

Trial Hearing  
Witness: CAR-D04-PPPP-0016

(Open Session)

ICC-01/05-01/08

1 International Criminal Court  
2 Trial Chamber III - Courtroom 1  
3 Situation: Central African Republic  
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08  
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki  
6 Trial Hearing  
7 Tuesday, 27 November 2012  
8 (The hearing starts in open session at 9.05 a.m.)  
9 THE COURT USHER: All rise.  
10 The International Criminal Court is now in session.  
11 Please be seated.  
12 THE COURT OFFICER: Good morning, your Honours, Madam President. We are in  
13 open session.  
14 PRESIDING JUDGE STEINER: Good morning.  
15 Could, please, court officer call the case.  
16 THE COURT OFFICER: Situation in the Central African Republic, in the case of The  
17 Prosecutor versus Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.  
18 PRESIDING JUDGE STEINER: Thank you.  
19 Good morning. I welcome Prosecution team, legal representatives of victims, Defence  
20 team, Mr Jean-Pierre Bemba Gombo. Good morning interpreters, court reporters.  
21 We will continue today with the questioning of Defence Witness D04-16.  
22 Before I ask court usher to bring the witness in, I have a -- the Chamber has an oral  
23 decision to be issued. It's the oral decision on the applications to question Witness  
24 D04-16 by legal representatives of victims.  
25 On 21 November 2012, the Chamber received an application from Maître Zarambaud, on

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1 behalf of the victims that he represents, to question Witness D04-16 (Filing 2429-Conf).  
2 The application contains a list of 22 sets of questions. On the same date the Chamber  
3 received an application from Maître Douzima Lawson on behalf of the victims that she  
4 represents (Filing 2431-Conf). The application contains a list of six questions.  
5 Having considered the reasons given by both Maître Douzima and Maître Zarambaud as  
6 to why the personal interests of the victims they represent are affected, the Chamber  
7 allows the respective applications to question Witness D04-16.  
8 Turning to the proposed questions, both legal representatives of victims are allowed to  
9 pose all of their proposed questions as set out in their aforementioned filings.  
10 I now ask court officer to turn very briefly into closed session in order for the witness to  
11 be brought into the courtroom.

12 (Closed session at 9.10 a.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Open session at 9.11 a.m.)

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

20 PRESIDING JUDGE STEINER: Good morning, Mr Witness, and welcome back.

21 THE WITNESS: (Interpretation) Good morning.

22 PRESIDING JUDGE STEINER: Are you ready, sir, to continue with your testimony?

23 THE WITNESS: (Interpretation) I am ready.

24 PRESIDING JUDGE STEINER: Mr Witness, I need to remind you that you are still under  
25 oath. Do you understand that, sir?

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1 THE WITNESS: (Interpretation) I do understand.

2 PRESIDING JUDGE STEINER: I also want to remind you that you are under protective  
3 measures, that your image and your voice that are broadcast outside the courtroom are  
4 being distorted so that the public cannot identify you by your image or your voice, and  
5 that in order to keep such protection it's important that during open sessions you don't  
6 reveal information that could lead to your identification. If need be, we go into private  
7 session. In private session there is no broadcasting at all outside the courtroom, and then  
8 you can feel free to speak because the public cannot hear what you say.

9 Is that fine with you, sir?

10 THE WITNESS: (Interpretation) Yes, indeed.

11 PRESIDING JUDGE STEINER: And finally, Mr Witness, just to remind you about our  
12 ground rules, that you are expected to speak slower than normal, and to give the five  
13 seconds after a question is put to you before you start answering, in order to allow our  
14 interpreters the time needed for finishing the translation of the question, our "five seconds  
15 golden rule." Can we count on you on that?

16 THE WITNESS: (Interpretation) Yes, indeed.

17 PRESIDING JUDGE STEINER: Thank you very much.

18 I'll give back the floor to the Prosecution. Mr Bifwoli.

19 MR BIFWOLI: Thank you, your Honours.

20 QUESTIONED BY MR BIFWOLI: (Continuing)

21 Q. Good morning, Mr Witness.

22 A. Good morning.

23 Q. Today we will proceed from where we stopped yesterday, and I will continue to put  
24 questions to you to find out what happened at the time.

25 Mr Witness, you reported to Mr Bemba on what was going on within the court martial

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1 system, didn't you?

2 A. As I said, the president and judges of the court martial during the hearings of the  
3 cases that they tried never reported to Senator Jean-Pierre Bemba, nor to any other official  
4 from the MLC executive. I can confirm that fact.

5 Q. Did you report the findings of the court martial with respect to the trial of the seven  
6 MLC soldiers accused of committing crimes in the CAR to Bemba?

7 A. I had nothing to report back to Senator Jean-Pierre Bemba with regard to the trial  
8 that you have mentioned, or any other trial for that matter. When the court martial had  
9 reached the end of proceedings it would suspend its hearings and withdraw in order to  
10 deliberate, after which it would then return with a view to handing down a verdict via the  
11 President of the Martial Court.

12 In view of the fact that the hearings were public, any individual could follow what was  
13 going on, either over the radio or over the television, and at that moment in time people  
14 could follow the verdict live. There was no other means of reporting on the matter, or  
15 reporting the findings, because the court martial was an entirely independent body.

16 MR BIFWOLI: Court officer, please display document CAR-OTP-0017-0358.

17 PRESIDING JUDGE STEINER: Mr Bifwoli, which document is it in the list of  
18 Prosecution or Defence list of documents?

19 MR BIFWOLI: Number 79 on the Defence list.

20 THE COURT OFFICER: Just for the record, this document CAR-OTP-0017-0358 is a  
21 public document and it's going to be broadcasted outside this courtroom.

22 MR BIFWOLI:

23 Q. Mr Witness, can you see the document on your screen?

24 A. Yes, I can.

25 Q. Can you read out what that document says?

1 A. "Gbadolite Court Martial, Gbadolite, 12 December 2002. To His Excellency,  
2 Mr the -- the National President of the MLC and Commander-in-Chief of the ALC. Re:  
3 Report on the hearings of the court martial with regard to the allegations of rape and  
4 looting in Bangui, Central African Republic. The court martial would hereby like to  
5 inform the Commander-in-Chief of the ALC that, pursuant to decrees 002 and 003 setting  
6 up a martial court within the ALC, hereby follow the decisions as follows:  
7 Point 7. Case file 008/CM/GBADO, decision of 7 December 2002. Ministry of Public  
8 Prosecutions versus Kpalakumu Metonga, aged 25 years, sergeant accused of offensive,  
9 notably attempted extortion of 10,000 CFA francs, stealing of ten litres of gasoline and 40  
10 tablets of Aspirin and for having violated disciplinary regulations, is convicted to 12  
11 months of imprisonment by the majority.  
12 Secondly, Ngangu Gbede, aged 28 years, corporal prosecuted for the following offences,  
13 attempted extortion of 10,000 CFA francs, having stolen ten litres of gasoline and 40 pills  
14 of Aspirin, having violated disciplinary rules and regulations, is convicted to nine months  
15 of imprisonment on a majority of the vote.  
16 Thirdly, Ndonga Bofe, sentenced to ten months of imprisonment by the majority of votes  
17 related to offences of attempted extortion, 10,000 CFA francs, having stolen ten litres of  
18 gasoline and 40 pills of Aspirin and having violated disciplinary rules and regulations."  
19 MR BIFWOLI: Court officer, can we move on to the next page please.  
20 THE WITNESS: (Interpretation) "Fourthly, Bomengo Willy, aged 35 years, lieutenant,  
21 S2, 28th Battalion, prosecuted for the following offences, aggravated burglary,  
22 €60 -- having stolen €60, perfume, three compact discs, two mobile telephones,  
23 insubordination, sentenced to 24 months of imprisonment upon the majority of votes.  
24 Mbokani Zabo, aged 29 years, second-lieutenant, prosecuted for the offence of  
25 insubordination, sentenced to six months of imprisonment on the majority of votes.

1 6. Likima Faustin, aged 21 years, corporal.

2 7. Ikwa Tonton, aged 21 years, corporal.

3 All are prosecuted for insubordination and sentenced to three months of imprisonment on  
4 the majority of votes by the court martial in Gbado. President: Brigade General Bule  
5 Gbangolo Basabe. Judges: Colonel Mongapa, Lieutenant-Colonel Samba and  
6 Lieutenant-Colonel Makutano. Permanent Judge: Nzanzu Pascal."

7 Q. Mr Witness, in view of this document, do you still maintain your testimony that the  
8 court martial didn't report its findings to Mr Bemba?

9 A. First and foremost, I wanted us to carry on reading this document until the very last  
10 page before answering this question.

11 Q. Mr Witness, we have reached the end of this document. What do you mean by "the  
12 very last page"?

13 A. Because the document in its presented form does not bear any signature of any  
14 judge and is problematic as such. Furthermore, if this is indeed a report from the martial  
15 court, from the court martial, then I believe that this document in this present form should  
16 bear signatures and, what is more, it is difficult for me to understand a judicial document  
17 of this sort.

18 Q. So it is your testimony that the court martial, to your recollection, never reported to  
19 Mr Bemba about their findings?

20 A. I did confirm the fact and I stand by what I said, notably that, if this is indeed an  
21 original document, then it should at least bear the signature or signatures of those  
22 individuals named here; notably, the members of the court. The provisions for such a  
23 decision in manuscript form would bear the signature of all the judges, including the  
24 signature of the president, himself or herself.

25 MR BIFWOLI: Madam President, can we briefly go into private session?

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- 1 PRESIDING JUDGE STEINER: Court officer, please.
- 2 (Private session at 9.29 a.m.)
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Page 8 redacted – Private session.



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Page 9 redacted – Private session.

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4 (Open session at 9.42 a.m.)

5 THE COURT OFFICER: We are in open session, Madam President. And for the record,  
6 document CAR-D04-0002-1641 is a public document and will be broadcasted outside.

7 MR BIFWOLI: Court officer, can we go to page 1646?

8 Sorry, the document is not clear on my screen. I don't know if something could be done  
9 to make it clearer?

10 PRESIDING JUDGE STEINER: Yes, Mr Witness?

11 THE WITNESS: (Interpretation) I would like to ask the Chamber for authorisation to  
12 meet with Maître Mabanga, the Court Counsel. Thank you.

13 PRESIDING JUDGE STEINER: The hearing therefore is suspended. So first I would  
14 like the court officer, please, to check whether Maître Mabanga is in court, available?

15 Yes, Mr Badibanga?

16 MR BADIBANGA: (Interpretation) Thank you, your Honour. The Office of the  
17 Prosecutor has a few concerns, because we understand that the mandate of duty counsel  
18 is limited to a particular purpose, and we are concerned whether they may discuss the  
19 evidence that is being adduced here, which is not part of his terms of reference. Thank  
20 you.

21 PRESIDING JUDGE STEINER: Let's go briefly into private session, please.

22 (Private session at 9.46 a.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Open session at 9.49 a.m.)

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

22 PRESIDING JUDGE STEINER: Thank you. And since the witness withdraws his  
23 request to see Maître Mabanga, the Prosecution can continue.

24 MR BIFWOLI:

25 Q. Now, Mr Witness, you have a document on your screen; is that correct?

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1 A. Yes.

2 Q. Mr Witness, I will rely on you because at the moment my screen is not showing the  
3 document. However, I have a hard copy, so where something is not clear point out to  
4 me because I'm not having the same document at the moment.

5 Now, Mr Witness, can you look at the last message on your left-hand side of that page?  
6 Can you see it?

7 A. Yes, I can see it.

8 Q. Up there it's written "Flash." Can you see that?

9 A. Yes, I can see that.

10 Q. Now, Mr Witness, we are in open session, so avoid mentioning any names, but you  
11 can see the time indicated there, "1830 ? Can you see that?"

12 A. Yes.

13 Q. And you can see the person who is sending the message, but don't mention the  
14 name. You know that person, yes?

15 A. The name as indicated, yes.

16 PRESIDING JUDGE STEINER: Sorry, could we please turn into private session.

17 MR BIFWOLI: The message --

18 PRESIDING JUDGE STEINER: Just one moment, Maître -- Mr Bifwoli.

19 (Private session at 9.51 a.m.)

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21 (Redacted)

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Page 13 redacted – Private session.

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Page 14 redacted – Private session.

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Page 15 redacted – Private session.

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Page 17 redacted – Private session.

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Page 18 redacted – Private session.

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16 (Open session at 10.30 a.m.)

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

18 MR BIFWOLI:

19 Q. Mr Witness, in your answer a short while ago, you mentioned that Mr Bemba's  
20 mandate as the President of the MLC was renewed before the presidential elections.

21 Which presidential elections are you referring to? Of which year?

22 A. I am talking about the last presidential -- presidential elections that occurred in 2011.  
23 They were both legislative and presidential elections in one.

24 Q. And Mr Witness, you have been a member of the MLC since 1998; is that correct?

25 A. I can confirm that.

1 Q. Do you believe in Mr Bemba as your president?

2 A. Since the time I became a member, I am a founding member of the MLC. I am a  
3 member of the political bureau (Redacted)  
4 (Redacted). The Congolese people and MLC supporters have never withdrawn  
5 their support and confidence for Senator Mr Jean-Pierre Bemba as President of the MLC.  
6 And as regards our statute and texts - legal texts - governing our political ideology, the  
7 political bureau, or even the founding members, have not shown any divisionist  
8 tendencies or withdrawn their confidence for him, so I believe in him.

9 Q. Mr Witness, are you loyal to Mr Bemba as your president?

10 A. Well, as a senior official of the MLC, when becoming a member one swears a solemn  
11 undertaking orally and in writing because each person becomes a member of their own  
12 free will. They are given a piece of paper, a document that they fill in and hand in to the  
13 local representatives of the party.  
14 So once one has fulfilled this task, and sworn an oath to remain loyal to the party and  
15 faithful, the individual - I'm sorry to use that term - whether it be Mr Bemba as the  
16 president, or towards the MLC itself, so in structural terms, pursuant to our statute, we  
17 perform these tasks in a very regular and responsible manner when appointing the  
18 national president, and also when renewing or voting in the parties' organs, once again  
19 renewing their mandate.

20 Q. Is your testimony therefore that to date you still remain loyal to Mr Bemba as the  
21 president of your party?

22 A. Well, why should I answer that question because I've just answered it? I believe  
23 that the answer I provided is eloquent and it's in answer to the very same question that  
24 you're putting to me again.

25 Q. Mr Witness, I asked you a clear question, whether you still remain loyal to

1 Mr Bemba to date. You have given an explanation. The Court wants a clear answer.

2 Are you still loyal to Mr Bemba as your president of the party?

3 PRESIDING JUDGE STEINER: Yes, Mr Haynes?

4 MR HAYNES: I think the witness's objection is perfectly fair. Page 28, line 25, is the  
5 same question and he's already answered it.

6 PRESIDING JUDGE STEINER: Let's try to restrict ourselves to objections that are of  
7 relevance. If it's just a matter of Prosecution repeating a question, I don't think that  
8 justifies an intervention from Defence. Maybe Mr Bifwoli could rephrase the question in  
9 order not to appear as a simple repetition of what the witness has already said.

10 MR BIFWOLI:

11 Q. Mr Witness, in view of this, you wouldn't say anything that harms your party  
12 president, would you?

13 A. Well, what would the purpose be of this solemn undertaking, to -- to tell the truth  
14 and the whole truth before this Court, as to my knowledge of events and what I know? I  
15 believe that I have taken this oath and I am committed to it and I'm trying to answer your  
16 questions.

17 Q. Do you have any legal training?

18 A. As I said previously, after the infantry I then went to the military privo (phon), for a  
19 five-month period of training, and in practical terms the training there also covers training  
20 required for the judicial police officer to complete his tasks, and also for those working in  
21 the military. So I also had a core module within the military academy that provided us  
22 with training in Congolese law, and also our training in our legal military code. It was  
23 not my intention to be a trained legal professional, nor did I follow any such training at a  
24 higher level, university level or other.

25 Q. Mr Witness, you have just testified that you also had "a core module within the

1 military academy that provided us with training in Congolese law." Now, can you give  
2 us a little bit more of details on this?

3 A. I do not know whether it was a module as such, but the training within the military  
4 academy has a core module for general training purposes. This means that at the end we  
5 graduate in social and military science, so rather than giving you the details of this  
6 training that I completed between '72 and '74, because of course this would require quite  
7 an effort on my part, and I don't know whether it will have any impact upon my  
8 testimony in the instant case.

9 Q. Did you have any further training in law apart from this one that you've mentioned?

10 A. It is just what I received, the training that I received and that I just described to you.  
11 Nothing further.

12 Q. The court martial had five judges. Apart from the permanent judge, do you know  
13 if the other judges had any training in law?

14 A. I would not be in a position to answer on their behalf. What I do know is that these  
15 officers all hailed from the military academy, and some of them had also completed  
16 studies in order to obtain a General Staff brevet or diploma, so I wouldn't be able to give  
17 you any details as to the curriculum they follow -- they followed and I wouldn't want to  
18 venture to comment on the matter.

19 Q. Now, let's talk about the President of the Court Martial that tried the seven MLC  
20 soldiers that were accused of committing crimes in the CAR. Do you know if the  
21 President of that court martial had presided as a judge or a president in any other court  
22 martial before that?

23 A. Prior to that, the President of the Court Martial had never presided over any other  
24 court. However, (Redacted)  
25 (Redacted), and following cases of severe indiscipline, this -- the young recruit was tried



1 by the Garrison system, and the (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. And apart from the permanent judge, do you know if the other judges on the court  
5 martial that tried the MLC soldiers that were accused of committing crimes in the  
6 CAR -- do you know if those other judges had any prior experience as judges?

7 A. I am not in a position to be able to answer this question. The time -- as I said, the  
8 judges came from various horizons and the criteria for the ballot voting meant that there  
9 were specific criteria to -- to incorporate in the list of candidates those officers who would  
10 be able to complete or fulfil the role, so the important thing is for there to be somebody  
11 with legal training amongst the judges. The prosecutor also has to be somebody with  
12 legal training, as does the court clerk and there's also an auxiliary with those qualifications.  
13 This is how the military courts and tribunals are set up.

14 Q. Apart from the court martial system and apart from the disciplinary councils within  
15 the units, was there any other court system that could try and punish MLC soldiers who  
16 have committed crimes?

17 A. The ALC Code of Conduct with regard to the various operational organs, that is  
18 to say the disciplinary council and the court martial, apart from these organs there are  
19 no -- there is no other structure as such. Of course, some soldiers might be incited or  
20 might conspire -- might conspire or might be incited by individuals who are not members  
21 to commit such crimes and, generally speaking, it is the military judicial system that has  
22 the jurisdiction to try these matters.  
23 Now, on occasion it can say that it does not have jurisdiction for those individuals who  
24 are not members of the ALC, notably civilians, and they are then referred to a competent  
25 jurisdiction. Apart from this, there were no other trials, whether it be in the first instance,

1 in court martial, et cetera, et cetera.

2 Q. Mr Witness, to qualify as a lawyer or as an advocate in the DRC, you require five  
3 years of legal training. Do you know that?

4 A. Are you saying that five years of legal training are required in order to qualify as a  
5 lawyer, or as an advocate? I would like you to repeat your question, please.

6 Q. To qualify as an advocate, who qualifies as a member of the Bar to practice as such  
7 within the DRC system, you need five years of legal training in a university or institution  
8 of that level; is that correct?

9 A. Well, you are confirming this fact because you are basing yourself on a certain code  
10 and a law that has been published in the official journal, the Larcier Code. Now, of  
11 course these are military jurisdictions that we're talking about and as such the  
12 composition of the court is such that an individual having completed five years of legal  
13 training, and having completed and having obtained their diploma, could be part of this  
14 court and could then administer justice and the law. So the permanent judge, who had  
15 legal training and who certainly - most certainly - completed his studies in law, as you say,  
16 well, he was one of them. Generally speaking, for ongoing trials in Kinshasa or  
17 elsewhere, most of the judges with a few exceptions are all -- all have legal training.  
18 There are some who do not have legal training.

19 Q. And to qualify as a *défenseur judiciaire*, that is like Mr Kedinshiba's position at the  
20 time, you only need the first three years of the five years required to qualify as an  
21 advocate. Did you know that?

22 A. As I said, Mr Kedinshiba is a legal professional and he himself was aware of the fact.  
23 I might not have known it. Of course, it is good to have this Code Larcier, but of all the  
24 laws that we have in the DRC, if offences are committed then of course there is some  
25 codified version and I am aware of this because I just bought a book entitled "Offences

1 from A to Z."

2 Now, for all the laws and legal texts or instruments published in the official journal that  
3 then become enforceable by all and sundry 30 days after their publication, of course this is  
4 a major question. If I was not aware, well, then Kisiba (phon), who was défenseur, well  
5 he was aware of this because he, working for a Bar as such, must have fulfilled all the  
6 criteria. Otherwise, he would have not been a member of the Bar.

7 Q. Mr Witness, do you know how many years of legal training does one require in  
8 order to qualify as a défenseur judiciaire?

9 A. At an earlier stage, I said I did not know. You know because you have this in the  
10 Code Larcier. Well, as I said, if I was not aware of the fact, Kisiba would have been  
11 aware of the fact because that is why, after all, he is a member of the Bar. I can quite  
12 honestly say that this law that you are referring to, which is part of the Code Larcier or the  
13 Larcier Code which I do not yet have access to, I do have of course the entire code - the  
14 Larcier Code - at home.

15 Q. Mr Witness, a défenseur judiciaire cannot appear in the Supreme Court, can he?

16 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

17 MR KILOLO: (Interpretation) Well, I really wonder what the relevance of this question  
18 is? We are talking here about the Supreme Court, whereas rather we should be talking  
19 about the court martial. The question would be whether the défenseur judiciaire can  
20 legally intervene before the court martial. These are two entirely separate questions and  
21 not only is this question irrelevant, but it is outside of the scope of what we are discussing  
22 here.

23 PRESIDING JUDGE STEINER: If Mr Bifwoli would like to clarify the relevance of the  
24 question, please?

25 MR BIFWOLI: One of the critical issues in this trial that we are talking about were the

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1 rights of the accused and the quality of the defence and its ability to serve its functions.  
2 That's what the Prosecution is trying to show, and I don't want to go beyond that because,  
3 if I do that in the presence of the witness, my next line of questioning will fall off.

4 Thank you.

5 PRESIDING JUDGE STEINER: I will allow Mr Bifwoli to repeat the question, but I will  
6 ask please, if you agree, to do it after the break because we have only one minute?

7 MR BIFWOLI: Absolutely.

8 PRESIDING JUDGE STEINER: Mr Witness, we'll have now our half-an-hour break.

9 This break is for the witness to take some rest, have a cup of tea or a cup of coffee, and as  
10 well as our interpreters and court reporters. It's 11 o'clock. We'll be back at 11.30.

11 I will ask, please, the court officer to turn into closed session for the witness to be taken  
12 outside the courtroom. In the meantime, we will suspend and resume at 11.30.

13 (Closed session at 11.00 a.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Recess taken at 11.00 a.m.)

18 (Upon resuming in closed session at 11.34 a.m.)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Open session at 11.36 a.m.)

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

2 PRESIDING JUDGE STEINER: Mr Witness, welcome back.

3 THE WITNESS: (Interpretation) Yes, good morning once again.

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

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

6 PRESIDING JUDGE STEINER: Mr Bifwoli, you have the floor.

7 MR BIFWOLI: Thank you, your Honours.

8 Q. Mr Witness, I will proceed from where we stopped before the break, and just before  
9 we broke -- we went for break, I had asked you if a défenseur judiciaire can appear before  
10 the Supreme Court. Can he?

11 A. According to legislation in the DRC, the défenseur judiciaires are registered at the  
12 district courts so they can only defend cases before those particular courts and in the area  
13 of common law, whether it be murder or other crimes, those courts are competent to  
14 administrator the law and even hand down death penalties. So the défenseur judiciaires  
15 could participate and even in the court martial, depending on the case, but they cannot  
16 appear before the Supreme Court or even the Appeals Court, so they could not act in the  
17 same right as lawyers in the Appeals Court or the Supreme Court in the area of judicial  
18 reform which later became the constitutional court.

19 Q. Let's talk about an advocate here. Can an advocate appear in all courts, from the  
20 lowest all the way up to the Supreme Court?

21 A. I said that there are advocates registered at the Bar to plead in cases before the  
22 Appeals Court. In specialised cases, I do not know the criteria but there are advocates  
23 who are registered to defend cases before the Supreme Court, and as far as I know, this is  
24 governed by specific rules incorporated into the rules of the Bar and I am not very familiar  
25 with those.

1 Q. And, Mr Witness, the *défenseur judiciaire*, they are not members of the Bar; is that  
2 correct?

3 A. The *défenseur judiciaires* are registered at the district courts, which are competent  
4 jurisdiction, and they played their role as *défenseur judiciaires* within these courts and  
5 they are registered on a roster at those courts. These are the regulations in force as far as  
6 *défenseur judiciaires* are concerned.

7 Q. But an advocate can appear in district courts, Court of Appeal and even Supreme  
8 Court, can he; do you know?

9 A. I have told you that the Bar is organised like a corporation. They have their rules  
10 and regulations, mode of functioning, and so on and so forth. I am not very familiar  
11 with that. And it happens, just like in other areas, such as physicians who have their  
12 own organisation, and whatever the case is, there are specific rules and regulations  
13 governing those bodies, and I am not very familiar with those.

14 Q. From your testimony, it follows therefore that Mr Kedinshiba would not have been a  
15 member of a Bar; is that correct?

16 A. As I said before, you need to put that question to Maître Kedinshiba, and he will be  
17 able to give you his CV. I know that he is a lawyer by training, and that is why he is  
18 referred to as "Maître," and I wouldn't know whether he is a member of any Bar or not.  
19 And even membership in a Bar is governed by certain principles and you even have some  
20 dues to pay. So I cannot answer on behalf of Mr Kedinshiba, that is to indicate whether  
21 he was a member of any Bar at that time or even today.

22 Q. You have just testified that Mr Kedinshiba -- you know that he is a lawyer by  
23 training. Do you know the institution that he trained in?

24 A. I wouldn't know that, so you can put that question to him. Similarly, when you ask  
25 or, rather, if you ask a question to Mr Kedinshiba regarding where the President of the

1 Court Martial received his training, then I believe he would answer in the same way and  
2 refer you to the person concerned. If he gives information about the institutes or  
3 universities where he studied, given that those institutions are organised, there are  
4 records that would confirm at what time such-and-such a person studied there, when they  
5 completed their studies and the certificates that they obtained.

6 Q. It is the court martial that appoints defence counsels; is that correct?

7 A. I believe you would need to put that question to the National Secretary for Justice.  
8 I said in this Court before that there were judges of the court martial who were members  
9 of the Congolese Liberation Army, the ALC, and since there were no career magistrates  
10 the national secretary, as part of his functions, designated members, magistrates, as judges,  
11 prosecutors and even registrars. I believe this would be the same thing for the  
12 defence counsel, or defenders. The president was not competent to make such  
13 appointments, so it would be best to put that question to the national secretary who at the  
14 time was responsible for justice and who knew the justice personnel working in the courts  
15 in the territory under the control of the MLC at the time.

16 Q. At T-275, page 26, lines 1 to 25, yesterday you testified that minor cases of  
17 indiscipline could be dealt with at the unit level, but severe criminal cases were referred to  
18 the court martial. Do you recall that?

19 A. Yes, I remember that I said that. There are two things here: At the unit level it is  
20 the discipline of the core itself that is when it concerns violation of -- violations of military  
21 rules and regulations, or failure to comply, and then you have cases of military discipline  
22 and if in any particular case the disciplinary counsel, based on the code of conduct of the  
23 ALC on the one hand, and on the other hand the other applicable texts, specifically the  
24 Code of Military Justice, then the disciplinary counsel will propose a disciplinary measure  
25 at the level of the unit which is different from a military trial and at the same time they

1 would examine cases to be referred to the General Staff.  
2 Within that General Staff, there was a legal adviser attached to the intelligence service  
3 who acted as a judicial police officer. He would complete the case file before forwarding  
4 it to the military prosecutor. At that level, you had the PCs and senior ranks and no  
5 judicial defender is appointed at that level because prosecution had not yet started. This  
6 only happens when a -- the criminal prosecution actually begins.

7 Q. Am I correct to say the court martial dealt with serious offences?

8 A. Yes, indeed. At the first instance the court martial deals with offences, including  
9 the most serious offences.

10 Q. And do you know if this is one of the reasons why, depending on the seriousness of  
11 the offences, the reason as to why the court martial required five judges? Is that one of  
12 the reasons, because it's dealing with serious offences?

13 A. Yes, indeed, because that is provided for in the code of conduct of the ALC, which  
14 determines the number of judges for the most serious offences, and this is what was  
15 applied and this is the normal practice in military jurisdictions.

16 Q. Yesterday at T-275, page 47, lines 1 to 17, you testified that more defence teams were  
17 not able to come because they did not receive authorisation from their authorities to  
18 attend. Do you know the reason why the authorities didn't release them?

19 A. I believe it would be preferable to put that question to the Kinshasa authorities. At  
20 that time, why did they refuse to release the lawyers from the Kinshasa Bar? So it is up  
21 to them to answer that question. We do not know the reasons why. I do not remember.

22 Q. And which teams did you -- which teams were expected and did not receive the  
23 authorisation?

24 A. The person in the best position to answer that question would be the National  
25 Secretary for Justice who, at that time as part of his duties, had taken the necessary



1 measures to contact the Bar, because if you need defence lawyers you would contact the  
2 Bar, be it in Kinshasa or Mbandaka, because there was a Bar there and people would be  
3 asked to volunteer to appear. I do not have any specific information, so I believe that it is  
4 the person who was the National Secretary for Justice at that time who could best answer  
5 that question.

6 Q. But there was a defence counsel there representing these people. Do you know  
7 why it was necessary to invite more defence teams?

8 A. In a case such as that, and so as not to tolerate impunity, it would be natural to  
9 ensure that even though the hearings were public, because of international opinion, those  
10 measures were taken so that people should know that this was not a parody of justice.  
11 And even at the internal level we had to show that, as far as the MLC was concerned,  
12 there were no borders when it came to lawyers. They could come and go back. So we  
13 thought we could have had two, three, even up to ten lawyers. We felt there should be  
14 no limits.

15 Q. But if you have an able defence counsel, why do you need three or even up to ten?

16 A. Thank you. I believe that that was not the only ongoing case. There were many  
17 accused persons. And so to have more than one defence counsel would have been better  
18 given that those lawyers would have organised themselves to play their role more  
19 efficiently. It would be very difficult for the same lawyer to appear for all those accused  
20 persons given that the cases would be ongoing on a continuous basis for several months.  
21 So I believe it was appropriate to do so, and also to ensure that the rights of all the  
22 suspects were respected. That would be better than having a single lawyer to defend  
23 everyone. That was the purpose of the initiative taken at that time by the National  
24 Secretary for Justice.

25 Q. Did you, as a court, take an initiative to find out why these defence teams could not

1 come?

2 A. It was not for the court to find out, because it was not its responsibility to do that.  
3 It was the National Secretary for Justice to do that. So the court just learned like  
4 everyone else; that is if I'm not mistaken. They also simply learned that there were  
5 lawyers who were available to travel. Some even said that those lawyers had even gone  
6 as far as the airport, but were not authorised to travel. So what could the court have  
7 done, because they were not in direct contact with those lawyers? That was the  
8 responsibility of the National Secretary, who was the equivalent of the Minister of Justice.

9 Q. Mr Witness, you have just stated that it would be very difficult for the same lawyer  
10 to appear for all those accused persons, given that the cases would be ongoing on a  
11 continuous basis for several months, and you continued, "So I believe it was appropriate  
12 to do so and also to ensure that the rights of all the suspects were respected."

13 Now, did you consider that this defence counsel had a heavy work-load?

14 A. Of course, if the suspect had his own means to guarantee his own defence in  
15 addition to having a lawyer. Now, were the suspect to co-operate and were the charges  
16 levelled against him quite clear to the court, then I believe that the discussions would not  
17 be as lengthy as those for some other accused because other accused might deny having  
18 committed the crimes outlined in the investigation. So unless they had other  
19 defence counsel to respect the code of conduct, to uphold the rights of the defence,  
20 Maître Kedinshiba did so, for example, and until the very end of those cases that were  
21 brought before the court martial.

22 Q. Mr Witness, if you understood that the work-load for these counsel would be heavy  
23 and you also understood that it was important for the rights of these accused people to be  
24 respected and this could be achieved through proper representation, did you find it  
25 important to find out why these defence teams have not come?

1 A. I do not believe that the fact that they did not come was -- had anything to do with  
2 the charges. I presume that the National Secretary certainly provided them with certain  
3 motivation when contacting them and attempting to convince them to come. It is their  
4 job after all and I don't believe that you are tired, not too tired to refrain from putting  
5 questions over a period of a number of months, because this is after all the job that you  
6 have accepted to do. Of course, this is at a professional level and an individual who does  
7 not have such a qualification would not be in a position to do so.

8 Q. The court has a duty to ensure that the rights of the accused are respected; is that  
9 correct?

10 A. Yes, indeed, the rights of the accused are respected, at least they were respected, and  
11 had they not been then we would not be talking here about Maître Kedinshiba, because he  
12 is the proof incarnate of the fact that the law was respected.

13 Q. And one of these rights of the accused is adequate time for preparation of their  
14 defence; is that correct?

15 A. Yes, that is correct.

16 Q. When was Kedinshiba appointed to represent these accused people, do you know?

17 A. As I said to you, there are certain stages to be observed. The judge member of the  
18 ALC would notify by decision the Chief of General Staff, and the other individuals, who  
19 are civilians and who have been taken on, well, I wouldn't be in a position to answer this  
20 question. Only the Minister, the National Secretary of Defence, or the interested parties  
21 themselves, would be able to, because I did not receive a copy - a notification - in view of  
22 the fact that this -- these were individual notifications sent out. They were official and  
23 signed on one side by the Chief of General Staff and on the other by the Minister of  
24 Justice.

25 Q. Now, the decision to appoint a defence counsel would only be taken after a decision

1 to charge these people has been made; is that correct?

2 A. I would not be in a position to answer this question. As I said to you, this question  
3 should be put to the National Secretary for Justice. I have the various judges, with the  
4 exception of the civilian and military judges, well, I -- when I'm appointed, or when the  
5 president is appointed, he discovers the presence of those individuals, and when he is  
6 called to take up his position, or notified of a mission, that is when he becomes aware.  
7 Previously to this, or prior to this, the president does not have any information, to  
8 respond to your question.

9 Q. But you know the function of a defence counsel is to assist people who have been  
10 accused of charges before court. You know that, don't you?

11 A. Yes.

12 Q. And therefore it logically follows that he can only be appointed to carry out that  
13 function if people are being charged in court; is that correct?

14 A. Well, yes. When these people are charged, then of course they require this - they  
15 require defence counsel - and the defence will then organise itself outside of the court  
16 with the prosecutor with a view to preparing his defence. They will then organise or  
17 convene a meeting with the accused, they will familiarise themselves with the contents of  
18 the case file and they will prepare the defence for their clients.

19 There are various stages, which are well-known, and there are various tasks that the  
20 defence counsel must fulfil. He cannot come before the court before organising himself  
21 and receiving the right to meet the accused, because it is not the court who authorises him  
22 to go and meet with them in their place of imprisonment. There is a judicial authority  
23 which is in charge of granting this right. This authority has, after all, placed the accused  
24 in custody, and it is the prosecutor, along with the other officials, who manages and  
25 administers these penitentiaries; administers the prisons and the accused who are there.

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1 Q. And do you know if Kedinshiba met with these accused people before appearing in  
2 court?

3 A. I believe that you should put this question to Maître Kedinshiba. I do not believe  
4 that in his capacity as defence counsel he would probably have told the court that he did  
5 not have the time to meet with the accused and he would possibly have explained the  
6 authorisation required to meet the accused, but the fact that he came to defend his case  
7 means that he did have the time to meet with them and he also had the time to familiarise  
8 himself with the case file and the charges that were compiled at the investigation stage.

9 Q. So the decision to charge these people was made on 3 December. It therefore  
10 follows that the earliest he could have been appointed as the defence counsel was  
11 3 December, is that correct, 2002?

12 A. What decision are we talking about? Could it please be shown on the screen,  
13 because I do not remember it. 3 December? What are we talking about?

14 Q. As we are checking the decision, I'll continue with my questioning.

15 PRESIDING JUDGE STEINER: Mr Bifwoli, if I may help, it's document 41 on the  
16 Defence list, document CAR-DEF-0002-00 -- the page is 0037. The document is 0002-0001  
17 and the document that Prosecution is discussing is 0037.

18 MR BIFWOLI: We ask the court officer to broadcast the document.

19 Q. Mr Witness, do you have the document on your screen?

20 A. Yes, I can see the document, but as to the date, well, it does not seem to feature.  
21 Can I have the date, please?

22 Q. Sorry. The date actually is on page 0040.

23 A. Yes. On that date, when the prosecutor requested the court to set a date for the  
24 hearing for 3 December, or on 3 December 2002, certainly, prior to that, the defence  
25 counsel would certainly have had the time to receive the information. So, what is more,

1 the role is fixed. The public and everybody will consult this, and including the  
2 prosecutor. So the role is set, it is published, whether it be in a civilian or military  
3 context.  
4 Those working in this context know that they have a hard copy for themselves and that  
5 there is also a copy for the public. He can see -- you can see here that it is up to the court  
6 to set a date for the hearing, and once this date has been set, then, as part of his tasks, he,  
7 the prosecutor, will send out the documents to those concerned and including the general  
8 public and defence counsel.

9 The accused are also informed of the date of the hearing in their case, the date at which  
10 their case will be heard in open session and the location of the hearing.

11 PRESIDING JUDGE STEINER: Yes, Maître?

12 MR KILOLO: (Interpretation) Madam President, I believe that in order not to mislead  
13 the witness when attempting to ascertain precisely when Maître Kedinshiba was able to  
14 intervene as defence counsel, I believe that we need to be transparent with the witness  
15 and show him all the relevant documents; that is to say, not only the documents that  
16 indicate the date from which the accused was committed as a suspect to the court to face  
17 trial, but also we need to show him the document bearing the date from which the witness  
18 was actually arrested, or charged subsequent to his arrest, and then we would be able to  
19 put a fair question to him on this basis.

20 PRESIDING JUDGE STEINER: Maître Bifwoli?

21 MR BIFWOLI: I'm sorry, your Honour. The Defence had an opportunity to put  
22 forward their case. In this particular case, the Prosecution questioning is focused.  
23 I don't understand how Mr Kilolo's explaining, showing the entire document from page 1  
24 to the last page, helps to accomplish this task. That's why the Prosecution is narrowing  
25 down to those documents that are helpful.

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1 Now, if we don't get it right, they have a chance to redirect, so they should just let us  
2 conduct our examination the way we know it.

3 PRESIDING JUDGE STEINER: Maître Kilolo, the Chamber has the whole dossier at  
4 hand, so the Chamber is in a position to examine if at any point before this décision  
5 renvoyer the accused were appointed a lawyer or not. So I don't think we need to show  
6 page-by-page to the witness something that it's in the documents of the case. We may  
7 ask maybe, "Mr Witness, do you know if before this decision dated 3 December,  
8 Maître Kedinshiba had already assisted the accused - the accused? Only if you know."

9 THE WITNESS: (Interpretation) I do not know, but what I do know is that  
10 Maître Kedinshiba was present, he was standing by the side of his accused, if you like.  
11 To say whether he was in contact, well, this is ten years ago and it is not made mention of  
12 this in the various documents as to, on such-and-such a day or such-and-such a time, he  
13 was in contact.

14 Now, maybe the prosecutor would know, because when granting authorisation to enter  
15 into contact with an accused in a prison establishment, there is a certain number of stages  
16 to follow before meeting the accused. Of course, these are certain administrative  
17 formalities to be completed. The president, or the court, cannot ten years down the line  
18 say precisely and answer this question precisely.

19 PRESIDING JUDGE STEINER: Mr Bifwoli, you can continue.

20 MR BIFWOLI: Thank you, your Honours.

21 Q. Now, Mr Witness, is it logical to appoint a defence counsel to defend people who  
22 will be appearing in court if the decision whether they'll appear in court or not has not  
23 been met?

24 A. Well, if a suspect or an accused has not yet been formally been taken into custody,  
25 then I do not see how this would be -- could be done for the defence, but the provisions of

1 the law say that an accused can be assisted by his or her lawyer before the prosecutor,  
2 before the prosecutor who is investigating the case, and this is provided for by the law.  
3 So our law, our constitution, provides that the accused or the suspect has the right to  
4 assistance, and this is very clear.

5 Q. Mr Witness, if an MLC soldier was to be promoted, was there a body that  
6 recommended the promotion of MLC soldiers to Mr Bemba for the appointment?

7 A. Of course, this is an administrative procedure, which is quite routine in nature.  
8 Whenever there is a promotion, of course, in administrative terms, an ad hoc committee  
9 needs to be set up for appointment purposes. Within a regular army, the ad hoc  
10 committee meets every two years.  
11 The General Staff will make requests from the lower ranks to the senior ranks and will  
12 request their case files. If there are any admonishments outstanding, then this will have  
13 consequences upon their advancement. There are a number of criteria to fulfil. So, of  
14 course, there is training to be taken into account, there are certain qualifications for the  
15 post, there is also the career path and also the amount of time served at the present rank  
16 and, lastly, there is the punishment status, as to whether one has been convicted or not.  
17 After having examined all of these files, the committee will then report, will then compile  
18 a general report to be sent to the Chief of General Staff, and the appointing authorities for  
19 various ranks, notably the rank of corporal until the level of the brigade, and as for senior  
20 officers and generals it is at the level of the commander-in-chief or the supreme  
21 commander that this decision is taken.  
22 The report also takes into account those posts that are available in order not to inflate  
23 ranks in any way and also to utilise those who are promoted in a rational manner. There  
24 are also promotions in exceptional circumstances, for example for a senior officer who has  
25 held a position of responsibility. If this requires a certain or given military rank or



1 training, all of this is taken into account and in all armies, this is what happens in  
2 administrative terms.

3 Now, within the ALC, as I said, most of the officers working for the General Staff, and  
4 most of those who were in charge of units, had previously received training, and in the  
5 case of the ex-FAZ, many of those who integrated the forces came along with their  
6 intellectual baggage, they fulfilled the criteria and -- in order to give them further  
7 responsibility within the ALC.

8 Q. Mr Witness, how did you know how this committee functions?

9 A. I will refer you to the date on which I joined the MLC, and furthermore, I told you,  
10 or the president told you, that the founding member of the MLC and also members of the  
11 political bureau and the college of founders, the political bureau, and the experience that  
12 they had was considered in that area. So this was a professional who had a career, who  
13 understood the administration of armed forces well, and who had contributed during the  
14 transition period to the integration to have capacity building for the troops of the forces of  
15 the troops of the Democratic Republic of Congo. And in order to have such a career for  
16 38 years, that's quite something, and also in his capacity as a technician of the staff.

17 Q. Were you ever a member of the ad hoc committee that dealt with the promotional  
18 issues?

19 A. No.

20 Q. And did you in any capacity play any role in the promotion of soldiers?

21 A. Within the ALC, no. Previously, in other functions, in the former Zairean army  
22 units, and the capacity of president at a certain time in the HQ with the Chief of General  
23 Staff, that made it -- put me at ease in order to understand how things happened. And of  
24 course coming for the ALC, it's this experience that everyone, including the other  
25 comrades, had with them in order to be able to set up an army which was very

1 professional and which took into account all military rights, for example with regards to  
2 different ranks, such that they couldn't deceive the expectations of the people, of the  
3 population.

4 Q. Witness, in military hierarchy, a chain of command is important in its functioning; is  
5 that correct?

6 A. Certainly the chain of command is important. When you are in peace, or at war,  
7 this chain of command with the Chief of General Staff, that person is the Chief of General  
8 Staff, he has a staff around him which he organises in accordance with the circumstances  
9 into important units.

10 Now, when it concerns operations he has, in order to do that, the operational and  
11 intelligence unit with officers who are in charge of intelligence and who are in charge of  
12 operations including, on the one hand, the administrative and logistical area, and for these  
13 too you have to take into account as well the care that's given. Health has an important  
14 role to play in this regard. Logistics, in order to make it possible for this unit, operational  
15 unit, to carry out its work, intelligence can give all the elements and possible scenarios  
16 with regards to enemy manoeuvres faced with which the operations unit has to work in  
17 accordance with the missions that are received, or it has to see how to combat enemy  
18 manoeuvres, but in order for that be successful the logistical cell has to be able to answer  
19 "yes" in order to support the manoeuvres that have been envisaged. So you have a chain  
20 of command, of course, that's how it happens in the army and above that, if we take the  
21 executive side, it's slightly different, but you have people who every day report on the  
22 territory which they control with regards to the economic health situation, et cetera.  
23 They provide a report in order to inform the highest authority thereof such that that  
24 person knows the necessary strategy to take so the proposals come from the executive and  
25 they, with regard to the proposals, from the Chief of General Staff of the army, they react

1 to that. And that's the way in which the chain of command, however you like to put it,  
2 in a very brief way, operates. I mean, obviously there are other aspects that come into it,  
3 but I can't mention them now because there's too little time to do so.

4 Q. So hierarchy and chain of command was taken seriously within the MLC; is that  
5 your testimony?

6 A. Of course. It has to be done in such a way such that the army can act efficiently  
7 and play its role efficiently such that everybody knows what they have to do at a given  
8 time with regard to the missions entrusted to them to defend the territory and also to  
9 defend the people.

10 Q. Of the five judges of the court martial, four of them were MLC soldiers, weren't  
11 they?

12 A. They couldn't be different to that, couldn't be different in military courts.  
13 When -- when you set up a military court you don't put any foreign ranks in there of  
14 soldiers, it was the soldiers from the same army. Some of them have been drawn by lots  
15 in order to constitute the tribunal.

16 Q. And of the four judges, the three were junior in rank to the President of the Court  
17 Martial; is that correct?

18 A. Indeed.

19 Q. And during the period that this court martial was performing its functions, all these  
20 four judges remained MLC soldiers; is that correct?

21 A. Of course.

22 Q. Is there anything in the law that would prohibit the appointment of four officers of  
23 equal rank to sit in the court martial? For example, a point like all brigade generals, or  
24 colonels, depending on the rank of the accused, is there anything that prohibits such  
25 action being taken?

1 A. This appointment by lots has a fundamental principle behind it, to take into account  
2 the ranks of the highest ranking accused, and imperatively there had to be among the  
3 judges one military judge who had a rank which was the same or higher than the accused,  
4 and that is the way in which, among the accused, there were general officers and there  
5 were subordinates and there were superior officers as well, and so this drawing of lots  
6 with a general officer and superior officers making up the court took into account this  
7 principle for military courts.

8 In the Democratic Republic of Congo, that's the principle for setting it up. You always  
9 take into account that with regards to the accused there are accused who have a higher  
10 rank, and as such you have to, among the judges, have one of the judges, or two, who has  
11 the same rank as one of the accused who has the highest rank among the accused. That's  
12 it.

13 Q. Yesterday at T-275, page 23, lines 16 to 25, you testified that you don't know details  
14 of the process of drawing lots (Redacted). Is that your  
15 testimony?

16 A. I maintain it (Redacted) and, having  
17 had the occasion to take part in different trials before military courts, where a certain  
18 number among the accused had their rank right the way up to general, it's the principle  
19 which is applied in the Democratic Republic of Congo where it concerns military courts  
20 and through experience that couldn't be new. And for members of the court, everybody  
21 had their profile. They had their training. As I said previously, it wasn't to a new  
22 person who'd been given a rank without having followed a particular career path  
23 suddenly who became major-general, no.

24 Q. At the same reference, you also testified (Redacted)  
25 (Redacted); is that correct?

1 A. Indeed. When it was done, it was with regard to the, well, military matters.  
2 There's a certain degree of confidentiality attached to them and secrecy, and that's why  
3 sometimes here in the Court it's done so here. You couldn't make all this public  
4 straightaway. I found out about this as, well, the president, as indeed the members did,  
5 when they were called and notified, and that's how I said everybody was surprised, even  
6 the president who was notified.

7 PRESIDING JUDGE STEINER: Court officer, please could we turn briefly into private  
8 session.

9 (Private session at 12.48 p.m.)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Open session at 12.49 p.m.)

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

19 MR BIFWOLI: Thank you, your Honours.

20 Q. Now, Mr Witness, in view of your testimony yesterday and what you've just  
21 testified, you therefore didn't know the considerations that were taken into account by the  
22 people who appointed the judges of the court martial, did you?

23 A. Thank you. If I say that, taking into account that during your questions I can  
24 generally recall what happened as regards the military courts. Now, following that,  
25 certainly the president said that the general -- Chief of General Staff, having also a

1 different career path to that of the president, taking into account that experience he  
2 couldn't not apply these criteria in a discretionary manner. What I say, what the  
3 president says, only makes -- is a matter of recalling general principles, which mean that  
4 in this type of constitution this is done in this way. This, of course, can be checked.

5 Q. Mr Witness, we understand there are minimum requirements for people to be  
6 appointed to the court martial, one of them being the rank of the accused and so on and so  
7 forth, but is it true that there are other considerations like the integrity of the people and  
8 so on and so forth? Are they taken into account as well in determining who should be a  
9 judge of the court martial?

10 A. Certainly, yes. The Chief of General Staff has a staff in the chain of command.  
11 There is somebody who is in charge of staff. He has to know the state of discipline of  
12 each officer. With regards to intelligence, there has to be a dossier regarding the higher  
13 ranking officers which provides information on their behaviour, their loyalty, their  
14 integrity. He has to report on all these matters. The Chief of Staff - the General Chief of  
15 Staff - cannot do so, unless he has a small staff who can aid him. When it comes to  
16 getting from the lots names of officers who are disciplined, who don't have administrative  
17 or disciplinary cases against them, that comes under the Chief of General Staff. You can't  
18 take an officer who doesn't meet such conditions. I'm talking about experience with  
19 regard to what I experienced previously before the president or the member was  
20 designated or appointed, that's it. That's the principle; the principle with regards to the  
21 setting up of military courts and drawing lots with a view in to doing so. Now, this  
22 drawing of lots, it's not just the five names. It has to be a lot more names than five, and  
23 then you have a name that's written on a paper and it's drawn as a lot.

24 Q. Do you know if court martial judges received a special allowance as judges of the  
25 court martial?

1 A. The president, the members of the court, well, what allowance? Of course if it's  
2 related to food or inherent needs, as indicated in the message, that's something else, if it's  
3 in order to be able to carry out a mission which is entrusted to them. Generally when  
4 there's an official mission within the framework of the army there could be an allowance  
5 given, because the mission - the official mission - calls for an allowance, daily allowance,  
6 to be paid for the small needs; for example soap, whatever. I can't recall everything  
7 because, well, the details are there, but you need a minimum to make it possible for  
8 people to work under the conditions as stated; for example for paper, for needs.  
9 And other than that special allowance, well, if it's linked to the mission that's official.  
10 The service organises a particular mission and there's travel which has been ordered  
11 outside the focal point, outside the garrison, and that obviously requires an allowance.  
12 And in the case in point, if you say, well, look, for -- well, if you -- it does help me  
13 remember if you show me something that will refresh my memory, but normally  
14 justice - military justice - when travel is to be carried out, civil and military justice has a  
15 budget available there for and, when there is a judicial mission in that regard, the  
16 coverage of that mission is carried out by the justice which has the means in order to  
17 ensure that.

18 PRESIDING JUDGE STEINER: Mr Bifwoli, Judge Aluoch wants a clarification.

19 JUDGE ALUOCH: Mr Witness, I want to ask you for a clarification on the evidence you  
20 gave yesterday and it is in this respect that you are testifying on right now. This is from  
21 transcript T-275 of yesterday. It's page 45 and the last question by Mr Haynes was as  
22 follows, "And just so that we are absolutely clear, would this decision have been read out  
23 publicly and, if so, by whom?" And this was your answer and this is where I need a  
24 clarification. Your answer was, "The decision was read out publicly. Once they had  
25 finished their closed session ...", that is the judges, "... then the judges would reconvene

1 and all would stand up and presiding judge in the presence of the accused and the  
2 defence would hand down the verdict. Lastly, the suspect or the accused would be  
3 given the floor and it would be explained to him, or them, that they have the possibility of  
4 lodging an appeal within the stated time limit to the prosecutor."

5 The question I want you to clarify for the record is: In this whole transaction, is an  
6 accused person given a chance only after a verdict has been announced, only after he has  
7 been sentenced? There's no time for him to mitigate or anything before sentence?  
8 That's what I want you to clarify, please.

9 THE WITNESS: (Interpretation) Thank you. During the hearing, questions may be  
10 put directly to the accused by the judges. He can answer directly or have himself  
11 assisted. At the end of the proceedings, when there are no further questions, the  
12 prosecutor makes his closing arguments. At that time, the judicial defender of the  
13 accused responds.

14 The accused person himself can add something to what his counsel has said, and once that  
15 is completed, the proceedings have come to an end and the hearing is adjourned. The  
16 members of the court withdraw to go and deliberate.

17 At the end of the deliberation, the members of the court reconvene in the courtroom in  
18 order to hand down the verdict. According to military procedures, everyone stands up.  
19 The president has the draft prepared by the permanent judge, in fact the decision  
20 prepared by the permanent judge, who is a career magistrate.

21 That president reads the verdict, after which he can give the floor over or explain in a  
22 different language to facilitate the understanding of the accused, who may not understand  
23 the original language used.

24 Then the accused person can say something, or be possibly assisted by his counsel  
25 regarding an appeal. The hearing is adjourned. For those who have something to add,



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1 they do so and the prosecutor takes the necessary measures. Thank you.

2 JUDGE ALUOCH: Yes, I understand all that. I just was not clear on at what stage  
3 issues of respect for the rights of the accused come in, but I now understand that during  
4 the proceedings then these issues must be brought up. That was not clear from  
5 yesterday's proceedings.

6 THE WITNESS: (Interpretation) Yes, thank you.

7 MR BIFWOLI:

8 Q. Witness, did the judges of the court martial, who are MLC soldiers --

9 PRESIDING JUDGE STEINER: Mr Bifwoli, I'm really, really sorry, but I was looking for  
10 the page to ask a follow-up question on the clarification asked by Judge Aluoch, that the  
11 issues related to the rights of the accused. There was an opportunity for these issues to  
12 be raised during the hearing, and one of the accused before the court martial - and this is  
13 on the top of page 0042 - he said that he, the other accused, had been tortured. Is it under  
14 the authority of the court martial to determine an investigation or to ask more details  
15 about the existence of torture, because from the summary of the hearings, it appears that  
16 no action was taken, not even questions were put.

17 Yes, Mr Haynes?

18 MR HAYNES: Can the witness see the page that you are referring to?

19 PRESIDING JUDGE STEINER: Yes, no problem at all.

20 MR HAYNES: Of course.

21 PRESIDING JUDGE STEINER: 0042, at the top. Can you see, Mr Witness, that they  
22 were arrested?

23 THE WITNESS: (Interpretation) Yes, I can see.

24 PRESIDING JUDGE STEINER: Yes, and not only he received a "punition de 150 fouets.

25 Ensuite ...", (Interpretation) "... we were taken back to the residence and we were subjected

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1 to further torture."

2 THE WITNESS: (Interpretation) I would like to go up -- back to the top of the page to  
3 see the beginning before looking at the statement of the witness.

4 PRESIDING JUDGE STEINER: (Microphone not activated)

5 THE INTERPRETER: The Judge's microphone.

6 THE WITNESS: (Interpretation) If the page can be gradually pushed up, if you can  
7 scroll down slowly? Yes, continue.

8 Can I answer now?

9 PRESIDING JUDGE STEINER: (Speaks English) Yes, please.

10 THE WITNESS: (Interpretation) Yes. As shown here, it is difficult to cross-check  
11 starting with the initial instruction within the unit, then forwarding the case file to the  
12 General Staff, which completed the file before sending it to the prosecutor. So it is  
13 difficult to cross-check those statements given that there were initial investigations, then  
14 another examination at the General Staff, and complementary examination of the case at  
15 the level of the prosecutor.

16 Regarding the 150 lashes, if this statement was made to the prosecutor and the prosecutor  
17 did not investigate, given that he had the authority to carry out investigations in order to  
18 determine the consequences of this type of treatment and torture, that would of course  
19 have had an impact. And human beings are likely to err, and if this escaped the attention  
20 of the court martial, I think it is such cases that may be referred to in the jargon as material  
21 errors in the investigation.

22 This was overlooked because the prosecutor should have contacted the court martial  
23 before forwarding that case file, to indicate that this aspect should be taken into account.

24 PRESIDING JUDGE STEINER: (Overlapping speakers) And if the prosecutor did not  
25 pay attention or did not inform the court, wasn't it, as you said -- my microphone is

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1 activated.

2 THE INTERPRETER: Madam President, that was in the previous statement.

3 PRESIDING JUDGE STEINER: If the prosecutor did not comply with his duties and did  
4 not investigate or did not pay attention to these complaints, wasn't it not for the judges as  
5 guarantors of the right of the accused to take any action in relation to a complaint of  
6 torture? Or the court martial just ignored this kind of allegation?

7 THE WITNESS: (Interpretation) In my humble opinion, it would not have been bad  
8 faith -- or, rather, that would have been bad faith to ignore this because this was within  
9 the context of the fight against impunity. I think it was not bad faith, it is simply  
10 something that happened, and it is regrettable that attention was not paid to this aspect at  
11 the time of the statement, and this is coming out now ten years later.

12 The ALC code of conduct included provisions strictly forbidding torture, so any such  
13 action should have been punishable. So it is regrettable that this would have totally  
14 escaped their attention, and this is noticed ten years later while reading this.

15 PRESIDING JUDGE STEINER: Thank you.

16 Mr Bifwoli?

17 MR BIFWOLI: Thank you, your Honours.

18 Q. Mr Witness, you explained about the allowances which judges could get. Now my  
19 question is, with respect to four judges, who were also MLC soldiers, did they  
20 continue -- do you know if they continued to receive their normal allowances as soldiers  
21 during the time they were acting as judges?

22 A. During normal times, even if people have their salaries, when there is an official  
23 mission you have both civilian jurisdictions and the military jurisdictions. The Supreme  
24 Council of the magistracy governs all those issues linked to allowances, because there is a  
25 budget for that purpose. So in answer to your question, given that there was a national

1 secretary responsible for justice, he must have taken into account the fact that the judges  
2 travelling on mission would regard -- would require ad hoc allowances to enable them  
3 resolve certain issues during their mission. It is not possible for me to remember all the  
4 details ten years later.

5 Q. My question is: Apart from these ad hoc allowances, did those judges who were  
6 also soldiers, and who before being appointed judges would normally get their normal  
7 salaries or allowances as soldiers? During this time, apart from the ad hoc allowances  
8 which they would get, would they continue to get their normal salary or allowance?

9 A. One has to make a distinction with what would prevail in the regular army. In this  
10 case, the ALC was the armed wing of the Congolese Liberation Movement which was  
11 controlling part of the territory, and the movement was not made up of the army alone,  
12 you had civil servants also, and daily food rations were provided to everyone in each unit,  
13 and there were also daily allocations to ensure that people could feed themselves and  
14 meet other needs, as well as health needs.

15 There were wards that were set aside to treat soldiers who were ill, as well as members of  
16 their families, with the drugs that were available. And I can tell you that whether it was  
17 in the territory of the former government or of the RDC, things were run practically in the  
18 same manner. The armies functioned in that way until the time when a transitional  
19 government was set up and lists were drawn up of all the former combatants who were  
20 supposed to be integrated into the army. And the numbers of soldiers that were  
21 declared made it possible for the relevant resources to be made available to pay for the  
22 soldiers integrated in order to set up the national army of the Democratic Republic of the  
23 Congo.

24 At that time, the vice-president responsible for the economy was in fact Mr Jean-Pierre  
25 Bemba and he brought about order in this sector and ensured that all the soldiers that

1 were integrated received their salaries up to this day.

2 Q. Mr Witness, I'm sure you understood my question, but you've not answered. The  
3 question is: Were judges of the court martial, who were also MLC soldiers, during the  
4 time that they were serving the state, were they receiving their salary as soldiers?

5 A. I have answered that question by saying that apart from the rations, there were  
6 allowances that were allocated. I even extrapolated to state that these allocations, the  
7 allowances were not only given to the ALC but when the transitional government was set  
8 up, it was realised that it was the system of allowances that was applicable in the other  
9 territories. Because when you talk about salaries, you have to consider rank, family  
10 allowances, transportation and housing allowances, and for an army that is at war you  
11 also have combat allowances. So when you talk of salaries, you have to take all those  
12 parameters into consideration.

13 A budget has to be drawn up. Generally, people claim that armies consume huge  
14 budgets, and it is recommended that when there is a national budget it is not appropriate  
15 to go beyond five per cent of the national budget for the military, but I have explained to  
16 you what happened at that time.

17 Q. Were the judges of the court martial subjected to the same disciplinary procedures  
18 as other MLC soldiers if they did something at the time they were still serving as judges?

19 A. Well, let me say this: No one within the MLC was above the law. If, as part of his  
20 functions, a judge commits an offence he should be answerable for it. So there is no  
21 question that such people could be covered and allowed to do anything that they wish.  
22 They are subject to the code of conduct, and it is even stated somewhere that if an officer  
23 is guilty of serious misconduct, and then he flees and he's being tracked, even lower  
24 ranking soldiers can organise themselves and arrest that officer, if possible, and bring him  
25 back to ensure that he is prosecuted. So this was all done in order to avoid impunity.

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1 So judges of the court martial would be subjected to prosecution if they were accused of  
2 committing serious crimes.

3 Q. So in this military system, where chain of command is taken seriously, hierarchy is  
4 taken seriously, judges are subjected to the same procedures like other soldiers, are you  
5 aware of any rules and procedures that secured the independence of the judges of the  
6 court martial?

7 A. Well, regarding guarantees, they were designated for a specific mandate and for a  
8 specific duration, and they were exempted during that period from assuming  
9 administrative duties within their units. So they could not cumulate their functions, they  
10 were totally at the disposal of the court martial to be available to try the cases on their role.  
11 So they did not have any additional duties relating to administration in their units of  
12 origin.

13 MR BIFWOLI: Thank you, Mr Witness. I realise it's time, so I'll stop here for today  
14 and go back to Madam President. Thank you.

15 PRESIDING JUDGE STEINER: Thank you very much, Mr Bifwoli.

16 Mr Witness, it's enough for today. We will adjourn and resume tomorrow morning at 9.  
17 We hope you have a restful afternoon, evening, and that you come ready to continue with  
18 your testimony tomorrow.

19 I thank very much the Prosecution team, the legal representatives of victims, the  
20 Defence team, Mr Jean-Pierre Bemba Gombo. I thank very much our interpreters and  
21 court reporters.

22 I will ask, please, court officer to turn into closed session for the witness to be taken  
23 outside the courtroom. In the meantime, we will adjourn and resume tomorrow  
24 morning at 9.

25 (Closed session at 1.29 p.m.)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (The hearing ends in closed session at 1.29 p.m.)