

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 International Criminal Court
2 Trial Chamber III - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki
6 Trial Hearing
7 Wednesday, 5 September 2012
8 (The hearing starts in open session at 9.04 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE STEINER: Good morning. I welcome Prosecution team, legal
13 representatives of victims, Defence team, Mr Jean-Pierre Bemba Gombo. Good
14 morning to our interpreters and court reporters.
15 We will continue today with questioning of Witness D-59. Before that, the
16 Chamber has a short oral decision to be issued. It is the oral decision on the
17 applications of legal representatives to question Witness D04-59.
18 On 27 August 2012, the Chamber received an application from Maître Zarambaud on
19 behalf of the victims that he represents to question Witness 59, filing 2286-Conf. The
20 application contains a list of four sets of questions.
21 Similarly, on the same date the Chamber received an application from
22 Maître Douzima on behalf of the victims that she represents, filing 2285-Conf. The
23 application contains a list of eight sets of questions.
24 On 30 August 2012, the Defence responded to both requests from the legal
25 representatives of victims, filing 2288-Conf, requesting the Chamber to deny the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 requests in their entirety, or alternatively to restrict the questioning as detailed
2 therein.

3 Having considered the reasons given by both Maître Douzima and
4 Maître Zarambaud as to why the personal interests of the victims they represent are
5 affected, the Chamber allows the respective applications to question Witness D04-59.

6 Turning to the proposed questions, Maître Douzima is allowed to put all of her
7 proposed questions to the witness as set out in her aforementioned filing.

8 In relation to the questions of Maître Zarambaud, the Chamber allows him to put his
9 questions as set out in his aforementioned filing, except for questions 3.3, 4.1, 4.2 and
10 4.3, which the Chamber finds irrelevant, and questions 4.4.1 and 4.4.2, which the
11 majority finds leading and irrelevant. On the other hand, the Chamber suggests that
12 questions 3.1, 3.2, 3.4 and 3.5 be rephrased in order to avoid leading the witness.

13 We will continue today with questioning of Witness D-59, this time starting by the
14 Prosecution. For that purpose I ask, please, court usher to bring the witness in.

15 (The witness enters the courtroom)

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

17 (The witness speaks French)

18 PRESIDING JUDGE STEINER: Good morning, Mr Dioba.

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

20 PRESIDING JUDGE STEINER: I am informed that you are waiting for your glasses
21 and we will provide your glasses to be brought to you.

22 THE WITNESS: (Interpretation) Yes, I had asked for the glasses, that is in case I
23 have documents to read, but if I don't need to read documents I think we can
24 proceed.

25 PRESIDING JUDGE STEINER: At this time I recommend Mr Iverson, if possible, to

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 start with questions that doesn't -- don't need the witness to read anything before his
2 glasses arrive.

3 Mr Witness, I need to remind you that you are still under oath. You understand that,
4 sir?

5 THE WITNESS: (Interpretation) Yes, I do.

6 PRESIDING JUDGE STEINER: And I also wanted to remind you that you are
7 expected to speak slower than normal and to give the five seconds after the question
8 is put to you before you start answering in order to facilitate the work of our
9 interpreters and court reporters. Is that fine with you, sir?

10 THE WITNESS: (Interpretation) Yes, Madam President.

11 PRESIDING JUDGE STEINER: Today the Prosecution will start questioning you.
12 Therefore, I give the floor to Mr Iverson.

13 You have the floor, Mr Iverson.

14 MR IVERSON: Good morning, Madam President and your Honours.

15 QUESTIONED BY MR IVERSON:

16 Q. Good morning, sir. How are you this morning?

17 A. Good morning, Mr Iverson. I do not know whether this is how I have to
18 address you, but anyway good morning.

19 Q. I don't intend to show you any documents, at least for the early part of this
20 morning, but eventually I would ask you that you do bring your eyeglasses because I
21 will be asking questions which will require you probably to look at a few documents,
22 so just to make you aware of that.

23 And I will be asking a few questions that will probably require private session, and I
24 just want to remind you, sir, that if at any moment you feel the need to talk about
25 identities of persons that you think may need protection, please identify that and ask

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 to go into private session and I will -- I'll make the request to the Chamber. Is that
2 clear, sir?

3 A. Yes, Mr Iverson.

4 Q. And I think you already know this, but just to make sure that -- because in the
5 past there have been witnesses who don't -- aren't exactly clear on the procedure here,
6 but I do represent the Prosecutor in these proceedings. Do you understand that, sir?

7 A. Just a moment, sir. I do understand what you are saying; I just need to get my
8 glasses.

9 Q. Are you all set, sir?

10 A. Yes, I'm ready.

11 Q. The last few days, while you were testifying, you looked at quite a few
12 documents and you analysed them in the courtroom; the Lusaka Accord, the CAR
13 constitution, the mutual assistance pact, CEEAC and the CEN-SAD protocol, just to
14 name a few, and I believe that, if I could summarise your overall argument is that
15 these documents, these agreements, created a duty of solidarity, created a duty for the
16 MLC to intervene in the CAR. Is that a fair assessment of your testimony, sir?

17 A. Mr Iverson, thank you for your question. Each document that we looked at
18 here together represents a very specific context and specific situation, so you cannot
19 bring all these documents together, these various different documents, and say or
20 conclude that they reflect mutual solidarity. Each document has its own specific
21 subject.

22 If you look at the Lusaka Accord, for example, yesterday and the day before, when
23 I was asked questions on the document, this is what I said: That the Lusaka Accord
24 related to the specific situation of a state, that is the Democratic Republic of the
25 Congo, which was in a situation of crisis. The crisis was linked to the conflict in that

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 country following the departure of Maréchal Mobutu, so there were forces in conflict.
2 The international community found itself observing a state which was becoming a
3 failed state, to use the expression of the American political scientist Alexander
4 Zartman, and so to avoid that state from becoming a failed state, the international
5 community decided to save this country through negotiations and brought together
6 the various stakeholders in order to find the ways and means of putting in place a
7 mechanism to reorganise and reunite that country.
8 This was, therefore, a gathering of political players and that is why I said that that
9 agreement was a political agreement, first of all, because these were political leaders,
10 or stakeholders, who came together around a table, expressed their opinions and
11 reached a consensus. This consensus was materialised in a document which became
12 the legal basis for the functioning of the state during the period referred to as the
13 transitional period.
14 That document, which was the outcome of the political consensus, was the document
15 referred to as the Lusaka Accord, which opened the way for other negotiations but
16 the agreement was related to the specific situation of the Democratic Republic of the
17 Congo. As I have said, this agreement led to other negotiations that would follow,
18 including Sun City, Pretoria, right up to the reunification of the country in 2003. So
19 we should not confuse between those various documents.
20 The Lusaka Accord concerned the Democratic Republic of the Congo and provided
21 the tools necessary or, rather, the legal framework required for the management of
22 the Congolese State to the various political stakeholders involved.
23 Now, when you come to the constitution of the Central African Republic, obviously
24 the CAR constitution is the basic document organising the Central African Republic.
25 There is no doubt about that. And I would like to add that apart from the general

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 aspects that may be related to my area of expertise, I try not to give any
2 interpretations of a legal nature. So that was the particular case of the constitution of
3 the CAR.

4 There is the next document, which was the Khartoum declaration, following the
5 meeting of CEN-SAD Member States. That was also a very specific context but
6 which related to the Central African Republic, a country in crisis. In Khartoum, the
7 Heads of State, the representatives of the Secretary-General of the United Nations and
8 the African Union, who met in early December 2001, were dealing with a situation of
9 threats to peace, a situation characterised by attempts to destabilise the state and the
10 regime that had been democratically elected, specifically the institutions of the
11 republic embodied by President Ange-Félix Patassé were threatened by coup
12 attempts.

13 In less than four months, May, June, July, August, there had been two coup attempts.
14 You are well aware that coup d'états usually lead to situations of violence. As a
15 result, the CEN-SAD Member States, faced with this situation, could not allow this
16 country to degenerate and given the necessity of preventive diplomacy there were
17 measures that had to be taken to avoid the state from collapsing, to use the expression
18 of the American political scientist Alexander Zartman. This is why these people
19 found themselves in Khartoum to try to restore security in the Central African
20 Republic.

21 So the decisions that were taken in Khartoum, that is to send forces to avoid the
22 collapse of the country and the destabilisation of the institutions, as well as
23 preventing the collapse of democracy, had as objective to safeguard democracy. So
24 you cannot take all those documents that come from various sources and claim that
25 they represent the same thing because each represented a specific context.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 I would like to recall, however, that I am interested in the political and strategic
2 analysis. I also need to point out that issues that are purely legal are not part of my
3 area of expertise. So please, do not try to take me into substantive legal issues
4 because I'm not a jurist. Thank you.

5 PRESIDING JUDGE STEINER: Mr Iverson, if you allow me. Mr Dioba, in order
6 for us to advance and release you as soon as possible, it is important that you try to be
7 as more objective as possible in your answers and that you try to focus on the
8 questions put by the Prosecution the way the questions are put to you. Otherwise,
9 we'll be turning back to elements that were already discussed here, and we do not
10 advance.

11 So it's just very kindly asking you to try to be objective and to focus on the core of the
12 questions that are put to you. Thank you very much for your understanding.

13 Mr Iverson. Yes, please.

14 THE WITNESS: (Interpretation) With your leave, your Honour, when it comes to
15 the issues that are of interest to us, it is always a good thing to define the context in
16 order to better understand, rather than answering by a "Yes" or a "No."

17 Thank you, your Honour.

18 PRESIDING JUDGE STEINER: I fully understand your comment and this is not
19 what we expect from an expert, as you are. An expert cannot answer by "Yes" or
20 "No," but just to give you an example the Prosecutor in his question was referring to
21 something you said yesterday, that MLC sent troops to Central African Republic
22 under a duty of solidarity. This is what the Prosecutor, unless I am mistaken, asked
23 for you, from where you took this conclusion that they had to send troops to the
24 Central African Republic as a duty of solidarity. It was this, and at least I'm not 100
25 per cent sure I understood your answer in that respect; specifically in that respect.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

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

2 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

3 MR KILOLO: (Interpretation) If you would allow me, your Honour, I don't want
4 to speak at length, but I do have a feeling here that the question that was put by
5 Mr Iverson isn't exactly the same question as the question you've asked, to the extent
6 that Mr Iverson quoted a series of documents, almost all the documents that we
7 examined yesterday, in order to draw a single notion therefrom that of solidarity
8 which would commit the MLC to the Central African Republic, and I think it is
9 correct that the expert has replied by retracing the context of all of these different
10 documents and clarifying that the notion of solidarity which committed the MLC
11 didn't come from each of these documents, but we had to put each of these
12 documents in their context. That was my understanding of it.

13 PRESIDING JUDGE STEINER: Maître Kilolo, I'll give of course back the floor to
14 Mr Iverson, but I have very clear in my recollection that the word "solidarity" as a
15 duty of the MLC was mentioned yesterday by the witness when I asked him what
16 was his interpretation of Article 20 of the Lusaka agreement, so it was not something
17 elaborated from all documents that were analysed.

18 If need be I go back into the transcript and I can bring it to you, but I hope you believe
19 in what I'm saying. It was exactly even because I had -- I had mentioned the wrong
20 Article. I had mentioned Article 17, and the witness corrected me that the duty of
21 solidarity was on Article 20.

22 Mr Iverson, please you proceed.

23 MR IVERSON: Thank you, Madam President.

24 Q. Sir, what would you say the duty of an expert witness is in the courtroom?

25 Would you say that it includes listening and answering questions; listening to and

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 answering questions?

2 A. Mr Iverson, the duty of an expert witness is to listen to the questions and to
3 answer the questions, but bringing clarifications, or making clarifications, in the
4 answers that are given. That's what it's about, and the answers in a courtroom such
5 as ours are based on the questions that are put. The answer corresponds with the
6 question that is asked.

7 As such, if questions are put on a precise point the answers are also as precise, but if
8 the questions are put in some kind of amalgamation (sic), then we try to explain
9 stage-by-stage to try and put everything in its place and help everybody understand
10 by having a precise answer.

11 Thank you.

12 Q. Is your duty as an expert witness to help the Chamber look at these issues of
13 politics, diplomacy and military strategy?

14 A. Is that a question you're putting to me there? What I heard from the
15 translator is -- what I heard from the translator is that a question you're putting to me,
16 or is that your own point of view?

17 Q. Is it an expert witness's duty to be helpful to the Chamber in their field of
18 expertise?

19 A. Thank you. An expert -- an expert does not do the work of the Chamber. The
20 Chamber is competent to do its work. It has its own personality. An expert does
21 the work which is up to him by submitting it to the Chamber and using the method,
22 the logical tools that are his, and using them he proposes work to the Chamber,
23 clarifications and then it's up to the Chamber to assess them.

24 Everybody has their own field of expertise. The -- my area is the politico-strategic
25 area and I use my tools, and with my tools I try to describe the situation, the situation

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 that I present to the Chamber, to say, "Look, if you take this approach, this is where it
2 takes you. From the perspective of this area, you can see what their responsibility is,
3 who are the actors and this is the situation."

4 Now, with regards to the rest, well, that's the work of the Chamber. My duty is not
5 to do the work of the Chamber, if I've understood your question correctly.

6 Thank you.

7 Q. Sir, what is your understanding about how a "legitimate intervention" relates to
8 the charges in this case?

9 A. Mr Iverson, thank you, but first of all I'd just like to ask you to clarify your
10 question because you're asking me what -- whether -- well, you see, you mentioned a
11 "legitimate intervention." You said something about a "legitimate intervention," but
12 I didn't find it very clear. Could you clarify that, please?

13 Q. Sir, do you understand how a "legitimate intervention" relates or does not relate
14 to the charges in this case?

15 A. Thank you. The question of the charges, this is something for the Court. That
16 is an issue for the Court. My work consists of highlighting the legitimate elements
17 explaining the intervention of the MLC in the Central African Republic.

18 I don't have to manage my behaviour in relation to the charges. That's not my work.
19 My work is to examine the elements of legitimacy, and that makes me observe the
20 political mechanisms which made it possible to intervene; I mean political and
21 strategic issues that made it possible to have an intervention of the MLC in the
22 Central African Republic.

23 And I therefore, speaking about the first mechanism which is the Lusaka agreement,
24 that's a political mechanism which had a legal basis which made it possible for the
25 leaders to deal not only with internal security within their country, but also of

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 neighbouring countries.

2 This legitimacy with regards to intervention is further justified by the fact - this is
3 something I've stated - that the MLC intervened in the Central African Republic at the
4 request of the Central African authorities.

5 THE INTERPRETER: At their request, repeats the witness.

6 THE WITNESS: (Interpretation) This is another element of legitimacy.

7 Now, as regards the charges, that's your field. What I was asked to do was carry out
8 an analysis of the situation of this crisis and the intervention of the MLC. In the
9 Central African Republic, the issue of the charges, which is a highly legal issue, well,
10 that's your issue.

11 Now, the link, if you like, that one can observe is something -- well, I would state that,
12 if you take a different approach, it makes it possible for the Prosecution, or the
13 Chamber rather, to have other elements available to them for an assessment and that's
14 possible, but I am not interested in those. I am not able to deal with the issue of
15 charges. Elements of explanation or assessment, they enable the Court to
16 understand issues related to the charges.

17 Thank you.

18 MR IVERSON:

19 Q. Right. So you would agree that experts should not take the place of the Judges
20 and express opinions about the criminal responsibility of the accused?

21 A. Thank you, Mr Iverson. In any work of analysis there is no norm which
22 prevents proposals; that is to say when you carry out a work you have elements
23 which you assess, you have descriptions, and you carry out evaluations and you
24 might make certain proposals, but that doesn't mean that you put yourself in the
25 Judges place. These are proposals that are made.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Now, it's up to the Court, to the Chamber, to assess things. The expert doesn't carry
2 out the work of a Judge, but it's not banned or prohibited, having carried out an
3 analysis, to suggest something. You can suggest things with regards to an
4 explanation, "I think that, I think that." To say "I think that," to have an opinion,
5 that's analysis. That doesn't mean that you're putting yourself in the place of the
6 Judges.

7 Now, with regards to the document, it's up to those people who it's addressed to to
8 assess it, or take it into consideration. There is no normal standard which prevents
9 such expression.

10 Q. To express opinions on the criminal responsibility of the accused would be
11 beyond your field of expertise though; correct, sir?

12 A. Thank you, Mr Iverson. I told you that I carry out an analysis from a field
13 which is mine, and using the tools, the analytical tools available in my field, and
14 using them I can propose something. With regards to a certain subject I can say
15 there are no norms, standards if you like, in the work which prevent you from giving
16 a point of view. There's nothing that prevents that. But now, with regards to the
17 rest, there is a matter of assessment. The fact is that this is a document aimed for an
18 internal public, and it's up to the high-level figures to whom the document is
19 addressed to assess it. I don't want us to create a controversy about this; I prefer
20 there to be no controversy in this regard.

21 The openness with regards to analysis, well, the field is open for the expert to take the
22 path or use the tools or the methodology that that expert has, and to give a point of
23 view, but not by interfering. I don't interfere. I don't interfere with issues of law,
24 matters of charges, no.

25 Thank you.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 Q. Sir, can I ask you to tell me the question that I just asked you?

2 A. The question that you asked me was whether - because I have a translation - the
3 question was whether is making proposals with regards to questions, is that going
4 beyond the work of an expert? That's the question that I had, and that was the
5 question, was it not?

6 Q. That's a very general answer, but I'm asking you specifically, is it appropriate,
7 sir, for an expert witness to give opinions on the criminal responsibility of the accused?
8 Do you think that that is appropriate, and you can answer "Yes" or "No."

9 A. Well, I told you in my answer that in the work of an expert there are no rules or
10 norms that prevent you giving your opinion. Everybody does it from their field.
11 It's up to the assessment of the high-level figures to whom those opinions are given.
12 That's the end of it.

13 Q. And since you have no expertise in the law, or apparently in criminology or any
14 other related field, such an opinion would not be an expert opinion; it would be your
15 own personal opinion, wouldn't it?

16 A. Thank you. The opinion that's given is not from a criminal perspective. First
17 of all there's an approach, there's an approach that's taken with regards to
18 responsibility. Now, if we go back to the subject, an analysis is carried out in order
19 to demonstrate that there are atrocities that were committed in the Central African
20 Republic within the framework of an armed conflict which occurred in the territory of
21 the Central African Republic with Central African actors and a certain number of
22 partners.

23 There are troops, there were troops, from friendly countries which accompanied the
24 different Central African actors from the perspective, from politico-strategic
25 perspective, we demonstrate -- or I demonstrate that given the troops were -- went

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 under the political and strategic command of the high level Central African
2 authorities and that these troops became manoeuvre troops for the Central African
3 Republic, as such, the responsibility must be found with the Central African Republic
4 authorities who used those troops, who were the perpetrators of atrocities or the
5 individuals.

6 Now, from that, because the responsibility, the political responsibility, of the leaders
7 who made available men to this country in difficulty, from a strategic point of view
8 this isn't demonstrated. This responsibility from a strategic point of view is not or
9 has not been demonstrated and, as such, from my analysis, on the basis of my
10 analysis, I express my opinion and I would answer that that is something which is not
11 prohibited.

12 Q. Sir, again, I am going to have to ask you, what question did I ask you?

13 A. Mr Iverson, whatever the case, you're going around the same question but
14 you're just changing the register, you're just changing the register, and my answer is
15 always turning around your previous questions. We're going around the same
16 question here. We're going around the same question.

17 So thank you.

18 Q. Can you tell me what my previous question was, sir?

19 A. The previous question that you asked me, Mr Iverson, was to demonstrate if
20 from an analysis, from an expert analysis, is the expert called upon to give proposals,
21 or make proposals, with regards to criminal matters. And previously you were
22 talking about the legitimacy of intervention in relation to the charges.

23 So I'm saying, Mr Iverson, we're going around with the same question here. So if
24 you ask me each time to repeat the question that you ask, well, go-ahead.

25 Q. Well, I'm looking for an answer, sir, I'm looking for a responsive answer. The

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 question is: Is it appropriate for an expert witness, having no expertise in criminal
2 matters whatsoever, to give an opinion about criminal matters?

3 A. Mr Iverson, I shall answer you. I carry out an analysis. Well, on the basis of
4 an analysis, at the responsibility at strategic level. Now, everybody stays within
5 their field, everybody remains within their field. Now, using the methodological
6 tools that are available to them, now this is something I would stress, it is not
7 prohibited. Everybody having carried out an analysis from their field of expertise,
8 it's not prohibited to give an opinion, to make an opinion, but you, as a legal person,
9 you can see that this is something which goes into the criminal area but me, when I
10 make a proposal, then I do that from my politico-strategic analysis and I contextualise
11 the responsibility at that level.

12 Now, with regards to the rest, it's up to the assessment of the Court to whom this
13 internal document is submitted. It's up to them to assess that, to consider that this is
14 a proposal which is welcome, with regards to the analysis which was carried out, or
15 this is a proposal which is not of interest to us with regards to such-and-such other
16 field. And that is the answer. That's my answer. It's clear.

17 Q. Sir, would you agree that expert witnesses should be impartial?

18 A. Thank you, Mr Iverson. The expert firstly carries out work with a view to
19 impartiality, but the duty of the expert is not only to give tools which make it possible
20 to understand but I said it's not prohibited. There is no norm. In social sciences
21 there is nothing, no rule, that prevents an expert from giving an opinion. Whatever
22 the organisation be, the expert does his work and the objective of that is, of course,
23 impartiality.

24 Mr Iverson, giving an opinion, does that mean for you being impartial with regard to
25 analysis, where you say the responsibility at strategic level is not demonstrated. So

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 the conclusion is I would suggest this: In your opinion, is that being partial, in your
2 opinion, Mr Iverson?

3 Q. Is it important for an expert witness to be objective?

4 A. Thank you, Mr Iverson. In the scientific approach in social sciences generally,
5 political and strategic studies go within the framework of social and human sciences.
6 The primary concern is objectivity, to go towards the truth, but you have to express
7 the truth. When it comes out, or when it gives rise to a concern, you have to express
8 the truth when it arises.

9 And what do I mean by that? What I'm saying is, when you analyse a social
10 phenomenon, you see things that are obvious from the tools that you have available
11 to you. You have certain things that are evidence, but the aim, the aim of everything
12 that we do, is to seek the truth. That is the aim of everything we do, and so the
13 responsibility, that's what it means.

14 What does it mean? So with this objectivity, this objectivity also implies that,
15 following my analysis, this is what I believe to be true. That's also objectivity.

16 Thank you, Mr Iverson.

17 Q. And would you agree that an expert witness should not be biased in any way
18 towards one party or another?

19 A. Thank you, Mr Iverson. An expert works on the basis of a particular topic.
20 An expert is requested to do a particular piece of work, and in this case - in my
21 case - I was asked to look at this issue of the intervention of the MLC in the Central
22 African Republic. The other part relates to the charges and the acts of violence and
23 abuse. I did not look at that. I did not look at those issues of violence, or abuse. I
24 analysed the mechanisms - the political mechanisms and the strategical
25 mechanisms - relating to the MLC's intervention in the Central African Republic. So

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 there you have it. That is the work that I did.

2 Now, the other aspect that you've touched upon, namely the charges, the violence,

3 the abuse, I did not look at those issues. Obviously, it is quite obvious - it is quite

4 obvious - that when an armed conflict occurs violence and abuses occur.

5 Consequently, the work that I was asked to do, the work for which I was asked to

6 provide expertise, has certain limits, restrictions.

7 So -- so it's not a matter of arguing "A and thus B." It is more a matter of conducting

8 analysis and then saying to the senior officials of this Court that, "On the basis of my

9 analysis, from a political point of view, from a point of view of the MLC's

10 intervention in the CAR, I do not find responsibility for A, so I think that A can

11 benefit from this or from that."

12 So I do not take interest in that. Otherwise, one cannot do everything when

13 conducting an analysis. Honestly, that would -- one cannot do everything. There

14 is a certain framework and, on the basis of that particular framework, I provide

15 opinions.

16 So it's not a matter of being biased. It's a matter of making suggestions subsequent

17 to an analysis with a concern for objectivity, because what we are trying to do here is

18 to find truth, find the truth, and then in turn responsibility.

19 Q. Sir, you haven't reviewed everything in this case, have you? You've

20 had -- you've limited review -- you've reviewed limited materials; correct?

21 A. Thank you, Mr Iverson. Mr Iverson, in the field of the social sciences and the

22 humanities -- and I'll stress this point because, you see, the area in which I have this

23 expertise, this is a very broad area. One cannot study each and every element of a

24 particular file. Everyone must remain within his or her area of expertise. I stress

25 this point.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 Legal -- people with legal training, who specialise in criminal matters, they do their
2 work. Someone who has expertise in politics and strategy does his area. Even
3 economists, so to speak, have their area of expertise. For example, an economist
4 might assess how much money was spent on weapons.

5 So if one is asked to prepare a report of 20 pages, one cannot read everything. That
6 would not be possible. How would it be possible in such a broad area? How
7 would one go through thousands -- one would end up writing thousands of pages,
8 Mr Iverson. That is not possible in the field of social sciences.

9 In an area as complex as armed conflicts with violence and abuses occurring
10 subsequent to an armed conflict, well, there are many aspects that stem from this.
11 Each area of the social sciences has its own work. One cannot look at everything.
12 One looks at what one is asked to look at, using one's methodological tools in light of
13 one's area of expertise. One conducts an examination, an analysis and you say what
14 you think and you submit a document.

15 One cannot do everything. That is just not possible, particularly in the field of the
16 social sciences and the humanities. Even in the field of law - even in the field of
17 law - an issue can be looked at from a number of view-points, because the field of law
18 has many branches. One cannot analyse everything in one particular piece of work.
19 That is why limits are set. That is why limits are set for the tools that one uses.
20 That is why limits are set, or boundaries are set, when one is asked to carry out a
21 particular piece of work.

22 Thank you, Mr Iverson.

23 PRESIDING JUDGE STEINER: Mr Iverson, sorry to interrupt you, just to remind
24 the witness to speak slower. The court reporters are not being able to follow what
25 you're saying, please. Thank you.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 THE WITNESS: (Interpretation) Thank you, your Honour. I shall endeavour to
2 do so. Usually I speak faster than that and I'm quite used to explaining things to
3 students, so I apologise. I will try to speak more slowly. Thank you.

4 MR IVERSON:

5 Q. Sir, the question I asked is that you didn't review everything in this case. You
6 reviewed limited materials. That's a pretty simple question that could be answered
7 "Yes" or "No." Can you answer that question "Yes" or "No"?

8 A. What documents are you talking about, Mr Iverson?

9 Q. You didn't review all of the materials from this case. You had a limited
10 subsection of materials that you reviewed. Is that true, "Yes" or "No"?

11 A. Once again, I'll stress this point. To say "Yes" or "No," well, it depends on your
12 question. So I'll ask you -- I'm sorry, you're asking the questions, but if I could ask a
13 question. You talk about some documents. The documents? I can't answer "Yes"
14 or "No." This is a distraction. You're asking -- no, you haven't explained. What
15 documents? What documents are you talking about? Explain to me. You say
16 some documents were submitted to me. Which? A, B, document C? You didn't
17 mention. Explain to me. Otherwise this is going to be, how shall I put this?
18 Otherwise, we're just going to be beating around the bush. What documents are you
19 talking about, Mr Iverson?

20 Q. In your report, you list a number of sources. Is your list of sources the extent
21 of the material that you reviewed, so you reviewed only those sources and nothing
22 more?

23 A. You were talking about the sources that I listed at the end of the report,
24 Mr Iverson? Are you saying that I based myself only on those sources? Is that
25 your question, sir?

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Q. Sir, I ask you to listen to my questions. I'm asking whether you reviewed
2 anything else than what you wrote down in your report that you reviewed?

3 A. Thank you, Mr Iverson. Of course, when one does such a piece of work there
4 always is this concern about bringing things together, or information together. You
5 have primary material but, you see, in the field of the social sciences - and I'm
6 speaking generally - certainties of the primary order, and I'll mention Karl Popper,
7 you see, one must constantly confront. So documents, sources aligned there, are
8 only primary sources.

9 I had other sources. For example, I mentioned that I did have the opportunity to
10 meet with -- with a view to better understanding the phenomenon, I did meet with
11 other stakeholders, of course. They are not indicated here but, since I was to come
12 here and explain these matters before this esteemed Bench, I -- and I did mention. I
13 cited. When I began mentioning those sources, we went into private session. So
14 those people were important sources.

15 So I did have access to other documents to analyse such a subject. One is always
16 looking, each and every day, for information that can provide a fresh outlook, or new
17 information.

18 Thank you, Mr Iverson.

19 Q. Sir, is there a reason why you're so defensive in answering my questions?

20 A. Thank you, Mr Iverson. You find me defensive, Mr Iverson? No. We are
21 having a discussion. We are having a dialogue with a view how, be it you from the
22 OTP, be it me, who is defending a report before the Court, we are all striving towards
23 the same objective; namely, finding the truth. You and I, we are not adversaries, we
24 are not in opposition to one another. No, you are representing the Prosecution.

25 I am an expert. I have submitted a piece of work to you, which I am defending here,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 which I am presenting so I am not on the defensive in terms of you. Why would I
2 do such a thing? We are all working together towards the same goal; namely, the
3 demonstration of the truth. And, consequently, responsibility.

4 No, Mr Iverson, I am not on the defensive in relation to you. This is a discussion.

5 We are having this discussion, or a dialogue, and I am making a contribution. I am
6 offering you what I know and this is in relation to my own -- my own identity.

7 Thank you, Mr Iverson. If you don't mind, Mr Iverson, if you're asking this question
8 why I am on the defensive, are you on the defensive, too, or are you on the offensive?

9 MR IVERSON: Madam President, I think it's become clear that this expert witness is
10 non-responsive to almost every single question that I'm asking. He has stated under
11 oath that he believes that this is a dialogue, this is a discussion. The Prosecution
12 submits that this is questioning, this is not a dialogue, it is not a discussion, and that
13 the witness be ordered to answer my questions.

14 PRESIDING JUDGE STEINER: Mr Witness, I'll come back again with a request that,
15 in order to avoid that we stay -- we've been now for one hour, exactly one hour, with
16 this discussion and with -- as a matter of fact, no concrete element, or answer, or
17 something that should be for the benefit of the Chamber in the Chamber's duty to
18 find the truth.

19 If you could, please, Mr Witness, make an effort to answer in a more objective way to
20 the questions put by the Prosecution. The Prosecution, Mr Witness, is right in one
21 point: This should not be a dialogue; this is a questioning. The same way -- let me
22 finish, please. The same way you answered quite objectively to the questions put by
23 the Defence, and we expect you to use the same objectivity to answer to the
24 Prosecution's questions.

25 The last question, I'll give you an example: The Prosecution asked whether your

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 sources were the sources you described in your report? I have your sources here.
2 You could have answered "Yes," " No," or, "Yes, I had these sources and some other
3 ones." Full stop.
4 Instead, we stayed for pages of the transcript with explanations that I must confess
5 I could not extract your answer to that question. Have you, or have you not, gone
6 into other sources other than the ones you described in your own report? It's a very
7 objective question. So I would very much appreciate if you try to be more objective
8 because, otherwise, you are right, we will continue going in circles here.
9 Just one minute, please. Maître Kilolo.
10 MR KILOLO: (Interpretation) Your Honour, I would like to share with you the
11 Defence's understanding of this examination, or cross-examination rather, of the
12 witness.
13 I'm listening to the French version, and I can assure you that if we are finding
14 ourselves getting bogged down it is because the Prosecution is giving the impression
15 that it does not want to go to specific practical points, and we're not -- we seem to be
16 getting bogged down in general theory that really has nothing to do with this
17 particular case.
18 There are a number of specific issues that were touched upon by the expert witness,
19 and if the Prosecution has questions regarding these points they should ask questions
20 about them, but to repeat the questions constantly, to start asking, for example, when
21 he was asked about his sources, he answered, saying that sources go -- the sources
22 went beyond the sources listed in my report. He even made reference to -- he even
23 made reference to a number of authors in the social sciences, and he explained that he
24 cannot limit himself to primary sources, the primary sources in his report, but he also
25 met with other stakeholders involved with a view to understanding the conflict and

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 the intervention of the MLC in the CAR. His answer was clear. So his sources
2 went beyond the sources listed in his report.

3 Of course, now, I wasn't listening to the English interpretation, but in French at least
4 it seemed perfectly clear.

5 PRESIDING JUDGE STEINER: Maître Kilolo -- Mr Witness, you will be given the
6 opportunity to talk, but I just ask you, please, to wait. I think, Maître Kilolo, in a
7 certain way you are right, if the witness had stopped, when he said that his sources
8 were go further than the ones mentioned. Full stop. That would have then
9 allowed the Prosecution to put more questions in relation to maybe other sources.
10 I don't know what is the Prosecution line of questioning.
11 But, however, the witness continued talking and talking and talking, and this is what
12 I'm trying to avoid. I'm sure that Mr Witness is able to give objective answers, so
13 this is what I'm asking him to do, give the objective answer and wait for the next
14 question by the Prosecution.

15 The second point, and here I'm trying to remind Defence, the Defence mainly on the
16 person of Mr Haynes here present, was always authorised to put questions to
17 witnesses, Prosecution witnesses, questions that were not directly related to the facts
18 but trying to challenge the credibility of the witness. So here, the Prosecution is as
19 well entitled to put questions in order to challenge the credibility of the witness or the
20 reliability of his report. So the Prosecution is not bound by questioning only on
21 what is on the witness report.

22 Ms Kneuer?

23 MS KNEUER: Madam President, I don't want to prolong this. However, I have to
24 say I'm very surprised that the Defence wants to dictate how the Prosecution is
25 supposed to conduct their questioning. And I would like to state for the record that

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 we are asking very simple and basic questions that go to the expertise of the witness
2 and his methodology, and we are not going further or progressing because the
3 witness is completely uncooperative. This has become apparent. He is not
4 listening to questions. He cannot even repeat the questions when asked. And I
5 have to say, I have a team here of francophone and anglophone colleagues. We
6 follow in both languages. I'm sorry to disagree with my learned colleague from the
7 Defence, but it is his interpretation what he may understand that the question was
8 answered clearly.

9 My concern, Madam President, is that you already advised the witness at the
10 beginning and that over the past days, when the Defence was questioning the witness,
11 we had answers, he was responsive, and today he turned his attitude. It's very
12 apparent, Madam President, and I think the question of my colleague to ask why he
13 is defensive was well-founded.

14 My further concern is that even with all good advice from my colleague, he may not
15 change his attitude. Perhaps it would be helpful to take a break and let VWU
16 explain, with all the time needed, his duties as an expert witness under oath, because
17 I'm concerned that we are taking days and days to even get an answer to a simple
18 question like: Should an expert be impartial? It's very simple and very easy to
19 answer.

20 Thank you, Madam President.

21 PRESIDING JUDGE STEINER: Maître Kilolo, it's the last time I give you the floor in
22 relation to this issue. We need to go forward.

23 MR KILOLO: (Interpretation) Thank you, your Honour, but I thought that each
24 time the Prosecution spoke we were entitled to respond.

25 What I'd like to say at this juncture is that I think it might be a good thing to

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 allow -- in order to allow Mr Iverson to move forward in his cross-examination,
2 rather than getting bogged down in an unproductive discussion, and well, the
3 Prosecution has not given us specific examples of questions that were put to the
4 expert witness to which he did not reply.
5 We have listened to all the questions asked in French, and we have noted all the
6 answers that were given to those questions.
7 Now, if the idea is to force him to answer by "Yes" or "No," I think this is showing a
8 lack of respect towards an expert witness who is entitled to express his reply freely,
9 just as the Prosecution, or the Defence, or the legal representatives of victims put their
10 questions quite freely.
11 So we would like to ask for two or three specific examples of questions to which he
12 did not reply, and we are ready to provide the answers that we heard or noted when
13 he replied.
14 PRESIDING JUDGE STEINER: We go forward. We can go back to the transcript
15 and I, myself, can give you at least two examples, and I already -- I have already
16 given these examples, starting by the last question in relation to the sources that in
17 my view was a quite simple question.
18 Mr Witness, is there any further comment? Otherwise, we are coming back to the
19 questioning by the Prosecution.
20 THE WITNESS: (Interpretation) Just two minor points: Thank you for allowing
21 me to address the Court. I would like to first hark back to the expression
22 "discussion," "échange" was the French word used. No, this is an examination, yes,
23 but it was a way of speaking, a way of putting things, a discussion, and then I
24 specified. But the objective is to come to the truth and to delineate responsibility.
25 I am well aware of this.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 This is not a discussion in the meaning of a pleasant chat with the Prosecution. No,
2 perhaps the expression was poorly chosen. So it was not a -- I did not mean to say a
3 sort of a pleasant discussion of some kind. I was speaking of an exchange within the
4 framework of an examination.

5 I'd also like to specify, your Honour, that answers to questions put from an expert in
6 a particular field, the answers depend on the questions. They depend on the
7 questions, but it is also -- well, it wouldn't be possible for me to be asked a question
8 that is general in nature and for me to say "Yes" or "No."

9 If the Prosecution asks me why I am on the defensive, I would explain. I explain
10 that I cannot be on the defensive, or that I'm not on the defensive. I explain. I
11 explain, and I give some information so that they can understand in relation to the
12 question put to me. I completely agree with you. Perhaps things are moving
13 slowly, but perhaps it is because of my daily activities. One tends to explain, repeat
14 oneself. I will do my best.

15 I think that in response to all the questions put to me I have tried to give objective
16 answers, because if one says "sources," well, I am saying, well, one cannot limit
17 oneself to the sources provided. There are others. For example, I met with some
18 people. That's an objective answer. It's true that I explained, but I do understand
19 your point fully, your Honour, and I thank you.

20 PRESIDING JUDGE STEINER: We will then try again.

21 And just one last comment, and I don't want to prolong the debate, even because we
22 are not having a debate here. Maître Kilolo, when you mentioned that you thought
23 that, "Each time the Prosecution spoke, we were entitled to respond," this is not
24 correct. The right to reply, no matter if for the Defence or the Prosecution, is only
25 under the authorisation of the Chamber.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Mr Iverson, you can proceed.

2 MR IVERSON: Thank you, Madam President.

3 Q. Sir, do you think it would be fair to say that, if an expert witness is biased in
4 favour of one party or another, that their testimony probably wouldn't be worth very
5 much; correct?

6 A. Mr Iverson, the way the question is put, an expert witness should not be biased.
7 I have explained this and I repeat. An expert carries out an expert study on the basis
8 of the terms of reference given to him. In my particular case, the issue was to carry
9 out an analysis, using political and strategic tools --

10 PRESIDING JUDGE STEINER: Sorry to interrupt, Mr Witness. Just for us, or for
11 you to understand exactly what we want, the question is not about your work. It's a
12 theoretical question. If an expert is biased, is his testimony worth or not? This is
13 the question.

14 THE WITNESS: (Interpretation) Your Honour, let me answer. To talk about
15 being biased or not in the work of an expert requires an understanding of the subject
16 of the work of the expert. It should not be biased. The work of an expert depends
17 on the subject. Now, if the expert stays within the methodological limits of that
18 work, that is where one has to determine whether the expert is biased or not.
19 Thank you, your Honour.

20 PRESIDING JUDGE STEINER: And if it is biased?

21 THE WITNESS: (Interpretation) With your leave, your Honour, why or how
22 would that work be biased? What is bias in an expert's work? I'm coming back to
23 say that there is always a subject for any particular piece of work. An expert carries
24 out an analysis using analytical tools. The subject is crucial in determining whether
25 there is bias or not, and it is only then that the expert can determine that, on the basis

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 of the subject that was presented, the work is biased or not.

2 The work of an expert, as I have said, has as primary purpose objectivity, so the
3 conclusions of an assignment depend on the subject of the assignment. That is the
4 proposed subject.

5 Thank you, your Honour.

6 MR IVERSON:

7 Q. And, sir, a biased witness, for example, might be willing to say just about
8 anything to support a certain side, or a party, right?

9 PRESIDING JUDGE STEINER: Maître Kilolo?

10 MR KILOLO: (Interpretation) Madam President, I am of the opinion that this is
11 not really a question, but a personal comment from Mr Iverson that does not require
12 an answer from the witness - the expert witness - so maybe we can go with something
13 else?

14 MR IVERSON: Maybe we can go with something else.

15 Q. Sir, would it be fair to say that a biased witness might be willing to say just
16 about anything to support their side, or their party?

17 PRESIDING JUDGE STEINER: It is exactly the same question, Mr Iverson.

18 MR IVERSON:

19 Q. Sir, might a biased witness stretch the significance of certain facts to support the
20 side that they support, that they are biased in favour of?

21 A. Thank you, Mr Iverson. Frankly, the questions asked by Mr Iverson are
22 addressed to me. I seem to have the impression, or rather I have the impression,
23 that Mr Iverson thinks that I am automatically biased. Not at all. Not at all. Why
24 should I be biased?

25 Considering that I am an expert at the International Criminal Court, it is the ICC that

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 certified me - that confirmed me - and included me in its list of experts. My primary
2 concern is the International Criminal Court. It is to provide clarifications on the
3 basis of my area of expertise for the benefit of the International Criminal Court,
4 because it is the ICC that included me as an expert on its list.

5 I believe that my answer is clear. I am not biased. So far, he has asked me three
6 questions. Fortunately, your Honour, you intervened, but this is the same question.
7 He's turning around and around as if to imply that, "Mr Expert you are biased," but,
8 no, that is not the case. I am disturbed, because I believe the Prosecution,
9 specifically Mr Iverson, is accusing me of being biased. I'm really disturbed.

10 Thank you.

11 PRESIDING JUDGE STEINER: Mr Iverson, I think you have already made your
12 point. Maybe we could go forward.

13 MR IVERSON:

14 Q. Sir, I'd like to ask you about your expert qualifications. So the way I
15 understand it is you were a student up until 2010 in doctoral school; is that right?

16 A. Thank you, Mr Iverson. In 2010 I was at the Centre for Political and Strategic
17 Studies, studying political and defence issues, and when we complete our studies it is
18 the general practice of the centre to keep its best students who go on to work for the
19 centre in the area of research as an expertise. So these graduates become researchers
20 and assistant lecturers, so you work in a very specific domain.

21 Please do not confuse things. I have the advantage of working in several domains.
22 I believe that is an advantage. And this area of strategic studies that I'm dealing
23 with, or that I dealt with, was reinforced with an internship in defence -- in the
24 Defence Academy, that is the highest academy where the highest-ranking officers of
25 the army study strategy, and that is what happened.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Q. Sir -- okay, I thought you were finished.

2 A. What I would like to say is that, Mr Iverson, let me recall that I submitted a file
3 to the International Criminal Court which included an attestation of research and
4 lecturing, a document confirming my expertise in strategic studies, an attestation of
5 an internship in the higher defence cause signed by Colonel Grepin (phon), a
6 co-operation officer, and there is even a report of my former lecturer. And after this
7 file was submitted, I received an answer from the ICC, signed by Mr Marc Dubuisson,
8 if I'm not mistaken; that is after the file that I submitted to be admitted as an expert of
9 the Court. So the answer was, "Yes." And if I remember correctly, the letter started
10 by thanking me for my interest in the Court. And on behalf of the Registrar, I was
11 admitted in the list of experts at the ICC.

12 Just one minute, sir, let me conclude.

13 Q. I'm sorry, but we have to move on. We simply don't have time for you to
14 continue -- I'm not asking about your entire CV, okay? If I would have asked that
15 question, it would have been, "Sir, please describe your entire CV." I just asked a
16 very discrete question about doctoral school, okay?

17 And the next question I would like to ask is, I understand you were recently an intern.
18 In 2010 you had an internship and you mentioned it, and that was your first
19 professional experience in any kind of military strategic environment; is that right?

20 A. Thank you, Mr Iverson. That internship, if you look at it correctly, was done in
21 2009. That represented the contact with the High Command of Strategic Studies, but
22 do not forget that before that stage there is a certain number of theoretical courses
23 that are undergone; that is, you actually do strategic studies. So you finally go to the
24 military academy in order to experience the daily reality.

25 PRESIDING JUDGE STEINER: Maître Kilolo, before you get the floor, you asked

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 the Prosecution to give you two or three examples of objective questions that were
2 not answered in an objective way. We have just witnessed two of them. I have the
3 question here, and I think at this point in time we'll have to suspend and ask VWU to
4 try to, in a very objective and neutral way, to explain what is to give testimony before
5 this Court.

6 The question was: "Were you a student up until 2010 in doctoral school; is that
7 right?" And we have 20 lines answer and at the end I don't know whether he was in
8 a doctoral study in 2010.

9 The second question: "Now, is the internship, were you doing an internship?" I'm
10 trying to find the question, and we have already again -- "I just asked a very discrete
11 question about doctoral school. The next question I would like to ask: 'You were
12 recently an intern in 2010, an internship, and you mentioned it, it was your first
13 professional experience in any kind of military strategic environment?'" and we had
14 already another 20 lines in the transcript without an answer.

15 So I'll give you the floor, but I see that we really have a problem here and I'm
16 not -- it's not a negative comment in relation to the witness. The witness sometimes
17 tries to explain much more than it's necessary but this is -- this is starting to create
18 some problems here.

19 Maître Kilolo.

20 MR KILOLO: (Interpretation) Madam President, the first thing is I regret, and
21 I believe you are share this point of view, the attitude of the Prosecution and the
22 Prosecutor is taking the liberty to interrupt an expert who is expressing himself, and
23 this is not only required in the courtroom but the normal rules, normal principles, are
24 that you do not interrupt someone who is answering your question. This was my
25 main point, the main point that I wanted to raise.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Now, you raised an issue. He was asked the question as to whether he was an
2 intern, and he answered clearly in French by saying that "I did indeed attend an
3 internship in the military academy," but he felt that he should not be limited to the
4 context of that internship because the internship came after theoretical studies that he
5 had undergone in strategic studies. So I do not see how it can be said that he did not
6 answer the question.

7 And in any case, in all criminal procedures, in jurisdictions where human rights are
8 respected, people are always allowed to express themselves, no matter what the case,
9 whether you are answering as a witness or as an accused or anything else. Everyone
10 is allowed to answer any question put to them.

11 What I'm wondering is this: When the Defence was examining the witness, you
12 would have realised that he took a lot of time to provide his answers, and this never
13 raised any issue at all. So why is that when it comes to his answering the
14 Prosecutor's questions he's being compelled to answer by a "Yes" or "No"?

15 I believe that the expert witness has no problem; he does not need VWU to explain to
16 him the role of a witness. This is a witness, or rather an expert, who has been
17 certified by the ICC, except it is being claimed here today that the competent
18 authorities of the ICC did not thoroughly examine his file. That would be
19 tantamount to sawing off the branch on which we are seated.

20 In my opinion, the witness should answer the questions of the Prosecution serenely,
21 and I believe he is making an effort to do so.

22 PRESIDING JUDGE STEINER: All evidence that is presented before this
23 Chamber has one single objective: To help the Judges in finding the truth in this
24 case. Even with some Prosecution witnesses, and it will be easy to make a research
25 on that respect, the Presiding Judge many times asked witnesses to be more objective,

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 to answer the questions, which doesn't mean to answer "Yes" or "No," but to answer
2 in a more objective way.

3 We are facing here a problem, two hours now, the first half of the Prosecution time in
4 interrogating the present witness brought very few relevant information for the case.

5 So we are facing maybe a misunderstanding from the part of the witness in what the
6 Chamber intends to say when the Chamber asks him to be objective; short-ended
7 questions. Not "Yes" or "No," but very simple questions.

8 So, therefore, I will ask VWU to assist the witness during the break in order maybe to
9 clarify some doubts about the role of a witness, even of an expert witness, in the
10 questioning, in its questions, no matter by whom; Defence, Prosecution, legal
11 representatives. Otherwise, we'll stay here for days and days and days and at the
12 end going nowhere.

13 Mr Witness, we will suspend now. It's almost 11 o'clock. We'll be back at 11.30. I
14 ask, please, court usher to accompany the witness outside the courtroom.

15 (The witness stands down)

16 PRESIDING JUDGE STEINER: And before we suspend, Mr Iverson, as the
17 Presiding Judge did with the first witness, I will ask you again to try to avoid
18 interrupt a witness as a matter of politeness.

19 This hearing is suspended.

20 THE COURT USHER: All rise.

21 (Recess taken at 10.58 a.m.)

22 (Upon resuming in open session at 11.35 a.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 PRESIDING JUDGE STEINER: Welcome back.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 I ask, please, court officer to go very briefly into private session.

2 (Private session at 11.36 a.m.) Reclassified into open session

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

4 PRESIDING JUDGE STEINER: Thank you.

5 As determined by the Chamber, the witness had a short, brief conversation with
6 representatives of VWU and of the Registry. The witness expressed his concerns
7 about the Prosecution lacking courtesy and interrupting him and challenging his
8 expertise and experience, and the witness was explained that the usual -- that this is
9 the usual functioning of a testimony and that he should answer to questions in a
10 straightforward way and to the best of his abilities. He was reminded not to take the
11 Prosecution's questions in a personal way and he reiterated his willingness to
12 co-operate fully as a witness.

13 So, taking into account the VWU assessment, we hope that we can continue with the
14 questioning of Witness D-59 in a more -- in a smoother way, and I ask the Prosecution
15 in the best of his efforts in order to understand maybe the concerns of witness
16 without of course having to change your line of questioning, the Prosecutor is
17 authorised to choose its own line of questioning, but take into account first to put to
18 the question -- the need to put to the witness more direct and simple questions and, if
19 need be, to challenge his experience and credibility to do it in a way that doesn't
20 appear as an intention to ridicule him publicly.

21 I hope this brief summary from the evaluation made by VWU can help both parties
22 and in the future the participants to proceed in a way that is beneficial to all parties
23 and participants and for the Chamber.

24 I ask, please, court officer to turn into public session.

25 (Open session at 11.39 a.m.)

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

- 1 THE COURT OFFICER: We are in open session, your Honours.
- 2 PRESIDING JUDGE STEINER: I ask, please, court usher to bring the witness in.
- 3 (The witness enters the courtroom)
- 4 PRESIDING JUDGE STEINER: Mr Witness, welcome back.
- 5 THE WITNESS: (Interpretation) Thank you, your Honour.
- 6 PRESIDING JUDGE STEINER: Are you ready to continue with your testimony, sir?
- 7 THE WITNESS: (Interpretation) Yes, your Honour.
- 8 PRESIDING JUDGE STEINER: Thank you very much.
- 9 Mr Iverson, you have the floor.
- 10 MR IVERSON: Thank you, Madam President.
- 11 Q. Sir, is this the first time that you've ever testified as an expert witness in any
- 12 court?
- 13 A. Yes, Mr Iverson.
- 14 Q. And is this the first time that you've ever testified in any court period, whether
- 15 as expert or fact witness, or character witness?
- 16 A. Yes, it's the first time that I speak before a Court.
- 17 Q. Sir, I'd like to ask you a number of questions about your report and I think that
- 18 it would be easiest if you had a paper copy for you to read. Do you actually have a
- 19 paper copy of your report with you already?
- 20 THE WITNESS: (Interpretation) Your Honour, I would just like -- can I come back
- 21 to a previous point just before we went on break?
- 22 PRESIDING JUDGE STEINER: If it is strictly necessary, yes. Otherwise, let's try to
- 23 go ahead, but if you want to make any comment you have the floor.
- 24 THE WITNESS: (Interpretation) Thank you very much, your Honour. It's just
- 25 because when we had the break Mr Iverson said that it was in 2010 that I had the first

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 contact with the strategic studies. I said "No," and I stated that it was since 2008, and
2 it was in 2009 that I was admitted to the internship at the war school. Thank you. I
3 just wanted to add that clarification.

4 PRESIDING JUDGE STEINER: Thank you very much for this important
5 clarification.

6 Mr Iverson, you can proceed. Do you have the copy of your report in front of you?
7 Do you?

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

9 MR IVERSON:

10 Q. Sir, do you have the complete report along with the sources in the version that
11 you have?

12 A. Yes, Mr Iverson.

13 Q. Sir, are there any corrections you'd like to make to your report at this time?

14 A. Thank you, Mr Iverson. This report was submitted for the assessment of the
15 Court. Intellectual work, when it has been submitted, there are always points or
16 words which might have slipped and might change the sense of a certain sentence,
17 but in terms of the material time, well, I can't do anything about it. I'll have to
18 assume responsibility for any errors, or have the possibility to explain on them.

19 Q. So no corrections at this time, right?

20 A. Thank you, Mr Iverson. Well, what I said was that if there are errors then I
21 have to take responsibility for that and I will give an explanation; while clarifying,
22 Mr Iverson, that this was -- that this is an intellectual work. As such, it can always
23 be subject to criticism.

24 Q. And did you write your entire report by yourself?

25 A. Thank you, Mr Iverson. Yes, I typed it on my machine.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Q. And since you typed it yourself, and you have no corrections at least at this
2 time, do you believe everything you wrote in your report?

3 A. Thank you for the question, Mr Iverson. This report, as I said, is one I wrote
4 myself. I did it and, I said firstly, that this is an intellectual work which was put for
5 the assessment of the Chamber. So if there are errors, then I would say that I would
6 take responsibility for that and I would explain if the possibility to explain is given.
7 So I think -- so I believe in this work, which is my work, which is work which I
8 drafted and I proposed to the Court.

9 Now, with regards to what you're saying, material time doesn't make it possible to
10 correct work that's already submitted for their assessment in intellectual work. Even
11 in major theses, there are always -- there's always the odd comma or -- that might be
12 wrong, or certain words or whatever, but I take responsibility for this work.

13 Q. Sir, would you agree that when you write a report, whether intellectual or one
14 that is to be used in court proceedings, in legal proceedings, would you agree that it
15 is important to be complete in your report?

16 A. Thank you, Mr Iverson. When one drafts a report you have to get to the very
17 heart of the subject, but taking into account the subject that was put to you, taking
18 into account the subject you were asked to cover, and you have to be complete within
19 the framework of that precise subject, it is not a matter of covering everything, but to
20 stay within the framework of the subject to analyse, to carry out your analysis with
21 regards to the subject that was proposed to you.

22 Thank you.

23 Q. And is it important for an expert witness to be accurate in their report?

24 A. Thank you, Mr Iverson. The objective of an expert in such a situation is to
25 bring elements of understanding into the framework of a case, but when I talk about

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 elements of understanding you have to do that while you stay within the framework
2 of the subject which you have been asked to cover, within the framework of that
3 subject that was asked of you.

4 You carry out your analysis and you finish by making proposals and you remain
5 complete, but you do so within the framework of the subject. You can't cover
6 everything. You can't address all the issues that would concern the case, for
7 example the case for which we are here; that is to say everybody comes with their
8 tools. The soldier carries out an analysis with military tools, the political analysts,
9 the legal analysts do it with their tools, but the work of an expert is to deal with a
10 particular subject. We're not covering the whole case, or carrying out a complete
11 work with regards to the whole case, because it's a complex case.

12 Thank you.

13 Q. Sir, would you agree that when listing the sources in your report it's important
14 to know -- to be complete in those sources, so if you leave sources out somebody
15 who's reading your report may not understand the significance of some of your
16 conclusions if you leave the sources out? Would that be a fair statement?

17 A. Thank you, Mr Iverson. I will put it like this: When you write a report, first
18 of all there's a whole series of sources thereto, but you can add to them afterwards.
19 You can -- when you do this, in order to make it concrete or in order to corroborate a
20 certain number of facts which have been made available to you, you can always
21 explore other sources. You have the possibility to explain that before a court. That
22 gives you a possibility to explain it to the court. So you can't say absolutely
23 everything, but because you've got the possibility to explain you come and you
24 explain it afterwards.

25 Q. Well, and that's what I would like to ask you to do, sir. Could you explain all

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 of the sources that you relied on that you omitted from your report?

2 PRESIDING JUDGE STEINER: Mr Witness, if you prefer in order to answer to the
3 question to go into private session, let me know?

4 THE WITNESS: (Interpretation) Yes, your Honour, that's what I was going to ask
5 for.

6 PRESIDING JUDGE STEINER: Court officer, please turn briefly into private session.
7 (Private session at 11.55 a.m.) Reclassified into open session

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

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

10 Beyond the sources which are listed on the paper, on the oral sources, I said it on the
11 first day. I said that within the framework of this analysis on the legitimacy of
12 intervention of the MLC in the Central African Republic, I had to explore the Lusaka
13 agreement in order to understand the MLC in its territory and to find elements or
14 information which would -- which would make it possible to go legitimately into the
15 Central African Republic.

16 Now, in order to do that, you had -- other actors were needed, (Redacted)

17 (Redacted)

18 (Redacted). Even yesterday, within the framework of the Congolese crisis, in order to
19 try and get significant information in order to understand this situation, what was the
20 status of the politico-military movement in the DRC at that time? I therefore met
21 (Redacted), with whom I had to examine the

22 crisis in its time in the Congo, the elements and the different actors that made it up
23 and even the principles and the negotiations for the Lusaka agreement. His
24 explanations were very useful to me.

25 Furthermore, thereafter (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 there to help understand to a greater extent the military functioning, the political and
2 strategic functioning, of the MLC, because at the time (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 I also met (Redacted)
8 (Redacted).
9 So I needed to speak to him to understand the operations of the RCD and to
10 understand all the various ins and outs of the Lusaka agreement, as well as the status
11 conferred upon the military/political movement at that time, namely subsequent to
12 the Lusaka agreement. Our discussions were most productive.
13 I also met with (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 So it was useful to meet with these people to better understand the status that had
19 been conferred upon the Government of Kinshasa and the other stakeholders, the
20 other parties involved in the bargaining and the agreement itself, and this allowed me
21 to look more closely at the legitimacy or non-legitimacy of the MLC in the Central
22 African Republic, but also in order to understand the MLC and the field it was useful
23 for me to meet with (Redacted)
24 (Redacted)
25 (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 (Redacted), so there were those sources.

2 I won't go back to the bibliography, because that's the sort of thing that you read each
3 and every day and that's quite normal, quite standard, but you see sometimes one
4 must meet with people to properly understand a social phenomenon, or a particular
5 topic, and I will leave it at that.

6 THE INTERPRETER: Your Honour, interpreter note: One of the names mentioned
7 by the witness was (Redacted).

8 PRESIDING JUDGE STEINER: Do you still need any names to be mentioned, or we
9 can go back into public session?

10 MR IVERSON: Madam President, there are a few more questions that I think should
11 probably stay in private session.

12 Q. Sir, did you just mention the extent of the people with whom you spoke that
13 were your sources that you omitted from your report? Is there anybody else?

14 A. Thank you, Mr Iverson. My memory may betray me, but I think that's it for
15 oral sources. A few moments ago I was saying that it is true that when you look at a
16 topic sometimes the most trivial discussions with people asking them very simple
17 questions can provide you with information, useful information, but those people are
18 the most essential sources, but for the time being I would say, Mr Iverson, that the
19 sources that I've mentioned are the main ones and I really don't have any other
20 sources to mention.

21 Thank you.

22 Q. What about (Redacted)? Did you speak to that gentleman?

23 A. Thank you, Mr Iverson. I did say that my memory was betraying me, but, yes,
24 (Redacted), yes, thank you for reminding me of that particular
25 name. This particular gentleman, (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

- 1 (Redacted), I did meet with that gentleman. Thank you for reminding me of that,
2 and I did mention him. Thank you for reminding me of that point, sir.
- 3 Q. No problem, sir. Do you know a man by the name of (Redacted)
- 4 A. I beg your pardon?
- 5 Q. Do you know a man by the name of (Redacted)
- 6 A. Yes, of course I do know (Redacted)
- 7 Q. What is your relationship to (Redacted)?
- 8 A. Well, I can say that (Redacted)
- 9 (Redacted)
- 10 Q. How long have you known (Redacted)
- 11 A. Thank you, Mr Iverson. I think I met him back (Redacted) years ago, I believe.
- 12 Q. Have you ever had any discussions about this case with (Redacted)?
- 13 A. Thank you. Yes, Mr Iverson, I did chat with (Redacted). (Redacted)
- 14 (Redacted)
- 15 (Redacted). I said to him that I was conducting an analysis. Could
16 you help me, could you arrange for me to meet some people (Redacted) That
17 sort of thing, yes. Thank you.
- 18 Q. What were the nature of your discussions about this case with (Redacted)?
- 19 A. Thank you, Mr Iverson. Well, I told you that (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 MR IVERSON: And I don't know if the next line of questions require a private
2 session, but I think it's best to ask them in private session, Madam President, just
3 because it's hard for me to get a handle on the potential risk.

4 Q. But, sir, how did the Defence initially contact you in this case?

5 A. Thank you, Mr Iverson. I think that my first contact with the Defence goes
6 back to the month of late April, or early May, unless I'm mistaken. I believe one
7 evening I got a telephone call from someone, someone who was calling me and asked
8 me whether I was Mr Dioba, and the person introduced himself to me, and he
9 introduced himself and I was asked about my activities and I was asked whether I
10 would be willing to do some analysis, prepare an expert report on a particular topic
11 for the International Criminal Court, and I said that I would take some time to look at
12 that and later the person contacted me again and I said "Very well" and I started the
13 work.

14 Q. Who was the person who contacted you?

15 A. It was the Defence counsel, Mr Kilolo, who called me on the telephone.

16 Q. Do you know how he got your contact information, how he knew who you
17 were?

18 A. I think you would do best to ask the person himself. You might want to ask
19 him that question.

20 Thank you, Mr Iverson.

21 Q. Okay. Well, I'll take that as you don't know.

22 What did Mr Kilolo tell you about this case?

23 MR IVERSON: And actually I think it's probably okay now to go back into open
24 session, Madam President.

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

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 (Open session at 12.14 p.m.)

2 THE COURT OFFICER: We're in open session, your Honours.

3 MR IVERSON:

4 Q. Sir, what did Mr Kilolo tell you about this case?

5 A. Thank you, Mr Iverson. When I had that call from Mr Kilolo, and I'll want to
6 be very specific, it was a telephone call I received, Mr Kilolo said to me that if I could
7 prepare an analysis, prepare an expert report, as part of this case relating to the CAR
8 and Mr Jean-Pierre Bemba, and I said "In what way? What sort of analysis in this
9 area?" And this was to shed greater light on the issues for the Court in accordance
10 with your areas of expertise, trying to analyse the intervention and really conducting
11 a deep analysis of the MLC's intervention in the Central African Republic. That was
12 the request he made, and afterwards, basing myself on my own methodological tools,
13 I began this work basing myself on oral sources, bibliographical sources, so as to
14 conduct this analysis, and I was told that the report should run to approximately 20
15 pages and that the most important thing was to shed light on the political/strategical
16 aspects of the matter so that people could better understand.

17 So I was to bring out the cause and effect links, the various stakeholders, the
18 responsibility, so that the Court could benefit from several approaches, analytical
19 approaches, so that they could do their work, and that is what I did as part of this
20 task, or this work.

21 Q. How many times have you met with the Defence in this case, sir?

22 A. Thank you, Mr Iverson. I must tell you that, when I began this work, I did not
23 meet with the Defence. It was mostly over the telephone. Now, I met the
24 Defence - I met the Defence - I met the Defence - slightly thereafter, but not at the
25 beginning, after. I believe barely once or twice. In any event, not several times.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 The last time that we met it was in Kinshasa. It was in Kinshasa, when I was
2 travelling through that city.

3 Q. And how many phone calls with the Defence, sir?

4 A. Thank you, Mr Iverson. Well, you see, honestly, it would be difficult to tell
5 you. *With this kind of work, two, three telephone calls? The Defence would
6 call me and say "Do you want this? Have you made progress in that area?", so I wouldn't
7 say, one, two or three telephone calls. I think the most important thing to remember
8 is that the Defence would call me on the telephone and Mr Iverson, I am sorry, but
9 I think two or three times, but the most important thing for you to realise is that the
10 Defence, the Defence would call me on the telephone. That's the most important
11 thing for you to understand.

12 Q. Okay, and just briefly I'd like to ask again about sources, but not individuals,
13 rather documents. I noticed on your report where you list your sources you didn't
14 list the Lusaka Accord, the CAR constitution, the mutual assistance pact of CEEAC,
15 the CEN-SAD protocol and possibly other documents. Are there other documents
16 that you reviewed that just are not listed on your report?

17 A. Thank you, Mr Iverson. I must say that I consulted those documents
18 beforehand, but I feared that if I based myself on -- well, speaking of the Lusaka
19 agreement, if I based myself on internet sources, I thought it was important for me to
20 go to the DRC and meet the actual stakeholders and that is why I mentioned those
21 gentlemen whose names I gave a few moments ago when we were in private session.
22 They helped me understand the process leading to the Lusaka agreement and one of
23 them was even so kind as to lend me a document, because you see I wanted a
24 document with signatures and, as I said, since I did have that opportunity to come
25 before this Court and provide explanations, that is why I had to come and explain.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Regarding the constitution of the Central African Republic, I did not consult that
2 document as such. I looked at it here, because I wasn't dealing with legal issues.
3 I've told you that I set some boundaries on my report. My task was to look at
4 everything relating to -- was not to look at the legal aspects. I'm not a legal person.
5 I don't have legal training. So the constitutionality of something, the boundaries
6 stop there. For me it was important to see the various elements that would allow me
7 to better undertake my analysis from a political and strategy point of view so that I
8 could do my work well.

9 Q. Sir, do you understand that knowing your sources and knowing the facts upon
10 which you rely in your report might be helpful to understanding how you came to
11 those conclusions? Do you understand that concept, sir?

12 A. Thank you, Mr Iverson. Sources are extremely important. I understand that.
13 Sources are very important so that one can understand the topic or a phenomenon or
14 a social matter, particularly since if the topic or the matter that one is examining is
15 something that occurred ten years prior, approximately ten years beforehand.
16 Quite naturally, to better understand, to better assess, such a phenomenon, one has to
17 rely upon sources, because we were not there. We were not direct witnesses of what
18 actually occurred. Our work was to prepare an expert report, and so it was
19 important to turn to the sources. I've told you that the other sources, because I did
20 have an opportunity to express them here in the event that the august Bench allow
21 me to do so, and so I did and since the Court did allow me to come and asked me to
22 come and present my views before the Court and this is what I have done.
23 Thank you.

24 Q. Is there anything at this time that you would like to mention to the Chamber in
25 terms of sources? Any sources that you have omitted? Now is the time for you to

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 tell the Chamber what those sources are. You have already told them in private
2 session, but is there anything else that you didn't include in your report that you
3 considered as a source in your report?

4 A. Thank you, Mr Iverson. Concerning the sources, I told you that after
5 mentioning the oral sources, which I mentioned here, I said that there were also
6 meetings, sometimes quite trivial meetings to chat. I mentioned (Redacted)
7 (Redacted) and those meetings, those trivial sort of meetings, provided me with
8 information, but there were other sources. For example, the Defence provides you
9 with some materials so that you can better understand the topic that you have been
10 asked to prepare an expert report about, unless there's something else?

11 Q. Now, we know from your report the documents you reviewed, the ones that
12 you wrote down, and we know from the private session we just had the individuals
13 you spoke to, but I'm asking you right now just to -- and we can go into private
14 session if necessary, but I want a complete list of your sources is what I'm saying.
15 Can you do that? Can you provide a full and complete list of everything you
16 reviewed in order to give your testimony here in court and to generate the report that
17 you have?

18 A. Thank you, Mr Iverson. You would like me to give those sources? Name
19 them?

20 Q. Absolutely, sir.

21 A. Thank you.

22 PRESIDING JUDGE STEINER: If you are going to mention any names, we have to
23 go into private session.

24 THE WITNESS: (Interpretation) Thank you, your Honour. Now, what I wanted
25 to say, your Honour, is that given such a context, trying to remember, I gave

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 Mr Iverson the sources, so to use my memory or give all those sources again from
2 memory, of course I would forget some because look at the question. To rime off all
3 the sources that were used for the report and others that were not listed, that's all
4 we've been talking about for a while now and I answered.

5 Now, to provide a list, an exhaustive list, Mr Iverson, I wouldn't want to run that risk.
6 You must realise that I have revealed the sources now, but off the top of my head just
7 going by my memory I don't have any document to refer to and I would prefer to
8 leave it at that and stick to just what I've said so far.

9 That being the case, perhaps - perhaps - Mr Iverson, well, what I'd like to specify is
10 that in -- at such meetings, it may happen and there are methodological tools, there
11 are certain methodological tools, that is to say meetings with people who did -- and
12 talked to them about, for example a little bit like the whole technique of focus groups,
13 so you speak with those people and what's important here it's not really their
14 personalities or their identities, but rather it's the information they bring you so that
15 you can understand the phenomenon, or the events. I think I understand what
16 Mr Iverson is driving at and, your Honour, I think perhaps we should go into private
17 session.

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

19 (Private session at 12.31 p.m.) Reclassified into open session

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

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

22 I believe that during my discussions in order to better understand, I had a meeting
23 with (Redacted)

24 (Redacted). He was a part of the multinational Central African

25 forces in the Central African Republic and I asked him whether he could identify a

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 certain number of his brothers in arms, his colleagues, three or four, who had been in
2 the Central African Republic as part of the multinational force so that they could try
3 to explain to me what they knew about that conflict and what they had been able to
4 observe from the point of view of peacekeeping soldiers.

5 So this type of discussion would take place in what can be called a focus group. It is
6 an interview technique, which requires that the researcher be with a group of people
7 and asks questions in order to understand an event. The most important thing is
8 that it is not really the people speaking, it is the answers that come from these people,
9 and you try to look at the consistency, the reliability and the probability of those
10 answers that are provided. On the basis of that information, the researcher can then
11 draw his conclusions and have an overview of the event that he is studying.

12 So it is for that reason that I wanted to meet with these (Redacted)
13 non-commissioned officers so that they could give me a detached point of view since
14 they were there in the Central African Republic, but they were (Redacted)
15 (Redacted) so I believe they would have a
16 dispassionate opinion of the events.

17 The researcher of course does not simply accept everything that is said. In such a
18 procedure, one of the first things that the researcher does, and which is what I did, is
19 to try to put everything that is said in perspective. This is something that is an
20 entrenched principle in social sciences, so you try to cross-check in order to
21 understand and explain a particular phenomenon. So this is what I did with regard
22 to those sources.

23 Are we still in closed session? Very well. The other source that I believe
24 Mr Iverson is referring to would be the meetings that I had with (Redacted)

25 THE INTERPRETER: And the witness mentioned a name, but it was inaudible.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 THE WITNESS: (Interpretation) When I saw this person in Congo afterwards, it
2 was in order to understand the DRC after the departure of Mobutu Sese Seko. I
3 wanted to understand how the political/military movements came into being, how
4 the Congolese State was organised and how the major players were acting, so it was
5 in an attempt to better understand that situation but from the perspective of the DRC.

6 PRESIDING JUDGE STEINER: Mr Witness, upon request of the interpreter, could
7 you please repeat the name of (Redacted) you just mentioned?

8 THE WITNESS: (Interpretation) We are still in closed session I believe? It was
9 (Redacted)

10 (Redacted) and I was trying to

11 have him help me understand Congo from an external point of view, from the point
12 of view of an external observer.

13 Thank you.

14 MR IVERSON:

15 Q. Sir, since we're in private session, now you mentioned the names that I think
16 you'd like to mention. Is there anybody else, any other information, that you'd like
17 to add to your sources at this time?

18 A. I was talking about the oral sources that I mentioned. You have the sources
19 that I have included in the written document and those that I mentioned. I also
20 referred to the documents provided to us by the Defence. I equally mentioned the
21 bibliographical references and these are there simply to apply the methodological
22 technique of documentary analysis, and in an expert assignment documentary
23 analysis consists of going to read to find out what other authors or researchers have
24 written on a given subject.

25 That enables you to have a better understanding of a phenomenon, but it does not

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 mean that you have to go and simply take away what they have written. No, it
2 enables you to understand the situation based on what they have written and then
3 you try to understand either the general issues or the specific aspects of the subject,
4 after which you yourself will then carry out your own work on the basis of the
5 methodological tools at your disposal. So I drew up a list of a certain number of
6 documents, including articles, books, dissertations, on the Central African issue, or
7 problem. That is the broad view.

8 Now, another source, if you want to call it that, is my own daily duties, my own daily
9 work. I should recall that at the centre I am responsible for a seminar and this is
10 under the supervision of a professor. The seminar is on the geopolitics of conflicts.
11 The Central African Republic conflict is not a new topic for me. It is not necessarily
12 either new for either me or our centre. This is something that we have been dealing
13 with, but not within the specific context of the MLC case, but these are things that we
14 usually deal with, and since we are still talking about sources I will continue with my
15 personal activities. I have told you that I was very much interested in the conflictual
16 nature or aspects of what geopoliticians refer to as the triangle of death, that is in
17 Central African area.

18 PRESIDING JUDGE STEINER: Mr Witness, sorry to interrupt you. The purpose of
19 continuing in private session was only because the Prosecutor asked you whether
20 you wanted to mention any other sources. So first I see no need if you are not
21 mentioning other sources, other names, first we can go back into public session, and
22 second again in this point to ask you to focus on the question put by the Prosecution.
23 We are again extending a little bit the context of the question that was put to you. So
24 can we go back into public session?

25 THE WITNESS: (Interpretation) Thank you, Madam President. Yes, I think so,

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 except the Prosecution has other questions that may require names. He was asking
2 me to list sources, so I was going progressively and I was concluding with my own
3 personal research. I was simply explaining to you the topics of interest that enabled
4 me to deal with the Central African issues in 2009, but that was not necessarily linked
5 to the issue that has brought us together in this courtroom, but the conflicts in what
6 the geopolitical specialists refer to as "the triangle of death," particularly with the
7 highway robbers who are armed bandits. This was simply to say that I have been
8 carrying out my own research about conflicts, so I used my own sources to generate
9 my report.

10 Thank you, your Honour.

11 PRESIDING JUDGE STEINER: I ask, please, court officer to turn back into public
12 session.

13 (Open session at 12.46 p.m.)

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

15 MR IVERSON:

16 Q. Sir, are there any other primary sources that you need to mention, or is that all
17 we're going to get at this time in terms of sources? I'd just like to close the loop on
18 this line of questioning, so if you could just answer if there are any other primary
19 sources that you reviewed?

20 A. Thank you, Mr Iverson. I have said and I would like to repeat that as a human
21 being my memory could be faulty, but for the time being I believe I will limit myself
22 to those sources that I have enumerated, but I should also mention that there could be
23 casual meetings or discussions that would shed light on things, but I prefer not to list
24 those ones. I have included documents given to us by the Defence, I've given you a
25 bibliography and the other sources, oral and otherwise, as well as my own personal

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 research. Thank you.

2 Q. Sir, do you think it might be difficult to evaluate your report if we don't know
3 the entire universe of your sources?

4 A. Thank you, Mr Iverson. The report submitted to this august jurisdiction
5 includes a list of sources. Furthermore, there are other sources that we felt we
6 should come and present and explain before this august courtroom which should
7 make it possible to assess this work, and this work has been submitted for assessment
8 because those who examined that work are competent enough to have thought that it
9 was good enough to be submitted for evaluation. Otherwise, we would not have
10 been where we are right now. I prefer to stop here for now.

11 Q. Sir, you mentioned that you received instructions. Did you receive written
12 instructions from the Defence?

13 A. Thank you, Mr Iverson. When you talk about "instructions," are you talking
14 about the request that was made to me to carry out this assignment? Because when
15 you say "instructions" maybe it is an issue of interpretation, but instructions, what
16 specifically do you mean by that? What I would like to know is what do you mean
17 by that word "instructions"? I really do not grasp it. Thank you.

18 Q. Well, let's show you your letter of instructions from the Defence. It's
19 document number 2 on the Prosecution's list of documents, CAR-D04-0003-0513. If I
20 could ask the court officer to please display that on the screen and it's a public
21 document.

22 PRESIDING JUDGE STEINER: Yes, Mr Kilolo?

23 MR KILOLO: (Interpretation) I would simply like to mention the level of
24 confidentiality of this document. It is a correspondence from the Defence to an
25 expert and it is our understanding that it is a confidential document.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 PRESIDING JUDGE STEINER: Mr Iverson?

2 MR IVERSON: It's my understanding that it's a public document. It doesn't relate to
3 the identity of anyone, except for Mr Kilolo and Mr Dioba.

4 PRESIDING JUDGE STEINER: I ask the court officer to check how the document
5 was uploaded in Ringtail.

6 THE COURT OFFICER: Madam President, in eCourt the metadata level of
7 confidentiality says "Confidential."

8 PRESIDING JUDGE STEINER: I apologise. I was discussing with the Judge. It
9 has been uploaded as "Confidential"? So could, please, court officer lower the
10 blinds.

11 Mr Iverson, if you want to discuss with the witness the content of a confidential
12 document, I think maybe it would be more reasonable if we go into private session.
13 I don't think only the display of the document is a problem. It's content. Am I
14 correct, Maître Kilolo?

15 MR IVERSON: May I be heard on this, Madam President? I will wait my turn, of
16 course.

17 MR KILOLO: (Interpretation) Well, I suppose that would be in private session.

18 PRESIDING JUDGE STEINER: That's why I am asking if this is what the Defence is
19 asking?

20 MR KILOLO: (Interpretation) We leave it up to you, your Honours, but we think
21 the answer is "Yes."

22 MR IVERSON: Well, I certainly don't intend on reading Mr Kilolo's phone number
23 or address or anything like that. I intend on reading the substance of the
24 instructions and those words have no bearing on any matter of confidentiality. So I
25 would request that I be able to do that in public session.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 PRESIDING JUDGE STEINER: I think I prefer that we go into private session.

2 Court officer, please.

3 (Private session at 12.56 p.m.) Reclassified into open session

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

5 MR IVERSON:

6 Q. Sir, I'd just like to read out a portion of the instruction to you and then ask a few
7 follow-up questions, and I believe do you -- are you able to see the French, the
8 instructions in French, sir?

9 A. I have them here in French, Mr Iverson.

10 Q. Mr Kilolo asks you, "In relation to the intervention by the MLC troops in the
11 politico-military crisis from 2001 to 2003 in the Central African Republic, please
12 provide us with your analysis and expert opinion concerning (1) causal relationships,
13 (2) and the politico-diplomatic and strategic or even military mechanisms in place
14 between the Central African authorities and the African international community
15 with a view to the intervention of the MLC troops in the Central African Republic."
16 Sir, these are fairly general instructions, are they not?

17 A. Thank you, Mr Iverson. When an expert opinion is being sought, the requestor
18 tells you what he wants to have, but he does not tell you how you are going to do
19 your work, the tools that you have to use and the procedure that you have to follow,
20 so the instructions express a need for an expert opinion. The expert evaluates the
21 request and, on the basis of his experience, field of expertise, he comes up with the
22 necessary elements, but the request itself is not restrictive. You are told, "We need
23 this. We want you to help us to understand the intervention of MLC troops in the
24 Central African Republic, dealing with the causal relationships, political or even
25 military mechanisms," and so on and so forth.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 This is a wish that is being expressed, a need that is expressed. The rest is left up to
2 the expert to design his work and to carry out the assignment right up to the
3 conclusion and even proposals. The expert is not limited.

4 Thank you.

5 MR IVERSON: I'd like to ask for open session. That's -- I don't really need the
6 document any more, but I did want to ask questions about causal relationships. I
7 don't see why that would need to be in private session.

8 PRESIDING JUDGE STEINER: Court officer, please we can turn into public session.
9 The document needs not to be displayed any more.

10 (Open session at 1.01 p.m.)

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

12 MR IVERSON:

13 Q. Sir, I became curious about these instructions because if somebody asked you to
14 write about causal relationships, how would you even begin to know what they
15 mean?

16 A. Thank you. Here for an event to occur, it means there were elements that
17 would explain that, or there was elements that mean that we got to that place, so
18 therefore it is a matter of finding a certain number of contextual elements which
19 explain the event in question. You have the cause in order to find why the social
20 phenomenon occurred.

21 Q. So because the questions are so vague, it really required you to extrapolate on
22 what was meant by the questions; right?

23 A. Thank you, Mr Iverson. If you find that the question was vague, well, it's not
24 me. I'm not the one who drafted the letter, but given that the letter is a written basis
25 you have a telephone interview. There are a certain number of points that are

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 explained. Now, if you say that the letter or the request for an expert opinion is
2 vague, well, you're the one who's saying that to your colleagues. It's not up to me to
3 say that, but on the basis of what I was asked to do as an expert I reacted, I carried out
4 my work, on the basis of what I was asked to do and a certain number of parameters
5 that were set out. Whether that's vague, well, I'm not the one who can answer that.
6 Perhaps you should be putting the question to your colleagues from the Defence who
7 wrote the letter in question.

8 Thank you.

9 Q. Well, sir, you're in the witness box and you are under oath, so I'm asking you
10 the questions.

11 Did this require then some kind of follow-up? I mean, how do you know what
12 causal relationship means unless you have some kind of telephone conversation to
13 have Mr Kilolo or whoever explain what's that supposed to mean?

14 A. Thank you, Mr Iverson. In explaining this causal relationship, I told you that
15 I had telephone contacts with Counsel Kilolo and that's something that I clarified a
16 moment ago, unless we don't understand each other, but I just wanted to point out
17 that I'm not asking questions. I'm just answering the question you put to me.

18 It's true that I said that if you find that the report is vague, well, that's certainly not up
19 to me to answer this question. You'll understand that, because I didn't draft -- but if
20 you find that the document, the instructions, the request, is vague, you're the person
21 who sees it. You're the person who's found that and that's reason why I say that it's
22 the person who wrote that who is in the best position to react to that comment on
23 your part, Mr Iverson.

24 So I did not ask you a question. All I did was answer, answer the question, or your
25 comment. That's what I did.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 Q. Sir, you know, I'm just going to ask you a series of questions. If you would
2 like you can answer "Yes" or "No," and it's obvious that you're not comfortable doing
3 that, but if you could just try and keep your answers short. In the instructions, you
4 were not asked to conclude anything specifically about history; correct?

5 A. Thank you, Mr Iverson. As you mentioned, and I'll come back to this, it's
6 correct that there were questions, but in the analysis of a phenomenon which is as
7 complex as the one we have before us, the answer of "Yes" or "No" is something that I
8 find to be not good, to put it in simple terms.

9 If the question is asked, and people say, "What's your name?", I'll give my name, but
10 if it's a question with regards to analysis of a phenomenon or event which is so
11 complex, answering "Yes" or "No," well, you can see it's too limiting, it's too risky,
12 and that's the reason why I find, Mr Iverson, and perhaps it's true, it will be quite
13 short, but it is difficult for me, your Honour, with regard to a question which
14 is -- gives rise to an open space for analysis, I don't see how I can say "Yes" or "No" to
15 that, but I can only give elements of understanding thereto and come to a conclusion.
16 Now, yes, Mr Iverson?

17 Q. Did you even listen to my question, sir?

18 A. Thank you, Mr Iverson. You're asking me if the request that had been made,
19 well, if the instructions that you were given -- in the instructions you were given you
20 were asked to make conclusions on -- as to the history. If it wasn't that, then I've
21 misunderstood it, Mr Iverson.

22 Q. Right, and can I get an answer to that question? Were you asked to conclude
23 anything about history?

24 A. Thank you, Mr Iverson. I'll go back to the working methodology of an expert
25 in a field such as politics and strategy; that is to say that you can't give answers when

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 you study without making reference to a context. And why am I mentioning the
2 political history of Central Africa? That is in order to make it possible for people to
3 better understand, because the history here makes it possible for us to understand the
4 present.
5 In a recent past this is what happened in this society, this is how it developed. These
6 are the developments, the social and historical developments of this State entity that
7 took place such that we arrived here, so even if the request that was made didn't do it
8 directly, as a specialist you know that these are tools, this is an important approach,
9 to better understand and that is the reason why you have to -- you have to bring
10 clarification when you take a historic approach such that people understand, they
11 understand the phenomenon. It's not an error. It's even what's needed when you
12 carry out analysis.
13 When you carry out analysis in order to understand a phenomenon - a political
14 phenomenon - you have to put it in its context, and for the understanding of that
15 context you need a historical approach, or a socio-historical approach. That's
16 important. It's always important.
17 So I don't have to be told to make conclusions at a historic level. The specialist has
18 his tools in order to carry out his work and complete his work, and the approach, the
19 methodological approaches which that person have, well, there are several different
20 possibilities in terms of methodological approaches, theoretical which are available to
21 that person. He implements those in order to better have the phenomenon subject to
22 study being understood and that's reason why -- if you would allow me, that's why
23 I'm just adding to that.
24 That is the reason why when we speak about the crisis, the political and military crisis
25 in the Central African Republic, I thought, well, that one approach, a historic

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 approach, or a socio-historical approach was important in order to understand how it
2 was that the Central African Republic since 1965 was under a system of military coup
3 d'état and these military coup d'état, they became the fashion, the favoured way of
4 acceding to the supreme positions in the country.

5 So that's why from 1965, with General Jean-Bédél Bokassa, you come to a coup in
6 2001 carried out by General François Bozizé. The first one he didn't manage, but the
7 taking of power of March 2003, so this historical chain, this historic demonstration,
8 why is that done? This is done in order to demonstrate to the highest court that
9 since this time the political actors of that State are permanently trying to take highest
10 office through a coup. It becomes an almost permanent situation from then, and that
11 gives you an idea with regards to war or armed conflict which will be imposed on
12 democratically-elected regimes, Ange-Félix Patassé, and the war that's forced on him,
13 until March 2003.

14 So that -- that is the reason for mentioning the history, the context, the historical
15 context, of this State formation which is the Central African Republic.

16 Thank you, Mr Iverson. Thank you, your Honour.

17 PRESIDING JUDGE STEINER: Mr Witness, don't take it as a personal criticism, but
18 maybe we are losing again the focus here and it took you three pages of the transcript
19 to give your answer and even with some kind of repetition we understand that as a
20 professor sometimes this is something that comes naturally, but I would ask again
21 you to try to be short and objective in your answers. Otherwise, we won't be able to
22 finish with your questioning as estimated today.

23 Mr Iverson?

24 MR IVERSON: Madam President, I project with his answers there is no way
25 possible that I could finish today, even though I intended to do so, but I will do my

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 best to make it through the next twelve minutes.

2 Q. Sir, you gave a noble dissertation about the importance of history. I didn't ask
3 you about that. We all understand that history is important. We all understand
4 that academics are important, but I hope you understand that it is important that you
5 just listen to my question and answer the question. I'll give you an opportunity to
6 explain if you want to, okay, but I wasn't asking you to give a dissertation on history.
7 I was just asking you whether or not you were instructed to comment on history and
8 I'm going to ask you another several questions about whether or not you were asked
9 to comment on certain topics that you wrote about and that you provided in your
10 testimony?

11 PRESIDING JUDGE STEINER: Maître Kilolo?

12 MR KILOLO: (Interpretation) Your Honour, if you would allow me just a little
13 contribution that I would like to make to help us move forward and also to
14 understand the answer provided by the expert. I think that everything comes from
15 the style used by Mr Iverson, because there are two ways of asking questions: Either
16 you ask a question when you go to what is the true question, or you use questions,
17 oratory questions if you like, which means that you ask a question but what you are
18 trying to get is not the question as it's put and I'll give you an example here. You are
19 asking if the Defence gave you an instruction to make a historical development or
20 account of the situation in Central Africa and in reality what Mr Iverson wants to
21 know is not as such whether the Defence did give this instruction, but what he is
22 trying to do is to see why did you make a historical development in your report while
23 it is nowhere stated that the Defence asked you to do so. So that's the true question
24 that the expert is trying to answer.

25 PRESIDING JUDGE STEINER: Maître Kilolo, I am sure that each party and

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 participant has its own style in questioning witnesses and we have been witnessing
2 that since the beginning of the case. You have your style, Mr Haynes a very proper
3 style of doing it and as well as Mr Iverson and other representatives of the OTP.
4 What I can assure you is if Mr Iverson had put the question in the way you put it, the
5 answer would take even more than three pages, but let's try, Mr Iverson, to put
6 objective the questions and insist with the witness to give objective answers.
7 Otherwise, we will start again with the debate we had in the beginning of this
8 hearing.

9 MR IVERSON:

10 Q. So, again, sir, it is not to discount the importance of history. I would be the last
11 person to discount the importance of history. It's very important. I am just simply
12 asking you, you were never asked to comment on history, but yet you extrapolated
13 from the instructions that you needed to comment on history. Is that a fair
14 statement, sir?

15 PRESIDING JUDGE STEINER: Mr Iverson, I think we have already understood
16 what you wanted, so you are putting the same question in another way and giving
17 room for a repetition of the explanation that even without receiving instructions the
18 historical approach appeared to be important for the witness.
19 Is there anything else you want in relation to this, because otherwise you are making
20 a conclusion, a final argument?

21 MR IVERSON: I'll move on to my next question, Madam President. The point is
22 taken.

23 Q. Sir, you weren't asked to conclude anything about the legitimacy of the
24 intervention; correct?

25 A. Thank you, Mr Iverson. The task was to analyse in an overall way or a global

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Open Session)

ICC-01/05-01/08

1 way the intervention of the MLC in the Central African Republic and to base myself
2 on my tools, and in order to achieve that, to go there, I came to demonstrate that the
3 intervention of the MLC troops in the Central African Republic was completely
4 legitimate and even legal on the basis of the analysis of the Lusaka agreement. So
5 it's always an approach, an analytical approach. Through that you arrive at certain
6 conclusions so the work that's asked of you doesn't limit you. When you are asked
7 for an expert opinion, you are not limited in your methodological tools or your
8 analytical tools, or in your approach. You are not limited. You work on the
9 understanding of the subject, using your tools, the tools you have available to you, so
10 it wasn't precisely or clearly that I was asked to demonstrate the legitimacy. No, I
11 was asked to carry out an analysis, an analysis of that intervention using the political
12 and strategic diplomatic mechanisms in order to provide clarification to the august
13 Chamber.

14 Thank you.

15 PRESIDING JUDGE STEINER: Mr Iverson, we have only five minutes. If it's
16 agreeable for you, I would like to adjourn for now, not to adjourn, just to release the
17 witness, because I wanted to have two minutes to discuss another issue with parties.

18 MR IVERSON: Absolutely, Madam President. Thank you.

19 PRESIDING JUDGE STEINER: Mr Witness, thank you very much. You are
20 released for today. We will continue tomorrow morning at 9 o'clock.

21 I ask, please, court usher to take the witness outside the courtroom.

22 (The witness stands down)

23 PRESIDING JUDGE STEINER: Court officer, please let's go into private session.

24 (Private session at 1.24 p.m.) Reclassified into open session

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

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

1 PRESIDING JUDGE STEINER: Thank you.

2 Maître Kilolo, I want to talk to you, Maître. The Chamber received a request for a
3 status conference, a request from the Defence, in order to deal with issues related to
4 Defence investigation. Before deciding, the Chamber would like to know first
5 whether the status conference would be in public or private or closed session,
6 ex parte or not and for how long the Defence estimates Defence will need in order to
7 address the issue?

8 MR KILOLO: (Interpretation) Your Honour, it is correct we would like us to be in
9 closed session. We think that in around 15 minutes we will have been able to go
10 over all the different extremely serious incidents that we want to at great urgency
11 bring to your attention and we also think that it would be a good idea for the service
12 which is responsible for the protection of witnesses, the VWU, also be present. The
13 Office of the Prosecutor too can also take part.

14 PRESIDING JUDGE STEINER: I thank you very much for these clarifications that
15 are necessary in order for the Chamber to get organised, including because we have
16 to adjust timing of the hearings with the interpreters and court reporters. So the
17 Chamber will come back to the Defence probably by the end of today.

18 Let's turn -- Mr Haynes?

19 MR HAYNES: I am sorry, but we are working on scheduling the next witness and
20 potentially a pre-testimonial meeting with the Prosecution and him and it might be
21 helpful if we can know now that we will finish with this witness tomorrow, or not.

22 PRESIDING JUDGE STEINER: I will listen to Mr Iverson, but since we still have
23 legal representatives authorised to put a number of questions, and at the end Defence
24 will be given the opportunity to follow up any of the questions, I doubt, but in any
25 case I wanted to listen to Mr Iverson.

Trial Hearing
Witness: CAR-D04-PPPP-0059

(Private Session)

ICC-01/05-01/08

- 1 MR IVERSON: Well, I would love to be able to guarantee that we will finish
2 tomorrow, but when I ask a simple question that could be answered "Yes" or "No"
3 and the witness responds with a three page or four page answer, the only conclusion
4 that I can come to is he has hijacked this courtroom and he needs to be controlled.
5 He needs to be told that his role is to answer questions and not to go off into
6 dissertations. So if he continues to do that tomorrow, I suspect that it will take
7 longer than a day, and I don't want to have to do that. Obviously my personal
8 preferences have no role in that decision at all. It's just a matter of professionalism.
9 I try to ask fair and objective questions and I get very long responses, so that's the
10 situation I'm dealing with and I think, yes, it's a difficult situation that I can't -- it
11 makes it impossible to gauge how long it will take.
12 Thank you.
- 13 PRESIDING JUDGE STEINER: I must confess, Mr Iverson, that I am not very happy
14 with the expression you used in that the witness has hijacked the hearing. Unless
15 this is a direct criticism to the way the Presiding Judge is conducting the hearing and
16 I hope it's not.
- 17 In any case, Mr Haynes, I don't think we'll be able to finish by tomorrow because
18 even if the Prosecution is able to finish we still have legal representatives and there
19 are many questions authorised by the Chamber to be put to the witness by legal
20 representatives. So I think it's more likely that we won't be able to start with the
21 next witness on Monday.
- 22 MR HAYNES: Thank you, but just so that everybody is clear, we will now proceed
23 on the basis that a meeting between that witness and the Prosecution can take place
24 on Monday morning and so if we do go short tomorrow we won't be able to hear that
25 witness on Monday morning. I just want that to be clear with everybody.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0059

1 PRESIDING JUDGE STEINER: The Chamber will not regulate these agreements
2 between Defence and Prosecution about meeting with the next witness. Only if any
3 problem - real problem - arises the Chamber should be involved in such discussions.
4 Court officer, please turn into public session.

5 (Open session at 1.30 p.m.)

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

7 PRESIDING JUDGE STEINER: Just to thank very much the Prosecution team, the
8 legal representatives of victims, the Defence team, Mr Jean-Pierre Bemba Gombo. I
9 thank very much our interpreters and court reporters. We will adjourn for today
10 and resume tomorrow morning at 9 in the morning.

11 The hearing is adjourned.

12 THE COURT USHER: All rise.

13 (The hearing ends in open session at 1.31 p.m.)

14 CORRECTION REPORT

15 The Court Interpretation and Translation Section has made the following corrections
16 in the transcript:

17 *Page 45 lines 5 to 6

18 " With this kind of work, two, three telephone calls? No. The Defence would call
19 me and say "We want this. Have you made progress in that area?"' Is corrected by "
20 With this kind of work, two, three telephone calls? The Defence would
21 call me and say "Do you want this? Have you made progress in that area?"'

22 RECLASSIFICATION REPORT

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

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