when you were a lieutenant and a platoon commander, did -- I think it's safe to
14 assume that is the moment when you had the most interaction with lower level soldiers; is
15 that fair?

16 A. There are two commands that I enjoyed most, exactly, platoon and battalion. In the
17 platoon you know each and every soldier, because they are only about -- as I said, in my
18 army it is only 37, you know, men and women. These days we have women in our
19 platoons, but during my time there weren't. You know each and every one of them and
20 you deal with them, you know, you know, and if you are a good commander they will die
21 for you, not like Qadhafi, but, you know, they will die for you. They will support your
22 missions without looking back.

23 Q. And did these lower level soldiers know you very well as their leader?

24 A. They did.

25 Q. Would it be fair to say that military units such as platoons and companies are very

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1 close-knit units where people know each other very well?

2 A. In a platoon you know each and every one, even amongst themselves. The
3 company the same. In battalions a little difficult, but the battalion commander would
4 know nearly all his NCOs, key NCOs, and of course officers and some soldiers. There
5 are about 600 to a thousand men, it's not very easy to do, but you will get to know them,
6 yes.

7 Q. And when you were a platoon commander, did your soldiers know what your
8 standards were?

9 A. Yes, my soldiers knew what standard I would want them to aspire to be, because I
10 set the standards, and when I went to training, or in an operation, I was there with them
11 in the front. I won't be, you know, back. I'm with them in the front.

12 Q. Sir, I'd like to turn now to some of your specific experiences in -- especially in Sierra
13 Leone and Liberia as they bear on issues of command and control and discipline and
14 reporting and investigations. Was there ever a time while you were deployed where you
15 had to address an issue involving potential misconduct or misconduct?

16 A. In peacekeeping it was several times, because we were dealing with rebel, you know,
17 soldiers, irregular forces, we were dealing with civilians. We were the only force that
18 was deployed - neutral force deployed - to ensure that peace and stability, security of the
19 country and its people was ensured. So it was more or less like my usual address to the
20 soldiers, units, whenever I went, you know, around, even if there was nothing untoward
21 reported against that particular unit that I am -- I am visiting.

22 Sometimes I would get wire reports, BBC or whatever, claiming, you know, that
23 peacekeepers, you know, have committed certain offences, which we will investigate.
24 Some of those offences we would find that they are true and take action to deal with them,
25 you know, the culprits. Some of them were mere rumours, and as such the onus was on

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1 me as the force commander to address those issues whenever I went visiting my troops,
2 address those issues, those particular issues.

3 Q. Did you learn of misconduct through reports from your -- the soldiers over whom
4 you had a command, or from media reports, or both?

5 A. I received from both. I received from anonymous letters. I received, you know,
6 from civilians who would, you know, come and ask "We want to see the force commander.
7 In our area, there is this report," and I would receive those. Sometimes I received the
8 information from my higher headquarters in New York, because some NGOs who have
9 the means -- I don't want to use the word "investigate," but they had the means to gather
10 information and report it directly to New York that soldiers in this particular area, or in
11 this command, are doing A, B, C, D. So I received information from all over.

12 I also received information from my own investigators. I had Military Police who, you
13 know, helped me as a commander to maintain discipline and they go out on my orders to
14 keep an eye on what is happening and they report back to me.

15 MR IVERSON: Sir, I'm going to ask the Chamber now for a break for lunch, but I just
16 want you to know that when we come back for the afternoon session there are really only
17 a few more questions that I'd like to go over and then I will complete my examination.

18 Madam President, I'd like to request now a break for lunch.

19 PRESIDING JUDGE STEINER: Thank you Mr Iverson, just on time. Mr Witness, it's
20 1 o'clock. We will have our lunch-break. You can also take some time during the break
21 to take some rest. We will resume at 2.30.

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

23 (The witness stands down)

24 PRESIDING JUDGE STEINER: The hearing is suspended.

25 THE COURT OFFICER: All rise.

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1 (Recess taken at 1.00 p.m.)

2 (Upon resuming in open session at 2.36 p.m.)

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

4 PRESIDING JUDGE STEINER: Good afternoon and welcome back, and I ask, please,
5 court usher to bring the witness in.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE STEINER: Mr Witness, good afternoon and welcome back.

8 THE WITNESS: Good afternoon, ma'am. Thank you for allowing me to come
9 back.

10 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony?

11 THE WITNESS: Yes, Madam, I'm ready.

12 PRESIDING JUDGE STEINER: Mr Iverson, you have the floor.

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

14 Q. Welcome back, General. How are you doing this afternoon?

15 A. Fine.

16 Q. We left off before the break and I was asking you some questions regarding the
17 tools available to a commander to address certain issues within the command. One
18 thing that you mentioned in passing was the ability to remove a subordinate
19 commander from his position as commander. Can you elaborate on how that
20 process works of removing commanders?

21 A. If a commander has been investigated and found to be wanting, in other words
22 he is not performing as required for whatever reason to the satisfaction of his
23 superior commanders, the superior commander has every channel available for him
24 either to recommend to a higher commander the removal of that particular officer
25 who is not meeting the standards that are required. In some cases, the commander

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1 himself has authority. He can order immediate removal of that particular officer or
2 commander from his command immediately, but then report back, report further up,
3 you know, to his superior commander, "This is what I have done with this particular
4 individual and for the reasons A, B, C, D which justifies him being removed
5 immediately from command and either reassigned to another duty, or even
6 investigated further."

7 Q. If you're a high level commander, say for example a division commander, who
8 is vested with the authority to remove officers, appoint officers, promote officers for
9 example, is there anything short of removing an officer from command that that
10 division commander could do to address a problem?

11 A. Yes. Yes, the division commander can call the officer for interview in front of
12 him, discuss with him his shortcomings and give him either a verbal or written
13 reprimand and send him back to his command and tell him, "These are the areas
14 where you are failing. I have noted these are your failures, or these are your
15 difficulties, and I'm giving you either a verbal reprimand, or written command
16 signed by the division commander," and he will send him back to his command and
17 give him a warning in that same reprimand that, "If you don't improve, then I will
18 take, you know, further, you know, steps."

19 Q. If the subordinate commander is simply deficient in meeting the standards of
20 the division commander, would retraining be a potential option to that division
21 commander?

22 A. Exactly. If the division commander finds that the reasons why this particular
23 officer is not performing to the standard, because maybe he requires more training,
24 more coaching, given more time to learn on the job, the division commander will, you
25 know, give him all those options or training, send him out on training, or let him

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1 learn on the job.

2 MR IVERSON: Madam President, I would like to request a private session just for a
3 brief period.

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

5 (Private session at 2.44 p.m.) * Reclassified as Open session

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

7 MR IVERSON:

8 Q. I wanted to use the code we had established for (Redacted) but I think that
9 that will prove to be difficult and so I want to ask this question in private session.

10 And this has to do with something stated by (Redacted) Witness 36, and the
11 reference for the record is CAR-OTP-0009-0345, and this is the English reference, and
12 then the pinpoint reference, the last four are 0388. And the French reference of the
13 same statement is CAR-OTP-0049-0906, and the pinpoint reference is 0948 is the last
14 four.

15 Sir, in his statement (Redacted) stated that 40 per cent of the troops of the MLC
16 were disciplined. If you are a division commander and your (Redacted) holds the
17 opinion that 40 per cent of your soldiers are disciplined, what steps would be prudent
18 to take to address this situation?

19 A. If I'm the division commander, I would immediately find ways by means in
20 which I can improve discipline because 40 per cent is definitely below average for a
21 division, or even for a battalion. Forty per cent only discipline you have a problem
22 and so you will have to take immediate action to arrest the situation going below that.

23 Q. And if you deploy your forces when they are at such a state of readiness in
24 terms of discipline, what are the implications for discipline?

25 A. Implications are enormous. In other words, you are sending troops who you

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1 don't really expect to perform to the standards that are required, you will find a lot of
2 difficulties in command and controlling such a force when deployed on the ground.

3 The commanders below you will find the same problems, and even more sometimes.

4 MR IVERSON: Madam President, I would like to request that we go back into open
5 session.

6 PRESIDING JUDGE STEINER: Yes, Mr Haynes.

7 MR HAYNES: Just -- just before we do, Mr Iverson's question in private session has
8 reminded me of a concern we have, and it is this: Prosecution filing 1743 of
9 16 September requested protective measures for four witnesses, (Redacted) of
10 which reference has just been made to one. The basis of the application, and I think
11 I can quote it exactly, was that protective measures were sought because of
12 heightened tension in the forthcoming Congolese elections. There is no other basis
13 advanced.

14 I respectfully remind the Chamber that we're still awaiting a decision on filing 1743,
15 but in our submission it's now moot because the Congolese elections took place on
16 28 November and there is therefore no outstanding basis for any of those witnesses to
17 seek protective measures. And I accordingly question whether it remains necessary
18 to ask questions about any of them in private session, but that's the only observation I
19 wish to make.

20 In my submission, in any event, a reference to a witness's -- or not a witness, a
21 reference to the fact that a man has made a witness statement which has been
22 considered by General Opande does not reveal his identity as a witness in any event
23 and that question could properly have been asked in open session, whatever the state
24 of that man's application for protection.

25 PRESIDING JUDGE STEINER: I don't know whether Mr Iverson wants to address

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1 this issue?

2 MR IVERSON: Well, just as an initial matter, because the Prosecution had applied
3 for a protective measures, realising that that issue has not been decided by the
4 Chamber, as a precautionary principle we thought it prudent to go into private
5 session to discuss this insular fact. I would have found it difficult to, as
6 Defence counsel proposes, to ask this question in open session certainly within the
7 realm of possibility but I think the risk would have involved possibly disclosing an
8 identity. To the extent that the Defence wishes to revisit the issue, the larger issue,
9 of application for protective measures I'm certainly not prepared at this moment to
10 address that in substance. It comes as a bit of a surprise that the Defence counsel
11 raises it at this moment, so I'd like to just preserve the Prosecution's position to revisit
12 it if it becomes an issue later in the proceedings.

13 PRESIDING JUDGE STEINER: You are 100 per cent right, Mr Iverson. Before the
14 Chamber rules on the issue of protective measures that, as always, will be ruled on a
15 case-by-case basis and with -- together with the VWU assessment and any other
16 measures that the Chamber deems necessary we will continue asking questions that
17 involved in a way or the other statements given by any protective -- protected
18 witnesses in this courtroom.

19 Court officer, please turn back into open session.

20 (Open session at 2.53 p.m.)

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

22 MR IVERSON:

23 Q. Sir, could you describe in general the process of how officer promotions work in
24 militaries, and including your experience with -- in dealing with irregular forces?

25 A. I'll start with the regular forces. In the regular forces there are steps that must

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1 be taken before an officer is promoted. First of all, he has to meet certain
2 requirements, standards, courses, and be compared with his rank, within his rank, his
3 contemporaries. Recommendations will come from his commanding officer for
4 promotion to the next high rank. It will be decided by the board, a board of officers
5 will sit and look through the promotion -- those who were promotable, the list of
6 people recommended, do they meet the necessary requirement standards? Have
7 they performed well enough to merit the next promotion? Once that is done, then of
8 course that board will say there are various vacancies available and the following
9 officers fall within that premise and the following will be passed on for or will be
10 promoted. Not everyone will be promoted. Some will be passed on for another
11 consideration later on. That's the normal standard that is done in any military.
12 Some larger militaries, even these days use computers, you know, to sieve the
13 requirements rather than people sitting down and discussing and a long list is sent
14 and published that the following officers fall within promotable vacancies available
15 and then there will be a cut-off line and vacancies will be found. Those who meet
16 the necessary promotion criterion will be promoted.
17 In the irregular forces, promotion tend to be done by the commanders themselves,
18 commanders will promote their men, their officers straightaway for whatever reasons.
19 They normally don't have a very well-oiled system like we have in the military, so
20 promotion depends on the whim of the commander, particular commander. If he's
21 in a battalion, for example, the battalion commander will promote his lieutenants to
22 captains, and captains to majors, and things like that. They don't even have an
23 establishment. In the military there is an establishment. Establishment calls for
24 people to be promoted to fit certain slots. Funds must be there available for them to
25 be paid for their high ranks. In the irregular forces they are not paid, so the

1 commander -- the commanders in most cases do promote their own people and
2 sometimes you find that the higher you go up, the promotion is normally done by the
3 highest, you know, the higher commander.

4 Q. If there are any commonalities between conventional and irregular forces with
5 regard to promotions, would one of those commonalities be that, in general, if
6 somebody is selected for promotion the promoting authority approves of that
7 person's conduct in the past?

8 A. That's what it is. The person is not being promoted because he's not doing
9 well; the person is being recognised for what he does and that is what they do, you
10 know. They promote them because of their good deeds.

11 Q. Is there any relation between either directly or indirectly between promotions
12 and good order and discipline within the military force?

13 A. Good order and discipline plays a role in an officer being promoted. An
14 officer can have the highest standards of education, he's passed all his courses, but he
15 may be passed on for promotion just because of his discipline. He will be passed.
16 He will be left out of the promotion if his discipline does not meet the highest
17 standards that are required.

18 Q. Now I'd like to go back to something you mentioned in the last session, and that
19 is this function that a commander has of weighing the facts and making what some
20 may describe as judicial-type decisions. Are you familiar with a scenario where a
21 court-martial convening authority, so a high-ranking general officer, would also have
22 the power to grant clemency, or pardon? Are you familiar with that type of
23 scenario?

24 A. Yes, I do. The convening authority, which is a high -- you know, a commander
25 of high level, will convene a court-martial, and when the court-martial has handed in

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1 the sentence to an officer, there will be a reviewing officer. Normally you will find
2 that it's the convening authority who reviews the sentence, and he has the authority
3 to sign on and accept the sentence given without clemency, or he can review, you
4 know, that sentence and say, "The court-martial gave this particular officer two years'
5 imprisonment," or something like that, and he will say, "I reduce this to this number
6 of months," or, "I reduce this to this, you know, corresponding sentence." Not to a
7 completely different, you know, sentence, but a corresponding sentence, yes.

8 Q. So a convening authority could adjust the sentence within his prerogative; is
9 that right?

10 A. That is correct. He will not, you know, turn round and say, "No, I don't find
11 him guilty. You found him guilty, but I don't find him guilty." That he won't do,
12 but he will review the sentence and he can.

13 Q. If a soldier is court-martialled and in the example you gave an officer receives a
14 two-year sentence, for example, and the convening authority grants clemency and
15 says, "The sentence is reduced to two months," and then promotes that officer to the
16 next rank, what message, if any, does that send to the force?

17 A. That is unheard of - unheard of - in the military, you know? You reduce the
18 sentence and you promote him? Unheard of in the military. That sends a very
19 wrong signal. You're condoning, you know, indiscipline.

20 MR IVERSON: General, thank you very much for your patience and consideration.
21 I've come to the end of my examination.

22 Thank you very much, Madam President, your Honours.

23 PRESIDING JUDGE STEINER: Thank you, Mr Iverson.

24 Before I give the floor to the legal representatives who are authorised to put some
25 questions to you, Mr Witness, I just would like to make a corrigendum on the ruling

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1 that is on page 51, starting on line 7, when I said, "Before the Chamber rules on the
2 issue of protective measures that as always will be ruled on a case-by-case basis and,
3 together with VWU assessment and any other measures that the Chamber deems
4 necessary, we will continue asking questions that involve in a way or the other
5 statements given by any protected witness in private session, instead of in this
6 courtroom."

7 I ask whether Mr Zarambaud will start? Maître Douzima? Maître Zarambaud.

8 Mr Witness, Maître Zarambaud, legal representative of victims, will put some
9 questions to you as authorised by the Chamber. Maître Zarambaud, you have the
10 floor.

11 MR ZARAMBAUD: (Interpretation) Thank you, Madam President, your Honours.

12 QUESTIONED BY MR ZARAMBAUD: (Interpretation)

13 Q. Good afternoon, Mr Witness.

14 A. Good afternoon, sir.

15 Q. My name is Mr Zarambaud Assingambi, and I am usually of the Central
16 African Bar and here I am a legal representative. Here I am the legal representative
17 of victims, along with my learned colleague Marie-Edith Douzima-Lawson.
18 As the President has just mentioned, we have been given authorisation by the
19 Chamber to put a few questions to you. They will be brief and I think you have
20 already provided answers to some of my questions, but let me begin with a first series
21 of questions based on reference CAR-OTP-0064-0607, page 0617. These references,
22 Mr Witness, are not for you. They are for the benefit of the record.
23 And so my first question to you is the following: How was the decision taken to
24 deploy MLC troops to the Central African Republic?

25 A. In the evidence that I reviewed, there was no clear-cut answer as to how the two

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1 countries discussed the mode of deployment before the troops were deployed into
2 CAR. In fact, there is evidence in the documents that I reviewed that this was
3 known - the deployment was ordered and known - between the highest command of
4 the two countries; in other words, Mr Bemba and President Patassé. Even the staff
5 of the MLC were taken by surprise when the deployment of the troops was effected.
6 The staff - the military staff - of MLC.

7 Q. Thank you, Mr Witness. Still relying on the same reference document,
8 paragraph 2, page 0618, my question in relation to your report is the following: Did
9 Mr Bemba have physical control over the troops deployed in the Central African
10 Republic?

11 A. In my expert opinion, he had the means to have physical control over the troops
12 that he deployed in the CAR. A commander does not have to be physically
13 available there on the ground with his troops. He can command from miles away,
14 provided he has the means to issue instructions through his chain of command. He
15 has the means to monitor what those troops are doing on a daily basis, or on a regular,
16 you know, basis. That is what we call, "He is in command and in control." That's
17 the military connotation of being in physical command of troops; command and
18 control of those troops.

19 Q. Thank you. If Mr Bemba had the possibility to exercise physical control over
20 his troops in the Central African Republic, how did he do so? By what means?

21 A. He did it through his commanders, the commanders that he actually deployed
22 with the troops in the Central African Republic. He also could monitor through
23 communication, radio communication, telephonic communication, or he himself
24 when he visited the troops in the CAR he would address them, he would have
25 opportunity to discuss with their commanders on the ground and even address the

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1 troops. That's what command is all about. He had the means to discuss the
2 conduct of his troops with the commanders that he had chosen and sent out there,
3 and also discuss with the Central African Republic leaders who they had gone to -- or
4 leadership that they had gone to assist in dealing with insurrection. That's the way
5 the military does their things.

6 Q. Thank you, Mr Witness. My second series of questions will be based on
7 CAR-OTP-0064-0607, the same reference, but at page 619 -- 0619, last paragraph, and
8 this is my question. The first question is the following: Commanders - MLC
9 commanders - on the ground in the Central African Republic, as well as their
10 subordinates, were they in a position to have command and control - effective
11 command and control - over their troops?

12 A. Exactly. When you send commanders on the ground, you send them to go and
13 command and have effective control over their troops, regardless of where they are in
14 your own country, or outside in another country. That's what command is all about.
15 You have to have the commanders who will be able to be in control - effective
16 control - of the men and women you are deploying. They were expected to have
17 that ability. They were people who would have been trained well enough to be
18 deployed outside or within their own country and have effective control - command
19 and control - of their men.

20 Q. Thank you, Mr Witness. Second question, still based on the reference I just
21 mentioned: Were there any serious cases of indiscipline?

22 A. From the witness statements that I reviewed, yes, there were reports of rapes,
23 there were reports of burning of, you know, people's houses, pillaging and killing.
24 Those are serious crimes as far as the military is concerned; any military force.

25 Q. Thank you, Witness. From your answer let me follow up with this question:

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1 The field commanders, that is those who were commanding on the ground, were they
2 able to or were they in a position to deal firmly with any serious cases of indiscipline
3 that may have been observed?

4 A. In the evidence statements that I reviewed, I saw no serious attempt -- I saw no
5 serious attempt to deal, especially the commanders on the ground, to deal with the
6 alleged offences that were committed, you know, by the troops. If something
7 happened somewhere else I have no knowledge about it myself.

8 Q. My last question, Mr Witness, will be the following: Who did the
9 commander-in-chief of the MLC troops on the ground in the Central African Republic,
10 who did that commander report to?

11 A. I believe you are asking me that the commander, the overall commander, of the
12 MLC forces in CAR who did he report to; is that correct? And if that is correct, my
13 expert --

14 Q. That is correct. That is correct, Mr Witness.

15 A. Thank you. The commander on the ground in Central African Republic
16 reported directly to his commander-in-chief back in Gbadolite. That is the chain of
17 command, that is his chain of command. He did not have any other commander
18 other than his chain of command in Gbadolite.

19 MR ZARAMBAUD: (Interpretation) I thank you very much, Mr Witness. And I
20 thank the Chamber for granting me permission to speak. Thank you.

21 PRESIDING JUDGE STEINER: Thank you very much, Maître Zarambaud. I now
22 give the floor to Maître Douzima-Lawson, also legal representative of victims, that
23 was authorised by the Chamber to put some questions to the witness.

24 Maître Douzima, you have the floor.

25 MS DOUZIMA-LAWSON: (Interpretation) Thank you, Madam President.

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1 QUESTIONED BY MS DOUZIMA-LAWSON: (Interpretation)

2 Q. Good afternoon, Mr Witness.

3 A. Good afternoon, ma'am.

4 Q. Witness, the President has just told you that I represent a number of witnesses
5 participating in these proceedings. Those victims would like to understand
6 somewhat how things happened. It is for this reason that my colleague and myself
7 asked for authorisation to question you in order to obtain clarification on a number of
8 issues. My questions to you will relate to your report and to some of the answers
9 that you gave to the Prosecutor in today's hearing.

10 Mr Witness, my first question to you will be in relation to part of your report, one of
11 your statements, and for the parties the reference is CAR-OTP-0064-0607, page 0619.

12 Mr Witness, it is your assertion that the MLC forces commander in the Central
13 African Republic had about 2,000 men under him but who were not properly
14 prepared for a sustained intervention in a foreign country. You talked about lack of
15 communication, or proper and adequate communication resources at brigade level
16 and also mentioned logistical insufficiencies. As an expert, what would you say
17 would have been the manner in which those forces should have been prepared?

18 A. Before you deploy any troops outside the country, or within the country, the
19 first thing is selection of the troops you are going to send out. You will select your
20 best troops. You will select the troops who are capable of going to meet the mission.
21 You will then plan, you plan in your headquarters how you are going to conduct that
22 particular mission.

23 If it is a mission that is going across borders it will, if possible, and in most cases there
24 has to be a joint planning between your own staff and the staff of the country in
25 which you are going to, you know, support. Several meetings will take place.

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1 Memorandum of understanding will be drawn between the two countries or the two
2 forces so that everybody's clear in his or her mind what you are getting involved in,
3 who is responsible for what, like in logistics. If you require any logistics from the
4 country you are going to support, and they are capable of providing it, that must be
5 in writing, agreement, and it will be detailed that this is what they are going to
6 provide and to who.

7 So there has to be planning and training. While all this planning is going on, you
8 train your troops, get them ready, supply them with what they need to get before
9 they deploy. And once they deploy, then you ensure that they are sustained. You
10 don't just provide them with equipment for day 1, day 2 or day 3 and then after that
11 they are on their own, then that mission will not succeed.

12 Q. Thank you, Witness, that is very clear. The explanation you have provided is
13 very clear. Let me now put a question to you relating to an answer you provided to
14 the Prosecutor, and this appears on today's transcript, the English version -- the
15 French version page 25, line 11 to 28 and page 26, line 1. The English version it
16 would be page -- page 24, from lines 8 to 16 and then page -- rather, page 24 from line
17 6 to 16 in the English version.

18 Mr Witness, the question was put to you to find out whether you had any additional
19 information on the matter of communication and logistics. Do you wish to modify
20 or change your position on the issue of this additional information? That was the
21 question. And your answer was that a conversation with a brigade commander or
22 officials who could have been in a position to provide you with additional
23 information may have enabled you to know that they did not have all the radio
24 equipment they needed, and that in those circumstances you would not have come to
25 the conclusion that they had any communication problems or logistics problems.

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1 Does this mean that they had all the communication equipment and the logistics
2 material that was necessary?

3 A. My report remains as it were. The evidence that I reviewed, the statements
4 and the information that I got on the documents that I reviewed, did not convince me
5 as an expert that they had sufficient number of communications that is required for a
6 sustained operation in DRC below brigade level. Similarly with the logistics. The
7 question that was posed to me was if I had information contrary to what I had, would
8 I change my mind? Of course, yes.

9 If I had information that really they had all these things I would be crazy, you know,
10 to say they didn't have them. I'm just saying that information that I had did not
11 convince me that they had the number of communication equipment that they
12 needed to operate successfully under those circumstances and logistics.

13 Q. Thank you, Witness. Let me now deal with another part of your testimony
14 here before the Court, and I'm referring to page 20 of the French transcripts, line 12 to
15 22, and in the English it is page 19, lines 5 to 15.

16 Mr Witness, you testified that it was expressly stipulated that the MLC forces came
17 from the DRC by way of the river and they were immediately in a position to invade
18 the city or the neighbourhoods of the city after taking out any resistance, and then
19 they set out to stretch their control beyond Bangui.

20 If I do recall properly, they travelled along a number of roads, the north, the northeast
21 and the northwest roads. Sibut, Bossangoa, and in so doing they were pushing out
22 the other forces and the town was behind them as they moved forward towards other
23 areas. That was the strategy they adopted.

24 Mr Witness, from your knowledge, would it be correct to say that the MLC troops
25 moved along all the roads that you mentioned simultaneously or in a consecutive

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1 manner?

2 A. I do not expect a movement of military forces going into battle to be, you know,
3 from all approaches. The military does not move that way. The commander will
4 decide on which routes he wants the movement on particular axes, particular days
5 and the others will move on different approaches. Sometimes if they find resistance,
6 they will change. They will change the axis.

7 As to what, you know, they finally do, that does not matter. What matters is that
8 they -- their movement is to contain the enemy and push the enemy from the areas
9 that have been identified by them, or been given to them in the orders of the
10 commander. The tactical - low-level tactical - movement on what actually happened
11 on day 1 to day B -- from day 1 to day 7 was not really my major concern. I looked
12 at the overall movement when they crossed the river, especially the forces that came
13 across the river. They moved out and then they continued to move further on
14 outside, you know, the city centre. That's all I was saying. They could have had
15 many axes, I don't know. It was not in the documents that I reviewed.

16 Q. I had another question to put to you -- well, I'll put it to you anyhow and I will
17 see whether or not you can answer it, if you know. So, anyhow, having pushed back
18 the enemy from a town, how long did they stay in that town before continuing to
19 another town?

20 A. Madam, I didn't have that information.

21 Q. Thank you, Witness. I'd like to come back to your report now, reference
22 CAR-OTP-0064-0607, page 616. You state that the training of the soldiers and the
23 officers of the MLC took place within the limits of its territory and it was aimed at the
24 new recruits who had no military experience whatsoever, whereas those who had
25 already been the recipients of military training received the necessary additional

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1 training within and sometimes outside the territory under the control of the MLC.

2 The training involved military initiation and political -- basic political initiation.

3 This prepared the officers and the combatants with a view to their being deployed in

4 the context of operations and military activities. It also made it possible for the

5 combatants to understand and to follow military orders via the chain of command in

6 times of peace and during combat operations. As far as you know - once again as far

7 as you know - what would have been the duration of such training? Do you know

8 that?

9 A. I cannot tell you exactly how long each and every soldier in the MLC got his

10 training for, but what I can tell you from our own experience, from our own

11 knowledge, irregular forces will get all that type of training that I'm talking about,

12 which are in my report, for them to be able to do what their commanders want them

13 to do. The training will vary from command to command. The training will vary

14 from one irregular force to irregular force. Normally they have a crash-training

15 programme when they have new recruits, a crash training programme to make them

16 be able to shoot the gun straight and become combatant, what you call "combatant,"

17 and then for those who are in command they will have the opportunity to have other

18 advanced training.

19 You will be surprised that some of these commanders in those irregular forces may

20 even have training outside their countries, for example in Uganda, neighbouring

21 countries, or even in Europe some of them do get training like that. In, for example,

22 when SWAPO had the best training I have seen in any irregular forces, some of them

23 got their training East Germany then, in Cuba and they had all round training.

24 I don't see the reason why MLC could not have that type of training, so that's what

25 I was talking about. Training will vary from irregular force to irregular force and it

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1 will vary from the low-ranking recruits, combatants, NCOs, their own NCOs and
2 commanders.

3 Q. Thank you, Witness. My final question, reference CAR-OTP-0062-0607, page
4 620. You said, Witness, that according to you the absence of consultation to prepare
5 the carrying out of operations in the Central African Republic largely contributed to
6 the difficulties concerning the excesses and problems of discipline that were noted
7 within certain elements of the intervention forces. So my question is as follows:

8 What were the intervention forces where there were problems of excessive behaviour
9 and indiscipline that had been observed?

10 A. The excesses I'm talking about are the ones reported by the witness statements
11 that I reviewed, whereby there are complaints of rape, killings, pillaging, beating of
12 civilians. Those are excesses. Those are things that in a military scenario you just
13 don't take them for granted. I don't know whether I have answered you, but those
14 are the excesses that I'm talking about.

15 Q. Well, actually my question was which were the intervention forces that you
16 were talking about who had carried out such excesses?

17 A. The intervention forces I'm talking about is MLC and the other forces that, you
18 know, came out to support President Patassé. The CAR or FACA forces are your
19 country's, or the CAR country's, forces. They are not intervention forces. They are
20 legitimate government forces, right? But any force that came out to come and assist
21 Patassé would be considered as an intervention force, because CAR is not their
22 country. They are intervening in a conflict which is not theirs. That's the word
23 "intervention." That's how the military use "intervention force." You are
24 intervening either because you have been invited to assist, or you are intervening
25 because of your national interest.

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1 Q. You referred to the MLC forces and you spoke about other intervention forces.
2 In the documents that you read, were there any complaints concerning other
3 intervention forces who might have committed excesses?

4 A. I don't remember very well, but I think there were reports of similar happenings
5 taking place even with the government forces. Even within the government forces
6 there were complaints against them, some of them, but I can't remember very well.

7 MS DOUZIMA-LAWSON: (Interpretation) Thank you, Witness. Thank you for
8 having been good enough to answer all of my questions.

9 Your Honours, I have concluded my questions. Thank you.

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

11 Before I give the floor to the Defence, I just would like the witness to clarify one point
12 on the transcript that may refer to a problem of the transcript, but it is on page 63, line
13 16. You said that, "They had sufficient number of communication that is required
14 for a sustained operation in the DRC below brigade level."

15 THE WITNESS: They did not. They did not.

16 PRESIDING JUDGE STEINER: But I suppose you meant the CAR, not the DRC, or
17 was it the DRC?

18 THE WITNESS: I'm sorry. You are absolutely right, Madam.

19 PRESIDING JUDGE STEINER: It's the Central African Republic you were talking
20 about?

21 THE WITNESS: The Central African -- Central African Republic. I'm sorry about
22 that.

23 PRESIDING JUDGE STEINER: No, it's not a problem. It's just to make the
24 transcript clear.

25 THE WITNESS: Thank you, your Honour.

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1 PRESIDING JUDGE STEINER: Maître Kilolo, Defence will start with their
2 questioning? You have the floor, Maître.

3 QUESTIONED BY MR KILOLO: (Interpretation)

4 Q. Good afternoon, Witness.

5 A. Good afternoon, sir.

6 Q. Let me introduce myself. My name is Aimé Kilolo, I am one of the
7 Defence counsel for Mr Jean-Pierre Bemba and I shall be putting a number of
8 questions to you on behalf of the Defence. Do you understand me?

9 A. I understand you, sir, very well.

10 Q. Witness, before you were contacted by the Office of the Prosecutor, did you
11 have any knowledge about the MLC, its functioning, its structure?

12 A. The structure of MLC for me, as a military man who had knowledge of various
13 irregular forces, especially in West Africa and Central Africa, was what I would call
14 "general knowledge."

15 Q. Before submitting your report, did you have access to the MLC archives?

16 A. Not at all.

17 PRESIDING JUDGE STEINER: Maître, forgive me, if I may? Mr Witness, just to
18 remind you of the five-seconds golden rule, not to give the answer immediately after
19 the question is put to you because now we are having interpretation. Maître.

20 MR KILOLO: (Interpretation)

21 Q. Witness, before you submitted your report did you have any discussions about
22 the functioning of the MLC, any discussions with military officers who had worked
23 within the MLC?

24 A. Not at all.

25 Q. Did you in person select all of the material, the documents, the statements of the

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1 different witnesses that were used as a starting point for your report?

2 A. No.

3 Q. Could you tell us who it was who selected those documents that were the basis
4 for your report?

5 A. The documents were sent to me by the Office of the Prosecutor. They did the
6 selection even without me, you know, knowing what documents they were sending.

7 Q. Do you know on what basis the OTP selected the information that was
8 communicated to you for the purposes of your report?

9 A. Not at all. Sorry. Not at all.

10 Q. Did you submit a request to the Office of the Prosecutor to get hold of all of the
11 documents, the relevant information within the context of the Bemba case?

12 A. When I got the documents, I had to review them and I reviewed them as a
13 whole package which was sent to me by the Office of the Prosecutor. And the only
14 thing I asked for, after reviewing these documents, is in my report; that I wanted to
15 visit, identified from the documents certain key officers who I wanted to interview, or
16 talk to, to add any information that could have, you know, been useful, you know, to
17 me. That's all I did, and it is in the record that I asked for certain things to be done
18 and they were not done.

19 Q. How did the Office of the Prosecutor reply to you in that respect?

20 A. The reply was that it was not necessary for me to go to the Central African
21 Republic or to DRC to interview with those officers. I had all the documents that I
22 needed. And, sure enough, I had sufficient, you know, document which gave me
23 the information that helped me to write my expert report. And I've stated quite
24 clearly that despite not going to DRC, or Central African Republic, or meeting with
25 those officers that I had selected, those few key officers that I had selected that

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1 I would have liked to, you know, to talk to, it did not hinder me from writing my
2 expert report or producing my expert report.

3 Q. Did you talk about the preparation of your report with a third party?

4 A. Not at all.

5 Q. Before submitting your final report, did you have to submit a draft report to the
6 OTP?

7 A. I don't know what you mean by "a draft report." I submitted a report that is
8 provided for, which has been produced in Court, as the report I have submitted, my
9 supplementary report, whatever you would want to call it.

10 Q. After the first report that you submitted, when were you asked to submit a
11 supplementary report?

12 A. Are you asking for the date, or the time, or the year?

13 PRESIDING JUDGE STEINER: Mr Iverson.

14 MR IVERSON: I don't believe that Defence counsel has a good-faith basis to ask that
15 question. If they want to ask that question, they should ask it in an open way and
16 not a leading way.

17 PRESIDING JUDGE STEINER: Maître Kilolo, I think you can put the question
18 directly because, apparently, the witness is not understanding what is your point.

19 I think it will be beneficial even to the Defence to put the question in a direct way.

20 MR KILOLO: (Interpretation)

21 Q. Witness, who asked you to submit a second report following the first report that
22 you had already filed?

23 A. I got that request from the O -- is it called OTP? The Office of the Prosecutor.

24 Q. Do you know who from within the Office of the Prosecutor made that request?

25 A. I do not know the person. I have no knowledge about the person. I was

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1 communicated -- I was being communicated to from the Office of the Prosecutor.

2 Q. Did the Office of the Prosecutor give you a reason why they had asked for a
3 second report?

4 A. I wasn't given any reason. I was told to explain one or two issues, like the
5 command and control, which I had discussed in my previous report, clarify what
6 "command and control" means. Clarify. There was no new -- no new information
7 which had not been in my previous report. They wanted me to clarify, for example,
8 what "command and control" means.

9 Q. Witness, did you receive any document containing an order given by
10 Mr Jean-Pierre Bemba during the operations in the Central African Republic?

11 A. Sorry, madam. Not at all.

12 JUDGE ALUOCH: Mr Kilolo, just before you go to the next question, I'm looking at
13 the real-time transcript, page 73, just where we are now, the English transcript, where
14 the witness -- where you pose the question "Did you receive any document
15 containing an order --" no, before that. I think this is the witness speaking, but it's
16 from line 8: "I wasn't given any reason. I was told to explain one or two issues, like
17 the command and control, which I had discussed in my previous report."

18 Mr Witness, what I would like you to clarify is, in being asked to clarify this once
19 more, though it was contained in your original report, did you have to consider the
20 statements of the same witnesses or different ones? Just to clarify, please.

21 THE WITNESS: I did not go into the statements of anybody, other than the
22 statements of the -- of the witnesses that were given to me. I didn't have to go
23 outside that purview. There was no need and I didn't. I didn't attempt even to go
24 and find out from somebody else. Command and control, for example, is a function
25 of a commander, which I am very much aware of in my military career. If

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1 somebody asks me "Explain what you mean by command and control," I just need to
2 expound on it and make it easier for non-military people to understand what
3 command and control is all about. That is what I did.

4 JUDGE ALUOCH: Thank you.

5 PRESIDING JUDGE STEINER: Sorry, Maître. It's 4 o'clock. General, thank you
6 very much. It's 4 o'clock. We'll have to adjourn for today. We will resume
7 tomorrow morning at 9.30 in the morning. Thank you very much. And I will ask,
8 please, court usher to accompany the witness outside the courtroom.

9 (The witness stands down)

10 THE COURT OFFICER: All rise.

11 (The hearing ends in open session at 4.00 p.m.)

12 RECLASSIFICATION REPORT

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

14 ICC-01/05-01/08-3038 and the instructions in the email dated 3 February 2014, the

15 version of the transcript with its redactions becomes Public