

Trial Hearing

(Closed Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0036

- 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 Monday, 19 March 2012
- 8 (The hearing starts in closed session at 9.36 a.m.) Reclassified as open session
- 9 THE COURT USHER: All rise. The International Criminal Court is now in session.
- 10 Please be seated.
- 11 PRESIDING JUDGE STEINER: Good morning. Could, please, court officer call the
- 12 case.
- 13 THE COURT OFFICER: Thank you, your Honour. Situation in the Central African
- 14 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
- 15 PRESIDING JUDGE STEINER: Thank you very much. Good morning. Welcome the
- 16 Prosecution, legal representatives of victims, Defence team. I see new faces.
- 17 Mr Haynes.
- 18 MR HAYNES: Your Honour, can I introduce Ms Julie Fabreguettes, the newest member
- 19 of the Defence team for Mr Bemba.
- 20 PRESIDING JUDGE STEINER: Most welcome. Good morning to our interpreters,
- 21 court reporters. Good morning, Mr Witness.
- 22 WITNESS: CAR-OTP-PPPP-0036 (On former oath)
- 23 (The witness speaks via video link)
- 24 (The witness speaks French)
- 25 THE WITNESS: (Interpretation) Good morning, your Honour.

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- 1 PRESIDING JUDGE STEINER: Good morning, Mr Rojas.
- 2 THE COURT OFFICER (DRC): (Interpretation) Good morning, your Honour.
- 3 PRESIDING JUDGE STEINER: Mr Witness, we hope you had a restful weekend, that
- 4 you are feeling well and ready to continue with your testimony?
- 5 THE WITNESS: (Interpretation) I'm ready to continue, your Honour.
- 6 PRESIDING JUDGE STEINER: Mr Witness, I need to remind you that you are still under
- 7 oath; do you understand that, sir?
- 8 THE WITNESS: (Interpretation) Yes, I understand that, your Honour.
- 9 PRESIDING JUDGE STEINER: I also want to remind you that if at any time you need a
- 10 break for any reason, you just let us know. Today, the Defence will start questioning you
- 11 and for that purpose I give the floor to Mr Haynes.
- 12 Mr Haynes, you have the floor.
- 13 MR HAYNES: Thank you, your Honour, and good morning.
- 14 QUESTIONED BY MR HAYNES:
- 15 Q. And good morning to you, sir.
- 16 A. Good morning, Counsel.
- 17 Q. And if I may inquire at this stage, how are you?
- 18 A. All right. I'm feeling a bit better. I'm all right.
- 19 Q. Good. Am I right to understand that (Redacted)
- 20 (Redacted)
- 21 A. Yes, that's right, (Redacted)
- 22 (Redacted)
- 23 Q. Good. Well, I hope you are comfortable there and if at any time you are
- 24 uncomfortable or tired do not hesitate to tell us, will you?
- 25 A. Certainly, Counsel. The Presiding Judge has told me that and I will do so, if

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1 necessary.

2 Q. Okay. Well, let's move on. Have you ever been concerned that you yourself may
3 face Prosecution in relation to crimes allegedly committed by the MLC?

4 A. No, not at all. I do know I had nothing to do with it.

5 Q. And that includes both the events we've been talking about in the Central African
6 Republic, and anything that may have happened in the Democratic Republic of Congo?

7 A. Yes, that's right. I played my role properly, fearing no one but God.

8 Q. Now, putting that to one side for a moment, you met in formal interviews with the
9 Office of the Prosecutor on three occasions, didn't you?

10 A. Yes, that's right.

11 Q. Twice in April of 2008 and once about 20 months later, in December of 2009?

12 A. Yes, I think it was three times. I don't remember the dates but, yes, three times.

13 Q. And other than formal interviews which were recorded on tape, how many other
14 times did you meet with members of the Office of the Prosecutor?

15 A. No. Other than the interviews, I think that I met the last time when I (Redacted)
16 (Redacted) and that was to give me the schedule that had been decided
17 upon by the Chamber for the various people giving testimony.

18 Q. And when was that?

19 A. I believe it was in November, towards the end of last year.

20 Q. Can you recall how it was you first came to be in contact with the Office of the
21 Prosecutor?

22 A. Yes, I remember.

23 Q. Well, how was it?

24 A. They asked me -- they asked me if I could give testimony in relation to the trial of
25 Jean-Pierre Bemba relating to the events that occurred in the CAR when the MLC troops

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1 were there.

2 Q. And who do you mean by "they"? Who was the first person who contacted you?

3 A. Before -- well let me put it this way: Before the OTP contacted me, my direct

4 superior called me in and (Redacted)

5 (Redacted). He called me, and once I got to Kinshasa he

6 explained the situation to me that the OTP of the International Criminal Court needed to

7 contact me and I could provide them with a few days of my time, and so that is how it

8 came to be that I went to see them.

9 Q. Who do you mean by your director or your superior?

10 A. My direct superior is (Redacted)

11 (Redacted)

12 Q. What position do you currently hold (Redacted)?

13 A. I am (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. Does that mean you are (Redacted)?

19 A. Yes, that's right. When I mentioned that I was (Redacted)

20 (Redacted), that is the current title of my job, yes.

21 Q. And how regularly do you report to (Redacted)?

22 A. At the current time, I am in contact with him nearly every day, be it by phone or

23 through written messages. I speak with him every day.

24 Q. (Redacted)

25 A. (Redacted)

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1 Q. And how regularly (Redacted)

2 A. Well, if (Redacted)

3 (Redacted)

4 (Redacted). He is not in the chain of command directly speaking with me. I always go
5 through (Redacted)

6 (Redacted). So it depends

7 on him.

8 PRESIDING JUDGE STEINER: Mr Haynes, just to remind you of the five seconds

9 because I can see that the court reporters are having difficulties in finalising the answers

10 in the English transcript. Thank you very much.

11 MR HAYNES:

12 Q. Just for the record of our proceedings, sir, (Redacted)

13 (Redacted)

14 A. (Redacted)

15 Q. Thank you. Now, I want to ask you a few questions about what happened in your

16 interview in December of 2009, and to that end I'm going to ask that Mr Rojas puts

17 Defence document 3 on the screen that you can see, and for you he'll have to go to page 10.

18 For those of us looking at the English version, it's document 6 on the Defence list of

19 documents, and we'll have to go to page 9.

20 PRESIDING JUDGE STEINER: Mr Haynes, can you give the ERN number, please?

21 MR HAYNES: Yes. I only gave the page numbers because I know Mr Rojas is using, as

22 it were, a stand-alone computer which would work on page numbers rather than ERN

23 numbers. But for the English, page 9 is CAR-OTP-0058-0148.

24 THE COURT OFFICER (DRC): (Interpretation) Document number 3 on the list from

25 the Defence is being shown to the witness and this is CAR-OTP-0057-0002, and right now

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- 1 I am showing him the page that ends 0010, and that is page 9 of the hard copy.
- 2 MR HAYNES: Then I'm afraid you need to look at page 10, which ends 0011.
- 3 THE COURT OFFICER (DRC): (Interpretation) That page is being shown to the
- 4 witness, the page that ends 0011.
- 5 MR HAYNES: Thank you.
- 6 Q. And, Mr Witness, I want you to look at the bottom half of the page where a question
- 7 begins (speaks French) Congolaise, and can you just read it through to yourself? The
- 8 English begins, (Redacted)
- 9 (Redacted)
- 10 (Redacted)" et cetera. And can you confirm, sir, that you have read the
- 11 questions and answers in the second half of that page?
- 12 A. Well, that was the question that was put to me by the investigators. That is correct,
- 13 they asked me that question.
- 14 Q. Sir, do you remember receiving a document informing you that you, in effect,
- 15 (Redacted)
- 16 A. No, I don't remember that.
- 17 Q. Well, if you read the questions and answers there, it's plain that in that interview
- 18 you were looking at such a document; do you agree?
- 19 A. I'm afraid I haven't understood.
- 20 Q. Well, the investigator, which I think was Mr Badibanga, because he's been talking
- 21 from the start of the interview, says, "We're showing you a letter which will be appended
- 22 to this record in which the (Redacted). Can you confirm
- 23 that you've been informed of this letter and have read it?"
- 24 Do you see that in the French?
- 25 A. Yes, I can see the question and the answer.

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1 Q. And do you now confirm that you were looking at such a document in that
2 interview?

3 A. Yes, I remember.

4 Q. Was that the first time you'd seen that letter?

5 A. Yes, that's right.

6 Q. Did you ask for that letter?

7 A. No, I didn't ask for it.

8 Q. Then who did?

9 A. No, I don't know. I was shown the document and I read it; I looked at it.

10 Q. So that we understand, is it the position that Mr Badibanga gave you that letter at
11 the start of that interview in December 2009?

12 A. I looked at that document at the first interview and that was all.

13 Q. Well, this isn't the first interview, this is the third interview, but (Redacted)
14 (Redacted) was given to you by an investigator of the OTP during that interview; is that
15 correct?

16 A. Yes, Counsel, I told you that I read it. I reviewed the document.

17 Q. And what did you understand by the phrase, (Redacted)
18 (Redacted)

19 A. That I could give testimony, as the document says. That I could be ready for
20 testimony, and that's what happened in Bangui.

21 Q. Did you understand it to mean (Redacted)
22 (Redacted) in Isiro, Basankusu, Gemena, Bangui?

23 A. My authorities were aware of the operations of the MLC in its day, so they knew
24 that the person responsible was not me.

25 Q. Was the letter addressed to you?

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1 A. Counsel, I think it might be a good thing to show it again, to show the letter, so that
2 we can refresh our respective memories, including my own memory.

3 Q. Well, I don't believe there's a copy of it that you can be shown where you are, so
4 you're going to have to do your best from memory at the moment. Do you remember
5 who signed the letter?

6 A. No, that's the reason why I'm asking for the letter. There was also the other
7 documents that we could have looked at together, in order to remind one-selves of what
8 it's about, and if it could be shown it's good.

9 Q. Very well. Can you help us as to (Redacted)
10 (Redacted)
11 (Redacted)

12 A. First of all, the fact of accepting to testify meant that it would have to be free, free as
13 a witness, if I could accept to do so, just as I could also say "no." It was free. I was
14 asked if I could do it freely, and that is how it was seen (Redacted)
15 (Redacted)
16 (Redacted)

17 Q. Very well. Was it explained to you, in December 2009, why it was necessary for
18 another interview to take place?

19 A. No. What I knew was that the interviews could happen on several occasions while
20 the investigators considered that to be necessary.

21 Q. Did you have to (Redacted) to be interviewed in
22 December 2009?

23 A. When I received the orders of my chief, first of all reminding me to -- or telling me to
24 come here, what -- (Redacted) was informed of that, (Redacted)
25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. Did (Redacted) tell you why it was necessary for you to be interviewed again
4 in December 2009?

5 A. With regards to the interviews, I didn't speak directly with (Redacted), with the
6 (Redacted). People came in-between (Redacted), and when
7 my immediate superior spoke to me about it then I was certain that (Redacted)
8 (Redacted) was aware of it, but I didn't speak to (Redacted). When you say, "(Redacted)
9 (Redacted) tell you," I didn't have a meeting with (Redacted) about it but I did
10 meet with the services which are directly above me.

11 Q. Sir, a document (Redacted)
12 (Redacted) would have to have had the (Redacted) wouldn't it?

13 A. I don't know, Counsel. If that's the procedure, I didn't see a document with
14 (Redacted).

15 Q. Well, let's have a look a little further up the page, on the page of the interview that
16 we've been referring to, and you read to yourself in the French and I'll read the English.
17 What the investigator said is, "What we expect from this interview is that you tell us the
18 truth about Bemba's role in the occurrence of these crimes. Telling the truth doesn't
19 mean that what you think -- saying what you think we'd like to hear, it means telling the
20 facts as they happened and providing details that back up what you say. Nothing you
21 reveal to us about any crimes you might have committed will be used against you
22 provided you're telling us the truth. Do you understand?" "Yes."
23 Then the investigator said, "On the other hand, if it seems that you're not telling the truth,
24 you can't be given any guarantees and then you'd be putting yourself in an awkward
25 position. Do you understand?" And you said, "Yes."

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1 Can you see that in the text in front of you?

2 A. (Indiscernible) -- starts here.

3 THE COURT OFFICER (DRC): (Interpretation) For the purposes of the transcription,
4 the passage that is being shown to the witness is the one which is on the last sentence of
5 the page finishing 0010 continuing to page 0011, middle of the page.

6 MR HAYNES:

7 Q. Sir, have you read that passage of the interview?

8 A. Yes, I've read it. I've just re-read it.

9 Q. What did you take the investigator to be saying to you there?

10 A. Well, from what I've understood, you -- it's not you. As far as you're concerned, as
11 a soldier they are looking at what the soldiers have committed. Now, I said, "Yes,"
12 because right from the start I had highlighted or clarified that President Jean-Pierre Bemba
13 was the person who was the commander. That was the person who took all the
14 decisions. That was the person who had the authority, the supreme authority over
15 everything; and when they said "vous," in terms of you, that you would have committed,
16 that's not me they're talking about, "me" as a person, it's "us" as soldiers they're referring
17 to with a "vous" form. That's it.

18 Q. Sir, you were interviewed over two days in April 2008; do you remember that?

19 A. Yes, I remember that.

20 Q. And was that about the events in the Central African Republic in 2002 and 2003?

21 A. Yes, the subject of the discussions was indeed that.

22 Q. And did you tell the truth in those interviews?

23 A. Certainly I told the truth, and I shall only continue to tell the truth, firstly in
24 accordance with my oath and thereafter I am a (Redacted) and I will only tell the truth.

25 Q. And this interview in December 2009, was that about the same subject?

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1 A. The main idea was to speak about the events in Bangui. As you are used to in
2 questioning to look for I don't know, or before coming to the conclusion, you ask different
3 questions, perhaps you might ask other questions as well, as you've been doing here
4 yourself. You've been asking me questions as regards the situation as it's going on
5 currently, well, it was about the issues in Bangui from 2002 to 2003. So it could also be
6 the fact that they asked other questions. I don't remember.

7 Q. Sir, when the investigator said to you, "If it seems that you are not telling the truth,
8 you can't be given any guarantees and then you'd be putting yourself in an awkward
9 situation," what awkward situation do you think he was referring to?

10 A. I don't know. If you want me to say clearly, well, I'm just going to say the truth
11 here. Look, I don't know; they're the ones who said it.

12 Q. Well, the next thing he said to you was, "The policy followed by the Prosecutor of
13 the International Criminal Court is to prosecute those persons bearing the greatest
14 responsibility."

15 Did you think that the awkward situation he was referring to was the possibility of you
16 being prosecuted?

17 A. I don't know. Whatever the case, I have nothing to reproach myself for, knowing
18 all the things that happened. I don't know.

19 Q. And when he said, "If it seems that you're not telling the truth," who did you think
20 was going to be the judge of whether you were telling the truth or not?

21 A. Counsel, I can't guess what they were thinking. (Indiscernible) I tell the truth.
22 I've got to tell the truth. I don't know why they said that. I can't make a guess as to
23 what they mean by that, "who could be the judge," I don't know that. I don't got no idea
24 why they asked this question.

25 Q. Can we go, please, to page 9 of the interview in French, and in English page 8 at the

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1 bottom. In the French the witness will need to focus on the middle of the page.

2 Sir, you need to look at the answer that's right in the middle of page that begins (speaks
3 French). Do you see that?

4 A. Yes, I can find it.

5 Q. And do you see that during that question the investigator said to you, "During the
6 investigation, we've interviewed a significant number of victims and witnesses, including
7 former members of the MLC, both soldiers and civilians alike. All of the witnesses have
8 provided us with evidence showing that wide-spread crimes were perpetrated by the
9 MLC's troops in the Central African Republic between October 2002 and March 2003."
10 Do you see that?

11 A. Yes, I can find it.

12 Q. In your April 2008 interviews, had you told the investigators that you knew about
13 wide-spread crimes in the Central African Republic committed by the MLC?

14 A. I spoke about what I knew (Redacted)
15 (Redacted), and I spoke about what we had
16 heard from here and there, sometimes in the media as well, according to what people had
17 told me, and that is what I had explained and what I had replied to the investigators.

18 Q. So what impact did it have on you when you were told that all the witnesses
19 interviewed by the Prosecution, including MLC soldiers and civilians, had told them that
20 wide-spread crimes had been committed by the MLC in the Central African Republic?

21 A. Well, I said, "Yes." My answer's there when they said that. They asked me the
22 question, "Do you understand?" And they spoke -- "Do you understand?" And I said,
23 "Yes." Yes, I understood what it said.

24 Q. Can we go down to the bottom of the page in the French, please, and in the English
25 it's the top of page 9. Sir, can you see the assertion by the investigator beginning (speaks

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1 French). I'll read the English. "The evidence in our possession also indicates that these
2 crimes were wide-spread. During the confirmation hearing in January 2009 Jean-Pierre
3 Bemba acknowledged that hundreds of MLC soldiers were arrested for pillaging. Do
4 you understand?" "Yes."
5 And then if we can go, please, to page 11 in the English, and for Mr Rojas page 12, and I
6 just want you to look at the top of the page, please. It's three or four questions and
7 answers beginning (speaks French), and I'll read the English. "How many soldiers were
8 arrested as a result of the commission's inquiries?" "Ten or so. I don't recall the exact
9 figure any more, but it was about ten."
10 Investigator: "Is there any report which gives the figure put forward by Bemba during
11 the confirmation hearing? As a reminder, he spoke of a hundred or so soldiers." "No, I
12 didn't hear of a hundred or so soldiers being arrested; there were only about ten."
13 Now, just so we're clear, do you remember who it was who said to you that Mr Bemba
14 had spoken at his confirmation hearing about a hundred or so soldiers being arrested in
15 the Central African Republic?
16 A. Counsel, it's the question that was put to me, it's here clearly, and what I said when
17 they asked the question in the first part, and he finished his question, "Do you
18 understand?" And my answer was, "Yes," I understood what had been said. If I hadn't
19 understood it, I would have said "No." And, also, if -- well, then he continued, and then I
20 said that I'd never seen a hundred people; I'd spoke about a dozen, ten, 11, 12. But three
21 or four days ago, I didn't know if it was seven or eight. That was the question that was
22 put to me when they had spoken about this figure of a hundred.
23 Q. Well, let -- it might be my fault. Let's see if I can clear it up. During the course of
24 your December 2009 interviews, or interview, there were only three people in the room,
25 weren't there?

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1 A. Yes, I think so.

2 Q. There was you, there was Mr Badibanga - who was asking you questions a few days
3 ago - and there was somebody called (Redacted). Which one of those men told you
4 that Mr Bemba had spoken at his confirmation hearing about a hundred or so soldiers
5 being arrested in the Central African Republic?

6 A. In fact, it was Counsel Badibanga who was asking me a lot of questions, and the
7 others added things from time to time. In my humble opinion, it was Counsel
8 Badibanga.

9 Q. And was it also he who told you that all of the witnesses interviewed by the
10 Prosecution, including MLC soldiers and civilians, had described wide-spread crimes
11 committed by the MLC in the Central African Republic?

12 A. I think it must have been him. In fact, he was the one who was asking a lot of
13 questions. He was, as it were, the main person asking me the questions.

14 Q. As a result of what he said to you here, what did you think had happened at
15 Mr Bemba's confirmation hearing?

16 A. Counsel, I can't imagine. I can't imagine something that I don't know, saying what
17 could I think? What does it mean to me? I couldn't think something. I wasn't there.
18 I don't know what his intention was. I don't know. I can't think something which is in
19 somebody else's mind.

20 Q. Well, did you think, as a result of what Mr Badibanga said to you, that Mr Bemba
21 had spoken at his confirmation hearing?

22 A. I wasn't there. According to what he said was that there had been a meeting.

23 Q. And what did you think Mr Bemba had said at the confirmation hearing?

24 A. You're asking me the question of what he said? How am I supposed to know that?
25 I'm told that he has recognised the fact that there were 100 soldiers who were arrested, so

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1 that's something that I doubted, but I don't know exactly what happened. All that I
2 know, perhaps there was an interview, or a meeting with Jean-Pierre Bemba and the
3 Chamber, or perhaps there was a hearing. I couldn't imagine it. I couldn't imagine it.
4 I don't know exactly the -- what the situation is there.

5 Q. What was your reaction to being told that Mr Bemba had said at a hearing at the
6 ICC that a hundred or so soldiers had been arrested in the Central African Republic?

7 A. Well, I said, "No." I didn't hear of a hundred who were arrested; I know of a dozen,
8 and it wasn't even ten. It was less than ten. I said, "No."

9 Q. So what did you think about what Mr Bemba had said?

10 A. (Indiscernible) the same thing. I didn't reflect largely in terms of thinking of why
11 he said that, I mean, if it was him who said it.

12 Q. I mean, if he said such a thing, it would have been quite untrue, wouldn't it?

13 A. Yes, in my opinion, it is untrue.

14 Q. But, sir, I'll be corrected if I'm wrong, he never said any such thing at his
15 confirmation hearing. In fact, he didn't speak at all at his confirmation hearing, so why
16 do you think you were told in that interview that he had said such a thing at his
17 confirmation hearing?

18 A. The investigators may have their own system, their own method of cross-checking
19 information, either by asking questions or casting doubt or exaggerating certain issues so
20 as to find out what I can say. Maybe it is just a method. I do not know.

21 Q. What method would that be?

22 A. I am assuming that it may be a method or a procedure that they use to have
23 someone say something that he might have forgotten, and so on and so forth, so I'm
24 supposing that it may just be a procedure that they use. I cannot confirm that.

25 Q. Do you mean they might tell you something which is not accurate that would make

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1 you think badly about Mr Bemba?

2 A. No, I did not say that. Maybe by exaggerating the figures they thought that I
3 would have said something similar, whereas I know that that was not the case. I must
4 speak the truth.

5 Q. Very well. I want to ask you --

6 PRESIDING JUDGE STEINER: Mr Haynes, since you -- I was waiting for you to finish
7 with this part of the questioning, just to ask you, please, when you mention any page of
8 the statement, please refer to the ERN number because in this case I see that there was a
9 kind of confusion because sometimes you referred to page 11, or page 12, and the
10 numberings in French coincidentally are 11, 12, 13. So, at the end, we don't know if you
11 are referring to the ERN number or the page of the document.

12 MR HAYNES: Of course, your Honour.

13 Q. Sir, I want to ask you now, please, something about what you said on the very first
14 day of your evidence when you were being asked by Madam President whether the
15 interviews you had given were voluntary. Do you remember her asking you that?

16 A. Yes, I did answer that question.

17 Q. And this is one of the things you said: You said, "I was not available for a lot of
18 reasons. (Redacted)

19 (Redacted)

20 to be asked when I thought I was going to be able, because the Court wanted to hear me,
21 they wanted to -- me to speak to them. They wanted to know when I was going to go
22 back, and they wanted me to (Redacted) as soon as possible, and they tried to get
23 me to give me a programme. Somebody had been arrested by the Court, (Redacted)
24 (Redacted)

25 (Redacted), and I didn't have the programme (Redacted) before

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1 having the video. As I had already answered, I said that, really, I thought that in this
2 manner there was a problem with it because I'm meant to be the witness, because right
3 from the start I was told that I was free and I could or I could not do so, but at the end I
4 was obliged to do so."

5 Do you remember giving that answer last Tuesday?

6 A. Yes, that was my testimony last Tuesday.

7 Q. Who did you talk to on the telephone?

8 A. Up 'til then I was only in contact with the investigators. I did not know anyone at
9 the ICC. Most of the time I spoke with Badibanga.

10 Q. And was it him you spoke to when you were (Redacted)?

11 A. Yes, indeed.

12 Q. I'm particularly interested in your recollection that you were told that the Court had
13 arrested somebody. Can you tell us a little bit more about that?

14 A. I was referring to Jean-Pierre Bemba. He had been arrested. He was there - he
15 was in The Hague - and then there was the issue of testifying. That was voluntary. I
16 could accept to testify or not, but (Redacted) so I wanted to be left alone for a while, for
17 (Redacted). I did not see why it should be immediately, that is what I
18 meant. I do not know whether I was understood.

19 Q. Thank you very much. Now, sir, you are aware, are you, of the circumstances in
20 which you are giving evidence, effectively completely behind closed doors?

21 A. Yes, I am aware that it is in closed session.

22 Q. And are you happy with that?

23 A. Yes, I am happy with that. That was my choice.

24 Q. So you asked for that to be the situation, did you?

25 A. Absolutely.

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1 Q. When, and why?

2 A. (Redacted)

3 Q. You see, I want to go back to that interview that we were looking at. For those of
4 us looking at the English, it's page 8, which is CAR-OTP-0058-0147 -- I'm sorry, it's page 7,
5 which is 0146; and in the French for Mr Rojas it's document 3, page 8.

6 PRESIDING JUDGE STEINER: Mr Haynes, I'm really sorry to interrupt you but we
7 have -- we need to have a one-minute break. The hearing is suspended. The witness is
8 authorised to go outside the room.

9 (Pause in proceedings)

10 PRESIDING JUDGE STEINER: Mr Witness, can we continue?

11 THE WITNESS: (Interpretation) Yes, thank you, Madam President.

12 PRESIDING JUDGE STEINER: Mr Haynes, you have the floor. I just ask you please to
13 give the ERN number of the French version in order to facilitate Mr Rojas with the
14 document.

15 MR HAYNES: Yes. It's CAR-OTP-0057-0009 and the witness needs to look at the top
16 half to the middle of the page.

17 Q. Sir, what I'm interested in, and I will read the English, are the replies where you say,
18 (Redacted)

19 (Redacted) And you were asked, "Could you clarify what you mean by that?" And
20 you said, (Redacted).

21 What's more, I've got to think about (Redacted) Why did
22 you (Redacted)

23 A. Well, it was not really the (Redacted)

24 (Redacted)

25 Q. What did you mean when you said that you didn't (Redacted)

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1 (Redacted)

2 A. I said that, yes, I am a soldier, and as a soldier there are a lot of procedures that are
3 required. I have to be accepted or authorised to do that. My superiors have to
4 authorise me because I am governed by certain military regulations.

5 Q. Sir, they are your words, not mine. (Redacted)

6 (Redacted)

7 A. To begin with, ever since I became a soldier (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted), more so, because I

11 was -- I had a clear conscience because I had performed my duties as an officer in the
12 correct manner.

13 Q. (Redacted) court-martial in Gbadolite, for the soldiers accused of crimes
14 in Bangui and Ituri, those hearings were all held in public, weren't they?

15 A. Yes, they were public.

16 Q. (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted).

20 Q. (Redacted)

21 (Redacted)

22 A. Yes, it was not a bad thing because it was necessary for other soldiers to follow the
23 hearings; that could serve as a lesson to them, so I think it might have been important.

24 Q. Thank you. (Redacted)

25 (Redacted)

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1 A. Yes, that is correct.

2 Q. And in your training you have become familiar with the military structure, not just
3 of the armies you have served in but also other models, such as the French, Belgian, and
4 British armies?

5 PRESIDING JUDGE STEINER: Just a moment, Mr Witness. Maître Badibanga?

6 MR BADIBANGA: (Interpretation) Thank you, your Honour. I did not wish to
7 interrupt Mr Haynes' questions a while ago, but I have the impression that he wants to
8 move on to something else, so that is why I wanted to mention this.

9 In the French version, page 23, lines 23 to 27, Mr Haynes told the witness that he wanted
10 to talk about the comment that he made on Tuesday, and Mr Haynes said, "I am interested
11 in your -- in your memory, when you say that the Court had said "They had arrested
12 someone." And the witness -- I believe that based on what I heard that the witness said,
13 "It was not mentioned that someone had been arrested." In the transcript of 13 March,
14 page 9, the number of the transcript is 213, the witness, on line 7 says, "Yes. Immediately
15 after (Redacted) I was looked for in order to give me the programme that had
16 been decided upon by the Court. So it was the schedule that had been determined by the
17 Court." So the way the question was put to that witness, one can have the impression
18 that the substance of that file had been discussed with him, but in his answer of last
19 Thursday he said that only the schedule, only the programme had been discussed with
20 him. That is why I wanted to have this included in the record. Thank you.

21 PRESIDING JUDGE STEINER: Mr Witness, would you like to say something about this
22 comment made by Maître Badibanga?

23 THE WITNESS: (Interpretation) Yes. Thank you very much, your Honour. What
24 Mr Badibanga has just said is correct. Because when the Defence talked about
25 "someone," it sounded a bit hazy in my mind because I could not remember that because I

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- 1 was being asked for to discuss the schedule, the programme that had been decided upon.
- 2 PRESIDING JUDGE STEINER: Do you seek further clarification on this point?
- 3 MR HAYNES: No. The -- I quoted faithfully from the transcript in which the
- 4 word -- the phrase "the Court had arrested somebody" is plain, and I was interested to
- 5 know what person the witness thought was being referred to, and he said he thought it
- 6 was Mr Bemba who had been arrested, so he acknowledged in his answer to me that he
- 7 recalls talk of an arrest, but there it is. We will all, as it were, deal with the transcripts in
- 8 due course, I daresay.
- 9 Your Honour, Mr Badibanga was correct in assuming, I'm moving on to a different topic,
- 10 and in my programme it would be logical to start that after a break, so I know it's five
- 11 minutes early but it might make more sense to do that now, rather than ask one or two
- 12 questions before we break.
- 13 PRESIDING JUDGE STEINER: Thank you, Mr Haynes. But before we go into the
- 14 break I noticed that while you were making your last statement the witness was shaking
- 15 his head. Mr Witness, would you like to say something in relation to what Mr Haynes
- 16 just said?
- 17 THE WITNESS: (Interpretation) Yes. Thank you, your Honour. I wanted to say
- 18 that it was his question, that is the Defence question, when they talked about someone
- 19 being arrested. As I have just said, that sounded strange in my mind, and it really
- 20 confused me so that is why when he insisted, and asked who is that someone, I could
- 21 have thought that it was the arrest of Mr Jean-Pierre Bemba, and yet on the first day it was
- 22 not arresting someone, it was scheduling the programme, so he misled me.
- 23 PRESIDING JUDGE STEINER: We are going now into our coffee break. You may have
- 24 a cup of coffee or a cup of tea and take some rest. It's almost 11 o'clock. We will be back
- 25 at 11.30.

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1 THE COURT USHER: All rise.

2 (Recess taken at 10.57 a.m.)

3 (Upon resuming in closed session at 11.33 a.m.) Reclassified as open session

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

5 PRESIDING JUDGE STEINER: Welcome back. Welcome back, Mr Witness.

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

7 PRESIDING JUDGE STEINER: Mr Haynes, another new face in the Defence team?

8 MR HAYNES: Not new, but rather unfairly having had the benefit of a holiday last
9 week. It's Hélène Soulie. You have seen her before.

10 PRESIDING JUDGE STEINER: Mr Witness, are you ready to continue with your
11 testimony?

12 THE WITNESS: (Interpretation) Yes, I'm ready.

13 PRESIDING JUDGE STEINER: I just want to inform the parties and participants that
14 there was an electricity cut in the loco, so we have a generator, and that's why we have
15 this noise behind the voice. I hope that doesn't bother too much our interpreters but, in
16 any case, if there is any problem with interpretation let me know.

17 Mr Haynes, you have the floor.

18 MR HAYNES:

19 Q. Welcome back, sir.

20 A. Good morning once again, Counsel.

21 Q. I was just about to start talking to you about your knowledge of military models,
22 and I was suggesting that you are familiar not only with the structure of armies you have
23 served in but also other models such as the French, Belgian and British armies; do you
24 agree?

25 A. Well, I really couldn't give you a lot of details about the models, the way they

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1 organise their armies. Speaking generally, I would say that it's almost classic. It's not
2 the same thing, at least in terms of the way things operate.

3 Q. Okay. Well, perhaps we'll come on to specifics in a little while but what was the
4 model for the structure of the ALC? What did it copy?

5 A. Well, it was (Redacted) to copy the model that we have here, the way things
6 are done here, to copy that.

7 Q. And the ALC was classically structured with a G1 to G4?

8 A. Yes, from G1 to G4. There even was a G5, who handled morale, and providing sort
9 of a political framework dealing with moral issues and that sort of thing.

10 Q. Thank you. You anticipated my next question. The G5 was added after a little
11 time; do you recall that?

12 A. Yes, indeed, that position was created slightly afterwards but in the meantime
13 within the units, that is to say the brigades and the battalions, ever since the beginning
14 (Redacted) political commissioners to those units.

15 Q. Sir, thank you very much. You seem to be one answer ahead of me all the time. I
16 don't need now to ask you about political commissioners.

17 JUDGE ALUOCH: Mr Haynes, I'm sorry to interrupt you.

18 MR HAYNES: Absolutely not, your Honour.

19 JUDGE ALUOCH: I just want to make sure that when -- in line 25, the real-time
20 transcript, when the witness says, "Well, it was (Redacted), to copy the model that
21 we have here," by "here" he means (Redacted). I just want to be sure.

22 MR HAYNES: Your Honour, that's a perfectly valid clarification and perhaps the
23 witness can deal with it.

24 Q. Sir, did you hear Judge Aluocho's request for you to clarify something?

25 A. Yes, I did hear. I said "here" in our part of the world. I mean (Redacted).

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1 JUDGE ALUOCH: Thank you.

2 MR HAYNES:

3 Q. And, of course, the ALC had a Chief of Staff?

4 A. I beg your pardon? Was that a question?

5 Q. Yes, it was. I simply wanted you to confirm that.

6 A. Yes, yes, I can confirm that.

7 Q. Now, some armies have a deputy commander, don't they?

8 A. Yes, sometimes there are such deputies.

9 Q. And that person would assume command of the armed forces in the absence of the
10 commander-in-chief; do you agree?

11 A. No. In principle, the commander-in-chief, well, does not have a deputy. And that
12 position, supreme commander, there's not even anyone serving on an acting basis or an
13 interim basis.

14 Q. In the MLC there was no deputy commander, was there?

15 A. No, no, there wasn't.

16 Q. And so if Mr Bemba had been dead, uncontactable or in some other way unable to
17 give an order, on whom did the responsibility fall?

18 A. Like a political military -- well, as part of a political military movement, it would
19 have been the secretary-general.

20 Q. Wouldn't it have been the Chief of Staff who became commander-in-chief of the
21 army if the president was unable to fulfil that role?

22 A. Not at all, no. Even in the current situation in (Redacted) --

23 THE INTERPRETER: Inaudible.

24 THE WITNESS: (Interpretation) -- under no circumstances if ever the president of the
25 republic is not able to give orders, not even the Chief of Defence Staff of our army can.

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1 MR HAYNES:

2 Q. So who would have assumed command of the army if Mr Bemba was in a coma?

3 A. I repeat: As a political/military movement at the time, it was the political person
4 who would come after Jean-Pierre Bemba.

5 Q. So who do you say that was?

6 A. The MLC had a secretary-general. I suppose he was the one in the right position
7 who would come right after Jean-Pierre Bemba to take over, to lead, if ever Mr Bemba
8 could not continue leading for one reason or another.

9 Q. Do you mean Mr Kamitatu?

10 A. Yes, he is the one who was our general secretary, right until the end.

11 Q. And if he was unable to fulfil the function because, for example, he was in South
12 Africa, who then would command the army?

13 A. Well, if it was just a matter of him travelling -- I was talking more about a situation
14 whereby this president or the one who would come after him might be in a coma, or
15 might have lost his sight, but if the person is -- if the leader is just travelling -- and
16 Mr Bemba, sometimes he was on travel status but he was still the leader. He still
17 commanded even though he was travelling.

18 So if he was travelling, there was no problem. If he wasn't alive, then there would be
19 another organisation even if it were just -- even just the ALC, the military branch of the
20 MLC. There was a national secretary responsible for defence, and that person could be
21 thought of as a minister, Minister of Defence, and we called him the national secretary.

22 Q. What about if Mr Bemba was uncontactable and a military order needed to be given,
23 temporarily uncontactable, who would give it?

24 A. Yes. One cannot be static or be -- or not take any initiative. One would do
25 something until the situation returned to normal, and that's quite a normal thing.

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1 THE INTERPRETER: Interpreter correction: In the previous answer the witness said,
2 "If Mr Bemba were to lose his life, not his vision."

3 MR HAYNES:

4 Q. Well, I'm not sure you have yet answered the question. (Redacted)
5 (Redacted)

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted).

10 MR HAYNES: Thank you. Now, I'd like you to look, please, for us at Defence
11 document number 9, which is CAR-DEF-0001-0127. Is that document on the screen in
12 front of the witness, Mr Rojas? He appears to be looking at something.

13 THE COURT OFFICER (DRC): (Interpretation) Yes, the witness is reading the
14 document CAR-DEF-0001-0127.

15 MR HAYNES: Thank you.

16 Q. (Redacted)

17 A. (Redacted)

18 Q. And we can see it's dated 13 March 2001. What is the -- who is the letter or order
19 addressed to?

20 A. It is intended for all the units within the ALC.

21 Q. And what is the purpose of the order or directive?

22 A. It is to inform the commanders that the commander-in-chief and the Chief of
23 General Staff will not be at headquarters for a certain period of time and, in the meantime,
24 day-to-day operations within the headquarters would be handled by Colonel Bittanye
25 Hirwa (phon), (Redacted).

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1 Q. And why was it necessary to do that?

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. (Redacted)

9 A. (Redacted). He -- there was a person designated in the letter to deal
10 with day-to-day measures (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 (Redacted)

17 (Redacted).

18 Q. I just wonder if you could help us: Was does it mean (speaks French) ALC? (Redacted)
19 (Redacted)

20 A. You want me to explain what (Redacted) Well, it means he would play the
21 role of the Chief of General Staff during that person's absence. I don't know how I would
22 otherwise explain the word "interim," serving on an acting basis or on a provisional basis.

23 THE INTERPRETER: Message from the interpreters: Could the witness be encouraged
24 to speak slowly? Many thanks.

25 MR HAYNES:

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1 Q. I wonder if you could just read paragraph 3 of this order to us, please.

2 A. Yes, I have read paragraph 3. "He shall ensure that all decisions taken by the upper
3 hierarchy of the ALC are put into effect. He will also ensure the cohesion of the group
4 within the chief -- the military headquarters of the ALC as well as discipline,
5 moral -- morality and the proper conduct of affairs, or the proper work being done, within
6 the various units of the ALC."

7 Q. Yes. We'll come on to it again in a little while, but would that pretty much sum up
8 what a Chief of Staff's job is?

9 A. Yes. Within the General Staff as a co-ordinator, yes, that's normal, (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted). That's -- that's a normal thing.

13 Q. (Redacted)

14 (Redacted)

15 A. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Someone from the -- I think this -- what we hear -- see here is a commander from the force
21 being designated. If a Chief of Defence Staff from the land forces, for example, from the
22 army is away, one takes one of the military commanders and asks him to replace that
23 person but in this particular place a sector commander was taken, who was present in
24 Gbadolite, the sector commander who was in charge of the north sector, which included
25 Gbadolite. (Redacted).

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- 1 That is clear.
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 (Redacted)
- 6 Q. (Redacted)
- 7 A. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 Q. Thank you, and the document can now be removed from the screen.
- 17 Now, I want to come on to the responsibility of the commander-in-chief. It's the
- 18 responsibility of the commander-in-chief to order the commencement of any military
- 19 action, isn't it?
- 20 A. That is correct, exactly.
- 21 Q. And that is true in any classically structured army?
- 22 A. In principle, yes.
- 23 Q. Only the commander-in-chief can give the order to open fire?
- 24 A. Yes, that's correct, unless -- unless there's a legitimate defensive act.
- 25 Q. Thank you. And how and in what circumstances would that arise?

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1 A. Legitimate defence? Well, for example, if the enemy comes and they attack you,
2 you're not -- if you haven't received the order, you have to defend yourselves; and it may
3 be the case that you may even have to attack the enemy yourselves, to defeat them, and
4 immediately the commander will report to -- the commander will have to make a report,
5 and that's it, Counsel.

6 Q. Thank you, sir. That's very helpful. Do you agree that in a classical military
7 structure there are three levels of command; strategic, operational and tactical?

8 A. That's correct, yes, you've understood that well. That's it.

9 Q. Let's take MLC strategy. That would have been the business of the president and
10 the High Command, wouldn't it?

11 A. Yes, that's correct.

12 Q. And MLC strategy would have been to change the government of the democratic
13 republic by civil war or negotiation, approximately that's it, isn't it?

14 A. I'm sorry, please -- please could you ask that again? I didn't understand.

15 Q. Yes. If one had to state what the MLC's strategy was, it would be to change the
16 government of the Democratic Republic of Congo by civil war or negotiation.

17 A. Yes, that's correct.

18 Q. Now, operational command would vest in the sector commanders; do you agree?

19 A. No, not the sector commanders. I never said that.

20 Q. No, I'm not saying you did say that. But let's see if we can think what the MLC's
21 operational command were trying to do. They were trying to seize as much territory as
22 possible by military action, weren't they?

23 A. Yes, that's correct.

24 Q. And at a tactical level, the command would seek to win local battles to achieve the
25 operational goals; do you agree with that?

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1 A. That's correct.

2 Q. Now, when you earlier described Mr Bemba as a strategist, and not a tactician, what
3 did you mean?

4 A. Yes. He gave the orders, and in accordance with his orders the commanders could
5 do their best to find a solution to put into action the orders that were given. He would
6 say, for example, "Mr such-and-such a commander, you have to get to such-and-such
7 locality," and the way in which it was done, well, that was up to the commander, given
8 that he had to get to the locality named by the commander-in-chief. And once the
9 locality had been reached within the envisaged time-frame, envisaged by the commander,
10 okay, that's fine.

11 Q. Thank you very much indeed. I think you'd also agree that Mr Bemba never
12 directed any tactical operation, do you?

13 A. Yes. Tactical operations, I want to say quite honestly, no. That is to say, he
14 doesn't co-ordinate the activities, the manoeuvres which a battalion undertakes in order to
15 reach the objective. To put a particular commander on the left, on the right, somebody
16 else in the middle, put weapons in whatever place, no, but he follows the situation very
17 closely so that his objectives are achieved.

18 Q. Thank you. Now, I want to focus your attention for a moment on something you
19 were asked questions about by Mr Badibanga the other day. The ADF were a Ugandan
20 force, weren't they?

21 A. Yes.

22 Q. And whatever their sympathies, they were comprised of citizens of Uganda, so far
23 as you were aware?

24 A. I'm sorry, Counsel, I haven't understood. Please, could you repeat that question?

25 Q. Yes. It's probably a silly question, because you've told us they are a Ugandan force.

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1 The soldiers within those units were citizens of Uganda, weren't they?

2 A. The soldiers of the ADF were indeed Ugandans supported by some Congolese of
3 tribes who were close to the Ugandan border. Some Congolese, I would say.

4 Q. And the Ugandans were originally the sponsors of the MLC movement in the DRC,
5 weren't they?

6 A. Yes, that's correct. Uganda was the sponsor of the MLC, yes. ALC, too.

7 Q. Thus, attacking Ugandan nationals was an extremely delicate diplomatic issue; do
8 you agree with that?

9 A. Well, it's a bit complicated there. I don't think we understand each other. The
10 ADF, these are rebels, Ugandan rebels, and they are in the Congo so it wasn't Uganda. It
11 wasn't the government of Ugandan, no, these were Ugandan rebels who fled their homes
12 and they were in the Congolese forest.

13 Q. I understand that but it was nonetheless a delicate issue as to whether MLC troops
14 should engage the ADF in combat, wasn't it?

15 A. Yes, it could be a sensitive issue, but it was the commander who's in the field who
16 gave this information and Mr Jean-Pierre Bemba had said to him, "No, this information is
17 false." That was it, but these ADF were Ugandan rebels who were in that region.

18 Q. The point I'm trying to explore with you is: Whilst this might have been a tactical
19 operation which ordinarily the commander could have decided to carry out, the possible
20 presence of Ugandan nationals made it something that the commander-in-chief had to be
21 consulted about?

22 A. The question isn't very clear. I don't understand, but what's true is that the
23 commander consulted the commander-in-chief, the commander who was in the field, so
24 that there be clear orders from the commander-in-chief, and the commander-in-chief
25 checked the information from the commander in the field and he found that this

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- 1 information was not correct. There were not these ADF troops in front of him, and he
2 told him to be careful with the information that he had. That was it.
- 3 Q. Thank you. I'll just put it one more way, which is: If these -- if there had been no
4 question of there being Ugandan forces involved, the commander would not have asked
5 Mr Bemba what to do, would he?
- 6 A. Well, whatever the case, if there were no troops from the ADF, I don't know.
7 Is -- the question was asking if there were these troops, but if there weren't then the
8 operations would just continue normally against those who were fighting.
- 9 MR HAYNES: Very well. Just so that we are clear about this, I'm going to show you a
10 little passage of what you said in interview because it might be quicker in the long run.
11 And it's document 1 for the witness and Mr Rojas, and for the rest of us it's document 4,
12 CAR-OTP-0055-1213. The French is CAR-OTP-0009-0357.
- 13 THE COURT OFFICER (DRC): (Interpretation) Document CAR-OTP-0009-0347, the
14 second redacted version, and page 0357 is being shown to the witness.
- 15 MR HAYNES: I'm concerned the witness might have the wrong page.
- 16 Q. I'm going to read the English to you and I'll see if we can find the French page in
17 due course.
- 18 You were asked the question: "He would give orders for an operation to be carried out.
19 Two, took decisions as regard the exact numbers of men to be deployed? The way in
20 which the men were to be spread out, who took those decisions?" And you said, "No,
21 that is to say, after the staff come the brigades; the brigades are not here with the staff, the
22 brigades are very far away, hundreds of kilometres away. They are down there. There
23 is a brigade here with its battalions nearby. To give an example, there was a brigade that
24 was on the river, the Congo. Makanza had its battalions; one battalion on the left bank,
25 another on the right bank up ahead and the other on the left bank to the rear and they

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1 were deployed like that. And even if there were a problem, this brigade in any case was
2 in a position to contain the enemy itself down there. If such-and-such a battalion
3 believed that the enemy was stronger, the brigade commander would deploy his forces
4 himself down there."

5 Is that how it worked in reality.

6 PRESIDING JUDGE STEINER: I'm sorry, Mr Haynes, there's nothing to do with the
7 page that has been displayed to the witness. We need to find the right page in order to
8 have the witness the opportunity to review. And I am trying to find here, and I can't find
9 as well. Yes, Mr Haynes, it's page 0374 in the French version.

10 THE COURT OFFICER (DRC): (Interpretation) 0374 is being shown to the witness.

11 PRESIDING JUDGE STEINER: What page did you mention, Mr Rojas? I'm talking
12 about 0374.

13 MR HAYNES: It's Defence document 1, and it's the 30th page of the 56-page document.

14 THE COURT OFFICER (DRC): (Interpretation) Indeed, the page CAR-OTP-0009-0374
15 is shown to the witness, which corresponds with page 30 of the paper version of this
16 document.

17 THE INTERPRETER: "What is the question," says the witness?

18 MR HAYNES:

19 Q. The example you gave there of the brigade with its forces on the River Congo, is that
20 a good practical example of the autonomy of brigade commanders to move their own
21 units?

22 A. To move what, move this -- this brigade was there by the river. The locality called
23 Makanza, it was there with all these units, these battalions; some on the left bank, others
24 on the right bank, and they were alone. As for brigade, it was just one -- one brigade.
25 Now, the question, what is the question?

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1 Q. Could the brigade commander on the River Congo move his units as he saw fit?

2 A. No, never. Not at all. You can't move, not even a company.

3 Q. So what did you mean in the phrase "The brigade commander would deploy his
4 forces himself down there"?

5 A. What I said was in case of operations, then he would receive orders, clear orders,
6 saying that if they had to advance, to attack; and then he would receive his orders from
7 the commander-in-chief. Now, when he had them, the only person who could move
8 these men, who could move them as they wanted, would be if they responded to the
9 orders that were received, and at that level they can manoeuvre -- he can manoeuvre as he
10 wants because he's received an order to do so. That's how it works.

11 But he cannot, while stationed there, start moving units and companies and battalions as
12 he wishes. You know that there's such-and-such a battalion in such-and-such a place or
13 in another place. You can't just move a battalion as he wishes. You can't make it move
14 forward, move backwards, but in the case that orders are received then he can manoeuvre
15 in accordance with the possibilities in the field and in accordance with the enemy
16 positions. That's it, Counsel.

17 Q. (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 (Redacted).

24 Q. (Redacted)

25 (Redacted)

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- 1 A. (Redacted).
- 2 Q. (Redacted)
- 3 A. (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 Q. (Redacted)
- 14 A. (Redacted)
- 15 (Redacted).
- 16 Q. And do logistics include communications?
- 17 A. No, not at all. When it comes to the management of the equipment, maybe; but the
- 18 functioning of communications itself, that is not under logistics.
- 19 Q. What about the provision of communications equipment; does that come under
- 20 logistics?
- 21 A. No. The logistics department would be responsible for controlling the equipment
- 22 of all the units, but with regard to procurement and distribution, that is not the
- 23 responsibility of logistics. The logistics department would simply note that this unit or
- 24 this brigade has at its disposal so many number of phonies, so many number of Motorolas,
- 25 and then the make. That is what they do, but they are not responsible for procurement

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1 and distribution.

2 Q. Is the provision of weapons and ammunition a matter of logistics?

3 A. The provision, no. Logistics are responsible for the management of that equipment,
4 those matériels. The logistics department includes all the equipment in its -- in the list
5 for follow-up. Now, regarding provision of supplies, for whatever is necessary for
6 operations, it is the responsibility of the G3 because we are dealing here with operations.
7 He knows the needs. He is the one that makes the request and, when that request is
8 authorised by the commander-in-chief, the commander-in-chief then orders the
9 distribution or taking out this equipment from the depot, if they are available there, or the
10 purchase of this equipment. And once the equipment is in place, it is then that the
11 logistics department takes over management. That is all.

12 Q. What about food and fuel?

13 A. It is the same thing. In the case of food, the food is bought at the same time for all
14 the units. As I said last time, food would be bought for a period of one month, for
15 example. The food is bought on the basis of the planned menu, and the distribution
16 takes place depending on the strength of each unit. The G4, under the direction of the
17 Chief of Staff, ensures that this food is dispatched to the various units. That is how it
18 happens.

19 Q. (Redacted)

20 (Redacted)

21 how it could be transported, and how its arms and ammunition could be maintained?

22 A. When an operation was being prepared, the commander-in-chief would order a
23 particular brigade to carry out a specific operation. If it was already known that the
24 brigade in question had sufficient amounts of food and ammunition, then the
25 communication -- the communication systems worked properly, solar panels, batteries,

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1 and then they had the necessary medicines or drugs, then there was no problem, they
2 would implement their orders of the commander-in-chief.
3 But if something was lacking that would prevent the operations to be carried out normally,
4 then that brigade would make the request. And as I said last time, that request would go
5 right up to the commander-in-chief. He would assess the situation and then issue his
6 orders, whether it would be necessary to make purchases or to take the supplies out of the
7 store, and in that case anyone would -- everyone would do their job under the supervision
8 of the commander-in-chief; that is, if food had to be bought, it would be bought and then
9 sent to the brigade in question. That is what happened.

10 Q. So what precisely is the role of the G4?

11 A. What I'm saying is that the G4 manages the equipment and matériels placed at his
12 disposal and intended for the use of the units. He has various services under his
13 authority, the service in charge of food, that in charge of weapons, then fuel, equipment,
14 all those services come under the G4. In a manner of speaking, he's a manager of all that
15 equipment and matériels. That is it.

16 Q. Thank you. (Redacted)

17 A. Yes, that is clear. (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. Thank you. What role would a G2 in intelligence play in the planning of an
21 operation?

22 A. The G2 was responsible for military intelligence; and in the area of operations
23 planning, his major role would be to provide the situation, the location of the enemy.

24 The S2, or the G2, is someone who would be the S3, or the G3, of the enemy. (Redacted)

25 (Redacted) the strength of the enemy.

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1 (Redacted) the intentions of the enemy as well as the weapons at the disposal
2 of the enemy; the support weapons, the heavy weapons, does the enemy have a lot of
3 ammunition? So he has to provide information about the enemy so that the S3, or the G3,
4 with his commanders should come up with a plan. That is the main role of the G2.

5 Q. Thank you very much. We're starting to understand one another a bit now. I am
6 going to come on to the G3, the operations officer. In many ways he's the most
7 important (Redacted), because it is him who
8 devises the operational plan on the basis of the information given to him by the others?

9 A. The G3 does not really plan the operations as such. More so because if the
10 operations are taking place at the level of the battalions, then there is an S3 for the
11 battalion. That would be the same for the S2. Even if it is at the level of the brigade
12 there is an S3 in every brigade, and in the General Staff itself the G3 co-ordinates and
13 follows up operations. The G3 can give advice to the Chief of Staff and say, for example,
14 that the brigade commanders should do this, rather than this, but he's not present with the
15 brigade commanders in order to plan the operations. Nevertheless, he ensures the
16 follow up of the operations.

17 Q. Thank you. (Redacted)
18 (Redacted)

19 A. (Redacted). That's it.

20 Q. With what, an operational plan?

21 A. Not with an operational plan. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 (Redacted)

3 A. Yes, indeed, it is the same question being put over and over. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. Thank you. And can we take it that in relation to the three battalions that went to
8 the Central African Republic, (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted). It was the same thing. Nothing really changed. It was the
17 same thing that happened in the MLC.

18 Q. Thanks. (Redacted)

19 A. No. It was instead the Central African Army that provided information about the
20 enemy. The G2 followed that up but that information came from the Central African
21 Army. Our S2s, which -- who were with the enemy, timidly began to understand and
22 followed up the session on the ground.

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 (Redacted). That is what they felt they should do

2 with the Central African Republic people. That is, our people were there alongside with
3 the members of the General Staff of the Central African Army.

4 Q. And what about logistics? (Redacted)

5 (Redacted)

6 A. Yes. Once again, the same thing was applicable. The needs assessment would
7 come from the brigade, which was on the other side, and the requests would go up to the
8 commander-in-chief, who would decide what should be done, as I said before.

9 Q. Thank you. Now I'm finished with that topic, and I just want to ask you before we
10 break for lunch a few short questions about the composition of the ALC; do you
11 understand?

12 A. Yes, that is clear enough.

13 Q. What was the minimum age to be a soldier in the ALC?

14 A. Eighteen. I beg your pardon? Thank you. It was 18 years.

15 Q. (Redacted)

16 A. (Redacted) upon the instruction of
17 the commander-in-chief, and particularly at the period of the alliance with the FLC, so
18 there was the former ALC which was merged with the former RCD-K/ML army. At that
19 time there were many, well, not many, but a few soldiers who were under 18, and the
20 commander-in-chief really insisted for them to be excluded from the army and return to
21 their homes, (Redacted).

22 Q. Thank you. And were all the members of the ALC volunteers?

23 A. Yes, that is correct; they were volunteers. They were people who came en masse to
24 be recruited, but there were also captured soldiers who could not do otherwise. These
25 were soldiers who, once captured, joined the ALC. Then there are people who

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1 surrendered, who were soldiers, so in any case, all the soldiers were volunteers. There
2 was no one who was forcibly enlisted.

3 Q. Thank you. And did the men volunteer, knowing that they would receive no
4 salary?

5 A. They could not have known that before volunteering. They volunteered to join the
6 ALC. Well, in that case it was a political problem for them. That is just young people of
7 the Équateur province, they wanted to join the ALC at all costs, to fight against the
8 Kinshasa regime. And if it was possible to go on to overthrow the Kinshasa government,
9 so that was the intention and the motivation of those young people who came to be
10 recruited en masse. It was only afterwards, after becoming soldiers, that they realised
11 that they would not receive a salary, but they stayed there.

12 Q. And as part of their education, were they taught to value and understand the
13 principle of self-sacrifice?

14 A. Yes. That was the raison d'être of the political commissioners.

15 Q. Thank you. Just two or three more questions before we break. The first is that
16 you've told us the majority of the men came from the province of Équateur; is that right?

17 A. That is correct.

18 Q. And the last two questions are about surrenders. There was a large surrender of
19 men at Basankusu; is that right?

20 A. Counsel, can you elaborate, surrender of whom? The government soldiers?

21 Q. Yes.

22 A. Yes, yes. In Basankusu, there was a good number of government soldiers who
23 were initially captured because they were surprised, and this happened everywhere, in
24 other localities, but there was a large number of those in Basankusu. I do confirm that.

25 Q. And what happened to those men?

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1 A. They were treated very well, welcomed well. They were all put -- there was
2 various rotations within the large canoes, the balliniere in French, and they were sent back
3 to Lisala which was the former headquarters before Gbadolite, and that place is in the
4 centre. It was on the river. You see, there was a training centre there in Lisala, close to
5 the town, at a place called Angenga, and that is where they were, that is where they were
6 sent to for re-education, or awareness-raising. As young recruits the -- you see the
7 political educators needed to talk to them about the MLC at a centre and then, after that,
8 like the other ones who had surrendered, they were deployed to the various units within
9 the ALC and we continued our operations with them, right up until the end.

10 THE INTERPRETER: Interpreter correction: That training centre was 25 kilometres
11 from the town.

12 MR HAYNES: Thank you very much, sir.

13 Q. One last question before you get your lunch-break: If anybody were to suggest that
14 the soldiers who were captured at Basankusu were massacred, that would be quite untrue,
15 wouldn't it?

16 A. That would be a lie. They are still within the armed forces of the Democratic
17 Republic of the Congo. They were integrated into the military forces of the DRC, so that
18 would be a lie.

19 Q. And no such thing happened at Gemena either, did it?

20 A. No, not there either. Nowhere.

21 MR HAYNES: Thank you very much.

22 PRESIDING JUDGE STEINER: Thank you, Mr Haynes.

23 Mr Witness, we will now suspend for our lunch-break. You will have time to take some
24 rest. It's 5-past-1. We'll be back at 2.30.

25 This hearing is suspended.

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- 1 THE COURT USHER: All rise.
- 2 (Recess taken at 1.04 p.m.)
- 3 (Upon resuming in closed session at 2.41 p.m.) Reclassified as open session
- 4 THE COURT USHER: All rise. Please be seated.
- 5 PRESIDING JUDGE STEINER: Good afternoon, everyone. Good afternoon,
- 6 Mr Witness.
- 7 THE WITNESS: (Interpretation) Good afternoon, your Honour.
- 8 PRESIDING JUDGE STEINER: Did you manage to take some rest during the break?
- 9 THE WITNESS: (Interpretation) Yes, I did rest, your Honour. Thank you very
- 10 much.
- 11 PRESIDING JUDGE STEINER: Are you ready then to continue with your testimony?
- 12 THE WITNESS: (Interpretation) Yes, indeed, I'm ready.
- 13 PRESIDING JUDGE STEINER: Thank you, Mr Witness.
- 14 Mr Haynes, you have the floor.
- 15 MR HAYNES: Thank you. And good afternoon to you, your Honour.
- 16 Q. And good afternoon to you, sir.
- 17 A. Good afternoon, Counsel.
- 18 Q. Sir, I'm going to move on from what we were talking about before lunch briefly to
- 19 talk about discipline. Would you describe the MLC as a disciplined army?
- 20 A. Yes, it was a disciplined army. Of course there were a few things that went wrong.
- 21 A number of soldiers went wrong.
- 22 Q. And how would you describe Mr Bemba's personal attitude to discipline?
- 23 A. Well, I said this earlier - in earlier questioning - he was very unhappy with soldiers
- 24 who did wrong, and he stressed that discipline came first and foremost.
- 25 Q. Whether or not soldiers spoke French and could read the code of conduct, every

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1 effort was made to ensure that all soldiers knew what it said; is that correct?

2 A. Yes, indeed.

3 Q. And in your view, did all soldiers in the MLC know that if you committed rape or
4 murder you would face the death penalty?

5 A. They knew that because all the commanders stressed the code of good conduct.

6 THE INTERPRETER: The interpreter regrets the last end of the sentence was inaudible.

7 MR HAYNES:

8 Q. Sir, you said something at the end of that sentence that the English interpreters
9 missed. Do you think that you could repeat it?

10 A. Yes. In response to your question, whether all the soldiers knew that if they
11 committed rape they would face the death penalty, yes, I said that. They learned of that
12 through the commanders. The commanders stressed that. They interpreted the code of
13 conduct to their -- in their respective ways. I can add that even the political
14 commissioners, who worked with the commanders, also stressed these points.

15 Q. Thank you. And soldiers were not taught that they could steal whatever they
16 wanted on the first day after a location had been taken, were they?

17 A. Counsel, I haven't understood the question. Could you repeat it?

18 Q. I think you were asked this question by Mr Badibanga. Were soldiers taught that
19 the first day after a town or village was taken they could steal whatever they wanted with
20 impunity?

21 A. No, that's not true. How could you tell that to a group of soldiers? You can't tell
22 soldiers such a thing.

23 Q. Sir, and in your view was there any impunity within the MLC?

24 A. No, there wasn't any.

25 Q. And did that go both for soldiers and for officers?

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1 A. Yes, that held true for both soldiers and officers. If, if a commander were informed
2 of a case of someone breaking the guide-lines, or raping someone or harassing the people,
3 or killing someone, there were -- there was punishment for those things.

4 Q. I'd like to just briefly ask you about a couple of examples. Do you remember the
5 case of Colonel Kibonge?

6 A. Yes, I do remember his case, that colonel who later became a general, a
7 Brigadier-General.

8 Q. What happened to him in relation to anything he might have done wrong?

9 A. He was tried, because in Beni -- well, in a way, one can say that he was lacking in
10 discipline so he was put on trial for a form of treason. He betrayed the president and
11 commander-in-chief. He was arrested, transferred to Gbadolite where he was put on
12 trial. He was detained there for quite a long time.

13 Q. And I think, as you've told us, there was also a commander called Ngalimu who
14 was tried in relation to the murder in Ituri; is that correct?

15 A. Yes, he was put on trial and after the ruling, well, he was acquitted. Rather, he was
16 a lieutenant. It was the lieutenant who was detained because of that same case, that case
17 of murder.

18 Q. And so far as you understood it, was Commander Ngalimu charged because he was
19 actually present at the time of the murder where it took place?

20 A. Yes, he was the commander of operations on that road where that case of murder
21 was committed. He wasn't directly responsible for the death of that person, for the
22 killing of that person. He was transferred for -- and put on trial since he was in that
23 sector, not far from the place where the case occurred. However, he didn't take action
24 immediately, you see, and so that is how it came to be after the ruling he was acquitted.

25 MR HAYNES: Thank you very much, sir. I want just quickly to look at a document

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1 with you, and to that end can document 13 from the Defence list of documents be placed
2 on the screen for the witness, please.

3 THE COURT OFFICER (DRC): (Interpretation) Document 13 has been placed on the
4 screen and this is CAR-DEF-0001-0078, page 1.

5 MR HAYNES:

6 Q. Sir, have you seen this document before?

7 A. No, I don't remember this document. If you don't mind, if I could have a look at it?
8 If I could review it?

9 Q. Absolutely. Perhaps Mr Rojas can take you through the pages of the document
10 reasonably quickly, because it's fairly monotonous.

11 (Pause in proceedings)

12 A. Yes, Counsel, I have had a look at this document.

13 Q. Thank you very much, sir. Who is Égide Kongoli?

14 A. Égide Kongoli, he was the GD at a particular time.

15 Q. That came across as "GD." Did you mean "G2."

16 A. Yes, GD -- G2, the person in charge of military intelligence.

17 Q. And was it part of his function to collate statistics on soldiers who had been
18 convicted and punished for crime?

19 A. Yes. It depended on the work that *the supreme commander asked him for.

20 Q. And were you aware, whether you'd seen this document or not before, if such
21 statistics were kept by the MLC?

22 A. I don't remember exactly. I might have seen this in passing. It really wasn't a
23 habit. I might have seen it in passing.

24 Q. Okay. But whatever, in October of 2002, did you have any reason to suspect that
25 MLC troops would misbehave if they were sent to Bangui?

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1 A. No. Already in advance, commanders who might engage in misconduct before
2 going to Bangui? No.

3 Q. In your view, what was the quality of the Echo Brigade?

4 A. They were a good brigade. In their day, they did a -- they did good work, as was
5 the case for other brigades, such as the ones in Makanza. All the brigades on the
6 front-lines were good brigades, including that one Echo Brigade.

7 Q. And what about their discipline levels?

8 A. The level of discipline was good, Counsel, except that as is the case in any other unit,
9 and any other army, there always are a few excesses or soldiers going wrong; lack of
10 discipline, cases of -- such as -- well, theft, sometimes, that sort of thing can happen.
11 There was no shortage of that.

12 Q. And what was your view of Mustapha as a commander?

13 A. He was a good commander.

14 Q. Thank you. We're going to move on to something else now. Now, according to
15 your recollection, the MLC had less than ten Thurayas, didn't it?

16 A. I don't remember exactly how many, exactly how many Thurayas there were. I
17 can't remember.

18 MR HAYNES: Okay, but perhaps if your memory is faulty we can have a look at your
19 interview. And for you, can we please look at document 2. It's pages 63 to 64 which, in
20 turn, in the French begins at CAR-OTP-0009-0464. For those of us following in English, it
21 is similarly document 5, pages 63 to 64, which is CAR-OTP-0055-1302. Sir, I want you to
22 look at that page, page 63, and then if Mr Rojas could take you over to page 64 so you can
23 see a passage there.

24 THE COURT OFFICER (DRC): (Interpretation) Yes, Mr Haynes.

25 MR HAYNES:

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1 Q. Sir, can you confirm that no commander at the front in the Democratic Republic of
2 Congo had a Thuraya?

3 A. Yes, Counsel, I had said that no commander had a Thuraya. Perhaps it was a
4 mistake because it was difficult for me to remember exactly who had a Thuraya. At least
5 the brigade commander as well as the commanders of battalions who were in the Central
6 African Republic had Thurayas. It's possible that in our country as well there might have
7 been one or two or three, but I don't know who would have had them.

8 Q. Well, forgive me, sir, you seem to be pretty clear in April 2008 that it was only the
9 commanders in Bangui who had Thurayas and that commanders at the front in the DRC
10 didn't have them. That's what you said in that interview not once, but twice, didn't you?

11 A. You spoke about 2008. I don't understand.

12 Q. Sir, that was when this interview took place. It took place in April 2008. And
13 what you said then was, "Not everybody had one. Not everybody had one. For
14 example, the commander who had been at the front did not have one. However, those in
15 Bangui did, you see, because with the Thuraya it was to ensure discrete communication.
16 It's like a telephone, but with the radio everybody who knows the frequency can listen in."
17 And over the page you were asked, "Did the other fronts receive Thurayas anyway?"
18 You said here, "Not here in the Congo." And you said, "At the front, I can't think -- I
19 don't know of any commander who had a Thuraya, apart from those who were in
20 Bangui." Is that correct?

21 A. Yes, I'd repeat myself. I said that -- what I said is correct, what I said here, but it
22 could be the case that perhaps there were others. One forgets, but I confirm that those in
23 Bangui, at least at battalion level, did have them. If it -- in terms of the Congolese
24 territory, I don't remember exactly who had them. Maybe my memory is bad, I can't
25 remember. I don't know. I think that there weren't any, but if there were I don't know;

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1 but in Bangui, I would confirm that they did have them.

2 Q. Would that also mean that when he was in Libenge, Mustapha didn't have one?

3 A. (Redacted)

4 (Redacted)

5 Q. Thank you very much for that. Do you know whether between 26 October and
6 30 October Mustapha came to Gbadolite?

7 A. That's difficult for me to remember. Between 26 October, these four days, it's
8 difficult for me to say. 26 October to 30 October 2002? I don't remember. Perhaps he
9 did go there but I can't remember for the time being.

10 Q. Well, let me put it to you in simple terms: Do you admit the possibility that the
11 Thuraya that Mustapha had in the Central African Republic was given to him by the
12 authorities in that country?

13 A. Perhaps, but I said they had Motorolas. I said -- sorry, Thurayas, I meant, with
14 which they were communicating. All these people -- all this type of equipment, rather,
15 was provided by the HQ. Now, if the Thuraya which they had in Bangui had been given
16 by the CAR authorities then, honestly, I didn't know that but most of our material or all of
17 our material came from the HQ in Gbadolite.

18 Q. Other than Mustapha who, to your knowledge, in the Central African Republic had
19 a Thuraya?

20 A. Certainly the battalion commanders had them.

21 Q. So how many MLC officers in total had Thurayas in the Central African Republic?

22 A. How many officers? If I say Mustapha, with the battalion commander, or battalion
23 commanders, there were three of them. Well, that would be four with Mustapha. What
24 I would say is that there were four, quite simply, Mustapha and the battalion
25 commanders.

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- 1 Q. That would have been about half the total number of Thurayas owned by the MLC,
2 wouldn't it?
- 3 A. Yes, approximately.
- 4 Q. At a time when you were fighting a war in Ituri and at a time when your political
5 leaders were negotiating in South Africa; do you agree?
- 6 A. Yes, certainly.
- 7 Q. Sir, do you think it is very unlikely that the MLC would have given away four
8 Thurayas at that time?
- 9 A. Well, the Thurayas that I am speaking about that's in the Central African Republic.
10 (Redacted). Perhaps others had them too. The secretary-general,
11 for example, he could also have one. I can't tell you at this stage, at this precise moment
12 who had them, how many exactly. Such-and-such a person who had them, I wouldn't be
13 able to tell you that now.
- 14 Q. Sir, if none of the brigade commanders at the front had Thurayas, Mr Bemba
15 couldn't have talked to any of them by that means, could he?
- 16 A. I'm sorry, Counsel, if you would be so kind?
- 17 Q. Yes. There was no mobile phone network in the Congo in 2002, was there?
- 18 A. At least in the territory that the MLC was controlling there wasn't.
- 19 Q. So the only two means of long-distance communication were HF radio or, if you had
20 one, a satellite phone?
- 21 A. Yes, that's correct.
- 22 Q. But in order to speak to somebody by satellite phone you both had to have one,
23 didn't you?
- 24 A. Obviously.
- 25 Q. So if none of the brigade commanders had satellite phones, Mr Bemba couldn't talk

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1 to them by satellite phone, nor could they talk to him by satellite phone, could they?

2 A. Who couldn't do it? The question isn't very clear. You want to say that

3 Mr Jean-Pierre Bemba didn't have another means of speaking to the commanders? I

4 didn't understand that very well.

5 Q. No, I'm coming on to the other means. What I'm suggesting to you is, given what

6 you've told us, it was not possible for Mr Bemba to communicate with his brigade

7 commanders by satellite telephone, was it?

8 A. If a commander doesn't have one, you're going to -- how are you going to

9 communicate with him? What are you going to use?

10 Q. HF radio. The commanders had that, didn't they?

11 A. Yes, of course. I said, I've said at length, that all the commanders had radio

12 operators with radios available to them; all the brigades, and sometimes even some

13 battalions.

14 Q. Thank you very much. Now, I want you to help us a little bit with how HF radio

15 works. Is a conversation by HF radio like a telephone call, or can only one person talk at

16 one time?

17 A. I don't know. We have to understand each other well. This HF radio that you're

18 referring to here it's a radio, it's also called a phonie, which has frequencies; and if all

19 these phonies of the MLC, if they have frequencies on which they put them, they just have

20 to say that they are going to call on whatever frequency and then they can communicate

21 between each other. And the President, Jean-Pierre Bemba, had this phonie at home as

22 well, in his lounge, with which he communicated with the commanders directly. He

23 knew himself -- between these frequencies, his operator just had to put them in

24 connection - direct connection - with the commander that he needed. That's something

25 that I explained here in past days.

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1 Q. Thank you. I think we understand that, that a communication by HF radio is an
2 open communication, isn't it? Anybody who is on the frequency on which you are
3 broadcasting can listen to what you are saying.

4 A. That is correct, yes. Exactly, and that's the reason why very often, after two or
5 three weeks, sometimes one month, we had to change frequencies out of fear that the
6 enemy could capture it or listen to it. Every time we had to change the frequencies.

7 Q. Thank you. You've brought me on to my next question.

8 JUDGE ALUOCH: Mr Haynes.

9 MR HAYNES: Your Honour, yes.

10 JUDGE ALUOCH: I'm looking at page 67, line 10 of the real-time English transcript,
11 where your question was: "So if none of the brigade commanders had satellite phones,
12 Mr Bemba couldn't talk to them by satellite phone, nor could they talk to him by satellite
13 phone, could they?" And then the answer from the witness, "Who couldn't do it?" The
14 question isn't very clear. I am not sure that that question has been answered. Can you
15 maybe try to get a clarification from the witness, please?

16 MR HAYNES: Yes.

17 Q. In order for a brigade commander to speak to Mr Bemba on his - that is,
18 Mr Bemba's - satellite phone, the brigade commander must have a satellite phone also; is
19 that right?

20 A. Yes. I'd said, yes, because you speak from telephone to telephone by satellite
21 phone. If there isn't one, how is he going to speak on the telephone if he doesn't have a
22 telephone?

23 MR HAYNES: I don't know if your Honour is content with the transcript now.

24 JUDGE ALUOCH: I will wait and see how it develops.

25 MR HAYNES: I don't think I'm going to develop any more with Thurayas or satellite

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1 phones. We're on to HF radios now, which are even more complicated, but we'll see how
2 we go. Perhaps we could sweep this up at the end.

3 Q. Is a conversation by high frequency radio a secure conversation?

4 A. Yes. Well, it's not very secure, but you try to make the conversation secure,
5 particularly when you are transmitting the messages. That's how -- well, the last time I
6 spoke about coded messages. There are only the operators who were organised to know
7 what the codes were, so it's just the same group who have the key in order to open a
8 message, to be able to present it to the commander, so that it is readable and
9 understandable. If not, you transmit messages which are coded between operator and
10 operator.

11 Q. Thank you. And so that we all understand this - I understand it, I think - a coded
12 message by HF radio would be a series of numbers and letters to represent words; do you
13 agree with that?

14 A. Yes, that is it exactly. The same thing as, for example, call indicators for somebody.
15 For example, the commander, Brigade Commander Echo, for these months you can call
16 him "Diamond." And after a certain period, then maybe the next month you call him
17 "25." And the next month he's going to be called "Paris." And that's the way it worked,
18 we changed all that. Those are examples of it just to try and hide, hide the identity so the
19 enemy can't identify who you are talking about.

20 Q. Thank you. And I'm sorry if this is slow and deliberate, but I think it's important
21 we all understand it. You can also just talk ordinarily over an HF radio, can't you? You
22 can say, "Hello, Peter, how are you?" You don't have to speak in code?

23 A. No. Yes, it's not obligatory to speak in code. Particularly if you don't know it,
24 then you could have a case where you speak clearly but, unfortunately, this message is got
25 by the enemy as well.

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1 Q. Thanks very much. Now, operational messages were not sent out without being
2 encrypted, were they?

3 A. Yes, yes. The messages, operational messages - that's to say a message which was
4 drafted - that has to be encrypted by the operator before being sent; but the commander,
5 when he drafts it, he drafts it clearly, correctly, in French. And it's the operator who has
6 to encrypt it before sending it, and the correspondent who receives it is going to decode or
7 un-encrypt that, to show it to the commander to whom the message is addressed because,
8 in fact, those who know these codes, well, that was only the operators, they were the only
9 ones who knew the codes, where it concerns the drafting of messages; but for call
10 indicators, we make an effort such that the commanders know them so that they are called
11 by these special call codes. That's it.

12 Q. Thank you again. I don't think my question was a good one, so I'm going to try
13 and put it again. You wouldn't speak on HF radio in French if you were giving
14 operational instructions, would you, because you wouldn't want the enemy to intercept
15 what you were saying?

16 A. Well, there, these aren't written messages provided to the operator. Now you are
17 talking about a conversation with a commander, who has the device in his hands,
18 (Redacted) the commander-in-chief also has his device in the hand. (Redacted)
19 (Redacted) can't encrypt or encode everything, if it's not written.

20 Q. Okay. The point I was trying to make is: Any sensitive information relating to an
21 operation would be sent by code or by encrypted message, it wouldn't be the subject of an
22 ordinary conversation in French by HF radio; (Redacted), no commander would
23 do that, and the commander-in-chief wouldn't do that, would he?

24 A. Yes, that's it. (Redacted) used to speak very often on the radio, (Redacted) used to
25 speaking a bit in French but much more in Lingala. That's our language, one of the

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1 national languages. And the person who is used to doing that could, throughout the
2 conversation, encode one word here and there but it's difficult for that person to encode
3 the entire conversation whilst speaking. That's it.

4 Q. Thanks very much. And just to complete the picture, an HF radio cannot receive a
5 call unless it is switched on; is that right?

6 A. Correct. If that radio is not switched on, no, it's not going to work. It has to be
7 switched on. You have to see if the antenna is up. You have to see that the battery is
8 working, that it's well-charged, all that, in order to be able to receive or transmit
9 therefrom.

10 Q. And it can only receive a message from a radio which is transmitting on the same
11 frequency to which it is tuned; do you agree with that?

12 A. Absolutely.

13 Q. So in order for a commander in the field to call Mr Bemba by HF radio, Mr Bemba
14 has to be by his radio set, it has to be switched on and the commander has to know what
15 frequency to use?

16 A. Yes, that's correct. Sometimes with his operator, if there isn't a good liaison, or if
17 they are fleeing, sometimes there are certain different frequencies they could use. They
18 could ask the operator, who is next to the commander, in a coded way to free up certain
19 frequencies, and they would do that, but if among the ALC troops they knew the
20 frequencies then they could also go there and follow the communications there, and very
21 often it was like that when they spoke to the commander, but sometimes others could also
22 follow as well. It was a radio.

23 Q. Sir, it was far simpler and more secure, wasn't it, for messages to be sent to the
24 communications centre and recorded in the cahier de communication?

25 A. That's correct. (Redacted)

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1 (Redacted)

2 (Redacted) but quite frequently the

3 commander-in-chief, Jean-Pierre Bemba, would speak directly with the commanders.

4 (Redacted)

5 (Redacted)

6 (Redacted) So he would talk to them

7 directly and reproach them over the phone, and I am telling you the truth here.

8 Q. (Redacted)

9 (Redacted)

10 A. Yes. You saw the example of the message that was sent to seek the authorisation of

11 the commander-in-chief. (Redacted).

12 Q. (Redacted)

13 (Redacted)

14 A. (Redacted)

15 (Redacted)

16 (Redacted).

17 MR HAYNES: And I just want to have a quick look at one message, and it's Defence

18 document 16. For Mr Rojas' benefit, it's page 108. The ERN number is

19 CAR-D04-0002-1620.

20 THE COURT OFFICER (DRC): (Interpretation) That page is being shown. The

21 document is CAR-D04-0002-1514. That is the first page of the document, and I am

22 showing the witness now the page ending with 1620.

23 MR HAYNES: And, Mr Rojas, could you make sure that he can see, as clearly as possible,

24 the entry in the top right-hand corner, please.

25 Q. Sir, are you looking at a message that begins with the word "Flash"?

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1 A. Yes, Counsel, I can see that.

2 Q. (Redacted)

3 (Redacted)

4 A. (Redacted)

5 (Redacted).

6 Q. And it bears the number 225/EMG-ALC/COMDT/2002. I wonder if you'd just be so
7 good as to read that message to us without any commentary?

8 A. I -- should I begin by the heading or with the instruction directly?

9 Q. No, I think we've been through the whole of the heading. Just read the instruction,
10 please.

11 A. Very well. "Instruction. All operational orders. Security and Defence. You
12 have to refer to the General Staff headquarters of the Congolese Liberation Army. No
13 one has the right to issue orders to you. But if it happens that the authority of the RCD
14 national poses a problem to you. Please refer to the ALC general staff. Attention to the
15 defence of the airport. Reference my message," and that is a prior message, "number
16 139/General Staff Congolese Liberation Army. The airport has to be well-barricaded in
17 order to avoid operation Kitona. Execution." (Redacted)
18 (Redacted)

19 Q. And just to complete it, the date is 22 October 2002, isn't it?

20 A. Yes.

21 Q. As concisely as you can, tell us what that message is all about.

22 A. Yes. Thank you, Counsel. I have said that we always have to be within the
23 context of what I'm saying, and I am always logical with myself. (Redacted)

24 (Redacted). Obviously, the supreme commander may have heard that the

25 authorities of the RCD national -- we have to clarify this, because there are certain things

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1 that we do not fully understand.

2 There was a sector in Isiro, which was controlled by the RCD national, which was an ally
3 of the MLC. Our troops were sent to Isiro to go and provide the security for our
4 rearguard while assisting the RCD national, and our men had to be warned so as not to
5 accept orders from several quarters. In other words, so as not to confuse themselves.
6 They had to take orders from the headquarters and from the commander-in-chief. In
7 principle, those orders were received through the General Staff headquarters of the ALC.
8 That was the essence of that message.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 I do not know whether you have understood me, Counsel.

13 Q. Well, I don't know what happened at Kitona. If you can tell us briefly, I am sure it
14 would help us understand.

15 A. In Kitona, and this was in '98, on 2 August, when the rebellion started, the
16 RCD-Goma at the time, with their allies - that is, Rwanda - they took off from Goma with
17 several large planes. They landed at Kitona, and that was the beginning of the rebellion.
18 They took the soldiers in the Kitona base by surprise. This is at the west of the country.
19 That is near the Atlantic Ocean. So the soldiers there were forced to flee, and this was the
20 beginning of the rebellion.

21 So the commander was reminded of the fact that this was a major operation and (Redacted)
22 afraid of that type of operation happening in Isiro. That is the explanation, Counsel.

23 Q. Thank you very much. I want to move on from there to the commencement of the
24 operation in the Central African Republic. Sir, were you aware on 25 October of 2002,
25 that troops under the command of General Bozizé were conducting a coup d'état against

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1 the democratically elected president of the Central African Republic?

2 A. I do not know precisely what the current President Bozizé did at that time to
3 prepare the coup d'état. I have no comment to make about that.

4 Q. Were there no reports on RFI about the fighting in Bangui?

5 A. No. In relation to Patassé's troops, I have said that I really do not have precise
6 information. I did not listen to RFI, so I cannot make any observations about the coup
7 d'état that you are referring to, that is the one carried out by General Bozizé. I do not
8 want to tell you lies.

9 Q. What was the first that you knew about the attack by General Bozizé in Bangui
10 against President Patassé?

11 A. At what time? Well, I do not know. All I know is that President Bozizé, with
12 some of the Central African Republic troops, defected against the regime in place of
13 President Patassé.

14 Q. Well, let me be a little more explicit. (Redacted)

15 (Redacted)

16 (Redacted)

17 A. Yes. (Redacted) there was a
18 serious situation in Bangui, and he had decided, for one reason or the other, to intervene.

19 Q. Thank you. If Defence document 16 is still on the screen, could we please go to
20 page 1628. That's CAR-D04-0002-1628, which should be page 116, I think, of the hard
21 copy book.

22 THE COURT OFFICER (DRC): (Interpretation) Yes, Counsel, that is done.

23 MR HAYNES:

24 Q. And can we look at the top right-hand corner again, please. Okay. Sir, you looked at
25 this message with Mr Badibanga the other day. A few questions about it. (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE STEINER: Mr Haynes, would you please confirm the page you are
7 referring to?

8 MR HAYNES: Yes. It's CAR-D04-0002-1628. And it's the message in the top
9 right-hand corner.

10 PRESIDING JUDGE STEINER: It was the same message that you were discussing with
11 the witness before?

12 MR HAYNES: No.

13 PRESIDING JUDGE STEINER: Yes, that's my point.

14 MR HAYNES: No. 162 -- we were looking at 1620 before.

15 PRESIDING JUDGE STEINER: The message related to the secure, the airport, at least in
16 my list, is document 1628. It's page 1628, so maybe we are having a problem here with
17 the numbering?

18 MR HAYNES: Bear with us a minute. We are just trying to sort out some problems
19 with the documents. Your Honour should be looking at a message which says,
20 "Extremely urgent. 251450, from the commander of Brigade E to chairman, info chef
21 EMG/ALC".

22 PRESIDING JUDGE STEINER: I am really sorry, Mr Haynes. I think we have a
23 problem with the numbering. I cannot find the message you are referring to right now,
24 because the 1628 that I have, and it's the same as my colleague has, is the one that asks for
25 the commander -- you can proceed, sorry. Sorry.

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- 1 MR HAYNES: Okay. The alternative I could suggest that I could hand you up a copy,
2 or perhaps we could use the Prosecution document? We are okay?
- 3 PRESIDING JUDGE STEINER: No, it's correct, Mr Haynes. It was my mistake. I am
4 sorry, I am really sorry.
- 5 MR HAYNES: No, not at all.
- 6 Q. (Redacted)
7 (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
12 (Redacted)
- 13 A. (Redacted)
- 14 Q. (Redacted)
15 (Redacted)
- 16 A. (Redacted)
17 (Redacted)
- 18 Q. Okay. I just wonder if we could go to the left-hand side of the same page, at the
19 top please, Mr Rojas.
- 20 THE COURT OFFICER (DRC): (Interpretation) It's done, Mr Haynes.
- 21 MR HAYNES: Thank you.
- 22 Q. (Redacted)
23 (Redacted)
24 (Redacted)
- 25 A. (Redacted)

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1 (Redacted)

2 (Redacted). This is an administrative issue, except you are referring to another message.

3 Q. I was simply trying to jog your memory as to what time of the day, on 25 October,

4 (Redacted)

5 A. There is a danger that I might get confused, or bogged down here. If I have to
6 remember whether it was before or after, I just do not recall.

7 Q. Okay. (Redacted)

8 (Redacted)

9 A. In any case, (Redacted)

10 (Redacted)

11 Q. Okay. (Redacted)

12 (Redacted)

13 A. Yes, yes, it was on that occasion that those observations were made.

14 Q. (Redacted)

15 A. (Redacted)

16 (Redacted)

17 MR HAYNES: Sir, thank you very much for answering my questions today. I am
18 afraid we are going to have to carry on tomorrow but it's time for us to finish for the day,
19 now.

20 PRESIDING JUDGE STEINER: Thank you very much, Mr Haynes. If I may ask
21 whether Mr Haynes has any estimation to give to the Chamber and to the witness on --

22 MR HAYNES: Yes, it will be touch and go, but I think we should just finish tomorrow.

23 PRESIDING JUDGE STEINER: Thank you, Mr Haynes.

24 Mr Witness, it is enough for today. We will adjourn. We hope you can rest, have a
25 restful night. We will continue tomorrow morning, starting at 9.30.

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1 I thank very much the Prosecution team, legal representatives of victims, the Defence
2 team, Mr Jean-Pierre Bemba. I thank very much our interpreters, court reporters,
3 Mr Rojas. Mr Witness, thank you very much. We will adjourn for today and resume
4 tomorrow morning at 9.30.

5 The hearing is adjourned.

6 THE COURT USHER: All rise.

7 (The hearing ends in closed session at 4.01 p.m.) Reclassified as open session

8 CORRECTIONS REPORT:

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

11 *Page 27 lines 5 to 6

12 "... (Redacted)

13 (Redacted)

14 (Redacted)...'' Is corrected by '' (Redacted)

15 (Redacted)

16 (Redacted)

17 *Page 47 line 19

18 '' Yes. It depended on the work that this commander asked for.'' Is corrected by

19 '' Yes. It depended on the work that the supreme commander asked him for.''

20 RECLASSIFICATION REPORT

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

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