

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0038

1 International Criminal Court

2 Trial Chamber III - Courtroom 1

3 Situation: Central African Republic

4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08

5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and

6 Judge Kuniko Ozaki

7 Trial Hearing

8 Monday, 29 November 2010

9 (The hearing starts in open session at 9.38 a.m.)

10 THE COURT USHER: All rise. The International Criminal Court is now in session.

11 Please be seated.

12 THE COURT OFFICER: Good morning, your Honours, Madam President. We are

13 in open session.

14 PRESIDING JUDGE STEINER: Good morning. Please, court officer, call the case.

15 THE COURT OFFICER: Yes, Madam President. Situation in the Central African

16 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, case

17 reference ICC-01/05-01/08.

18 PRESIDING JUDGE STEINER: Thank you very much. I would like to welcome the

19 Prosecution's team, legal representatives of victims, representatives of OPCV and

20 counsel, Defence counsel for Mr Jean-Pierre Bemba and, of course, Mr Jean-Pierre

21 Bemba himself.

22 Before we start with our tight agenda, just to inform that the Chamber has been

23 informed by the Defence that Mr Kaufman has been appointed as associate counsel to

24 the Defence team of Mr Jean-Pierre Bemba Gombo.

25 The second point, before the witness is brought into the courtroom, following from an

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0038

1 objection raised on Friday by the Prosecution at the end of the last session with regard  
2 to the manner in which the Defence was questioning Witness 38, the Chamber  
3 ordered that VWU, the Victims and Witnesses Unit, provide an updated  
4 psychological assessment on Witness 38, which it duly did.

5 The Chamber thanks VWU for its quick response and notes from the psychological  
6 assessment that the witness states he felt harassed - "harceler" in French - including by  
7 the last part of the questioning by Mr Liriss.

8 The witness is assessed as being willing and able to continue with his evidence today,  
9 but the Chamber will be paying close attention to the manner of questioning by the  
10 Defence in an effort to minimise the witness's stress and avoid deterioration in his  
11 psychological well-being.

12 Just as well, for the record, the Chamber received a few minutes ago an updated  
13 assessment by VWU, informing that the VWU had a brief meeting with the witness  
14 again this morning. He is willing to continue his testimony; however, he indicates  
15 that his feelings about what happened have not changed. So, repeating for the sake  
16 of the record that the Chamber will be paying close attention to the manner of  
17 questioning by the Defence of Witness 38, in an effort to minimise his stress and  
18 preserve his psychological well-being.

19 So now we are going very briefly into closed session in order to allow the witness to  
20 get into the courtroom.

21 Madam Prosecutor.

22 MS BENSOUA: Thank you, Madam President. With regard to the appointment  
23 of Mr Nick Kaufman as associate counsel, as the Chamber is aware, the appearance of  
24 Mr Kaufman in this case has been a subject of litigation and the Prosecution would  
25 wish to be given the opportunity to make submissions regarding Mr Kaufman's

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP-PPPP-0038

1 appearance as associate counsel, since his status has now changed from legal  
2 consultant to associate counsel.

3 For the record of this case and the fair trial of these proceedings, the Prosecution  
4 would wish to have an opportunity to make submissions regarding the change of his  
5 status in this case.

6 PRESIDING JUDGE STEINER: Madam Bensouda, the Chamber is aware of the  
7 challenge made before the previous -- the Chamber in its previous composition in  
8 relation to Mr Kaufman's appointment, and the Chamber on its current composition  
9 is aware of the decision issued on that challenge, it's filing 769. The Chamber notes  
10 that paragraph 46 apparently solves any problem that may have appeared to be on  
11 the issue of Mr Kaufman having now been appointed as associate counsel.

12 Paragraph 46 of that decision clearly states that, and here I quote, "Even if the  
13 Chamber had decided that the appointment of Mr Kaufman is directly covered by the  
14 Code of Conduct because his name is on the Registrar's list of counsel, considering  
15 Article 12(1)(b) of the Code of Conduct, it would have concluded that there are no  
16 persuasive indications that he was involved in, or privy to, confidential information  
17 as a staff member of the Court relating to this case, for the reasons set out above."

18 So bear in mind this decision, paragraph 46 of Decision 769. Of course, if the  
19 Prosecution still wishes to make a submission, please, submission be in writing and  
20 the Chamber will decide upon that.

21 MS BENSOU DA: Thank you, Madam President, we will do that.

22 PRESIDING JUDGE STEINER: Please, court officer, let's go to -- briefly to closed  
23 session for the witness to get into the courtroom.

24 (Closed session at 9.46 a.m.) \* Reclassified as Open session

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

Trial Hearing

(Closed Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 (The witness enters the courtroom)

2 PRESIDING JUDGE STEINER: Good morning, Witness.

3 WITNESS: CAR-OTP-PPPP-0038 (On former oath)

4 (The witness speaks French)

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

6 PRESIDING JUDGE STEINER: I was informed that you had a good weekend; is that  
7 correct?

8 THE WITNESS: (Interpretation) Absolutely.

9 PRESIDING JUDGE STEINER: So you are welcomed back to this courtroom. We  
10 hope that before the break we are going to finish with your questioning but, in any  
11 case, the Chamber would like to remind you that you are still under oath.

12 So we are here for the last part, as far as I understood, of Defence questioning. So,  
13 Mr Liriss. Maître Liriss, you have the floor, please. Sorry, Maître Liriss, could we  
14 go into open session?

15 MR LIRISS: (Interpretation) No, I need two minutes.

16 PRESIDING JUDGE STEINER: So we can go maybe into private session.

17 MR LIRISS: (Interpretation) Private session.

18 PRESIDING JUDGE STEINER: So, court officer, please, we go into open and then to  
19 private session. I'm informed that we can go straight into private session.

20 (Private session at 9.49 a.m.) \* Reclassified as Open session

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

22 PRESIDING JUDGE STEINER: Maître Liriss.

23 MR LIRISS: (Interpretation) Your Honour, your Honours, first of all, I would like  
24 to reassure the witness, and if I say (Redacted) if I use this word (Redacted), he will  
25 understand why. As for his impression that he was being harassed, I will make an

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 effort on this occasion to reassure him because he is here to assist justice, and he  
2 places himself at risks. It is our duty to assist him, as individuals who are working  
3 for the sake of justice. I asked for private session to obtain a confirmation of  
4 something.

5 QUESTIONED BY MR LIRISS: (Interpretation)

6 Q. On 23 of November, at that hearing, on page 11 in the French transcript, lines 6  
7 and 2, and page 12, lines 6 to 8, and at the hearing held on the 25th, page 13, lines 14  
8 to 23, and page 14, line 1 to 7, the witness stated that at the time of the events, (Redacted)  
9 (Redacted)  
10 (Redacted) And at the time (Redacted) (phon).

11 A. (Redacted)

12 Q. (Redacted) What I would like to know is whether (Redacted) from the  
13 village (Redacted) was also part of the group that (Redacted) was the leader of.

14 A. Yes. And (Redacted) was also considered to be the person who was to be (Redacted)  
15 (Redacted) deputy in terms of seniority.

16 Q. Thank you. Madam, to avoid going into private session, could we perhaps  
17 refer to (Redacted) as 040 and (Redacted), because the witness said that he was a  
18 gentleman officer, couldn't we call him, or refer to him as the gentleman officer, and  
19 (Redacted), who was described as being very cruel, we could say the cruel one,  
20 so a cruel officer for this person and this would avoid the necessity for private session,  
21 unless I require private session, because we want to talk about the individual himself  
22 or his family, the witness himself and his family. I believe this should be done very  
23 confidentially.

24 PRESIDING JUDGE STEINER: Prosecution, any objection to the proposal?

25 MS BENSOUDA: No objection.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 PRESIDING JUDGE STEINER: So in order to make it clear for the record and, yes,  
2 Madam Bensouda.

3 MS BENSOUA: Sorry, Madam President, I'm being advised by my team that so far  
4 (Redacted) has not been referred to as Witness 40, and perhaps if we start now it will  
5 be known that he is going to be a witness in this case, and that he is Witness 40. So  
6 perhaps that may not be very helpful.

7 MR LIRISS: (Interpretation) I agree. Perhaps the Defence could suggest a  
8 pseudonym. Given the situation, could the Defence -- or could the Prosecution  
9 perhaps suggest a pseudonym? "The big boss" perhaps?

10 PRESIDING JUDGE STEINER: Prosecution?

11 MS BENSOUA: Madam President, if we may just consult for a few seconds  
12 because the Prosecution does not regard (Redacted) as the big boss.

13 Thank you, Madam President. Madam President, the Prosecution is suggesting that  
14 since already we have referred to (Redacted) in public as (Redacted) we are  
15 suggesting that we just continue to use his name as (Redacted), as long as we avoid  
16 using the name to -- for the witness to be identified as having met or having  
17 approached him in that capacity. So I think if we continue to use his name carefully,  
18 the Prosecution does not object to that.

19 PRESIDING JUDGE STEINER: Maître Liriss, I was exactly going to say that the risk  
20 that we have in doing your questioning in open session is, if you say that (Redacted)  
21 (Redacted) an officier méchant, or (Redacted)  
22 the officier méchant, the problem is not the identification of the officier méchant, but  
23 the fact that (Redacted) So I think it  
24 would be better if you tried to put your questioning in a manner that does not  
25 identify the witness and, if need be, we go into private session.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 MR LIRISS: (Interpretation) Very well, your Honour. For the moment it's not  
2 necessary to remain in private session.

3 PRESIDING JUDGE STEINER: Please, let's go into public session then.

4 (Open session at 9.58 a.m.)

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

6 MR LIRISS: (Interpretation)

7 Q. Witness, do you know the neighbourhood of Bakongo in Bangui, as well as the  
8 neighbourhood known as Akwonga (phon)?

9 A. Lakwonga (phon), yes.

10 Q. Yes. What distinguishes these two neighbourhoods? Could you tell us how  
11 they can be distinguished from a linguistic point of view, Witness.

12 A. I can't do that.

13 Q. Thank you, you can't. And now at page 14, line 15, from the hearing held on  
14 23 November, you said that Begoua was 12 kilometres after the northern limits of the  
15 capital. How are we to understand this? Is it 12 kilometres from the centre, or 12  
16 kilometres after the last limit?

17 A. It's 12 kilometres from the centre that we call Point Zero. Point Zero.

18 PRESIDING JUDGE STEINER: Just to remind you first to give a pause after each  
19 sentence and, second, to turn off your microphone while we wait for the witness's  
20 answer.

21 And, Witness, please, although Mr Liriss is questioning you in French, you need to  
22 give a pause before answering. Otherwise, the interpreters cannot follow.

23 THE INTERPRETER: Many thanks from the interpreters.

24 PRESIDING JUDGE STEINER: Thank you very much.

25 MR LIRISS: (Interpretation)

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 Q. Witness, on the basis of the explanation you gave us, could you -- I know it's  
2 difficult for you to remember figures, but could you estimate the distance between the  
3 naval base of Bangui and PK12? If you can't estimate that, that's not a problem.

4 A. I can't.

5 Q. Let us say is the distance more than Point Zero, or shorter?

6 A. Well, since it's along the river, it's a further distance in comparison with Point  
7 Zero.

8 Q. Page 16 of the hearing of 23 November, lines 23 and 24, you stated: "I would  
9 like to know whether you can confirm that Chief of State Patassé was the one who  
10 called upon the MLC to deal with the rebellion fomented by Mr Bozizé from the  
11 boundary with Chad?" Answer: "I confirm that."

12 A. I confirm that.

13 Q. Could you confirm that that was indeed the goal of the MLC's intervention?

14 A. I do confirm that.

15 Q. Thank you. You also acknowledge, in relation to these events, that an  
16 inter-African force was present, CEN-SAD, and there were also Libyan forces with the  
17 same objective; that is to say the defence of the legitimate government against the  
18 rebels. That was your testimony on 26 November, page 5, lines 1 to 28.

19 A. I believe I said on that day that there were several events going on in the  
20 country and I really can't exactly situate the time when CEN-SAD arrived, whether it  
21 was to -- in relation to Bozizé's rebellion, or the events of 28 May. The former  
22 President --

23 THE INTERPRETER: Inaudible.

24 THE WITNESS: (Interpretation) It may seem -- I really can't quite say. Perhaps I  
25 would have to go back to the history or, if you can provide me with -- shed some light



Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 on that, I could confirm and tell the Court more. President Kolingba.

2 MR LIRISS: (Interpretation)

3 Q. I see. The most important thing for me is to gain confirmation in Bangui of  
4 that inter-African force after the disturbances, and later we will determine which  
5 disturbances we are talking about. Now, Witness, on the hearing of the 23rd, page  
6 17, line 13, you stated something along the lines of this and, if it's not the case, please  
7 correct me. "After" -- no, "After four or five days of fighting we started to hear that  
8 President Patassé had called upon Jean-Pierre Bemba's rebels, so the day when  
9 Bozizé's rebels withdrew from PK12, the same evening again, the soldiers arrived,"  
10 but you said the same thing during your hearing -- correction, the statement you gave  
11 in 2008, page 0231. You said almost the same thing, but there was some  
12 misunderstanding that I'd like to clear up, "When the rebels entered Bangui there  
13 were four or five days of fighting, and it was said that Bemba's rebels had arrived and  
14 they were already at the port." Now, when you talk about the five days, was that 30  
15 October, after five days of fighting? Is that when the MLC entered Bangui at the  
16 river port; correct?

17 A. That is pretty much it.

18 Q. So 30 October, that is the date we will assume. Who was the fighting with  
19 during that time before the MLC came upon the scene between 25 October and  
20 30 October?

21 A. There was fighting between the Central African army and Bozizé's rebels.

22 Q. Witness, could you please give us the names of the various units involved, if  
23 you could; the various units of the Central African army who were fighting?

24 A. Before the arrival of Mr Bozizé, it was the entire army. All the various units  
25 were fighting, but on the front lines there were more soldiers from the presidential

1 guard. They were on the front lines. They were the ones who were much more  
2 visible, but other than that it was the entire army that was mobilised for this fighting;  
3 the army forces that had remained loyal to Bozizé.

4 Q. Now, when you say the "presidential guard," you're mentioning the USP?

5 A. Yes.

6 Q. The other Central African forces, you're thinking of the FACA?

7 A. Yes.

8 Q. But the Libyans as well, they fought as well?

9 A. The Libyans? The Libyans never got to PK12.

10 Q. No, I'm speaking of the fighting that occurred to gain control of Bangui, to take  
11 power in Bangui, the efforts to conquer the presidential palace. I'm not talking about  
12 PK12. I'm talking about the fighting that occurred in Bangui to take power.

13 A. I was not at the front, sir, so I'm not in a position to know about that.

14 Q. You weren't aware of the bombing - the shelling - done by the Libyan army  
15 against the rebels?

16 A. Well, it's true that -- I would like to tell you that the information in our country  
17 really was based on rumours. There was bombing by the Libyans, but to go and  
18 actually see and to manoeuvre, as -- I saw things in PK12, but in this case I did not.

19 Q. In addition to the forces that you mentioned, did you hear people talk about the  
20 back-up troops of a certain Barril, a certain French mercenary?

21 A. There was talk of that in the newspapers. Indeed, yes, the newspapers did  
22 speak of this gentleman, Mr Barril. I never saw him. I was telling you -- I said in  
23 my statement that I really am not involved in politics, if you wish, or things like that.  
24 So there are some things that are beyond me. I read the newspapers. I am aware of  
25 things. I know about various events, various officers, this Mr Barril, but that's all.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 Q. Thank you. The most important thing for me is to have -- to determine  
2 whether you did have some opportunity to hear about these things. I'm not asking  
3 you to answer technical questions about the army. Now, you weren't in Bangui. I  
4 thank you.

5 Now, there were also the MLPC militia as well. Do you know those people?

6 A. The MLPC? In any event, it's just now that I've learned about this militia,  
7 honestly. I don't know -- you speak of a militia. Perhaps, according to your sources  
8 of information, there might be some kind of definition. Perhaps if you -- you tell me  
9 that might help me remember such a militia, but I heard about militia in other  
10 countries. I really don't know. It is possible that there might have been some  
11 militia.

12 Q. I will rephrase my question. The MLPC, as you know, is the name of the  
13 party --

14 A. Yes.

15 Q. -- of President Patassé?

16 A. Yes.

17 Q. Do you know -- now, in some neighbourhoods in Bangui, or zones of Bangui,  
18 there were young people who did not have much to do and they became members of  
19 the MLPC, and they had automatic weapons and they had various names, such as  
20 Sarawi or Zakawa (phon), and they were organised by neighbourhood and they took  
21 up arms against the rebels. This is what I mean by militia.

22 A. Exactly. I believe there was a number of militia. Balawa, Karako, yes. We  
23 did hear about these various militia groups, yes.

24 Q. And the Miskine guard? For your information, the leader of the presidential  
25 guard was Byakaye (phon), not Miskine.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 A. Yes.

2 Q. So Miskine also had his own -- how should I term this? His own army, his  
3 own unit, as you mentioned already, but just to correct that mistake. I'm speaking of  
4 the chief of the presidential guard. I realise that there were an enormous number of  
5 troops on the field before the MLC arrived in that particular case. Do you still  
6 maintain that the Central African army was inexistent?

7 A. Sir, if you could -- I would like to confirm my version of the events. All these  
8 forces that you mentioned, they fought for -- during other events, yes, but in this  
9 particular case, in relation to the events that bring us here today, I confirm my version  
10 of the events, for the mere reason that I never saw those forces that you have  
11 mentioned, sir, and above all not at PK12.

12 Q. I beg your pardon, Witness. I'm talking about the fighting in Bangui before the  
13 arrival of the MLC, and I was mentioning these various forces. That is why I'm  
14 asking you the question. Do you continue to maintain that the army was inexistent;  
15 whereas, even before the MLC arrived, Bozizé was unable to take control of the  
16 presidential palace? That is why I'm asking you the question. Do you maintain  
17 that the Central African army, the Central African forces, no matter what name you  
18 might put to them, was in existence?

19 A. I maintain my version of the facts, sir.

20 Q. Now, these forces that resisted for five days, do you have any idea what their  
21 fate was, did they join the rebels or did they continue fighting?

22 A. No idea. What I do know, if Mr Patassé called upon Bemba's rebels, it was  
23 because somewhere with all these forces that you mentioned things weren't working  
24 any longer, and I believe that if -- in my humble opinion, if Bemba's rebels had not  
25 arrived, Bozizé would have -- Bangui would have fallen. So try to understand the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 army had become inexistent, inoperative. Patassé, there was no -- Patassé no longer  
2 had confidence in that army. They could do nothing for him.

3 Q. I beg your pardon. Now, could you tell us, did the MLC substitute itself for  
4 the Central African army that resisted for five days against a rebellion coming from  
5 Chad that was not expected?

6 A. The reason is simple: If the Central African or all the forces you mentioned  
7 had the capacity to fight the rebels, I think that President Patassé would not have  
8 called upon the rebels. If he called upon the rebels, I believe in my humble opinion  
9 that he would have -- or there must have been some kind of idea or hint that if they  
10 continued with those forces the capital would fall. So he had to call upon another  
11 force to drive out Bozizé's rebels from the country. That is how I understand how  
12 the events unfolded at that time.

13 Q. Could we agree that the MLC forces came to back up or to provide assistance to  
14 the troops already there?

15 A. Naturally. There was already fighting. If one party was growing weak, you  
16 would have to bring in reinforcements.

17 Q. Thank you. I don't think one can say that. One can only say that -- that the  
18 Central African army did -- sort of disappeared all of a sudden. I thank you for your  
19 answer.

20 PRESIDING JUDGE STEINER: Slow down a little bit, please.

21 MR LIRISS: (Interpretation) Certainly, your Honour.

22 Q. Let us move on to another topic, the stationing at PK12 of the MLC contingent,  
23 on 23 November, page 44, line 11.

24 After sketching the perimeter that had been drawn around the MLC -- correction, had  
25 been assigned to the MLC, you said not necessarily in the affirmative that it was not

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 supposed to go beyond one square kilometre or it couldn't have been more than one  
2 square kilometre. You were not affirmative, but you said approximately it would  
3 not have been more than one square kilometre; is that correct?

4 A. Yes.

5 PRESIDING JUDGE STEINER: Could you please repeat your answer.

6 THE WITNESS: (Interpretation) I answered in the affirmative.

7 MR LIRISS: (Interpretation)

8 Q. On 25 November, page 9, line 3, you said that for a civilian to enter that trench,  
9 because you see the soldiers had dug trenches, that meant death. If one went into  
10 the trenches, it meant death. You added that the population could not move about,  
11 they could not move about freely under such circumstances. That was at the same  
12 hearing, page 54, line 6 to 10.

13 You stated, furthermore, that the vast majority of the population had left the locality  
14 with the exception - and I will cite you directly - the rare courageous few and a  
15 number of old people. That was at the same hearing, page 53, lines 17 to 22. Then  
16 you maintained that rapes occurred on an average of six or seven cases per day, rapes  
17 of girls who might have ventured into that camp; is that correct?

18 A. Yes, entirely.

19 Q. I am looking for additional information, if you could help me shed some light  
20 on this. Why did these girls, knowing the danger, venture into these trenches which  
21 they knew were occupied by people that you yourself described as animals?

22 A. First of all, I want to shed some light on this. I did not say that the girls were  
23 raped in the trenches, open trenches, by the school. When I said that one could go  
24 freely, it was in -- it was on the main roads, but on either side there were soldiers of  
25 Mr Bemba. I was saying, and you reminded us of this, that it was not more than one

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 square kilometre, but you must realise the size of Begoua. There were people at the  
2 weighbridge. There were people further away, who were really not aware of what  
3 was going on here, and naively they would fall into the trap. So those were the kind  
4 of people I was talking about.

5 I said in my statement that there were some neighbourhoods that had not been  
6 affected, not like our neighbourhood here, but when the military police were moved  
7 about it was an opportunity for the militia to go a little bit deeper into the territory.  
8 I think you'll realise that around -- around the headquarters periphery, the people  
9 were more war-hardened. They were more prepared. But people who were  
10 further away, could not. They had an unpleasant surprise when they would venture,  
11 particularly if there was a bit of a lull. There was no gunfire. They might have to  
12 go and see someone; they might have to move about. So some people were looking  
13 for things to eat; they had to go and look for something to eat, find something to eat.  
14 So these unfortunate events occurred.

15 Q. I thank you. But could I remind you that you said that the Banyamulengue  
16 were beasts, were animals, and their nature was known to everyone. The  
17 newspapers spoke of these events, the radio stations, everyone was talking about the  
18 daily rapes.

19 A. Sir, the newspapers were talking about that, yes, but only educated people  
20 could read the newspaper. The radio talked about it, but not everyone had radios.  
21 I believe I told the Court that at that time people couldn't even turn on their radio set;  
22 otherwise, it meant you would probably endure some abuse. You would be  
23 mistreated.

24 Q. I understand. However, you told the Prosecution - and the Prosecutor was  
25 surprised by the carelessness -- but in any event, did these girls come from

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 somewhere else. And you answered saying, and I will give the reference, I will give  
2 the reference, you stated that they were not girls from elsewhere, nor were they girls  
3 who had fled, but rather they were girls who had remained, who were aware of the  
4 danger, or the very few who had come to Bangui to see their relatives. And I will  
5 add the word, knowing the answer, that's what you said. You said they were the  
6 only girls, the local girls, except for the few who did come.

7 That is why my question is: How can you explain this phenomenon? These girls  
8 who on a daily basis, six, seven, eight, nine who knew the dangers, who were from  
9 the area, and you added -- you said it was in the shadows. It was at nighttime.  
10 That's when they would go and throw themselves into the mouth of the wolf, to put it  
11 that way.

12 A. I'm not contradicting myself. A short while ago I just described to you how  
13 everything happened, who stayed back and how those people got about their  
14 business. Maybe you do not know Begoua. Today, Begoua is one of the largest  
15 urban centres in Bangui, so Begoua is not only the headquarters that was occupied by  
16 the MLC rebels; it extends from PK10 to PK15. That is all the cattle markets; Damara  
17 1, Damara 2, Damara 3, Yambi 1, Yambi 2, Yambi 3, Begoua 1, Begoua 2, Begoua 3.  
18 Ngola 1, 2 and 3. All that is Begoua. The last time I was not able to give you an  
19 approximate number of the inhabitants of Begoua, but if you have to take into  
20 consideration of all that area, you would have at least 30,000 inhabitants, counsel.  
21 And if you look at the layout of the neighbourhoods, it is probably that the person  
22 from Ngola 2 or Damara will not know what is happening in Begoua centre because  
23 there are shortcuts that certain people use, counsel.

24 Q. Thank you, Mr Witness. But, to be frank with you, I find it hard to understand  
25 that an area of one square kilometre in Begoua was subjected to violence. People



Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 fired guns, houses were broken into and the shops were looted. People fled around  
2 the area but others nearby were not aware of it. So I find it hard to understand.

3 PRESIDING JUDGE STEINER: Maître Liriss, just one more interruption. We are  
4 half-an-hour from the morning break and I hope you remember that we -- the  
5 Chamber wishes to finish the questioning as soon as possible. So, thanks.

6 MR LIRISS: (Interpretation) I believe we'll be able to conclude, Madam President.

7 Q. In relation to that fact, Mr Witness, this is what you say: When it started  
8 getting dark, there were orgies being organised around the Begoua school; is that  
9 correct?

10 A. Yes. When I talk about orgies, if you want to describe or define it, that is when  
11 people meet to carry out certain activities, but that is when they wish to do so. But I  
12 use that word to refer to gang rapes.

13 Q. You even added something. You said that there was voyeurism, and you  
14 yourself even went to have a look and you say that there was sexual intercourse  
15 taking place.

16 A. Yes, indeed, sexual intercourse without the consent of the female partners.

17 Q. There were voyeurs. You were there but we have not been told whether those  
18 women were crying out for help or not. But what I would like to know is whether  
19 we cannot suggest to the Judges a single version of the facts instead of asking them to  
20 analyse two different versions. You are convinced that by the word "orgy" you are  
21 referring to gang rapes. I am convinced that by orgies, I understand that these are  
22 sexual activities amongst consenting individuals. I think the Judges will make their  
23 determination.

24 A. I prefer that we keep the word or expression "gang rape".

25 Q. Let me move on to something else. What was the FACA unit that occupied the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 RDOT after the departure of Bozizé's forces from PK12?

2 A. The RDOT has always been a regiment responsible for defending the territory.

3 Are you talking about before or after Bozizé's departure? I believe that those were  
4 the same soldiers that returned there because, to date, the RDOT has maintained its  
5 base.

6 Q. You stated in your previous testimony, page -- or, rather, on the 25th, page 56,  
7 lines 7 to 9, that the RDOT is actually a part of PK12. Now, do you stand by your  
8 statement that only the MLC was based in PK12?

9 A. Please, I had given explanations. I said that the RDOT was one metre away  
10 from the barrier; that is one metre away from the headquarters of Mr Bemba's militia  
11 group. So I believe that the RDOT was not geographically located in PK12; it was in  
12 PK11, one kilometre away from the MLC base.

13 Q. I would like to ask the Chamber to verify with me what the witness said on the  
14 25th, page 56, lines 7 to 9. He said that it could be considered that the RDOT was in  
15 PK12.

16 A. Please, counsel, counsel, it is not a question. I'm speaking to the Chamber.  
17 Let me explain. When I was giving my explanation, it is because on the other side  
18 they were saying that PK11 and PK12 are the same things because in Bangui, people  
19 consider the entire area as PK12, and that is why I agreed, but I had started by saying  
20 that RDOT was one kilometre away, far away from the base. I'm sorry that you tried  
21 to set this trap for me. It is not honest.

22 Q. In fact, it is not a trap. I believe I was just reading what was written. Did you  
23 observe the Bangui battle, or another battle?

24 A. No.

25 Q. So why do you say that the FACA and the M --

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 PRESIDING JUDGE STEINER: Sorry, Witness, you have to wait before giving your  
2 answer.

3 THE WITNESS: (Interpretation) I'm sorry.

4 PRESIDING JUDGE STEINER: We are just waiting for the rest of the -- Maître,  
5 Madam Bensouda?

6 MS BENSOUA: Thank you, Madam President. Madam President, I believe my  
7 learned colleague is misquoting the evidence. If you look at the transcript that my  
8 learned friend is referring to, lines 7 to 9, it talks about one kilometre from the barrier.  
9 He says, "Yes, it is PK11 in principle now, the RDOT is in fact at PK11, so it's one  
10 kilometre from the barrier. Yes, if you like, it would be said that at PK12" for the  
11 sake of the testimony. But my learned friend keeps referring to one metre.

12 PRESIDING JUDGE STEINER: Thank you for the clarification, Madam Bensouda.

13 MR LIRISS: (Interpretation) I did understand that it was indeed one kilometre.

14 Q. Now, if your statement is limited to the area of PK12, to the extent that the  
15 FACA never operated in tandem with the MLC, wouldn't this be contradictory to  
16 your statement of April 2004 to the Prosecutor, page 259, first paragraph? Except the  
17 Bench directs that the document be presented to the witness. It is confidential.

18 Witness, you can quote. If you have the document with you, you can read it out.

19 MR LIRISS: (Interpretation) I do not know the degree of confidentiality of this  
20 page, but it is his statement so I believe it is confidential. If I have to read, there has  
21 to be private session.

22 THE COURT OFFICER: If I may, Madam President, this is document which is  
23 referenced CAR-OTP-0010-0221 and it's classified for the time being as confidential.

24 PRESIDING JUDGE STEINER: Maître Liriss, the page you mentioned can be shown  
25 to the witness but not to the public, since it is confidential. And depending on the

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 question you are going to put has to be in private session.

2 MR LIRISS: (Interpretation) Agreed. Will the time used for the closed session be  
3 included in the time allocated to me?

4 PRESIDING JUDGE STEINER: Doesn't matter whether it's in closed or private or  
5 open session, Maître.

6 (Private session at 10.44 a.m.) \* Reclassified as Open session

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

8 PRESIDING JUDGE STEINER: Maître Liriss, you have the floor.

9 MR LIRISS: (Interpretation)

10 Q. If the document is visible, I can read it out to you: "Did Moustapha have a  
11 leader here in the Republic of Central Africa?" This is page 259. Answer: "No, I  
12 do not know. Maybe a commander, or chief. Since he collaborated with the  
13 Central African army, he could only collaborate, he could only have collaborators,  
14 because he was a senior ranking officer; a colonel. He had to have collaborators,  
15 because these were officers from our country with whom he worked together."

16 A. Can I answer your question, Counsel?

17 Q. My question was to know whether these people could have been collaborating,  
18 or operating together, at PK12. Your answer was, "No," and I have just read out a  
19 document to you in which you had stated that they worked together. That is all.

20 A. No, counsel, let me clarify.

21 MR LIRISS: (Interpretation) Madam President, I really do not want to have an  
22 argument. I am happy with my answer but, if he wants to answer to something,  
23 then it is up to the Bench to decide. I simply wanted to move on to the next  
24 question.

25 PRESIDING JUDGE STEINER: As a matter of fact, I don't see whether you have put

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 a question. I don't see any question. You just read part of the statement. You  
2 want the witness to confirm whether it confirms what he said in his statement?

3 MR LIRISS: (Interpretation) Yes. Yes, can he confirm that, please?

4 THE WITNESS: (Interpretation) Yes, counsel, I do not know which day it was  
5 again, but I explained clearly. This is what I say: An army cannot leave one  
6 country and come to another one without any contact between the officers. I wanted  
7 to say that, as Chief of Staff, Moustapha could only collaborate with the leaders of our  
8 country's army, but to say that the army had carried out joint operations on the field, I  
9 would say honestly I never saw them operating together. It was in relation to the  
10 strategy and I believe I said that in front of this august Court.

11 MR LIRISS: (Interpretation) Madam President, what is important for me is that it  
12 should be acknowledged that the high-ranking officers of the two armies were  
13 working to get together. That is what we refer to as operating together. It is not  
14 necessarily the troops, and in fact an army before everything else is the general staff,  
15 or état major.

16 Now, regarding the child soldiers, in the hearing of 3 November, page 48, lines 10 to  
17 14, and then page 49, line 28 -- I'm sorry, your Honour, I do not know how to  
18 reconcile the necessity to speak slowly and to also conclude my cross-examination. I  
19 was talking about page 48, hearing of 3 November, lines 10 to 14. In fact, we are still  
20 in closed session. I no longer need it.

21 PRESIDING JUDGE STEINER: Court officer, please, we can go into open session  
22 but, please, the image must be taken from the screens.

23 (Open session at 10.50 a.m.)

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

25 MR LIRISS: (Interpretation) Madam President, I would like to go on to the child

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 soldiers.

2 Q. In the hearing of 23 November, page 48, lines 10 to 14 and page 49, line 28, as  
3 well as page 50, lines 1 to 4, you testified as follows: That you saw a small boy of not  
4 older than 15 years operating a DCA, as well as another child whose gun barrel was  
5 touching on the ground and that it was pitiful because he was not have been older  
6 than 14. My question is as follows: From what distance did you see them?

7 A. The first time, the one who had a weapon slung over his shoulder, that is when  
8 they were coming in. On the evening that they came in, I said that they were in  
9 single file; that is when I saw him. The second who was sitting on the weapon that  
10 you have mentioned, that is the DCA, (Redacted)

11 (Redacted) I apologise, this was another mistake. (Redacted)

12 (Redacted) that I saw him seated in a DCA. It is a contraption with a seat. An  
13 army expert can confirm to you what I'm describing.

14 Q. I do not dispute the fact that you saw them. I am asking about the distances.  
15 You saw the first one in the evening?

16 A. I believe the distance would be 15 to 20 metres; that is all.

17 Q. And the second?

18 A. (Redacted), there was the weighbridge. In any case, on your -- (Redacted)

19 (Redacted) they were at the weighbridge and I saw them, and when (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Thank you. Did you speak with them?

23 A. No, I had no reason to speak with them.

24 Q. Thank you. So how were you able to estimate their age?

25 A. There is what we call in the municipality apparent age brackets, who cannot see

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 a child and try to guess his age? Even I myself, even if I had not told you how old I  
2 was, you would be able to estimate my age. This is something that it is intellectually  
3 possible, counsel.

4 Q. If I understand you well, this was a personal evaluation of yours? It was not  
5 clear that it was a child soldier. This is simply your personal point of view?

6 A. Thank you.

7 Q. We are going to move faster. Hearing of 23 November, page 50, line 9. You  
8 stated - and that is important for us - that the MLC soldiers were permanently in  
9 uniform; is that correct?

10 A. Yes.

11 Q. Most of them, or the large majority of them, were wearing green berets like the  
12 soldiers of the presidential guard?

13 A. Yes, indeed.

14 Q. The identification of victims and assailants. During the hearing of  
15 24 November, page 14, lines 21 to 23, and page 46, lines 4 to 6, you stated on two  
16 occasions that to your knowledge only women were raped; is that correct?

17 A. Correct.

18 Q. On 24 November, page 28, lines 7 and 8, in answer to the Prosecutor's question  
19 you stated that the victims could identify the MLC because of their beastly nature and  
20 cruelty, which is contrary to the nature of Central Africans; is that correct?

21 A. Correct.

22 Q. Do those criteria of identification seem relevant to you?

23 A. Yes, because I experienced the events. Those criteria of identification appear to  
24 me to be relevant. You forgot to mention that I also mentioned how they were  
25 dressed. They had the uniforms and the gardening boots and so on and so forth.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 Regarding the behaviour and the character of Mr Bemba's men, I believe that this was  
2 a very relevant identification criterion.

3 Q. Very well. So, how is it possible to understand the rapes, the setting of houses  
4 on fire, as well as the murders that are taking place almost every day for the past 10 to  
5 15 years now in the Central African Republic? Are we to say that these are  
6 also -- this is also beastly behaviour? I do not need an answer on that.

7 In the same vein, what do you think about the systemic looting of Bangui by its  
8 own --

9 PRESIDING JUDGE STEINER: Maître, could you please explain how relevant is this  
10 question for the case at hand; the evaluation of what is going on today in Bangui, or in  
11 the Central African Republic?

12 MR LIRISS: (Interpretation) Yes, indeed. What I'm stating is that the criterion of  
13 beastliness, or brutality, of a people is not relevant to determine who is the aggressor.  
14 On the other hand - and that is my third question - he could have said that the  
15 assailants could be identified because they were the only ones on the field. That is a  
16 criterion that seems to be more relevant to me.

17 MS BENSOU DA: Madam President, indeed the Prosecution has been patient with  
18 Mr Liriss' closing arguments in posing a question. I don't think that these are  
19 arguments that are relevant now, and I am requesting the Court that this last one  
20 particularly be expunged from the record as being relevant. We are not  
21 charging -- the charges do not -- the period, the temporal period, of the charges do not  
22 cover up to today, 15 years. It is just between 2002 to 2003. So this argument, these  
23 closing remarks if I may call it, is irrelevant at this point, and I'm kindly requesting  
24 that the Court expunges this from the record.

25 PRESIDING JUDGE STEINER: I don't think we need to go to a point to expunge



Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 from the record, but I fully agree with Madam Prosecutor that this looks more of final  
2 observations from the Defence than properly a question to the witness, and  
3 reminding the Defence that we have two or three more minutes, so the Defence  
4 should use these two or three minutes with wisdom.

5 MR LIRISS: (Interpretation)

6 Q. During the hearing of the 24th, page 50, Mr Witness, you said that the MLC  
7 officers were fully involved in the organisation of rapes and theft; is that correct?

8 A. Yes, because --

9 Q. You said, "yes." That is enough. I would like to proceed. Were you  
10 personally a witness?

11 A. I can say that they were fully involved because I informed the people that I  
12 contacted, but they never reacted, the rapes and theft never stopped.

13 Q. You informed them about what you had been told, but did you personally  
14 witness MLC officers as being fully involved in rapes and theft?

15 A. Yes, I can testify to that.

16 Q. Can you give me an example?

17 A. I can give you the case of Mr Mapao. He was living in the house that was full  
18 of property looted from the population, property that had been stolen. How can you  
19 explain that an officer who had not agreed with his men to steal would not have  
20 allowed that property to be stored in that house? So that makes it possible for me to  
21 confirm all what happened in Begoua during that time.

22 Q. The Defence agrees with you that there were items stored there, and in the  
23 case -- in the presentation of our case, we are going to explain why those things were  
24 there.

25 Now, regarding the rapes.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP -0038

1 A. (Redacted)

2 they were aware of that. And if the rapes did not stop after we expressed our  
3 grievances, that means that they were aware that something was happening and they  
4 didn't do anything to put an end to it. This means tacit complicity.

5 Q. I'm sorry, but you said that you can personally testify to -- or about cases of  
6 rapes, murders or theft involving an officer, not that you had informed them. I  
7 asked you whether you can personally testify to that, and you said, "yes".

8 A. Counsel, I stand by the statement that I gave, as well as the transcript of my  
9 testimony during this trial.

10 Q. In that case, let me refer to your statement to the Prosecutor, according to which  
11 you said you could not personally testify to any crime. Now, if these officers were  
12 fully involved in the organisation, how can you explain the reaction (Redacted)  
13 (Redacted) and he was surprised about  
14 why they had done that? I can give you three or four cases and you will answer  
15 once and for all.

16 A. No, I prefer to answer on a case-by-case basis. Counsel, you understand the  
17 principle of complicity. It is possible that he is aware and then try to convince me  
18 that he's not aware. He will give such explanations so that I should not implicate  
19 him. That is a principle. You are a jurist, Counsel, so you are aware of this.  
20 Could he have said that he, as an officer, was involved in those activities? That is  
21 not possible, Counsel. Owing to your professionalism, you cannot believe such  
22 allegations.

23 Q. Thank you. My last question: Since you said that there were accomplices,  
24 how do you explain what you said at page 292 of the document? I will read it out to  
25 you after the break, unless if you would like me to read it out immediately, but that

Trial Hearing

(Closed Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 would require a session ... (Overlapping microphones)

2 PRESIDING JUDGE STEINER: Let's go then to our break, and after the break, you  
3 will have Maître Liriss no more than five minutes to finish your questioning.

4 MR LIRISS: (Interpretation) That will be fine. Could we make it 10? I promise.

5 PRESIDING JUDGE STEINER: Maximum.

6 MR LIRISS: (Interpretation) Thank you.

7 PRESIDING JUDGE STEINER: Let us go into closed session in order to allow the  
8 witness to be brought out of the courtroom, and we are going to a half-an-hour break.  
9 We'll be back at 11.35 sharp.

10 (Closed session at 11.06 a.m.) \* Reclassified as Open session

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

12 (The witness stands down)

13 THE COURT OFFICER: All rise.

14 (Recess taken at 11.07 a.m.)

15 (Upon resuming in closed session at 11.38 a.m.)\* Reclassified as Open session

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

17 PRESIDING JUDGE STEINER: Let's resume our session. Court officer, please  
18 bring the witness in.

19 THE COURT OFFICER: Madam President, for the record of the case, we are in  
20 closed session.

21 (The witness enters the courtroom)

22 PRESIDING JUDGE STEINER: Mr Witness, welcome back. Maître Liriss, you have  
23 the floor for 10 minutes maximum.

24 MR LIRISS: (Interpretation) Thank you, your Honour. We should be in private,  
25 I believe.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 PRESIDING JUDGE STEINER: Court officer, please, private session.

2 (Private session at 11.39 a.m.) \* Reclassified as Open session

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

4 MR LIRISS: (Interpretation) Madam President, the question was whether MLC

5 officers were aware of crimes being committed. This question was put to the witness

6 at page 0292, and the witness said that he believed that that wasn't the case. He

7 didn't think that they could -- "that their own soldiers could inform their leaders

8 because they enjoyed raping and committing acts of theft. They couldn't betray

9 themselves. I don't believe that they themselves would have informed their leaders,

10 their commanders." That's all I wanted to read out.

11 Q. With your permission, I'm now going to put my last three questions. The first

12 one is as follows: Did you hear over the radio, by way of rumours, that all the goods

13 looted and stolen and stocked up --

14 MR LIRISS: (Interpretation) Madam, we're still in private session, aren't we?

15 PRESIDING JUDGE STEINER: Private session.

16 MR LIRISS: (Interpretation) That's all I need. I no longer need that.

17 PRESIDING JUDGE STEINER: Open session, please.

18 (Open session at 11.42 a.m.)

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

20 MR LIRISS: (Interpretation) Thank you, your Honour.

21 Q. So my question was: With regard to the goods that were allegedly stolen and

22 stockpiled in a room, could one have found out over the radio, by watching television,

23 or by asking those who claimed that they had lost their goods, could they have been

24 asked to come to Bangui, the ceremony took place? Evidence to that effect will be

25 provided to the Court. So the question that I would like to ask the witness is

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 whether he heard about this event.

2 A. You are informing me of something new.

3 Q. Thank you. Another question. The Prosecution asked the witness whether,

4 with regard to Bemba's awareness of the crimes, since he wasn't able to meet him

5 when he visited, was he sure that Mr Bemba was able to see the signs that they were

6 bearing? And he said that he is absolutely sure that Mr Bemba had seen those signs.

7 But the question that I would like to put to the witness is as follows. To see the signs

8 is one thing, but to read what is on the signs - it's not just written in chalk, but with

9 coal - to read this when you're travelling at 100 kilometres an hour in a car, when you

10 have tinted windows, as he said, my question is whether it is possible to see the signs

11 in such conditions. It's certain that Mr Bemba did read what was written on those

12 signs?

13 A. I can't know. I believe that the question that the Prosecution put was clear,

14 "Did Mr Bemba see the signs," and I said that, "Yes, he saw the signs," but as to

15 whether he read them, that's a question for Mr Bemba, not me.

16 Q. Thank you. And finally, for my last question, you said that between the 25th

17 up until the date when Bozizé's rebels left, PK12 and Begoua were under the control

18 of Mr Bozizé.

19 A. Sorry?

20 Q. Before Bozizé left PK12 --

21 A. Yes. Yes.

22 Q. -- before the capitulation --

23 A. Yes, their base was at PK12, under the control of Bozizé's rebels.

24 Q. Were there any victims?

25 A. Victims? What kind of victims?

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 Q. Were there cases of murder, rape?

2 A. No, not as far as I know.

3 Q. Very well. If there had been, would you have been aware of them?

4 A. Yes. Yes.

5 Q. If there had been 60 such cases, would you have been aware of this?

6 A. Let me tell you something, sir. In my statement I provided an estimate of at  
7 least five or six claims that were made a day, but I didn't mention all the cases. So in  
8 a certain sense one could have been aware of crimes or cases of rape being committed,  
9 but one might not have known all the details relating to cases of rape.

10 Q. I'm not sure whether we understand each other. During the period that PK12  
11 was under Bozizé's control, you said that there were no cases of rape, or murder, or  
12 looting?

13 A. As far as I know, that's the case.

14 Q. Very well. You said that, if there had been such cases, you would have been  
15 aware of the fact?

16 A. Yes, if there had been 60, would I have been aware of that?

17 Q. No, if you had been aware of two, you would have known. If there had been  
18 60, yes, you would have known that too, of course, but as the situation stands we  
19 have 68 such cases.

20 I have now concluded my cross-examination, your Honour.

21 PRESIDING JUDGE STEINER: Thank you, Maître Liriss. So I'll give now the  
22 opportunity -- I will ask first the Prosecution whether the Prosecution wants to  
23 re-question the witness?

24 MS BENSOUDA: Yes, Madam President, just a few questions to clarify.

25 PRESIDING JUDGE STEINER: So you have the floor, reminding you, Madam

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 Prosecutor, on the content of the re-questioning.

2 MS BENSOUDA: Yes, indeed. Indeed.

3 PRESIDING JUDGE STEINER: Thank you.

4 MS BENSOUDA: Thank you, Madam President.

5 QUESTIONED BY MS BENSOUDA:

6 Q. Sir, good morning. Sir, am I correct to say that you were interviewed by  
7 investigators from the Office of the Prosecutor over two days briefly on 8 April 2008  
8 and more substantively during the interview on 9 April 2008?

9 A. Yes, Madam Prosecutor. Yes, Madam Prosecutor.

10 Q. Sir, you also confirmed to the Court that during the familiarisation process in  
11 November recently, 2010, you had the opportunity to read over your statement.

12 And, Madam President, I'm referring to page 79 of transcript of testimony of  
13 23 November 2010. Am I correct, Mr Witness?

14 A. Yes, you're quite right, Madam.

15 Q. Mr Witness, between 9 April 2008, when you were first interviewed by the  
16 investigators of the Prosecution, and November 2010, which approximately is now  
17 two-and-a-half years, were you interviewed by investigators from the Prosecutor's  
18 office again about the events that took place in Begoua in 2002 and 2003?

19 A. I don't really understand your question.

20 Q. After the April interviews, which you have just confirmed, were you again  
21 interviewed by the Office of the Prosecutor after that?

22 A. No.

23 Q. And between 9 April 2008 and November 2010, until the familiarisation process,  
24 did you have the opportunity to read your statement?

25 A. Yes.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 Q. I will now move to just a different part of your testimony. You were asked by  
2 learned counsel for the Defence, Mr Haynes, about an incident of rape that you  
3 witnessed. With regard to what you saw, you stated the following. Your Honours,  
4 I'm referring to page 32, lines 8 to 10, of the transcript of 26 November, which says, "I  
5 know that I saw a woman." I'm quoting you now. "I was clear. There was some  
6 amorous struggling at the Begoua level that certain people saw. They came to tell  
7 me about it. I saw that it wasn't good. I then returned."

8 Sir, it's still not clear from the record what exactly you saw happening with regards to  
9 this rape. Could you please tell the Court exactly what you witnessed happening to  
10 this girl that you saw being raped by the rebels of Mr Bemba?

11 A. There were some young people who were heading towards the Begoua school.  
12 They noticed the events and then (Redacted) They didn't (Redacted)  
13 in vain. It's because they knew that (Redacted) to cases of rape, to  
14 what was happening. (Redacted), and in fact I saw  
15 those soldiers who were raping this woman. It was without her consent, because she  
16 was crying out. She was shouting, but at the time who could have helped her? I  
17 myself, given everything that was happening, because of my own safety I had to  
18 return to my house.

19 Q. Thank you, Mr Witness, for that. Again, sir, you were asked by learned  
20 counsel, Mr Haynes, if you reported the incident of rape you saw, and you responded  
21 that you did not report all incidents and I'm interested in your following responses  
22 which I am going to quote, Madam President. At page 33, lines 21 to 25, of the  
23 transcript of 26 November,

24 Mr Witness, you said:

25 "And with regard to (Redacted), well, it was too risky to leave my place and



Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 (Redacted) sir. It was a great risk for my life. I had to stay at  
2 my place but, if there was an occasion for me (Redacted), I would do so.  
3 I am quite a discreet man in my town. I am not a seditious man."  
4 You also went on to say at page 34, lines 6 to 7, on the same day, this is 26 November,  
5 you said, "It was necessary to be cautious and wise at the same time." And again at  
6 page 35, lines 11 to 23, you said, "It was necessary for me to take measures for my  
7 own security after all."

8 Sir, in this context of what you have said, could you explain for the Court's  
9 understanding why you did not report all the crimes, including the rape you  
10 witnessed, to the commanders of Bemba's rebels' forces based in Begoua?

11 PRESIDING JUDGE STEINER: Mr Haynes, you have opportunity after to come  
12 back to the witness.

13 MR HAYNES: Well, I will sit down, but that is the most blatant leading question  
14 I've ever seen. She has supplied him with the whole answer.

15 PRESIDING JUDGE STEINER: Let's not talking about leading questions, Mr Haynes.  
16 Your whole line of questioning was only based on leading questions, and I don't need  
17 to remind you that we are not talking here in this Court about cross-examination in  
18 which leading questions are allowed, so let's not discuss leading questions. Madam  
19 Prosecutor is reading part of the statement.

20 You can proceed.

21 MS BENSOUA: Thank you, Madam President.

22 Q. So my question, sir, if you want me to repeat it, is that could you explain for the  
23 Court's understanding why (Redacted) all the crimes, including the rape you  
24 witnessed, (Redacted)?

25 A. Thank you, Madam Prosecutor. You can understand that (Redacted)

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 (Redacted) the Banyamulengue entered the town of Begoua, so (Redacted)  
2 (Redacted) for a certain period of time and at one point in time I felt  
3 completely insecure. So, given certain events that were a bit distant in time, faced  
4 with such events I had to stand back. (Redacted)  
5 (Redacted) in cold blood if  
6 (Redacted). So  
7 that was the situation.

8 So during this period of upheaval, well, first I reacted and then I was tired. I became  
9 tired because the atmosphere was not really an acceptable one.

10 Q. Thank you, Mr Witness. You also were asked by counsel, Mr Haynes, if after  
11 the soldiers left Begoua you wrote down the crimes that were committed by Bemba's  
12 rebels. Your Honours, I'm referring to page 36, lines 15 to 17. This was the  
13 question that was posed to you, "Could you explain why you did not write down  
14 anything about the crimes committed by Mr Bemba's rebels in your neighbourhood  
15 after they had left?"

16 A. Madam Prosecutor, at the time, as I have said, the administration was  
17 practically inexistent, even more so in Begoua. And after they departed, I had a  
18 spontaneous mission, and I thought it was (Redacted) to what was happening in my  
19 neighbourhood, that I didn't have the mission to describe the events that had  
20 unfolded. So, that's the first thing.

21 And, secondly, I never had a talent for writing; otherwise, perhaps I would have  
22 thought of writing things down, these events that happened. (Redacted)  
23 (Redacted) and I was involved in a process of forgetting, because it was necessary  
24 to try and forget certain things that had happened. I didn't have the idea of putting  
25 all of this down in writing.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 Q. Thank you, Mr Witness. Sir, you also told the Court that during the  
2 familiarisation process you knew that the document was done and you could not add  
3 anything, and otherwise you could have mentioned -- you remembered something  
4 and so you would have included the incident of the rape that you witnessed. I'm  
5 just paraphrasing what you said.

6 Your Honours, I'm referring to pages 31, lines 19 to 22 of the 26 November transcript.  
7 Sir, is there anything else that you would like to mention about the crimes you  
8 witnessed that you remember during the familiarisation process?

9 A. I didn't mention in this statement anything about the crime, the person who was  
10 shot in cold blood. It was in the transcript, so I think we would have to take that into  
11 account. Other than that, as I was saying, I think it was in reply to an answer by  
12 Mr Liriss. I said that they had made an estimate of the events that had been reported,  
13 but I didn't explain everything, because for some events I had to consolidate, I had to  
14 direct the victims in various directions and, remember, there was the risk to my life  
15 from Bemba's rebels.

16 MS BENSOUA: Thank you. Thank you, Mr Witness.

17 Madam President, that is all for this witness from the Prosecution. Thank you.

18 PRESIDING JUDGE STEINER: Thank you, Madam Bensouda.

19 I just wanted to clarify one thing first here. On page 39-1, Madam Prosecutor put the  
20 following question, line 3: "Mr Witness, between 9 April 2008 -- " No, no. It's not  
21 this one. Sorry. No, it's on line 14. "And between 9 April 2008 and  
22 November 2010 until the familiarisation process, did you have the opportunity to  
23 read your statement?" And the answer is: "Yes."

24 I would like to repeat the question to the witness to see whether the witness  
25 understood and whether I understood the answer. Between 9 April 2008 and

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 November 2010 in the familiarisation process, in the meantime, did you have  
2 opportunity to read again your statement?

3 THE WITNESS: (Interpretation) I would say yes. During the familiarisation  
4 process, I was given some documents. My statement -- the statement was provided  
5 to me and I read it.

6 PRESIDING JUDGE STEINER: But before the familiarisation process, have you read  
7 your statement?

8 THE WITNESS: (Interpretation) No. Before, no. But during the familiarisation  
9 process.

10 PRESIDING JUDGE STEINER: Thank you. Judge Joyce Aluoch wants also to have  
11 a clarification, but we need to go for one minute into private session, please, court  
12 officer.

13 (Private session at 12.05 p.m.) \* Reclassified as Open session

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

15 JUDGE ALUOCH: Thank you. This is in relation to the answers given on Friday  
16 by the witness. The transcript is page 39. It begins from lines 19, 20, 21. These  
17 were answers given in response to questions by Mr Haynes. I think I'll start from  
18 line 19 where it says "(Redacted)."

19 "I don't know (Redacted), but (Redacted). (Redacted), I did not know any such  
20 person. (Redacted), I made that correction yesterday, (Redacted), who  
21 (Redacted)."

22 Please, can you just spell the names of that man, whether it's (Redacted) or  
23 (Redacted) can you just spell his names, please, if you are able to, because the  
24 transcript has the name beginning with (Redacted) and again the name beginning with (Redacted) so  
25 I don't know which one is which, please.

Trial Hearing

(Closed Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 THE WITNESS: (Interpretation) If you could suspend the session for four minutes  
2 and I could answer the question.

3 JUDGE ALUOCH: Thank you.

4 PRESIDING JUDGE STEINER: Suspended upon request from the -- you need to  
5 leave for a while? Please, court officer --

6 THE WITNESS: (Interpretation) Yes, a few moments.

7 PRESIDING JUDGE STEINER: And the witness asks for a short interruption.

8 (Closed session at 12.07 p.m.) \* Reclassified as Open session

9 THE COURT OFFICER: We are in closed session, Madam President.

10 PRESIDING JUDGE STEINER: Please, court usher, take the witness out of the  
11 courtroom, please.

12 (The witness stands down)

13 THE INTERPRETER: Message from the English booth: One of the Judges'  
14 microphones is on.

15 (Trial Chamber confers)

16 (The witness enters the courtroom)

17 PRESIDING JUDGE STEINER: Are you feeling well?

18 THE WITNESS: (Interpretation) Yes, I'm fine.

19 PRESIDING JUDGE STEINER: We will go back to private session, please.

20 (Private session at 12.12 p.m.) \* Reclassified as Open session

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

22 JUDGE ALUOCH: Do you want me to repeat the question or you got it right? You  
23 want me to repeat it, the question?

24 THE WITNESS: (Interpretation) I understood.

25 JUDGE ALUOCH: Good. Thank you.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 THE WITNESS: (Interpretation) (Redacted), I always knew that person by the name  
2 of (Redacted)

3 JUDGE ALUOCH: And that person is -- that name is different from (Redacted),  
4 the one you said you did not know.

5 THE WITNESS: (Interpretation) I don't know -- I don't know whether it's the same  
6 person, but the person who (Redacted) we always knew him by  
7 the name of (Redacted) unless -- unless his status has changed, his civil status has  
8 changed.

9 JUDGE ALUOCH: Thank you very much. I just needed that clarification.

10 PRESIDING JUDGE STEINER: Maître Liriss? I suppose, established by the Rules,  
11 Defence is always the last, so you have the opportunity now if you need to address or  
12 to clarify any of the points already answered by the witness, clarifications or --

13 MR LIRISS: (Interpretation) No, ma'am, we have no further questions.

14 PRESIDING JUDGE STEINER: I'm really sorry. Court officer, please, let's go back  
15 into public session.

16 (Open session at 12.15 p.m.)

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

18 PRESIDING JUDGE STEINER: Maître Douzima-Lawson.

19 MS DOUZIMA-LAWSON: (Interpretation) Your Honour, just one item of  
20 information. I realise that in the transcript, what he said was not repeated exactly.  
21 It was (Redacted) not (Redacted)

22 THE WITNESS: (Inaudible)

23 PRESIDING JUDGE STEINER: Thank you, Maître Douzima-Lawson. It was a  
24 problem with the French version of the transcript. So I just -- Defence doesn't want  
25 then to take the floor any more. So that means that, Witness, we just finished your

Trial Hearing

(Closed Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 questioning by the Prosecution, by the Defence. You have given evidence before the  
2 Court, and the Chamber would like to express gratitude because of your effort in  
3 coming here before this Court. with all the appearing before this Court could involve  
4 in your personal life. So we thank very much that you found time and overcome  
5 any troubles in order to come to this Court and give your personal testimony.

6 In order for us to find the truth, it's imperative that witnesses such as yourself are  
7 prepared to give evidence and to assist the Chamber on the relevant issues in this case,  
8 and we are aware that it certainly would have been inconvenient for you and possibly  
9 may have involved even risks, some personal risk for you. So, you leave us now and  
10 go home in peace with the gratitude of the International Criminal Court.

11 Would you like to add something, Witness, before you leave the Court?

12 THE WITNESS: (Interpretation) No, nothing in particular, ma'am.

13 PRESIDING JUDGE STEINER: So, thank you very much. We are going then  
14 into -- very briefly into closed session, to allow the witness to leave the courtroom.  
15 And we wish you a safe journey back home.

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

17 (Closed session at 12.19 p.m.) \* Reclassified as Open session

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

19 (The witness is excused)

20 PRESIDING JUDGE STEINER: Madam Bensouda, would you like to start  
21 questioning the expert?

22 MS BENSOU DA: Yes, Madam President.

23 PRESIDING JUDGE STEINER: I'm so sorry. Please, court officer, turn into public  
24 session.

25 (Open session at 12.24 p.m.)

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

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

2 PRESIDING JUDGE STEINER: Maître Liriss?

3 MR LIRISS: (Interpretation) Thank you, your Honour. The Defence would like to  
4 object before the expert enters the courtroom. Thank you for leave to do so. The  
5 objection will be made by Mr Nick Kaufman.

6 MS BENSOUA: Madam President, in regard to the submission we made earlier on  
7 that we will be filing some written submissions regarding the appearance of  
8 Mr Kaufman, we wish to request the Chamber to suspend any appearance of  
9 Mr Kaufman in these proceedings pending those written submissions; otherwise, the  
10 whole purpose of the written submissions will be defeated. This is our application  
11 from the Prosecution, that any appearance of Mr Kaufman be suspended until the  
12 Prosecution files the written statements -- written submissions. Thank you.

13 PRESIDING JUDGE STEINER: Would the Defence like to respond?

14 MR LIRISS: (Interpretation) First of all, I don't see the legal basis for this because  
15 there has been a ruling by the Chamber, and this ruling was not attacked. So, I really  
16 don't see the legal basis on which one can request suspension awaiting -- not awaiting  
17 a decision, but awaiting a submission.

18 Secondly, the motion in question is a motion that has to do with a matter of law, not a  
19 matter of facts, and so it's quite secondary. Thank you, your Honour.

20 PRESIDING JUDGE STEINER: You have the right to reply, Madam Prosecutor.

21 MS BENSOUA: Thank you, Madam President. The issue here does not concern  
22 whether the submission is a matter of law or fact. I think the issue here is the  
23 appearance of my learned colleague, Mr Kaufman, in these proceedings in view of the  
24 decision that was already taken.

25 This morning, Madam President, the Prosecution was quite unprepared for the



Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 application and decision of the Chamber, and in view of the litigation that has already  
2 taken place, the Prosecution feels that it is fair that we are given an opportunity to  
3 make submissions regarding that decision and the litigation that has taken place  
4 before a concrete decision has been -- is being made by the Chamber for his  
5 appearance, and we are only requesting for an opportunity to make submissions,  
6 concrete submissions, before the Chamber makes a decision in that regard.

7 (Trial Chamber confers)

8 PRESIDING JUDGE STEINER: I see that as mentioned in the beginning of  
9 this -- today's hearing, that decision 769 issued by this Chamber in its previous  
10 composition - although, at that time related to Mr Kaufman as being a legal  
11 consultant - the decision -- paragraph 46 of such decision was clear by saying that  
12 even if the Chamber has decided the appointment of Mr Kaufman is directly covered  
13 by the Code Of Conduct, because his name is on the Registrar's list of counsel,  
14 considering Article 12(1)(b) of the Code Of Conduct, it would have concluded that  
15 they are no persuading indications that he was involved in or privy to confidential  
16 information as a staff member of the Court relating to this case for the reasons set out  
17 above.

18 I would like to ask the Prosecution whether the submission is on different grounds,  
19 because if they are on the same grounds, the Chamber will proceed.

20 MS BENSOUDA: Madam President, the Prosecution is going to file additional  
21 information for the Chamber's consideration as to whether there really exists a  
22 conflict of interest. We have, since the decision, been able to find additional  
23 information that we would submit to the Chamber regarding Mr Kaufman's  
24 appearance in this case. That is why, Madam President, we are submitting that if  
25 Mr Kaufman should already start appearing, any written submissions that we will

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 make in future will be of no consequence because he's already started appearing

2 anyway,

3 And the whole purpose of making the written submissions will be defeated. This is

4 why we're asking that his appearance, for now at least, be suspended until the

5 Chamber considers the additional written information that the Prosecution will

6 submit and the Chamber will decide.

7 PRESIDING JUDGE STEINER: Yes, Maître Liriss.

8 MR LIRISS: (Interpretation) Madam President, your Honours, the Prosecutor has

9 said that she's going to make a submission presenting additional information that will

10 overturn the ruling indicating that there is no conflict of interest. That should be an

11 appeal. It is not the Judge who has handed down the decision who is going to

12 overturn that decision.

13 Furthermore, the application to file a submission does not suspend a ruling that has

14 already been handed down on a legal basis by the Court.

15 PRESIDING JUDGE STEINER: I understand your point. The Chamber takes note

16 of your point. The fact is that a decision was issued on the basis of different facts, at

17 that time Mr Kaufman being a legal consultant.

18 The Prosecutor is saying that there has been a change in relation to evidence and this

19 change is related to the change on the position of Mr Kaufman on your team.

20 You presented your -- Mr Kaufman now as your co-counsel, so there has been a

21 change in the factual situation. So, based on that, we are going to suspend this

22 hearing until 1.30, which is the time in which we were -- to 2 o'clock.

23 Madam Prosecutor, please make your submission as fast as possible, as soon as

24 possible, in order to allow the Defence to prepare for filing written or make oral -- or

25 an oral response to your submissions.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-OTP- PPPP-0038

1 This hearing is suspended until 2 o'clock.

2 THE COURT USHER: All rise.

3 (The hearing ends at 12.35 p.m.)

4 RECLASSIFICATION REPORT

5 Pursuant to Trial Chamber III 's Second Order, ICC-01/05-01/08-2223, dated 4 June

6 2012, and the instructions in the email dated 9 October 2013, the version of the transcript

7 with its redactions becomes Public

8