

Trial Hearing  
Witness: CAR-D04-PPPP-0016

(Closed Session)

ICC-01/05-01/08

- 1 International Criminal Court
- 2 Trial Chamber III - Courtroom 1
- 3 Situation: Central African Republic
- 4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
- 5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki
- 6 Trial Hearing
- 7 Wednesday, 28 November 2012
- 8 (The hearing starts in closed session at 9.07 a.m.)
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Witness: CAR-D04-PPPP-0016

(Open Session)

ICC-01/05-01/08

1 (Redacted)

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3 (Open session at 9.09 a.m.)

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

5 PRESIDING JUDGE STEINER: Thank you very much.

6 Good morning, Mr Witness.

7 THE WITNESS: (Interpretation) Good morning.

8 PRESIDING JUDGE STEINER: I hope you had a restful night and that you are  
9 feeling well and ready to continue with your testimony?

10 THE WITNESS: (Interpretation) I am ready.

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

13 THE WITNESS: (Interpretation) I do understand.

14 PRESIDING JUDGE STEINER: I also wanted to remind you about your protective  
15 measures, that your voice and image that are broadcast outside the courtroom are  
16 being distorted so that the public cannot identify you and, in order to keep that  
17 protection, you should avoid saying in public sessions anything that could lead to  
18 your identification. If need be, we can at any time go into private session. Is that  
19 fine with you, sir?

20 THE WITNESS: (Interpretation) Very well.

21 PRESIDING JUDGE STEINER: And finally, Mr Witness, to remind you about our  
22 ground rules, that you are expected to speak slower than normal and to give the five  
23 seconds after a question is put to you before you start answering in order to facilitate  
24 the tasks - the hard tasks - of our interpreters and court reporters.

25 THE WITNESS: (Interpretation) Very well.

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- 1 PRESIDING JUDGE STEINER: I'll now give back the floor to Mr Bifwoli to continue  
2 his questioning on behalf of the Prosecution.
- 3 MR BIFWOLI: Thank you, your Honours.
- 4 QUESTIONED BY MR BIFWOLI: (Continuing)
- 5 Q. Good morning, Mr Witness.
- 6 A. Good morning.
- 7 Q. Today I will continue from where we stopped yesterday and I will ask you  
8 focused and pointed questions. I request that you give -- I request that you give  
9 concise and precise answers so that we can be able to conclude your testimony.  
10 Avoid giving long and unnecessary details. Try to give a summary that is concise  
11 and precise. Do you understand?
- 12 A. I understand.
- 13 MR BIFWOLI: Now, before I put questions to you today, Mr Witness, I would like  
14 to broadcast a document which I would like you to go through and refresh your  
15 memory first, and for that case I request the court officer to display document  
16 CAR-DEF-0002-0001 at page 0049.
- 17 PRESIDING JUDGE STEINER: Mr Bifwoli, could you please facilitate our lives and  
18 say which number it is in the list of evidence, please.
- 19 MR BIFWOLI: It's number 14 on the Prosecution list.
- 20 Q. Mr Witness, once you are through with reading that portion, you let us know so  
21 that you move on to the other portions that I would like you to go through.
- 22 THE INTERPRETER: The beginning of the witness's answer was inaudible.
- 23 THE WITNESS: (Interpretation) Until point 5, but as for the rest --
- 24 THE INTERPRETER: The witness does not finish his sentence.
- 25 MR BIFWOLI:

1 Q. Are you through with that page?

2 A. Yes, I have read up until point number 7, "Ikwa Tonton."

3 MR BIFWOLI: Court officer, can we move on to the next page.

4 THE WITNESS: (Interpretation) Could we please scroll on down. Could we  
5 please move on after point 3, on to the following page, please.

6 Could we please move on down. Could we move on down, please.

7 MR BIFWOLI: Can we go on to the next page.

8 THE WITNESS: (Interpretation) Could we please scroll down. Could we scroll  
9 down, please.

10 MR BIFWOLI: We can move on to the next page.

11 THE WITNESS: (Interpretation) Could we scroll down, please. Could we scroll  
12 on down further, please. Could we move on to the next page, please.

13 Could we please scroll down to see the signature, please. Yes.

14 MR BIFWOLI:

15 Q. Mr Witness, you recall the Defence showing you this document on your first  
16 day of examination; do you recall that?

17 A. I do recall. I believe that it was part of the document, part of what we've just  
18 seen, comprising a number of pages, and the witness was being questioned as to the  
19 document itself, its provenance, and the original version thereof, bearing the  
20 signature of all the judges and all the members of the court martial. All of this was  
21 handwritten. This is what I said with regard to what is being presented to me in  
22 order to certify as authentic the document and as to its origin, and this is a document  
23 that is now being used by the Prosecution.

24 Q. For your information, Mr Witness, we got this document from the Defence, and  
25 I would show you another page. This is a translation of the handwritten one.

1 Court officer, can we go to page 0104. Can we go to the bottom, where there are  
2 signatures.

3 A. Yes, I have seen. Thank you.

4 Q. Mr Witness, so that we are clear, the document that you read is a typed version  
5 of the handwritten one, and we got both documents from the Defence. Do you  
6 understand that?

7 A. Yes, I have understood that. Thank you for the clarification.

8 Q. Now, having refreshed your memory, yesterday you testified that the accused  
9 can appeal if dissatisfied with the verdict of the court martial. Is that your  
10 testimony?

11 A. That is what I said.

12 Q. In view of this, it is important for the accused to know the evidence upon which  
13 they were convicted; is that correct?

14 A. Yes.

15 Q. In order to exercise their right of appeal, it is also important for the accused to  
16 know the reasons for their conviction, is it?

17 A. Yes.

18 Q. And these are minimum requirements of a judicial decision, aren't they?

19 A. Yes.

20 MR BIFWOLI: Court officer, can you display page 0053.

21 Q. Witness, do you have that page on your screen?

22 A. Yes.

23 Q. Can you read out the second paragraph?

24 A. "Considering that during the deliberations and in attempting to ascertain  
25 whether the charges levelled against each of the suspects had been established in fact

1 and in law, the response to this question by the majority was 'Yes.' As to whether  
2 the suspects could benefit from my mitigating circumstances, the answer by the  
3 majority of votes was 'Yes.' As to providing or applying a suspended sentence, the  
4 answer was 'No'."

5 Q. And that was the decision of the court; is that correct?

6 A. I can confirm that.

7 Q. In this decision, there is no analysis of the facts and evidence in the case; is that  
8 correct?

9 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

10 MR KILOLO: (Interpretation) I believe, Madam President, that this manner of  
11 proceeding is not quite fair with regard to the witness, because we cannot ask him to  
12 read just one paragraph preceding the disposition of the decision itself and consider  
13 upon this basis that the decision has not been reasoned in fact. So I believe that only  
14 a complete, or comprehensive, reading of a decision would be fair, of a judicial  
15 decision, would be fair to the witness and would then be a basis for putting the  
16 question to him as for the motivations or reasons underlying this decision.

17 PRESIDING JUDGE STEINER: Maître Kilolo, I'll give the floor to Mr Bifwoli to  
18 answer, but I think we stayed for half-an-hour waiting for the witness to read the  
19 whole summary of the decision, unless I'm wrong. Mr Bifwoli.

20 MR BIFWOLI: Your Honour, you are entirely correct, and I wonder if the  
21 Defence counsel was following what we were doing a short while ago?

22 PRESIDING JUDGE STEINER: You can proceed, Mr Bifwoli.

23 MR BIFWOLI:

24 Q. So, Mr Witness, in this decision there is no analysis of the facts and evidence in  
25 the case; is that correct?

1 A. I would say that's not correct, because the measure, which has made it possible  
2 for the court to rule, is large. I read several pages, it's long, and then you can see  
3 where it comes to the last paragraph, "Par ces motifs," for these reasons the following.  
4 So for each part, each one of the accused, there were details where it concerns the  
5 decision, and as such everything is linked.

6 Q. Fair enough, Mr Witness. If there is any analysis, you are going to show us,  
7 because we have the decision with us, but before we come there listen to my next  
8 question: In this decision, there is no reference to witness testimony; is that correct?

9 A. Reference to which witness?

10 Q. In this decision, did the court make any reference to the evidence of any  
11 witness?

12 A. The question that you put to me, firstly, on this paragraph and thereafter on the  
13 witness, well, I have to be able to see all the different paragraphs and the exhibits in  
14 order to see that, if we mention the case of witnesses.

15 Q. The purpose of refreshing your memory, Mr Witness, was for you to refresh  
16 your memory about this decision. From your refreshment of your memory, is there  
17 anywhere where the court made reference to the evidence of a witness in this  
18 decision?

19 A. Reading what I can see here, well, I've gone through the different measures, but  
20 where it concerns the testimony you have to go back up to what was written during  
21 the hearings.

22 Q. My question is clear: In the decision which you went through this morning, is  
23 there any reference to the testimony of a witness?

24 A. I don't remember. I just read it so quickly here. If I had the opportunity of  
25 re-reading it that would -- I mean, it's an exercise which is quite constraining, but

1 I don't know if in such a short time you can remember there being a witness from that.  
2 Could that section mention the case of a witness? But here what we're trying to look  
3 after the deliberations of what was done independently, after the deliberations, where  
4 it concerns each of the accused.

5 Q. Mr Witness, I have read this decision, and I believe all of us in this Court have  
6 read this decision, and I put it to you that there is no single reference to the evidence  
7 of a witness in this decision. Do you agree?

8 A. But a moment ago I replied that when you read these points, I don't remember.  
9 That's my answer.

10 PRESIDING JUDGE STEINER: Mr Witness, if I may, you are given the opportunity  
11 to read the whole body of the decision and not only the dispositive. If need be, we  
12 give you time to read it again. Is that what you want? We can give you time  
13 enough to read the whole summary of the hearing.

14 THE WITNESS: (Interpretation) That's not what I'm asking for, your Honour. It's  
15 in relation to the question that's put to me. Where I don't remember, I say that  
16 I don't remember. Anybody could have that.

17 PRESIDING JUDGE STEINER: Just for the record, I wouldn't like you to say that  
18 you were given the opportunity to read only the dispositive part of the decision,  
19 because this is not correct. You are given the opportunity to read the whole -- it's  
20 how we called, if we may call the summary of "l'audience publique du 7 décembre  
21 2002." The public hearing of 7 December 2002. Is there here any reference to the  
22 evidence produced by a witness?

23 THE WITNESS: (Interpretation) No, no.

24 PRESIDING JUDGE STEINER: Do you remember whether there were any witnesses  
25 in this case, or you don't remember?



1 THE WITNESS: (Interpretation) In this case? I remember there weren't  
2 witnesses.

3 PRESIDING JUDGE STEINER: Thank you. Mr Bifwoli, could you proceed, please.

4 MR BIFWOLI: Thank you, your Honours.

5 Q. Mr Witness, is your testimony that there were no witnesses in this hearing? It  
6 therefore follows that there was no analysis of any witness testimony; is that correct?

7 A. That's correct. If there were no witnesses, then the analysis of the witness  
8 couldn't take place either.

9 Q. And apart from witnesses not appearing in person, there were no statements of  
10 witnesses that were produced in this hearing; is that correct?

11 A. I don't remember. I don't remember statements, but on the other hand witness  
12 Bomengo in his statement did mention Gbangi (phon) as an intelligence officer of the  
13 battalion, and he also seized certain goods from soldiers presented before a  
14 commander. The ALC unit and a commander from the gendarmerie without giving  
15 details about the goods that were taken between this commission from the unit  
16 commander of the ALC and the commander of the Central African gendarmerie.  
17 That happened in Bangui. Without giving details of possible owners of the goods  
18 that were taken, without giving the details of the precise places within Bangui where  
19 these materials were taken from soldiers, that is something that I can remember from  
20 reading the statement of Willy Bomengo.

21 Q. Apart from the statements of the accused persons who were denying these  
22 crimes, were there any additional statements produced in this hearing?

23 A. The statement which was made during the hearing, and you put the question  
24 about this to the witness yesterday, where it concerns the administration of 150 lashes  
25 on the orders of a commander whose name he mentioned, I said that it was necessary

1 to look at the orders from Zongo before an officer who is sent on mission in this  
2 regard, and also the follow-up of the question by the legal counsellor or legal adviser  
3 for the staff, and in that circumstance the investigation could have been completed if  
4 there was a complainant in order to facilitate testimony, but in the situation of this  
5 armed conflict in Bangui which had just occurred, even this officer did not have the  
6 power to go and investigate in a foreign country where the crimes were committed  
7 subsequent to violence that there was there.

8 Q. Mr Witness, I would like just to remind you that at the beginning I asked you to  
9 be concise and precise in your answers so that we can be able to make some progress.  
10 I'll remind you of that.

11 Now, were there any statements from anyone else other than the accused in this case?

12 A. I don't remember statements from anyone else in this case. As a witness, what  
13 is certain is that the defence -- it's the defence who assisted the suspect and they could  
14 ask to take the floor and they could reply if necessary.

15 Q. Mr Witness, I can see you are able to remember very fine details of what  
16 happened, so if there were any other statements other than the accused surely you  
17 would have remembered, wouldn't you?

18 A. Well, you will have me specify the type of statements, so I can remember what  
19 happened ten years ago. What I remember I say, as I've just said it. There are other  
20 things that I can't remember, so I can't risk saying what I don't remember.

21 Q. The record before us tells us there were no statements from anyone else other  
22 than the seven accused; do you agree?

23 A. Indeed.

24 Q. Now, in this decision, which you had the opportunity to refresh your memory  
25 about a short while ago, there is no reference to any piece of documentary evidence;

1 is that correct?

2 A. Please could you help me understand what you mean by "documentary  
3 evidence"?

4 Q. Independent documents that are different from statements, are they referred  
5 anywhere in this decision?

6 A. Independent documents? I don't know, with the reference that you make to  
7 certain legal texts.

8 Q. Other than legal texts, is reference made to anything other -- anything else?

9 A. In a reference other than what appears here, I don't remember either.

10 Q. Now, in this decision there is no finding by the court regarding which evidence  
11 was believed and which evidence was not believed. Did you see that anywhere in  
12 this decision?

13 A. Yes, the court in the substantive paragraphs mentioned the role of the  
14 prosecution, as expressed by the prosecutor, to classify the crimes up stream; the  
15 crimes which were -- each of the accused were accused of.

16 Q. Now, from the record the prosecutor did quite a number of things. In this  
17 decision, did you specify which of the prosecution evidence you believed and which  
18 of the prosecution evidence, for example, you did not believe? Is that specified  
19 anywhere in this decision?

20 A. In this decision, with regard to each suspect, the measure or crime that they are  
21 accused of are pointed out. They are noted individually, or in accordance with what  
22 they did, and that's it. That was done in order to have deliberations and a majority  
23 of the votes to establish whether it was established or non-established that the crimes  
24 which each was accused of having committed had taken place, and this is what  
25 figures in the substantive paragraphs which has the conclusion of the work of the

1 court martial.

2 MR BIFWOLI: I'm sorry. I'm having a problem with my microphone, so I'm not  
3 getting the translation. Sorry, your Honours, I was having a problem with the other  
4 microphone, so I was not getting translation.

5 Q. So, Mr Witness, am I correct to say in this decision no specific reference is made  
6 that, "We considered and believed this prosecution evidence and we considered and  
7 did not believe this particular evidence from the prosecution?" There is no such  
8 statement in this decision; is that correct?

9 A. In the decision it was noted that -- or what are the charges that had been  
10 retained against each of the accused, and also the same accused had admitted during  
11 different questioning or interviews what they were being accused of as detailed for  
12 each of them. I understand the concern would be that it was necessary for these  
13 items to be brought before the court. The court received the case file. The detailed  
14 items found on each of the accused were there and, with regards to the investigation  
15 until the case file coming to the court, these evidentiary items certainly were absent.  
16 Is that what you want? Well, the court had noted that apart from the statements  
17 these evidentiary items, if I've understood that well, were not present.

18 Q. Is it your testimony that the accused people admitted that they committed these  
19 crimes?

20 A. In their statements, there weren't contradictory answers from the  
21 instruct -- from the investigations ongoing in Gbadolite on each -- by each of them.  
22 On the other hand, if I remember, in fine before the court some did state -- rejected on  
23 block that they didn't recognise these crimes.  
24 Now, I said "up stream" because the officer said that he had seized items which had  
25 not been given him. It was the intelligence officer who could have given all the

1 possible details in that regard, including the items that were found on them. Would  
2 they also not have also been provided at the same time as the other items to the  
3 commission composed of an officer from the ALC and also the gendarmerie in  
4 Bangui, the capital of the Central African Republic?

5 MR BIFWOLI: Court officer, can we go to page 52. Can we move to the second last  
6 paragraph on that page.

7 Q. Can you read to the Court what that second last paragraph says, Mr Witness?

8 A. "As such, it asked the court to sentence the accused, Kpalakumu, Ngangu and  
9 Ndonga, to three years of sentence, with 12 months. The accused, Willy Bomengo,  
10 to 24 months of sentencing in prison, and Mbokani to three months of sentence, with  
11 12 months, and the accused Lingimba and Ikwa were to be acquitted."

12 MR BIFWOLI: Just a moment, your Honour, I have seem to have gotten a wrong  
13 reference. Just one minute to confirm.

14 Court officer, the right paragraph is the fourth paragraph from below.

15 THE WITNESS: (Interpretation) Can you specifically identify the extract so that  
16 I can -- should not be mistaken at what I'm reading?

17 MR BIFWOLI:

18 Q. Mr Witness, if you count paragraphs from below, it's the fourth one, starting  
19 with "Qu" something. Do you see it?

20 A. Yes. "When questioned about the allegations, all of them categorically denied  
21 them and declared that they were not aware of the reasons for their indictment.

22 Considering that when taking the floor for their arguments, the prosecution stated  
23 that all the offences, or charges, levelled against the accused had been clearly

24 established, in fact and in law, and that the court could only impose the heaviest

25 sentence provided for these offences after having them benefiting from the mitigating

1 circumstances that these were first offenders."

2 Q. So they all denied having committed these crimes, that was very clear; is that  
3 correct?

4 A. Yes, as it is stated here, they all denied the crimes.

5 Q. Mr Witness, for the accused to appeal, they have a right to know the evidence  
6 upon which they were convicted; is that so?

7 A. Yes, that is their right.

8 Q. From the decision that you saw a short while ago, the accused can't tell which  
9 evidence was relied upon to convict them; is that correct?

10 A. What they said, contrary to their initial statements during the investigation in  
11 Zongo, and I should point out that amongst these accused there was one intelligence  
12 officer who stated that he had retrieved from certain soldiers, and he did not give  
13 their names, even though he would have been able to identify them formally, and  
14 before the legal adviser at the General Staff, he denied it, whereas, prior to that, that  
15 particular person had made a statement, and there were other statements from the  
16 other soldiers, indicating that certain non-military effects, or items, had been found in  
17 their possession.

18 While before the court, it is usually the position taken by certain accused, that is to  
19 deny the facts, relying on the fact that some evidence that might have confirmed the  
20 charges was absent. So they would claim to be unaware of the charges, so that is  
21 also a way for them to defend themselves.

22 The commander of the unit, after a disciplinary council hearing, cannot take someone  
23 who is innocent and who did not do anything and subject them to a -- to an  
24 investigation.

25 Q. Mr Witness, I'll keep on reminding you to be precise and concise in your

1 answers.

2 Looking at the decision of this court, do you see anywhere where reference is made  
3 that, based on this evidence, we convict accused 1; based on this evidence, we convict  
4 accused 2? Is there anything in reference to that in this decision?

5 A. I had already given you the answer, which is "No."

6 Q. Knowing the evidence upon which they were convicted is important in  
7 challenging the decision of the court on appeal; is that correct?

8 A. Yes, it is important. It is also possible to state on appeal that during the trial at  
9 first instance the accused is not convinced about the charges levelled against him, and  
10 that is why he is appealing for the letter of the law to be applied and that the verdict  
11 during the trial should be quashed.

12 Q. By failing to make reference to the evidence relied upon to convict each of these  
13 people, the court violated this important right of these accused people, didn't it?

14 A. One of the essential rights of the defence -- well, the essential rights of the  
15 defence is one thing, and there is also the right of the accused to be assisted by a  
16 defence, and this provides him with a guarantee to be able to lodge an appeal in  
17 order to reverse the conviction. So you cannot say it is goodwill -- the good faith or  
18 bad faith of the court, because to err is human, and if the trial court had made an  
19 error of a precision, then that error could be rectified at the appeals level because the  
20 court itself could not hand down a decision and then reverse it, itself, subsequently.

21 Q. Are you aware of any single decision of the court martial that went on appeal?

22 A. I do not remember anything, any such decision. However, the transitional  
23 government was instituted, and in the agreement setting that up, it was the  
24 responsibility of the transitional government to deal with all decisions and case files  
25 that had been dealt with by the belligerent groups, and the appeals could have gone

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1 on normally even after the completion of their task by the court martial. So I'm not  
2 aware of any appeals that might have been lodged subsequently by the accused  
3 persons who had been convicted. I do not remember.

4 Q. Other than this particular case of seven accused people, are you aware of any  
5 decision that went on appeal from -- where an appeal was lodged against a decision  
6 of a court martial?

7 A. I do not remember.

8 PRESIDING JUDGE STEINER: Maître -- Mr Bifwoli, please, Judge Aluoch wanted a  
9 clarification.

10 JUDGE ALUOCH: Yes, Mr Witness. It is the answer you have just given on -- from  
11 page 19 on the transcript that I need a clarification on. When the court martial was  
12 set up, do you remember whether an appellate wing of it was also set up, or just the  
13 court martial that was trying these accused persons? Was any provision made for  
14 appeal at all when it was set up?

15 THE WITNESS: (Interpretation) Yes. The National Secretary for Justice had set  
16 up appeal courts in Buta and Gemena who were -- which were responsible for  
17 appellate proceedings, so this had been done by the National Secretary for Justice.

18 JUDGE ALUOCH: Thank you.

19 PRESIDING JUDGE STEINER: Mr Bifwoli, if you allow me, I also want some  
20 follow-up questions before you change the subject.

21 Court officer, please, could we turn briefly into private session.

22 (Private session at 10.16 a.m.)

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Page 17 redacted – Private session.

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Page 18 redacted – Private session.

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Page 19 redacted – Private session.

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17 (Open session at 10.31 a.m.)

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

19 PRESIDING JUDGE STEINER: Mr Witness, as we can see from the dossier and from

20 your knowledge, we are facing an investigation made by the prosecution in which

21 most of the accused were interrogated in the middle of the night. We see that the

22 procedure was sent to the court martial on 3 December, the hearing took place on

23 5 December and the decision of the court martial was issued on 7 December,

24 involving seven accused, a procedure in which no evidence was produced, neither

25 before the prosecution nor before the judges, in which contrary to what you say all

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1 accused denied participating in the conducts. Do you, in your view -- in your view,  
2 is that -- was that a regular procedure? You affirmed in transcript 275, page 52, lines  
3 11 to 13, that this procedure was a normal one; a regular one. Do you maintain that  
4 this procedure was a regular one?

5 THE WITNESS: (Interpretation) Yes, this is what I said, and as far as military  
6 courts is concerned in the DRC the procedure would have it -- the procedure would  
7 seem quite expedited, or expeditious, as in the instant case, notably from 3 to 5 to 7  
8 December.

9 Now, this is not any form of imitation. Before the prosecutor, the case file had been  
10 investigated and the court had received it with a view to ruling on the case of course  
11 without any evidence; evidence that's been mentioned on a number of occasions.  
12 I would also like to say that as to the place of detention this can be an opportunity for  
13 the accused to communicate, and in this specific case it might be that they decided to  
14 deny the facts or the charges before the court in view of the fact that the prison did  
15 not allow a situation where the accused could be separated; could be kept separate.  
16 This is different in a military and civilian setting.

17 So in this context, in view that there was no isolation during the preventive detention  
18 period, this might be an indication to the fact that even a person who has committed a  
19 crime in view of the spirit of camaraderie, and by virtue of the fact that they hail from  
20 the very same unit, it might be that subsequently all of the accused then deny the  
21 charges comprehensively; not that I want to say that this is what occurred in this  
22 specific case. The court never went to visit the prison prior to this, or during or even  
23 after the trial and the verdict. This is just an indication that the witness is giving.

24 PRESIDING JUDGE STEINER: Mr Witness, we are not here to debate and I'm not  
25 going to debate with you, but in all legal systems of the world, when interrogated by

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1 the prosecutor and sometimes even by the judges, the accused person they can lie as  
2 much as they want because they don't take the oath. That's why the burden of the  
3 proof is on the prosecution. So the fact that they deny shouldn't have influenced a  
4 judicial decision.

5 In any case, my last question before I give back the floor to Mr Bifwoli, apologising  
6 for the interruption. You said -- and I don't have here the reference, but I can bring  
7 the reference at any time, that the press - the media - was present on the day of the  
8 delivering of the decision, including foreign media: TV, radio, newspapers and  
9 foreign media.

10 According to evidence CAR-ICC-0001-0005, which is already evidence in this case,  
11 EVD-T-D04-0002, 7 December, when the court martial issued publicly its decision  
12 was a Saturday. Is that a normal procedure for a court martial to sit on a Saturday  
13 before the whole media in order to deliver a decision? Is that a normal procedure, a  
14 regular procedure as well?

15 THE WITNESS: (Interpretation) Yes. In the DRC the working days are  
16 established by the Ministry of Labour and Employment, and if Saturday is not a bank  
17 holiday then people work.

18 PRESIDING JUDGE STEINER: Thank you. Judge Aluoch.

19 JUDGE ALUOCH: I just want to give the reference from the transcript. It was  
20 transcript 275 of 26 November, that was Monday. Mr Witness, when you said "So  
21 the hearings were totally public, and members of the media, including foreign media,  
22 were authorised to be present, so there was no pressure and no interference," I just  
23 wanted to give that reference.

24 PRESIDING JUDGE STEINER: Thank you very much, Judge. Mr Bifwoli,  
25 apologising again for the long interruption.

1 MR BIFWOLI: Thank you, your Honours, and the Prosecution notes that all the  
2 questions were actually pertinent for determination of the truth.

3 PRESIDING JUDGE STEINER: Thank you very much for saying that my questions  
4 were pertinent. Very kind of you.

5 MR BIFWOLI:

6 Q. And Mr Witness, because we have page 51 on the screen, I will reorganise my  
7 questioning a bit then to deal with that portion. Then I'll come back to complete the  
8 portion I was in -- on before that. So from that page it is also true that the accused  
9 were served by summons to appear before the court martial on 5 December 2002; is  
10 that correct?

11 A. This is 5 December, and the hearing came to an end on 7 December.

12 Q. The question is: From the record they were served with summons to appear  
13 for the hearing on 5 December; is that correct?

14 A. If they were to appear on 5 December, then the summons would be served a  
15 long time prior to that. As I explained to you, the court clerk would make sure that  
16 the information was circulated prior to this. I do not have this here, but you might  
17 have this in your file, they are noted a long time prior to this, not on the very same  
18 day. The schedule is to set the date prior to this, a long time prior to this.

19 Q. Mr Witness, if you go to page 51.

20 Court officer, can we go up a bit. No, no, no. Let's go down. Down again. Yes,  
21 yes.

22 Now, Mr Witness, on that page you can see almost in the middle there is a paragraph  
23 with the names of the accused people. Can you see that paragraph?

24 A. Yes.

25 Q. Can you read it out?

1 A. "Mindful of the decision, the referral decision for ..." --

2 THE INTERPRETER: The interpreter cannot find the section of the document for  
3 cite translation.

4 THE WITNESS: (Interpretation) "Mindful of the summons to appear for  
5 Kpalakumu Metonga, Ngangu Gbede, Ndonga Bofe, Bomengo Willy, Mbokani Zabo,  
6 Lingimba Faustin and Ikwa Tonton, on 5 December 2002, for the cases, disjointive  
7 cases by the clerk Gbate Gia Malawe, summons to appear on 5 December 2002 before  
8 the court martial to appear for the hearing of 5 December.

9 The suspects appeared in person, assisted by their counsel, Maître Nicolas  
10 Kedinshiba, Défenseur Judiciaire for the Tribunal de Grande Instance of Gbadolite,  
11 mindful of the investigation conducted during the hearing.  
12 Yes, represented that the ministry of public -- the Ministry of Public Prosecutions,  
13 represented by Mr Nicolas Jean Kamba Tujibikile, and his final arguments, hearing  
14 the counsel for the suspects, Mr Nicolas Kedinshiba, pleading and concluded by  
15 declaring that the court should come as non-established the charges brought against  
16 the accused and to acquit them purely and simply, hearing the suspects and their  
17 statements and defence evidence upon which the court martial declares these  
18 discussions closed and deliberates upon the case in its decision to be handed down in  
19 public session on 7 December 2002, of which the contents follow."

20 I have finished reading the document.

21 Q. Now, nowhere on this record it is mentioned that summons were served to the  
22 accused on any other day earlier than 5 December; is that correct?

23 A. This is a statement that notably they were summoned to appear on 5 December,  
24 and we need to take into account here that the question might have been put to the  
25 court clerk, whose role it was to set the date prior to this, a long time prior to the date



1 of the hearing itself, and his role might have been specific in this case to see, to  
2 ascertain, whether these dates are contradictory or not, because prior to this, the court  
3 clerk has to conduct a further task, notably he needs to provide prior notification a  
4 long time prior to the hearing.

5 I am not sure about this. These are documents that have been in the archives of the  
6 courts and tribunals and that are not here before us, but this date is as it is; it is prior  
7 to this, a long time prior to this, and I am sure that they were notified of this by what  
8 we call a roll that is then posted.

9 Q. Now, considering that the decision to refer this case to court martial was made  
10 on the 3rd, so at the earliest they would have been summoned was 3 December 2002;  
11 is that correct?

12 A. I believe that this is the case here, notably that another date has been given.  
13 This is the logical procedure, notably the day before; that is on the 3rd, the 5th and  
14 the 7th. All of these dates, the 3rd and the 7th, cannot have been ignored as such.  
15 Certainly the court clerk in his work served a summons upon the accused and also  
16 notified the défenseur, as I said. The schedule is posted up, as I said previously.

17 Q. It is the court martial that sets the date for the hearing; is that correct?

18 A. Yes, indeed.

19 Q. And the court martial got seized of this case file for the first time on  
20 3 December 2002, according to your testimony; is that correct?

21 A. Yes, indeed.

22 Q. So there is no way summons for the hearing would have been issued before  
23 3 December 2002; is that correct?

24 A. Yes, this is correct, with regard to what we have before us.

25 Q. And, sir, I'm not sure if I got the translation correctly, but I want you to read on

1 page 51 that paragraph starting from "Nicolas Kedinshiba" up to the end.

2 A. "Hearing counsel for the suspects, Maître Nicolas Kedinshiba, in his pleading  
3 and conclusions declaring that the court should say that the charges are not  
4 established for the suspects and that they should be purely and simply acquitted,  
5 hearing the suspects and their statements and defence evidence."

6 Q. Sorry, it was my mistake, I didn't point out to you the right paragraph that I  
7 wanted. The paragraph that I want is on your screen. You can see the top-most  
8 paragraph with names, then the paragraph immediately down there. Just read that  
9 paragraph alone, the second paragraph at the top.

10 A. "During the appeal in the hearing of 5 December 2002, the suspects appearing in  
11 person, assisted by their counsel, Maître Nicolas Kedinshiba, defence counsel,  
12 défenseur judiciaire with the Tribunal de Grande Instance, or District Court, in  
13 Gbadolite, in view of the investigation or instructions made during the hearing,  
14 hearing the public prosecutions represented by Mr Jean Kamba Tujibikile and his  
15 final statements."

16 MR BIFWOLI: I don't know if I'm missing something, but did I get the translation of  
17 the words that appear immediately after "Gbadolite," immediately after "Kedinshiba,  
18 défenseur judiciaire Tribunal de Grande Instance," and then the words that are not in  
19 bold, could I get a translation of that?

20 PRESIDING JUDGE STEINER: Are you asking the interpreters to translate  
21 something directly to you, Mr Bifwoli?

22 MR BIFWOLI: Your Honour, I have listened to the translation, and these particular  
23 words are of importance to me and it appears like they have been missed out, so  
24 I would like to get their translation on record, the words immediately after  
25 "Gbadolite," because my questions are going to be about that.

1 PRESIDING JUDGE STEINER: So meaning (Interpretation) "Committed by this  
2 court in regular proceedings."

3 MR BIFWOLI: Exactly, your Honour. So, thank you, your Honour.

4 Q. Now, Mr Witness, to assist the interpreters, in that paragraph, after "Gbadolite,"  
5 just re-read that portion slowly so that the interpreters can interpret for the record.

6 In the second paragraph from the top and after the name "Nicolas Kedinchiba," then  
7 there is in bold, "Instance de Gbadolite," then the words that are in small letters.

8 A. "Appointed by this court in regular proceedings."

9 MR BIFWOLI: Thank you, Mr Witness.

10 PRESIDING JUDGE STEINER: Mr Bifwoli, we have just a few minutes. We have  
11 to go into a break. I just wanted to ask the Prosecution after the break to bring its  
12 line of questioning a little bit more objective and concise, because Prosecution has  
13 been questioning for five hours, 38 minutes, already discounting the time taken by  
14 Judges for their questioning, so I think it's time for the Prosecution to conclude as  
15 soon as possible the questioning of the present witness.

16 MR BIFWOLI: Your Honour, my remaining portion of questioning is actually  
17 focused on the proceedings and the questions are very short and focused, and if I get  
18 precise and concise answers, we will be through.

19 PRESIDING JUDGE STEINER: I hope so, Mr Bifwoli.

20 Mr Witness, we have now our half-an-hour break. You deserve a break. Our  
21 interpreters and court reporters, to whom I apologise, I was the first one breaking the  
22 five-second golden rule during this first part of the hearing, so I do apologise. We  
23 will resume at 11.30.

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

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- 1 11.30.  
2 (Closed session at 10.58 a.m.)  
3 (Redacted)  
4 (Redacted)  
5 (Redacted)  
6 (Recess taken at 10.59 a.m.)  
7 (Upon resuming in closed session at 11.36 a.m.)  
8 (Redacted)  
9 (Redacted)  
10 (Redacted)  
11 (Redacted)  
12 (Redacted)  
13 (Redacted)  
14 (Redacted)  
15 (Open session at 11.38 a.m.)  
16 THE COURT OFFICER: We are in open session, Madam President.  
17 PRESIDING JUDGE STEINER: Mr Witness, welcome back.  
18 THE WITNESS: (No interpretation)  
19 PRESIDING JUDGE STEINER: Can we continue with your testimony, sir?  
20 THE WITNESS: (Interpretation) Yes.  
21 PRESIDING JUDGE STEINER: Mr Bifwoli.  
22 MR BIFWOLI: Thank you, your Honours.  
23 Q. Mr Witness, I will proceed from where we stopped just before the break. And  
24 from what you read, Mr Kedinshiba was actually appointed by the court martial; is  
25 that correct?

1 A. Indeed.

2 Q. But yesterday at T-276, page 31, lines 6 to 15, you testified that you did not  
3 know who appointed him. Now, in view of this, would you like to confirm that he  
4 was appointed by the court?

5 A. Yes, the first statement was what you said. Reading this document we read a  
6 moment ago, it is stated "Committed by the court, for the court," when the case is  
7 called, the accused presenting themselves, and at that time putting the question as to  
8 whether they have a counsel. It is then that the counsel presents himself, and he is  
9 appointed duly to defend them, and that's why I said the court did appoint  
10 somebody. It accepted to defend these accused, so that can be corrected in that  
11 sense.

12 Q. Now, having reviewed the entire record of the proceedings, there is nothing to  
13 show that anyone else appointed Kedinshiba. Do you have anything to show that  
14 anyone else appointed him?

15 A. Well, I stated that with regard to the case file, I remember that Kedinshiba was  
16 appointed by the court and I had to reconsider -- or you had to reconsider what I said  
17 previously with regard to Counsel Kedinshiba. So it's over ten years ago. It  
18 shouldn't be held against me.

19 Q. Mr Witness, from the record at CAR-DEF-0002-0001, at 0052, the prosecution  
20 recommended the acquittal of Lingimba and Ikwa. Now, why were these people  
21 convicted by the court if the prosecution itself recommended their acquittal?

22 A. Thank you. In Congolese law, what you have to take into account generally,  
23 the transcripts or court reports which are drawn up by the legal advisers and the  
24 person who's responsible in the Democratic Republic of the Congo, the judicial  
25 officers, they take an oath before the prosecutor. And what does this mean? This

1 means that the documents that are drawn up when talking to a suspect are authentic  
2 and constitute evidence until there is proof of the contrary. This initial statement or  
3 the initial transcript done by the different OPJs and by the prosecutor are authentic  
4 under the terms of the -- under Congolese legislation unless there's proof of the  
5 contrary.

6 If the accused before the court state something contrary to what they initially stated,  
7 then that becomes a contradiction. This is why in the case in point, in the  
8 deliberations, this is done with regards to the initial statement and there's a  
9 contradiction, and there's a contradiction, the judges deliberate and they do so in  
10 accordance with their ultimate convictions. That led to the situation whereby there  
11 was a sentence with regards to this request for acquittal.

12 Q. Now, in the court martial system, do you arrest someone first, then investigate  
13 later, or you investigate first before you arrest a suspect?

14 A. The court martial, when it is established, it works in sessions for a duration  
15 which is specified, well-specified. Now, there are cases which are regularly on a  
16 register which are examined -- examined by them. Now, the Congolese legislation  
17 sets out the cases under which a suspect or suspects can be put under arrest and it  
18 provides the definitions under which this takes place, in particular cases of flagrancy,  
19 and with regards to the military aspects thereof if that happens in the Congolese  
20 territory the operations which are carried out by soldiers there's military jurisdiction  
21 which is called upon under normal time, you have the operational war council which  
22 follows that and can be seized of cases of flagrancy at any time which the army troops  
23 would be accused of.

24 And it is in this context that you have to understand how the court martial has  
25 worked in sessions without hindrance to the expeditious way in which they have

1 worked. It's in that particular given context in -- under normal conditions there can  
2 be a trial and there is -- can also take place for several months or several years. This  
3 is not the case for the military courts and in particular during a time of armed conflict.

4 Q. So that it is clear, during the time of armed conflict for the crimes for which  
5 these people were charged they can be arrested first and then investigated later, or it's  
6 always that they are investigated first before they are arrested? Which is which?

7 A. During a time of conflict, if there is an operational war council attached to the  
8 manoeuvre units in a theatre of operations - a given theatre of operations - what is  
9 done in terms of the units is that there are OPJs who are appointed, these are  
10 intelligence officers, who at any time can arrest a soldier who is suspected of having  
11 committed an offence.

12 There are interviews, there's a transcript, and in regard to the accusations which come  
13 under the Military Criminal Code the OPJ can quickly, having preventatively  
14 detained the person for investigation needs, transmit the case file and bringing the  
15 suspect before the prosecutor.

16 In the case of concern to us, the court martial was set up with regards to a number of  
17 cases of flagrancy and it was seized of them by the prosecutor of all these cases. The  
18 cases had to be dealt with in session by this court martial.

19 Q. At T-275, page 56, lines 13 to 25, yesterday you testified that the court martial  
20 after delivering its verdict also explained to the accused their right of appeal if they  
21 were dissatisfied with the verdict. Now, did you testify -- is that your testimony?

22 A. I keep to that.

23 Q. And are you sure this court martial explained to the accused - these  
24 people - about appeal?

25 A. I'm sure of that, because following the verdict or in accordance with the verdict,

1 French is the official language and I said that there could be troops who could not  
2 lead -- read it and as such the language of communication had to be used, which was  
3 Lingala. This was done in order to explain to the accused and sentenced soldiers  
4 what their rights were to appeal after the verdict was handed down.

5 Q. And so if this is true, it will be part of the record; is that correct?

6 A. The case file, or the decision, or judgment as presented and the substantive part  
7 thereof, well, this is made during the deliberations and therefore in closed session,  
8 because for the certainty be sure that the accused person understands the judgment or  
9 decision the presiding judge or the president of the court, having handed down the  
10 judgment, explains it in Lingala for the soldiers who are accused and sentenced and  
11 the verdict is read.

12 This isn't part of the substantive paragraphs in Congolese law in military courts or  
13 civil courts. This has always been done, but it's not part of the dispositive part, if we  
14 like. Nevertheless, the court officer in that person's role certainly can write a  
15 summary for the ad hoc report for the hierarchy.

16 Q. So that it's clear, so a record is not kept of this explanation to the accused people  
17 that they have a right to appeal if dissatisfied with the verdict of the court martial?  
18 Is that your testimony?

19 A. Well, the answer that I've just given, if you said it doesn't figure in the case  
20 record, but I would also like to say and this is the role of the defence counsel because  
21 he's the counsel of the client, he advises his client, to explain also the case to him such  
22 that it be well-understood. In addition to what the tribunal does in good faith, it is  
23 the Bench that intervenes after the verdict and the counsel says that, "I'm going to  
24 appeal in the name of my client."

25 Q. Mr Witness, have you received any payment purportedly on Bemba's behalf?



1 A. Please could you -- please could you ask the question again? A witness?

2 Well --

3 Q. Have you received any payment purportedly on Bemba's behalf?

4 PRESIDING JUDGE STEINER: Yes, Mr Haynes?

5 MR HAYNES: I think that question needs a bit of clarification. Does Mr Bifwoli  
6 mean in 2002, or more recently?

7 PRESIDING JUDGE STEINER: I agree with you. You should be more precise,  
8 Mr Bifwoli.

9 MR BIFWOLI: Entirely, your Honour.

10 Q. Mr Witness, have you received any payment purportedly on Mr Bemba's behalf  
11 relating to this case?

12 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

13 MR KILOLO: (Interpretation) Your Honour, I would like to object to this question.  
14 And why? Quite recently a Defence witness was questioned with regard to the  
15 same thing, and here I'm referring to transcript T-269 of 8 November 2012, and  
16 namely page 69 thereof, and this is what the witness said and obviously -- well, could  
17 we go into closed session, please?

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

19 (Private session at 12.00 p.m.)

20 (Redacted)

21 (Redacted)

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1 (Open session at 12.17 p.m.)

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

3 MR BIFWOLI:

4 Q. Mr Witness, were any promises made to you in exchange for your testimony in  
5 this case?

6 A. I did not receive any promises from whomsoever in exchange for this testimony.

7 No promises.

8 Q. And were you reimbursed your expenses for meeting or contacting the  
9 Defence?

10 A. These -- these -- well, as for expenses that might have been incurred upon  
11 meeting the Defence, well, I'm not aware of any.

12 Q. Now, the prosecutor of this court martial was Jean Kamba; is that correct?

13 A. Yes.

14 Q. Who was the prosecutor before him?

15 A. The prosecutor before him at the court martial, well, I'm not aware of this.

16 Jean Kamba was appointed and he was the person who was present for these cases  
17 before the court.

18 Q. Do you know anyone called Nyakunya, or something like that? I'm not sure,  
19 Nyakonia or Nyakunya?

20 A. No idea.

21 PRESIDING JUDGE STEINER: Mr Bifwoli, I'm really sorry but you ask the witness  
22 if he knows someone called Nyakunya or something like that, so even you don't  
23 know the name of the person you are asking about? I didn't understand this kind of  
24 question.

25 MR BIFWOLI: Sorry, your Honour, my pronunciation may not be good, but I

1 may -- maybe spell.

2 PRESIDING JUDGE STEINER: Yes, maybe it would be better. Yes.

3 MR BIFWOLI: N-Y-A-K-O-N-I-A.

4 Q. I don't know how it's pronounced, but do you know someone with that name?

5 A. Amongst the judges and including the prosecutor and the court clerk, I do not  
6 know of any individual bearing this name. Otherwise, he would have been notified  
7 and it would have been easier, but this is a name that I do not know, nor do I know  
8 the individual.

9 MR BIFWOLI: Mr Witness, the Prosecution has come to the end of its questioning  
10 and the Prosecution would like to thank you for coming and co-operating with the  
11 Court to determine the truth.

12 Thank you, your Honours. That brings us to the end of the Prosecution questioning.

13 PRESIDING JUDGE STEINER: Thank you, Mr Bifwoli.

14 Mr Witness, legal representatives of victims were authorised to put some questions to  
15 you, were authorised by the Chamber, and therefore I'll now give the floor to Maître  
16 Douzima Lawson, who will put to you the questions authorised by the Chamber and  
17 some follow-up questions that legal representatives deem necessary.

18 Maître Douzima?

19 MS DOUZIMA LAWSON: (Interpretation) I thank you, Madam President.

20 QUESTIONED BY MS DOUZIMA LAWSON: (Interpretation)

21 Q. Good afternoon, Mr Witness.

22 A. Good afternoon, madam.

23 Q. I would like to introduce myself to you, Mr Witness. My name is Maître  
24 Douzima Lawson. I am a lawyer with the Central African Bar and I am here  
25 representing a number of victims who have been admitted to participate in the case



1 you are testifying in and as the President, Madam President, has just said, to you I  
2 have been authorised to put a certain number of questions to you because your  
3 statements and knowledge is of interest to my clients.

4 Now, Mr Witness, I shall be putting questions to you associated with your knowledge  
5 and also with statements that you have made before the Court since this past  
6 Monday.

7 Now, Mr Witness, I would like to remind you that you are benefiting from protective  
8 measures, and I will try to make sure that your identity not be disclosed.

9 Madam President, I would like, for my first questions, for us to move into private  
10 session in order to avoid the identity of the witness being indicated.

11 PRESIDING JUDGE STEINER: Court officer, please.

12 (Private session at 12.24 p.m.)

13 (Redacted)

14 (Redacted)

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16 (Redacted)

17 (Redacted)

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(Private Session)

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14 (Redacted)  
15 (Open session at 12.36 p.m.)  
16 THE COURT OFFICER: We are in open session, Madam President.  
17 MS DOUZIMA LAWSON: (Interpretation)  
18 Q. Mr Witness, we are in open session and both of us should make an effort not to  
19 identify you to the public.  
20 Now, referring to the same transcript, that is transcript 275 of 26 November, page 50,  
21 lines 5 to 12, you stated that the dual role of the court was to examine the dossiers and  
22 to take into account the charges brought by the prosecutor. Is this what the court  
23 martial did when it handed down its judgments?  
24 A. Thank you. The court martial relied on the applicable texts, that is the criminal  
25 code, the civilian penal code and other texts. In Congolese law, the reports of the

1 judicial police officers, which are certified, including the reports of the prosecutor  
2 himself, are considered to be authentic until proven otherwise.  
3 If there are any contradictions, that is in relation to other statements given to the  
4 judicial police officers or to the prosecutor, or adversarial statements before the court  
5 and the arguments of the prosecutor during deliberations, I've said this before, in the  
6 face of any contradictory elements the judges while deliberating will arrive at their  
7 conclusions based on their own intimate convictions and when they vote by secret  
8 ballot that vote is based on the conviction of each of the judges and a sentence is  
9 arrived at which is then handed down.

10 Q. Thank you, Mr Witness. Let us now move on to page 49 of the same transcript,  
11 lines 10 to 17. You stated that the President of the Court hands down the verdict  
12 before the accused and the parties and then gives the floor to the accused, pointing  
13 out to them that they can lodge an appeal within the time period specified. Now,  
14 what is that time period?

15 A. In Congolese law, for cases at first instance, that time period cannot be more  
16 than 48 hours, and I pointed out here that the court martial was set up to work in  
17 sessions; that is to work continuously. The court believed that the time-limits given  
18 were quite enough for the counsel of the accused to lodge an appeal with the  
19 prosecutor and those time-limits were set out in the applicable texts.

20 Q. Mr Witness, this morning - and this is on page 15, line 11 - you testified that  
21 some of the accused roundly rejected the allegations, and also in the decision of the  
22 court martial it is stated that, after being questioned on the accusations against them,  
23 all of them denied them categorically and stated that they did not know the reasons  
24 for their indictment.

25 Still this morning, page 19, lines 9 to 22, in answer to a question from the Prosecutor

1 you stated that you did not remember any decision of the court martial that was  
2 appealed. You do not remember, or you are not aware, of any appeals that may  
3 have been lodged by convicted accused persons.

4 Mr Witness, my question to you is as follows: As far as you know, did you ever  
5 learn -- given that the time-limit for appeal is 48 hours or two days, are you aware of  
6 any appeal lodged by any one of the accused after a verdict of the court martial, given  
7 that none of the accused admitted the facts as stated in the decision?

8 A. I would like to repeat what I said a short while ago. In Congolese law, we  
9 acted on the basis of Congolese law. You had the minutes or reports provided by  
10 the judicial police officers and those documents are considered to be authoritative  
11 until proven otherwise, and any further information has to be provided by the  
12 accused. If in the course of the proceedings the accused rejects all the charges, then  
13 it becomes a contradiction of what was stated and noted in the reports of the judicial  
14 police officers who had made a solemn undertaking before the prosecutor.

15 I have also said that we worked in sessions and, in answer to a question relating to  
16 the creation of appeal courts in two districts which had to deal with the appellate  
17 proceedings, once the mission of the court martial had ended I also explained the  
18 context that prevailed afterwards. After the completion of the mission, each of the  
19 members of the court had to return to their normal duties and you are a judge, your  
20 Honour, and you know how the appellate proceedings are carried out.

21 I mentioned that there was a provision of the all-inclusive agreement, stipulated that  
22 all legal decisions taken in all the territories should be taken into account by the new  
23 judicial system. I said that I did not remember, because after the completion of the  
24 mission all the members of the court had to return to their previous places of their  
25 work, so ten years after the events I do not remember who lodged an appeal and who

1 did not. That was my answer.

2 Q. Thank you, Mr Witness. Let me move on to something else. This morning,  
3 page 11, lines 27 to 28, and page 8, line 1, the Prosecutor asked you whether, aside  
4 from the statements of the accused who denied the crimes, were there any other  
5 statements produced during those hearings. In your answer, page 12, lines 2 to 14,  
6 you stated that the investigation could have been more complete if there were  
7 complainants who testified, but there was a situation of Bangui which had just fallen  
8 and even that officer did not have the right to go and investigate in that situation,  
9 given the situation that was prevailing.

10 Now, Mr Witness, if that was the case, why did the court martial nevertheless  
11 organise those trials given that there were no investigation reports from the field itself  
12 and that there were no complainants; people who actually came to make statements  
13 in the courtroom?

14 A. Let me say that, given these cases which were quite flagrant, because in the  
15 statement of one of the plaintiffs he states that in Bangui, capital of the CAR, some  
16 belongings were retrieved and handed over to the commission in the presence of the  
17 ALC unit commander and a commander of the gendarmerie of Bangui Town. So  
18 based on which law could this officer, even in normal times, carry out an  
19 investigation in the CAR related to allegations for which those elements were accused?  
20 On the basis of which agreement and on the basis of which law?

21 That is why these acts having been committed in Bangui, there were instructions in  
22 Zongo relating to flagrant or serious crimes and you are aware, your Honour, how  
23 serious crimes are investigated from the judicial police officer directly to the Office of  
24 Public Prosecutions from where the matter is referred to the competent jurisdiction.  
25 As I have already said, in Congolese law the reports are authoritative until

1 challenged - successfully challenged - because those records are drafted by judicial  
2 police officers who have been sworn before the prosecutor. That is the legislation in  
3 the DRC.

4 PRESIDING JUDGE STEINER: Maître Douzima, if you allow me, just to make it  
5 sure that I understood what you just said, that according to Congolese law the reports  
6 made by the prosecution and the greffier are authoritative unless proven, so meaning  
7 that the evidence of the case is what the Prosecution is saying and it was certified by  
8 the officer? I did not understand that part. Could you please elaborate a little bit  
9 on that?

10 THE WITNESS: (Interpretation) Thank you. I have said that there are legal texts  
11 existing in the Democratic Republic of Congo for all the jurisdictions, both civilian  
12 and military, setting out the following: The reports of the judicial police officers,  
13 including the prosecution office, are authoritative until proven otherwise, and it is up  
14 to the accused person to provide the contrary evidence. He can say, "I do not admit  
15 this," and he can even call witnesses. That is why, in light of the law, the reports  
16 themselves constitute evidence; that is on the basis of the legislation in force.

17 PRESIDING JUDGE STEINER: I'm sorry if I insist, but in the current case if the PV,  
18 the procès-verbal, contains only the statement of the accused, is this evidence? And  
19 the statements of the accused denying, is it what you call evidence on the basis of the  
20 legislation in force?

21 THE WITNESS: (Interpretation) The legislation on the procedures may have its  
22 shortcomings, but that is what is provided for in Congolese law and that is why I'm  
23 mentioning it.

24 PRESIDING JUDGE STEINER: Maître Douzima?  
25 Judge Aluoch needs a clarification.



1 JUDGE ALUOCH: A clarification. Mr Witness, does this therefore mean that there  
2 is no need for calling witnesses at all, if I understand what you're saying?

3 THE WITNESS: (Interpretation) I did not say that there is no need to call witnesses.  
4 I said that it is incumbent upon the accused persons to provide evidence, including  
5 calling his own witnesses, to prove that "I do not accept the allegations against me.  
6 These are witnesses that can testify to that." That is what I meant.

7 JUDGE ALUOCH: So the burden is on the accused under Congolese law? It is not  
8 on the prosecution to prove that he is guilty? It is on him to prove that he is not  
9 guilty?

10 THE WITNESS: (Interpretation) That is not what I said. The burden of proof in  
11 this particular case is the PV, or procès-verbal, which has been forwarded to the  
12 prosecutor. At his own level, the prosecutor can carry out further investigations,  
13 and that is what constitutes the evidence according to Congolese legislation.  
14 Now, even after having declared or made those statements, the accused person can  
15 deny those statements and refuse to recognise them, and it is also possible for him to  
16 go as far as to call witnesses to appear before the court and assist the court to make its  
17 determination on the case, but if the witness does not do that and simply denies  
18 everything categorically, given the contradiction in the court, that is in relation to the  
19 previous investigations, then during the deliberations each one of the judges would  
20 act on the basis of his own personal conviction.

21 JUDGE ALUOCH: Thank you.

22 PRESIDING JUDGE STEINER: Just one second, Maître Douzima.  
23 Can we go into private session very briefly, please.

24 (Private session at 12.58 p.m.)

25 (Redacted)

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Page 50 redacted –Private session

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Page 51 redacted –Private session

1 (Open session at 1.04 p.m.)

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

3 MS DOUZIMA LAWSON: (Interpretation)

4 Q. Witness, to go back to the question I asked a moment ago, I asked you this  
5 because I took up the terms you had used. You said the court ruled in accordance  
6 with its intimate conviction or conviction beyond reasonable doubt. That means that  
7 the court is sovereign. This isn't a question of law.

8 Witness, you are the person who said that the investigation could have been complete.

9 That means that it wasn't complete or it could only be complete if there were  
10 plaintiffs, which means there weren't any, and you said that the officer in charge  
11 didn't have the power to go and investigate in a foreign country, that is to say in the  
12 Central African Republic, where the violence took place, and that's the reason why I  
13 asked you the question. There are shortcomings. There are lacking elements. As  
14 a sovereign court, did the court martial -- shouldn't it have asked for greater  
15 information or investigate further before coming to a decision, or ruling, such that  
16 any decision it took was based on credible evidence?

17 A. The investigative elements that the court could have undertaken, or these  
18 matters, if the situation had not degraded in the Central African Republic, that would  
19 have been the reason to set up an investigation commission which would carry out  
20 investigations, a joint investigation commission, in Bangui. And who would it  
21 investigate? Well, the theatre of operations was Bangui, the capital, and between  
22 what happened there was a chain of command.

23 Normally, this chain of command is under the supreme command of the President of  
24 the Republic, who should decide to set that up because, having called upon foreign  
25 troops to establish order and safeguard the institutions of such operations with

1 foreign armies, as is summarised in a document, there were the Central African  
2 Armed Forces who received reinforcements and among these reinforcements there  
3 were troops from the ALC who -- they couldn't work independently, but in a chain of  
4 command, certainly with a staff for co-ordination, in order to use these forces who  
5 had come by way of reinforcement for operations, for logistics and for other  
6 psychological operations, civilian protection and in order to maintain discipline. So  
7 when the powers that were in place at the time, well, there they had a major  
8 difficulty - this was it - with these gendarmerie commanders.  
9 Some of them, as was said, well, one of the suspects could have provided information.  
10 The commander of the gendarmerie, Central African gendarmerie, could have done  
11 so, because the victims could have presented themselves to complain in the normal  
12 way and they could have been identified formally, and it is this difficulty that I  
13 mentioned. But given these cases of flagrancy, the investigation commenced in  
14 Zongo against these soldiers, and these operations which were repeated on several  
15 occasions - I'm not going to mention them all here - they had consequences, and  
16 perhaps the person who was in command of that, who was well-known in Central  
17 Africa certainly, you could say, well, they are not exempt from everything, from  
18 everything that they provoked and what has been seen in Bangui.

19 Q. I note that you know that the context of this conflict, I'm not going to go over  
20 everything I've said, so I'd like to go on to the next question, which is: What are the  
21 crimes which the Central Africans complained of with regards to the MLC soldiers?

22 PRESIDING JUDGE STEINER: Sorry. Yes, Mr Witness?

23 THE WITNESS: (Interpretation) I --

24 THE INTERPRETER: Well, the witness would like --

25 THE WITNESS: (Interpretation) On the part of the court, a moment ago, having

1 mentioned different matters, I mentioned that there was a publication, The State of  
2 the World 2003, where it was reported by certain conflict specialists what I've just  
3 mentioned and the part of the representatives, well, when they say that I know that  
4 better, could I ask the Court to authorise me to leave in extenso -- to read in extenso  
5 certain passages concerning what happened in Bangui so that that not be understood  
6 that I understood that the witness understood well the crimes, if that's possible?

7 PRESIDING JUDGE STEINER: Mr Witness, I am sure that if what you are  
8 mentioning is important in order for your testimony to be well understood, the  
9 Defence will be the first one to provide the Chamber with excerpts or even the  
10 integrality of this document you are mentioning. So I don't think it's necessary that  
11 you bring documents and start reading extensively in order to prove that your  
12 knowledge, you have a broad knowledge of the situation in Central African Republic  
13 at that time. I don't know whether Mr Haynes would like to add something in that  
14 respect?

15 MR HAYNES: I'm actually not clear in my own mind what it is that the witness is  
16 asking for. So, no, I don't want to add anything.

17 PRESIDING JUDGE STEINER: I think it would be not for me to try to explain what  
18 Maître Douzima said. Maybe Maître Douzima herself, although I think I  
19 understood what she meant.

20 Maître Douzima?

21 MS DOUZIMA LAWSON: (Interpretation) Thank you, your Honour. I'd prefer  
22 to explain myself to the witness.

23 Q. Witness, I have the impression that you think I'm accusing you. No, I'm just  
24 asking you a question. If you know the answer, tell me. If you don't know, then  
25 say that you don't know. It's your explanations which make me ask me (sic) the

1 question whether you know which crimes the Central Africans were victims of and  
2 which they were accused -- what the MLC soldiers were accused of. Do you know  
3 what crimes the MLC soldiers were accused of? That's it.

4 A. Well, the witness doesn't know the crimes that the Central Africans stated that  
5 the ALC soldiers committed.

6 Q. What are the crimes for which the court martial was seized, or what crimes  
7 were referred to the court martial?

8 A. With regard to the court martial, this was the Bomengo case file, Bomengo and  
9 others. A certain number of details were given about what the judicial police  
10 officers had noted when questioning the agent with regards to the PV. It was all that.  
11 It was in flagrancy by the unit commander without there informally being a  
12 complaint which was filed against these troops which came before the court martial.  
13 A formal complaint with regards to different crimes filed in a regular way either in  
14 Zongo, or in the places where the court martial sat, I don't know of any.

15 Q. Witness, you stated that the court martial did not know of complaints against  
16 its troops. Now, in the decision of the court martial, they state that the -- they say  
17 that there is no place for harm or interest. The goods were recovered and provided  
18 back. The goods which were stolen were given back. Who were they given back  
19 to?

20 A. Well, if we remind ourselves that in the statement of one of the accused,  
21 Bomengo, he stated freely before the judicial police officer who took his statement  
22 that he had recovered certain items from soldiers without giving details and  
23 according to his statement these items were given to the commander of the  
24 gendarmerie, the Central African gendarmerie, before his commander. That's the  
25 statement before the judicial police officers with regards to Bomengo.

1 And what they were still accused of, this is something I mentioned a few moments  
2 ago, if it was possible to check including the 10,000 CFA francs and all the other items  
3 that were mentioned, was that at the same time? Well, they were given to an officer  
4 from the gendarmerie, a police officer, a judicial police officer, certainly trained, and  
5 that person -- well, these were -- all these goods were listed, all these items were listed,  
6 and they were -- all the items that were noted, those which had been received by the  
7 witness and all these items were noted by a commission, and this was no longer  
8 possible in the context of violence in Bangui.

9 Q. Witness, to the extent that it wasn't possible to have a list of goods that were  
10 stolen with proof that they were provided back to the interested parties, is it normal  
11 that the court martial can say in its decision that the stolen goods were provided to  
12 them; were given back to them?

13 A. Given back? Well, perhaps that's inappropriate, that term "restitué," but the  
14 fact that these goods were provided to the gendarmerie, to the commander of the  
15 gendarmerie, who was in Bangui, well, that's a nuance there, quite simply, because  
16 there was no contradiction with regards to what was stated by Willy Bomengo that it  
17 was given back, given back -- well, I think that there's a nuance between the words  
18 that were used in the text and it may be that which is leading to a problem of  
19 understanding.

20 PRESIDING JUDGE STEINER: Maître, sorry.

21 Mr Witness, we'll come back tomorrow to this point, but just to call your attention  
22 that at least before the officier de police judiciaire, and this is on page  
23 CAR-DEF-0002-0003, the accused, Willy Bomengo, said that he brought all goods that  
24 were allegedly pillaged or robbed in three vehicles and he delivered everything to  
25 Commander Moustapha in the presence of the chef de gendarmerie from Central



1 Africa. So as a matter of fact, the goods were delivered to Colonel Moustapha.

2 So my question is: Has at any point of the procès-verbal or the court martial Colonel  
3 Moustapha called to testify?

4 THE WITNESS: (Interpretation) No.

5 PRESIDING JUDGE STEINER: Maître Douzima, you still have time for one short  
6 question.

7 MS DOUZIMA LAWSON: (Interpretation) Yes, your Honour. That will be my  
8 last question.

9 Q. Witness, when reading the decision of the court, they talk about the fraudulent  
10 taking of certain goods, violation of orders, attempts at theft, rape, extortion.

11 Mr Witness, what is the difference that the court martial made between theft,  
12 extortion and pillaging?

13 A. If you have to classify theft as the fraudulent taking under the texts which are  
14 in force, then it's different from pillaging. Pillaging is envisaged in the military code  
15 and it is a type of large-scale pillaging involving several people, taking their goods,  
16 their property, either with violence or it's taken by men in uniform, and which is  
17 severely penalised by the penal code.

18 I think that in Congolese law the attempt and the offence itself, or the offence  
19 committed, these can be prosecuted. With extortion, the investigation of such cases  
20 of flagrancy would be made more easily if that had been possible, or if it had been  
21 possible to carry out the interviews in the places where these crimes had really been  
22 committed, which would have made it possible for the victims and for the plaintiffs  
23 to be able to seize the opportunity to make submissions because that -- you have a  
24 situation where you have the victims and the witnesses, well, they would have the  
25 possibility that when they were in Bangui they would be able to make their complaint

1 directly to the gendarmerie, Central African gendarmerie, and to see to what extent  
2 the Central African gendarmerie could investigate that and what type of co-operation  
3 there could be in the framework of these joint operations with the reinforcement of  
4 these ALC troops. This wasn't the case and the court martial in its session found  
5 itself in an impossible position as regards doing that, or to complete the whole case  
6 file under those conditions.

7 MS DOUZIMA LAWSON: (Interpretation) Witness, it was just because in the  
8 judgment of the court martial nowhere do we see mention of pillaging, whereas it's  
9 on rumours of pillaging that the court martial is seized and that's the reason why I  
10 asked that question.

11 Witness, I would like to thank you for your co-operation. I have finished.

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

13 Mr Witness, it's enough for today. We will adjourn and resume tomorrow morning  
14 being sure that your testimony will be concluded in tomorrow morning's session.

15 I thank very much the Prosecution team, the legal representatives of victims, the  
16 Defence team, Mr Jean-Pierre Bemba Gombo. I thank very much interpreters, court  
17 reporters. We will adjourn and resume tomorrow morning.

18 I ask, please, court officer to turn into closed session.

19 (Closed session at 1.31 p.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (The hearing ends in closed session at 1.31 p.m.)

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