

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Open Session)

ICC-01/05-01/08

1 International Criminal Court
2 Trial Chamber III - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki
6 Trial Hearing
7 Wednesday, 7 November 2012
8 (The hearing starts in open session at 9.04 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 THE COURT OFFICER: Good morning, your Honours, Madam President. We are in
13 open session.
14 PRESIDING JUDGE STEINER: Good morning.
15 Could, please, court officer call the case.
16 THE COURT OFFICER: Situation in the Central African Republic, in the case of The
17 Prosecutor versus Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.
18 PRESIDING JUDGE STEINER: Good morning. I welcome Prosecution team,
19 Ms Kneuer, legal representatives of victims, the Defence team, Mr Jean-Pierre Bemba
20 Gombo. Good morning our interpreters, court reporters.
21 We will continue today with questioning of Defence Witness D-48, and for that purpose I
22 ask, please, court officer to turn into closed session for the witness to be taken into the
23 courtroom -- to be brought into the courtroom.
24 (Closed session at 9.05 a.m.) * Reclassified as Open session
25 THE COURT OFFICER: We are in closed session, Madam President.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 (The witness enters the courtroom)

2 WITNESS: CAR-D04-PPPP-0048 (On former oath)

3 (The witness speaks French)

4 PRESIDING JUDGE STEINER: We can turn into open session, please.

5 (Open session at 9.07 a.m.)

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

7 PRESIDING JUDGE STEINER: Mr Witness, good morning and welcome back.

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

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

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

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

14 THE WITNESS: (Interpretation) Yes, I do understand that, your Honour.

15 PRESIDING JUDGE STEINER: I also wanted to remind you about our ground rules, that
16 you are expected to speak slower than normal and to give the five seconds before you give
17 any answer in order to allow our interpreters to do their job.

18 THE WITNESS: (Interpretation) Yes, I will, your Honour.

19 PRESIDING JUDGE STEINER: I know we can count on you and we appreciate very
20 much.

21 I also wanted to remind you, Mr Witness, that you are under protective measures; that
22 your image and voice broadcast outside the courtroom are being distorted so that the
23 public cannot identify you, but in order to keep your identity concealed from the public
24 it's important that you help us and avoid giving information in public session that could
25 lead to your identification. Whenever needed we go into private session when you can

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 speak freely because then the public cannot hear what is said inside the courtroom.

2 THE WITNESS: (Interpretation) Yes, I will keep an eye on that, your Honour.

3 PRESIDING JUDGE STEINER: Thank you very much.

4 I'll give back the floor to the Prosecution. Mr Iverson.

5 MR IVERSON: Thank you very much, Madam President, and good morning. Good

6 morning, your Honours.

7 QUESTIONED BY MR IVERSON: (Continuing)

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. I'm afraid that my cold hasn't gotten any better, so I just ask you to bear with me this
11 morning if you would. Sir, I'd like to pick up where we left off yesterday and I think that
12 we can stay in open session for the time being, but just be mindful of the fact that we are
13 in open session, sir.

14 So would it be fair to say that from your perspective that the MLC was capable of
15 pursuing fair and transparent justice?

16 A. Yes, the MLC was in a position to administer justice in a fair manner within the
17 context of the limited resources at that time.

18 Q. And was Mr Bemba aware of some of the problems that you mentioned yesterday,
19 the lack of magistrates and the lack of an appellate court?

20 A. Yes, he was fully aware of that. He was the leader. He knew. I reported to him.
21 I told him that there weren't enough magistrates and he was the one who authorised the
22 recruitments. If we had candidates we were to recruit because he wanted the justice
23 system to operate normally.

24 Q. And was there anything expressly prohibiting the prosecution of ALC soldiers
25 within the MLC civilian system of justice?

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 A. Yes, in principle. Within the operation of the justice system in the Congo there are
2 two forms: There is civil justice and military justice. It's not possible -- well actually,
3 there are two codes. There's the criminal code, which applies to everyone, but there's
4 also for soldiers a code of military justice. So there's the two, but it would not be easy for
5 a civilian court to try military people applying the military code.
6 It's absolutely necessary to have soldiers who are familiar with military discipline and
7 who are familiar with the day-to-day life of soldiers to try the person because it's not the
8 same kind of law that would be applied mechanically. You also have to understand the
9 environment within which the suspects operated. That is why soldiers in the Congo are
10 tried by other soldiers, because other soldiers are able to understand the behaviour of a
11 soldier properly. Civilians are unable to entirely understand the problems of soldiers.
12 That's why soldiers in the Congo are tried by other soldiers.

13 Q. And I understand that the preferred forum for soldiers would be military justice, but
14 was there anything legally or jurisdictionally obstructing the possibility that a soldier
15 could be prosecuted by the civilian system of justice? Were there any legal mechanisms
16 in place that prohibited that?

17 A. Well, I believe what I've just said. Congolese law and the organisation of the
18 Congolese system of justice makes a distinction between civilian justice and military
19 justice.
20 I said as well here in the courtroom that it would be acceptable within military justice to
21 have career magistrates generally speaking, but in the case of the MLC we had to
22 requisition, or call upon, civilian magistrates so that they could join this system of military
23 justice and at the same time they would also receive help with -- help from military people,
24 so soldiers, and there are some offences that civilians are not familiar with. There are
25 some offences that are strictly military in nature that a civilian cannot rule upon.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. Well, let's talk about an offence that isn't strictly military. So you have a strictly
2 military offence like for example desertion, right, that's not a civilian offence, but you also
3 have an offence such as murder or rape which is not necessarily a military offence? If an
4 ALC soldier committed murder or rape, could that soldier be prosecuted in the civilian
5 system of justice?

6 A. No. Because of the organisation of the Congolese system of justice, there are two
7 separate systems: Civilian justice and military justice. Military judges, the ones from
8 the military system, refer to the common law along with strictly military law. How can I
9 put this? There is a code -- correction, there is an ordinary criminal code and beside that
10 code there is a code of military justice, because in actual fact when a soldier commits a
11 murder, as the case you mentioned, he is breaking both civil law and also military law
12 because, if someone leaves his position and commits a murder two or three metres away
13 from that place, he has not only committed murder. He has also broken the instructions,
14 or he has violated orders. So within the Congolese system soldiers are put on trial within
15 the military system, which is made up of their peers, their -- other soldiers who can easily
16 interpret the behaviour of soldiers who have committed an offence, thereby
17 compromising themselves.

18 Q. And, sir, what in your opinion was the quality of military justice within the
19 MLC/ALC?

20 A. At the beginning I said, when I came at the beginning, there was a court martial and
21 it was a court that operated in a speedy manner and the rights of the defence were not
22 always upheld, and we wanted to get away from that system and opt for a garrison court
23 or a superior war council. The terminology was very difficult to introduce within the
24 setting amongst the people who had to render justice at the time, but we had to ensure
25 that in the future there would not be any justice without defence, because in the case of

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 the court martial it was possible that there might not be a defender to help the accused,
2 but with the war council we wanted to ensure that the defence rights were protected.
3 We had a great deal of difficulty, but we made efforts to ensure that the rule of law would
4 prevail.
5 We wanted everyone to be put on trial within the courts that had been set up would
6 benefit from the assistance of a lawyer and we did not have many. There was just one
7 judicial advocate or defender. So we wrote to a number of Bar Associations and we said,
8 "Each time we need someone, we shall write to you and ask for someone to assist the
9 accused." So that is how the system operated. It was difficult to exchange permanent
10 members of these various war councils, or court-martials.
11 Please note that the one -- the person who was the President of the Gbadolite District
12 Court had been designated as permanent judge and it was not possible to change. Even
13 if someone said -- even if -- even if someone said, "Oh, I don't want that particular person
14 in the Bench," it was not possible to make any substitutions.
15 So I am not saying it was completely perfect, because -- well, if we had had -- if we had
16 enough judges we could have changed or switched judges, but the circumstances did not
17 allow for that, but indeed we did want to ensure that no crime would go unpunished, that
18 a proper defence would be provided and that we would remain within the resources that
19 had been made available to the system and, you see, the system was in keeping with
20 various codes. I wouldn't say it was absolute heaven, but I would say that efforts were
21 made to ensure that justice was administered in an independent fashion.

22 Q. So would it be fair to say then that the military system of justice was also fair and
23 transparent, or capable of being fair and transparent?

24 A. Yes. All the parties who assisted with a normal trial were brought together, except
25 for defence, because truly let's say we had ten or 20 accused and there was only one

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 defence attorney, so you can imagine the difficulties that that person had defending all
2 those people. So perhaps the defence side of things was not very well organised, but the
3 setting up of Benches designated to try, that was provided for. We had judges. As I
4 said, there were three for criminal matters, there was also someone from the Department
5 of Public Prosecutions and then the defence was handled by this judicial advocate, who
6 was present there. So I think that in the case this was done without breaking the
7 legislation relating to the organisation of the judiciary within the Congo.

8 Q. So if both systems of justice were capable of rendering justice, if a case wasn't
9 brought it wasn't due to capability. It was due to willingness to prosecute. Would that
10 be fair to say?

11 A. No, let's say -- I'm saying that in the case of the organisation of courts that there
12 were difficulties, and I mentioned them yesterday. It is possible that investigations were
13 not concluded, or that investigations might have been botched, because we did not have
14 resources to go to a particular place. I would say it's not like this system, with the
15 resources here. We had very -- we had limited resources to ensure that crimes would not
16 go unpunished in the territory. We did the best we could. We did all we could.

17 Q. As concerns military justice, Mr Bemba, as the commander-in-chief and to ensure
18 good order and discipline within the ALC, he had the authority to convene courts martial,
19 did he not?

20 A. Well, let's say Mr Bemba was the president, but he did not have responsibility for
21 rendering justice. He was not the one to render justice. I learned here - right
22 here - about decisions taken by the judges. I myself, I discovered that right here. I said
23 yesterday that this had to do with the independence. When those people are put in place,
24 they were free to conduct inquiries and to hand down rulings. I could not intervene.
25 The prosecutor, who also worked as the military auditor, each time something was

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Open Session)

ICC-01/05-01/08

1 brought before him he could investigate and it could also be postponed or referred to
2 court martials. He could in the case of people he suspected or people for whom there
3 were charges and for whom he had gathered evidence, so he could also bring such
4 matters before the war councils, the court martials.

5 MR IVERSON: Could I ask the court officer to please display Defence document 47,
6 ERN number CAR-DEF-0002-0580, and it's a public document?

7 Q. Sir, now this is a little bit difficult to read, but I'd like you to read this silently to
8 yourself and when you're finished just please look up at me.

9 A. The first part. I have read the first part.

10 MR IVERSON: And I'd ask the court officer if he could display the second page at the
11 bottom of the page, please, all the way down at the bottom please?

12 Q. Sir, do you recognise that signature at the bottom of the page?

13 A. Yes, I do.

14 Q. This is a court martial convening order, isn't it, signed by Mr Bemba?

15 A. Yes. This is a decision to establish a court, yes.

16 Q. So when I asked you if Mr Bemba had the authority to convene court martials the
17 answer is "Yes", it's not "No"; correct?

18 A. I think that I didn't express myself --

19 PRESIDING JUDGE STEINER: Mr Witness, just one moment.

20 Maître Kilolo?

21 MR KILOLO: (Interpretation) Your Honour, I'd just like to draw your attention to the
22 fact that I see that this line of questioning is not very fair to the witness, because each time
23 there seems to be a series of leading questions being put to him, in particular, "Is it
24 Mr Bemba who was the one?", rather than asking an open-ended question of the witness.
25 I think it would be fairer to the witness to proceed in that manner.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 PRESIDING JUDGE STEINER: I give the floor to Mr Iverson, but first I don't see that the
2 question is leading, Maître Kilolo, and second I would like to remind that this Chamber
3 has been quite flexible when it's the other party, not the calling party, is questioning the
4 witness, not allowing of course 100 per cent leading question but being quite flexible on
5 that.

6 Mr Iverson, do you have anything to say about that?

7 MR IVERSON: I don't really have anything to add, Madam President. I don't think any
8 of my questions are unfair, and I do believe that this Chamber has shown itself fully
9 capable of shutting down questioning that they believe is unfair.

10 PRESIDING JUDGE STEINER: You can proceed, Mr Iverson.

11 Q. So would it be fair to say that, in the system of military justice, Mr Bemba had
12 overall authority over the entire system of military justice considering his power to
13 convene the courts martial?

14 A. Let me say this: You have to distinguish between two things. We are speaking
15 here of the year 2002, after the Lusaka Agreement which recognised three administrations
16 in Congo with the same powers. I do not think I fully understood your question, but
17 what I said is that Mr Bemba could not organise the court. He had the powers to set up
18 the government and appoint the members of his government. In fact, he acted as a head
19 of state, but when it came to prosecuting suspects, it was not Mr Bemba who decided
20 when someone would be prosecuted. He had the powers to set up jurisdictions.

21 When I said that we set up a court of appeal, I did not personally do that. It is a decision
22 that I took after consultation, leading to the decision to create an appellate court. So,
23 creating or setting up a jurisdiction can be within his powers but to organise a jurisdiction
24 and to determine how it should function is not in his powers, so he's not the one who
25 would say, "Prosecute this person" or not. So, pursuant to the law, he could set up the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 court but he could not decide who would do what, who should be guilty or not, so he
2 established the jurisdiction as all other jurisdictions, just like all other heads of state would
3 do. So he took general decisions without personally himself having to organise the
4 structure. So I did not say that he did not have any powers. He had the powers. He
5 was considered as the Head of State of that territory, so he could take decisions.
6 But regarding the functioning of the court and how the court should operate, he was not
7 responsible for that.

8 PRESIDING JUDGE STEINER: Mr Iverson, sorry to intervene.

9 The interpreters are asking you, please, to speak a little bit slower. They are having
10 difficulties in following you.

11 THE WITNESS: (Interpretation) Thank you very much, your Honour.

12 MR IVERSON: Could I ask the court officer to please display Defence document 41,
13 CAR-DEF-0002-0001 at page 37, please. 0037, please.

14 THE COURT OFFICER: The document is available on the screens, at page
15 CAR-DEF-0002-0037, and it's a public document.

16 MR IVERSON:

17 Q. Sir, could I just ask you to just read to yourself the section that is stating the
18 governing law of the court martial, and just look up at me when you've finished, if you
19 would.

20 A. Yes. I believe we saw this document yesterday.

21 Q. You're correct, sir. And in looking at the third document down from the top, that's
22 decree number 2 of 25 March 2002, that's part of the governing law, so the document we
23 just saw, the convening order for the court martial, is part of the governing law of the
24 court martial system; is that right?

25 A. No. That is the decision that actually sets up the court martial.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. Okay. And I don't -- and maybe I should be more specific here. It's not the
2 governing law, the substantive law, but it is the jurisdictional part of the court martial?
3 That's what provides the jurisdiction; is that right?

4 A. Yes. That is what creates the jurisdiction in that territory.

5 MR IVERSON: Could I ask the court officer to please display 0041 of this same
6 document, please.

7 Q. Sir, at the top you see the names of the, I'll call them the panel members or judges of
8 the court martial. Could you tell the Court which ones of these did (Redacted)
9 (Redacted)

10 PRESIDING JUDGE STEINER: Court officer, please could be turn into private session.
11 (Private session at 9.38 a.m.) Reclassified as Open session

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

13 THE WITNESS: (Interpretation) Yes. (Redacted)

14 (Redacted)

15 (Redacted)

16 MR IVERSON:

17 Q. And excluding the registrar, the other four judges or panel members are all military;
18 they're all military officers, is that correct?

19 A. Yes. The others are soldiers, so apart from the permanent judges, the others are
20 soldiers appointed by the General Staff. So I said that this is a hybrid jurisdiction, and
21 the Minister of Defence had a role to play and the Minister of Justice also had a role to
22 play. The Ministry of Justice appointed career magistrates, and the Defence Ministry
23 was responsible for appointing military officers because the Minister of Justice did not
24 know these officers.

25 Q. (Redacted) you're certainly aware that, as an officer

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 in the military, you're subject to the orders of superior officers; is that right?

2 A. I do not quite get your question.

3 Q. It's the duty of officers to follow and obey the orders of officers appointed above
4 them in the chain of command; would that be fair to say?

5 A. (Redacted) I do not know how to answer that question.

6 Q. All four of these officers were subject to the orders of the commander-in-chief,
7 Mr Bemba; is that right?

8 A. What I'm saying is that within that justice system there is a permanent judge who
9 guides them and I believe, (Redacted) I do not think that magistrates
10 who are soldiers are subject to the instructions of their hierarchy when it comes to the
11 judicial system.

12 Now, in this particular case, whether the soldiers who are professional soldiers when they
13 were requisitioned, they had to follow the orders of their superiors, that I cannot tell you.
14 I do not know.

15 Q. Sir, have you ever heard of the concept of unlawful command influence within
16 military justice?

17 A. No.

18 Q. Did the ALC system of military justice have any mechanism to guard against, for
19 example, a superior commander ordering officers to do -- and directing a certain verdict
20 in a court martial? Is there any legal mechanism you can point to?

21 A. (Redacted) I do not know what could have been happening
22 in that particular situation. I never heard of such a thing.

23 Q. Well, the reason I ask you, sir, is because you seem to know quite a bit about
24 military justice in general so that's why I thought I would ask if you knew about any
25 mechanism within the ALC to guard against this concept of unlawful command influence,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 but I'll move on.

2 PRESIDING JUDGE STEINER: Mr Iverson, are you changing topic because I would like
3 to put a follow-up question?

4 MR IVERSON: I am slightly going to change the topic so now might be the right time,
5 Madam President.

6 PRESIDING JUDGE STEINER: So, if you would allow me, I would like to ask the court
7 officer, so first we can turn back into open session.

8 (Open session at 9.44 a.m.)

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

10 PRESIDING JUDGE STEINER: I ask, please, court officer to display document 40 on the
11 Defence list. It's document CAR-DEF-0001-0155, starting by the first page and then
12 going to the second page, 0156.

13 THE COURT OFFICER: Madam President, the document CAR-DEF-0001-0155, it's
14 available on the screens and it's a public document.

15 PRESIDING JUDGE STEINER: Mr Witness, you don't need to say anything about this
16 first page of the document. I just wanted this document to be displayed for you to
17 confirm that you recognise this document. You don't need to give details because we are
18 in public session. You recognise this document?

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

20 PRESIDING JUDGE STEINER: So, court officer, if we go to the next page, which is the
21 report prepared by the commission in relation to the investigation on crimes of pillaging
22 occurred or alleged to have occurred in Bangui. Could you please read the first
23 paragraph?

24 THE WITNESS: (Interpretation) "In implementation of the order of the national
25 president of the MLC, a commission of inquiry travelled to Zongo to verify the allegations

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 of looting attributed to ALC soldiers in the CAR."

2 PRESIDING JUDGE STEINER: In accordance with this document, that means that
3 president -- the president national of the MLC, which is Mr Bemba, he had the power to
4 create an investigation commission to investigate some facts within the military justice?

5 THE WITNESS: (Interpretation) Let me say that he could set up a commission of
6 inquiry in any domain.

7 PRESIDING JUDGE STEINER: And in this case, just for me to understand the Congolese
8 system, because sometimes it's different than other systems, when the president creates a
9 commission, or determines the creation of a commission of investigation, are the judiciary
10 or the members of the party under the obligation to follow the orders of the president?

11 THE WITNESS: (Interpretation) When the president sets up a commission, are the
12 members of the prosecution department compelled to follow the orders of the president?
13 The truth is the president facilitates their task because when crimes are perpetrated it is
14 automatically their responsibility to go and investigate. So when the president asked
15 them to carry out an investigation, they are actually simply doing their job. Now, when
16 it comes to the outcome of the investigation it is their conscience and the law that guides
17 them; that is, the prosecution department and the court.

18 PRESIDING JUDGE STEINER: And when creating a commission to investigate
19 something, let's say in this case to investigate the accusations of pillages occurred in
20 Bangui, is the commission bound, or the material competence of the commission is to
21 investigate only what the president asked for, or could the commission broaden the
22 investigation?

23 THE WITNESS: (Interpretation) The commission can broaden the investigation
24 because, as I said, it is an opportunity given to the judges to investigate. The order does
25 not limit what they can do. So they can go beyond the scope.

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 PRESIDING JUDGE STEINER: I understand. Thank you very much for the
2 clarification.

3 THE WITNESS: (Interpretation) Thank you.

4 PRESIDING JUDGE STEINER: Mr Iverson.

5 MR IVERSON: And since that segues into my next line of questions, I just ask that the
6 court officer to keep the document on the screen. And for my next few questions it will
7 require a private session, Madam President.

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

9 (Private session at 9.50 a.m.) Reclassified as Open session

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

11 MR IVERSON:

12 Q. Now, sir, my understanding is that you (Redacted)

13 (Redacted) is that right?

14 A. No, I did not (Redacted)

15 investigation was inside Congolese territory and in Zongo. Allegations concerned events
16 in the CAR, but our role was to investigate in Zongo, inside the DRC.

17 Q. Sir, I'm just reading from (Redacted)

18 (Redacted) is that

19 right?

20 A. Yes. The allegations of pillaging concern what happened in the CAR, but the
21 commission did not travel to the CAR. They were supposed to investigate in Zongo.

22 Q. And I am well aware of that and we'll get to that but what I'm asking you now is
23 simply what (Redacted) mission order was, and it was to investigate allegations of pillage that
24 happened in CAR; right?

25 A. Yes, investigate in Zongo events related to pillaging allegations attributed to ALC

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 soldiers who had gone to the CAR, but the alleged lootings related to the fact that they
2 were supposed to have brought back looted property with them through Zongo, so the
3 investigation had to take place in Zongo given that Mr Bemba did not have any powers to
4 appoint a commission to go and investigate in the CAR. (Redacted)

5 (Redacted)

6 MR IVERSON: I think for this exercise it might be handy to actually have a paper copy
7 of the report, so we went to the trouble of printing out several copies.

8 Could I ask the court usher to please retrieve the copies of the report and provide one to
9 the witness, and if other parties wish to have a paper copy we have -- they're available.

10 Q. Sir, could I ask you to turn to the portion where (Redacted)

11 (Redacted) to investigating in Zongo in that report where (Redacted) it?

12 A. "Paragraph 1. In implementation of an order of the national president of the MLC,
13 a commission of inquiry travelled to Zongo to investigate allegations of looting attributed
14 to members of the ALC." So it was in Zongo, not in Bangui.

15 Q. That wasn't really what I was looking for. It says that (Redacted) but okay.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 (Redacted)

2 Q. Sir, can you point to any specific evidence or fact that led you to believe that
3 pillaged goods were being transferred through Zongo? What led you to believe that?

4 A. The soldiers had crossed back to Congo, so those who were alleged to have been
5 perpetrators of the crimes, if they had looted property, they could not have looted that
6 property and left it in the CAR. So the Congolese, the MLC soldiers had returned and it
7 was alleged that they had brought that property back to their spouses, and the wives were
8 in Zongo and in Congo, so we believed that if those allegations were true then we would
9 find that property with their families in Zongo.

10 Q. Sir, were you aware that most of the ALC soldiers operating in CAR at the time of
11 the end of November 2002 were operating in the northern parts of the country? What led
12 you to believe that they were crossing into Zongo at the end of December 2002? In fact,
13 the 5th Battalion crossed over in December 2002; isn't that right?

14 A. I would like to appeal to you not to embarrass me with questions related to the army.
15 (Redacted) so I do not know about the east/west, north/south when it comes to
16 operations. We heard this information from the radio and it was indicated that the
17 property was taken to Zongo, so the order indicated that we should go to Zongo. We
18 knew that the soldiers retreated in disarray, so as to knowing who was in the north and
19 who was in the south I am not able to answer these types of questions.

20 Q. (Redacted) wouldn't it be good to know some of
21 these issues?

22 A. (Redacted)

23 (Redacted) who had been operating in that area for many years, and those
24 magistrates had a role to play and were to draw up a report, but I'm not so sure that those
25 magistrates were trained soldiers. These -- those issues are technical military issues.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Operations, the directions of the compass, that's military matters. (Redacted)

2 (Redacted) namely to determine whether the alleged events were true or not.

3 As for the other issues, for example which way the people might have crossed over or

4 come back, those are questions of military strategy. Often it's very difficult to think in

5 such terms.

6 Q. (Redacted)

7 (Redacted)

8 A. (Redacted) In actual fact, being responsible in Congo, well, you can't imagine

9 conducting an investigation on foreign territory. How could you imagine that? I just

10 can't imagine. It's an -- you just can't conduct an inquiry on foreign soil. You couldn't

11 do that yourself, unless for example the authorities in Paris asked you to do that, but you

12 on your own initiative can't go and conduct investigations in France.

13 Q. (Redacted)

14 (Redacted)

15 A. (Redacted) it was a good idea to have an international

16 commission. Even the one -- even going to CAR with a Congolese investigator wouldn't

17 necessarily have meant that they would have found the truth, considering that there were

18 several players in the field. There were Chadians, people from Central Africa, even

19 Frenchmen. There were even Sudanese people. So it wouldn't have been possible to go

20 and conduct an inquiry without that -- unless that commission of inquiry were

21 international. (Redacted)

22 (Redacted) It would have been impossible.

23 Q. (Redacted)

24 A. Because in the CAR there are authorities and there's a whole system of justice there,

25 including military justice. (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 (Redacted) the CAR authorities were there in the
2 Central African Republic and so they were the ones who -- they were the only ones who
3 had authority. If they had asked us for assistance we would have provided all our
4 expertise, but they didn't. I just can't think of such a thing. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Okay, so I'll take that as a "No," that (Redacted)
10 (Redacted) is that right?

11 A. (Redacted) It was the CAR in
12 principle that should have investigated and possibly asked for the assistance of the
13 Congolese authorities.

14 Q. Well, were you aware that from 30 October until 27 November Colonel Mondonga
15 didn't seem to have a problem going to Bangui and investigating? Were you aware of
16 that?

17 A. No. Yesterday I said that I didn't know him. I didn't know. (Redacted)
18 and I was not aware of the existence of that inquiry in the CAR. I said that. I reiterate I
19 don't know him and I was not aware of that investigation. I saw the documents here for
20 the first time.

21 Q. What about Magistrates Pascal and Jean, (Redacted) They
22 certainly knew about the investigation, didn't they; Mondonga's investigation?

23 A. No, I can't say that they were aware of that investigation. No.

24 MR IVERSON: Could I ask the court officer to please display CAR-OTP -- excuse me,
25 CAR-DEF-0002-0001, at page 0041? Now, I'm going to ask for a slightly complicated

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 thing here. We're going to look at two documents at one time: 0041, which is on our
2 screens, and the last page of Mr Musafiri's investigation.

3 Q. Could you turn to the last page of the investigation, sir, on the paper copy?

4 PRESIDING JUDGE STEINER: Mr Iverson, this Defence document at page 0041, do you
5 have the information which document it is in the Defence list just for facilitating the
6 search for the document?

7 MR IVERSON: It's 41. Defence document 41.

8 Q. So, sir, could I have you on the screen look at and read who was the permanent
9 judge and the prosecutor in the Gbadolite trial of 5 December 2002?

10 A. Mr Pascal Zanzu was the permanent judge and Mr Jean Kamba was the Public
11 Prosecutor, representing the Public Ministry, the prosecution.

12 Q. And, sir, if you look at the last page (Redacted)

13 (Redacted) Could you read their names, please?

14 A. The same people.

15 Q. Oh, so in other words, sir, they knew very well about Mondonga's investigation,
16 which resulted in the court martial, (Redacted)

17 (Redacted) right?

18 A. No, I can't say. I'm discovering these things here. They were the ones who
19 wrote -- who signed this report and they would have said. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE STEINER: Maître Kilolo?

23 MR KILOLO: (Interpretation) Your Honour, could we have the exact reference to this

24 statement that was made by Mr Iverson to the effect that people allegedly were found

25 guilty of looting by the two people in question? Are we talking about looting, or theft?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 I think that the information just provided to the witness is not correct.

2 PRESIDING JUDGE STEINER: Can you clarify that, Mr Iverson?

3 MR IVERSON: I'll do my best to clarify. I think I'm referring generally to the fact that
4 on the first page of CAR-DEF-0002-0001 it says, "Bangui, 27 November 2002," so we know
5 that Mondonga is writing this from Bangui and we know the investigation started in
6 Bangui on 30 October, and it says "de dossier pillage". To me, that indicates pillage. I
7 am just citing what the evidence says, Madam President.

8 PRESIDING JUDGE STEINER: Mr Haynes?

9 MR HAYNES: I think what Mr Kilolo was trying to express was that the question
10 completely misrepresents the charges and the convictions that were recorded in the court
11 martial at Gbadolite. Nobody was convicted of pillage, nobody was charged with
12 pillage, and there's no obvious connection between the two events, and the question could
13 be phrased a lot more carefully and properly.

14 PRESIDING JUDGE STEINER: Mr Iverson.

15 MR IVERSON: I can certainly rephrase.

16 Q. (Redacted) who had been involved in the prosecution
17 and adjudication of a trial that involved the topic of pillage.

18 MR HAYNES: I'm sorry, it didn't.

19 PRESIDING JUDGE STEINER: At least the name that was given to the case is pillaging.
20 If the persons were convicted of pillaging, it's something different. Rephrase again your
21 question, please, Mr Iverson, because --

22 MR IVERSON: I think I have to stand my ground and say I think I'm correct here. The
23 dossier itself refers to pillage, and that's what I'm referring to, Madam President. I don't
24 think that there's any obfuscation or hiding of my point. The point is clear, that these
25 two individuals were intimately involved in this trial that unquestionably involved

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 questions of pillage and then subsequently acted as his investigators in Zongo in
2 questions involving pillage and never bothered to tell him that "Hey, there's something to
3 these allegations of pillage." We know this because people were convicted on the basis,
4 the underlying facts were that they pillaged, that they refused to -- they didn't obey the
5 lawful order to return the items, and then they were prosecuted for violation of lawful
6 order.

7 PRESIDING JUDGE STEINER: Yes, Mr Haynes.

8 MR HAYNES: I'm sorry, but I don't even think that Mr Iverson can establish the timeline.
9 I think the witness's evidence is that the inquiries in Zongo took place some time in
10 December, that the report took a long time to write because of the resources available. So
11 it's not even possible for Mr Iverson to assert positively which occurred first, the trial or
12 the inquiry.

13 PRESIDING JUDGE STEINER: Now I am --

14 MR IVERSON: I think I can establish --

15 PRESIDING JUDGE STEINER: I'm completely lost, Mr Haynes. This Commission of
16 Inquiry was established in December and the Colonel Mongapa inquiry is dated
17 November.

18 MR HAYNES: It's not Mongapa, it's Mondonga.

19 PRESIDING JUDGE STEINER: Mondonga; I am really sorry.

20 MR HAYNES: No, no, and the convictions were recorded on 27 December. The report
21 is signed on 3 January, and I do refer you back to his evidence yesterday as to the time it
22 took to write up the report. So I do not believe it is possible for Mr Iverson to assert
23 which occurred first, the conviction or the inquiry.

24 PRESIDING JUDGE STEINER: Mr Iverson?

25 MR IVERSON: If I may be heard. I respectfully disagree. (Redacted)

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 witnesses were interviewed on 26 December. The trial happened on 5 to 7 December and
2 these two individuals, Pascal and Jean, were involved with the trial, and I think my point
3 is clear.

4 MR HAYNES: Let's proceed, your Honour. I don't have anything further to say.

5 PRESIDING JUDGE STEINER: You can continue, Mr Iverson.

6 MR IVERSON:

7 Q. (Redacted)

8 (Redacted)

9 A. Yesterday I said that the statement that we heard over the radio, RFI, that was not
10 the first time that RFI had broadcast incorrect information, and personally, we did not
11 attach a lot of credibility to the statements that were being broadcast over RFI. (Redacted)

12 (Redacted)

13 mission - and I said this yesterday - not to be political or military in nature, so that is why

14 (Redacted), and the two magistrates were entrusted with

15 the task of questioning all the people who could possibly shed light on the matter.

16 After investigation, they drew up the report which you have before you, (Redacted)

17 (Redacted) As for the rest,

18 who was in Bangui et cetera, I say and I insist, I was not made aware of the existence of

19 any such report, any such previous report, so there you have it.

20 PRESIDING JUDGE STEINER: Mr Iverson, may I?

21 Mr Witness, you repeat that you had no idea of the existence of the previous investigation

22 and trial that was headed by Colonel Mondonga; is that correct?

23 THE WITNESS: (Interpretation) No, the report by Colonel Mondonga, I said that I

24 didn't know. I don't know about the existence of that report. That's what I said.

25 PRESIDING JUDGE STEINER: On the other hand, (Redacted)

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 (Redacted) it is stated, and we touched upon this point yesterday, that
2 one of the witnesses, Mr Papy Bokula, he said exactly that because of the news on the
3 radio, a mixed commission of members of ALC and of FACA was established. This
4 commission found that goods had been pillaged. They recovered these goods, and this is
5 what they say, they gave the goods back to the victims. So you were aware of the
6 existence at least of a mixed commission composed by the members of the ALC in order to
7 investigate pillages committed by MLC soldiers. (Redacted)
8 (Redacted)
9 (Redacted)
10 THE WITNESS: (Interpretation) Yes, your Honour. In my opinion, what the judge
11 got from that witness was what happened in Bangui. (Redacted)
12 (Redacted) That's what I said yesterday. There was no
13 name mentioned, no name of the person from the MLC who had been involved in that
14 commission. That person gave information, and he may have just heard. (Redacted)
15 (Redacted)
16 If the name of a soldier had been given, (Redacted) tried to meet with such a soldier,
17 but when that information was given to Mr Kamba, he does not mention any member of
18 the MLC who was part of it. So not having power over the authority and not knowing
19 all the soldiers, (Redacted) who
20 were in a position to summon people from the General Staff to determine who the soldier
21 was who represented us during -- in that investigation. (Redacted)
22 (Redacted)
23 (Redacted) but military matters, as you can see, the
24 commission -- you see, that was matters amongst soldiers, and to tell you the truth, I have
25 no knowledge of the Mondonga report. I don't Mondonga.

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE STEINER: Thank you. Sorry to interrupt, Mr Iverson.

7 MR IVERSON:

8 Q. Sir, and this question doesn't really have to do with (Redacted), but in terms of
9 being able to enter the territory of the Central African Republic, you were aware that there
10 were roughly 1,500 to 2,000 ALC soldiers operating on that territory at the time of your
11 investigation; right?

12 A. I didn't know how many soldiers there were. I was not interfering or getting
13 involved in military matters. I have no idea how many soldiers were there.

14 Q. But you knew that soldiers were there from your country, from the ALC; correct?

15 A. Yes, I had learned that from a colleague.

16 Q. And of course you knew about it because of the radio reports; right?

17 A. Yes, I heard over the radio but I didn't know how many soldiers there were.

18 Q. Were you aware that some time after 14 February, that Thomas Luhaka went to
19 Sibut by helicopter with a group and questioned people in Sibut?

20 A. No, no, I didn't know. Where is Sibut? I really don't know.

21 Q. Sibut's a town or a village in the Central African Republic. So then it would
22 surprise you to know, then, that they didn't have any apparent problem in entering the
23 territory of the Central African Republic to talk to people? Would that surprise you?

24 A. Well, when the soldiers were there, they were in charge of defence, so it wasn't a
25 problem, and he had military training.

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 Q. Was Mr Luhaka a member of the ALC?

2 A. He was Assistant National Secretary Responsible for Defence.

3 Q. But he was a politician, he was a civilian; right?

4 A. He had had military training.

5 PRESIDING JUDGE STEINER: Mr Iverson, we have to --

6 MR IVERSON: Yes, Madam President. Thank you.

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

8 (Open session at 10.29 a.m.)

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

10 PRESIDING JUDGE STEINER: Thank you.

11 Mr Witness, we have now a short break, half-an-hour. It's time for you to take some rest,

12 have a coffee or tea. It's 10.30. We will resume at 11 o'clock.

13 I ask please, court usher, to turn into closed session for the witness to be taken outside the
14 courtroom.

15 In the meantime, we will suspend and resume at 11 o'clock.

16 (Closed session at 10.31 a.m.) * Reclassified as Open session

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

18 (The witness stands down)

19 THE COURT OFFICER: All rise.

20 (Recess taken at 10.31 a.m.)

21 (Upon resuming in closed session at 11.05 a.m.) * Reclassified as Open session

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE STEINER: Welcome back. Could, please, court usher bring the

25 witness in.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 (The witness enters the courtroom)

2 PRESIDING JUDGE STEINER: Can we turn into open session, please.

3 (Open session at 11.07 a.m.)

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

5 PRESIDING JUDGE STEINER: Thank you. Mr Witness, welcome back.

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

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

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

9 PRESIDING JUDGE STEINER: Mr Iverson, you have the floor, reminding you that we
10 are in open session.

11 MR IVERSON: Thank you, Madam President. And I would request to stay in open
12 session, at least for a while. I think it will be safe to do so.

13 Q. Sir, could you tell the Court when you first heard about crimes allegedly committed
14 by the ALC in the CAR?

15 A. I no longer remember the precise date. This was information that was broadcast
16 round the clock by RFI.

17 Q. Do you remember if there were any other media sources besides RFI?

18 A. No. In our area we listened only to RFI.

19 Q. Do you know if you were able to pick up Voice of America on the radio?

20 A. I beg your pardon?

21 Q. I think from your response it will probably be a "no," But do you know if you were
22 able to pick up a radio station called Voice of America in the area where you were
23 located?

24 A. I really do not know. I never listened to that station, but I cannot say for sure that
25 no one else did.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. And could you tell the Court what did you hear on RFI about the allegations of
2 crimes committed by ALC in CAR?

3 A. I do not remember the exact words, but I heard that Banyamulengue troops
4 committed pillaging, rapes and murders in the Central African Republic. That is it.

5 Q. And you think that the RFI reports provided vague information; is that right?

6 A. I believe so because there were no details, as far as I am concerned.

7 MR IVERSON: I'd like to listen to one of those RFI reports from 3 November 2002, and
8 it's document 36 on the Prosecution's list of documents, ERN number CAR-OTP-0031-0093.
9 It's a public document, it's a radio broadcast, and it starts at minute mark 01.22 and it ends
10 at 03.29.

11 For those following along in French, we provided a transcription, and that is document 37
12 on the Prosecution's list of documents, CAR-OTP-0036-0039, and for those following in
13 English, we have an English translation, document 38, CAR-OTP-0056-0278.

14 I would ask, please, if the court officer could play the radio broadcast from
15 3 November 2002.

16 THE COURT OFFICER: Mr Iverson, would it be possible to precise what is the track
17 number of the file that needs to be played? Currently track 2 was being played, because
18 it corresponded to CD 2, but maybe it's another track that needs to be played.

19 MR IVERSON: It's track 5. Sorry, I omitted that. It's not your fault. It's my fault.
20 (Audio excerpt played)

21 MR IVERSON:

22 Q. Sir, I know it's been a long time, but do you specifically remember listening to this
23 radio broadcast?

24 A. No, I cannot remember precisely whether I heard this specific allegation. I heard
25 two accusations just like that, but I do not remember hearing this particular one.

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 Q. Okay, but you heard RFI radio broadcasts like this one; correct?

2 A. That is correct, yes.

3 Q. Now, in this particular broadcast, what information were you able to take from the
4 broadcast?

5 A. Can you repeat, please?

6 Q. Well, what -- based on the RFI broadcast, what were the allegations made? What
7 were the -- could you repeat to the Chamber some of the factual allegations made by RFI
8 in this broadcast?

9 A. I have just heard, like you, that there were allegations of looting and also rapes.

10 Q. And was there anything specific, or was it vague in your opinion?

11 A. I heard about the allegations of crimes committed by LMC (sic) soldiers: Pillaging
12 and particularly rapes. That is what I heard.

13 Q. And we also heard the story of a mother who says her daughter was raped; right?

14 A. Yes, that mother was not identified, but we heard that her daughter had been raped;
15 her daughter named Patricia.

16 Q. Right. And would you say that there's any other information from this broadcast
17 that could be used as potential leads?

18 A. Leads to what?

19 MR IVERSON: I'd like to request a private session, Madam President.

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

21 (Private session at 11.22 a.m.) Reclassified as Open session

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

23 MR IVERSON:

24 Q. Could the fact that you have someone's first name and their age (Redacted)

25 (Redacted) Considering (Redacted) could

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 (Redacted)

2 A. No. Maybe for the Central African Republic authorities this could be a lead, but
3 they would first of all have to identify the mother. It is mentioned that it was in the
4 northern neighbourhood of Bangui, so people would have to go there and identify that
5 woman and interview her, but from my point of view, when I said that it was vague,
6 before this information was broadcast RFI had broadcast other information accusing MLC
7 soldiers of cannibalism and this was absolutely incorrect. And given that precedent one
8 could not completely rely on what RFI was broadcasting, but if you were in Bangui and
9 you were an investigator you could use this as a lead to try to see who were the
10 perpetrators.

11 And what is surprising is to see that someone who is on the ground and who says that her
12 daughter was raped does not say that she herself was raped, and she was able to identify
13 the perpetrators, whereas there were several groups fighting and someone who is in a
14 state of shock can say just about anything.

15 Q. Sir, it's interesting you're already finding reasons to disbelieve this story before (Redacted)
16 (Redacted) You're prejudiced. You say, "Well, there were so many groups. We don't
17 know who could do it," but it's a job of an investigator to take the facts and then take them
18 further; right?

19 PRESIDING JUDGE STEINER: Mr Haynes?

20 MR HAYNES: Can we save the speeches for the final arguments? That's not a question.

21 PRESIDING JUDGE STEINER: I tend to agree with Mr Haynes. Mr Iverson?

22 MR IVERSON: Well, I'll try to rephrase it into a question.

23 Q. Sir, would that be a sign of prejudice, if an investigator discounts a story prior to
24 actually hearing from the actual person based on their own personal beliefs?

25 A. No. You asked me a question; that is as an investigator. I thought you were

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 asking me whether (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted) Now, when you say I'm

9 biased, I'm surprised. I thought your question was, if I was the investigator, would I
10 have used this information? So I really do not quite understand.

11 Q. Sir, do you know if this incident that was reported was ever investigated by the
12 MLC, or the ALC?

13 A. No, I do not know, except of course what we talked about a short while ago; that is
14 the existence of a joint commission which I was not aware of. I was not aware of that
15 investigation in the CAR, but what I know is that there was an investigation in Zongo; (Redacted)
16 (Redacted)

17 Q. And, sir, would you agree that the information that we just heard from RFI is
18 alarming information?

19 A. Absolutely, yes. Otherwise, people would not have been worried to the point of
20 arranging a trip to Zongo. People were worried about such information, because no one
21 would want to accept that. I do not think anyone here would tolerate such things. It
22 would worry anyone, and the fact that there were several investigations means that
23 people were in fact worried.

24 Q. Would you agree that it's information that should be followed up on? Further
25 investigation is warranted?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 A. Yes, this is information that would need to be investigated. There is no other thing
2 to say. It requires that a real investigation be conducted. There's no doubt about that.

3 PRESIDING JUDGE STEINER: Mr Iverson, sorry if I interrupt you.

4 Mr Witness, you just said that, "It would worry anyone, and the fact that there were
5 several investigations means that people were in fact worried." What "several
6 investigations" you are talking about?

7 THE WITNESS: (Interpretation) Yes, your Honour, I talked about the investigation
8 (Redacted) in Zongo and also the one that I've learned about here in -- that happened in the
9 CAR, but I'm also talking about the investigation that was requested by Jean-Pierre Bemba;
10 that is, for an international commission.

11 PRESIDING JUDGE STEINER: Sorry if I insist, but you mentioned here, maybe it's a
12 problem of translation, that the fact that there were several investigations means that
13 people were in fact worried, and you mentioned two investigations that related to
14 pillaging, and here we are talking about rapes. Are you aware on whether any
15 investigation on rapes were opened?

16 THE WITNESS: (Interpretation) No, your Honour. I believe that the information was
17 about looting, rapes, acts of violence and abuse in general. I said -- well, the question
18 that was put to me was whether the information broadcast by RFI was worrisome, and I
19 said yes, that would be a worry, a concern, for anyone. One cannot remain indifferent to
20 such information, and that is why there were several investigations.

21 I'm talking about the investigation (Redacted) in Zongo regarding looting. I said that
22 there was another investigation in Bangui, the one I've just learned about here in Bangui,
23 but I also said, but Mr Bemba asked for another one and it was supposed to be an
24 international commission, and now I have no information about such other investigations
25 but the events required --

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 PRESIDING JUDGE STEINER: But that means that when you were talking about many
2 investigations, several investigations were opened, you were talking about the two you
3 know about pillaging and Mr Bemba's request for an international inquiry, but you were
4 not aware on whether Mr Bemba ordered an investigation on rapes in DRC or court
5 martial, the soldiers when they came back; you are not aware, or are you?

6 THE WITNESS: (Interpretation) No, your Honour.

7 PRESIDING JUDGE STEINER: "No" what? Give your complete answer; otherwise, it's
8 vague.

9 THE WITNESS: (Interpretation) I said that the investigations I was talking about were
10 the investigations (Redacted) in Zongo, the one in the CAR and the one that was requested,
11 that was going to allow all the truth to come out. Now, I don't have any information
12 whether that investigation actually occurred, because in actual fact, to investigate a rape,
13 you would have to interview that lady and others to come to the truth.

14 PRESIDING JUDGE STEINER: I would try to be clearer in my answer. Do you know
15 whether Mr Bemba ordered the opening of an investigation in relation to the alleged rapes
16 committed by the soldiers in Bangui, in Central African Republic? I'm just asking
17 whether you know.

18 THE WITNESS: (Interpretation) I have no such information, ma'am.

19 PRESIDING JUDGE STEINER: Thank you very much. Mr Iverson. Yes, Mr Haynes.

20 MR HAYNES: I think I ought to just place on the record that I don't believe there is yet
21 any evidence in the case as to what brief Colonel Mondonga had, and I use the word "yet"
22 advisedly. I don't believe it is the case that the evidence shows he was only sent to
23 investigate pillaging. That may well have been the fruits of his investigation, but I don't
24 believe it is fair to characterise the evidence in the case in the way that your Honour has.

25 PRESIDING JUDGE STEINER: Mr Haynes, I confess again, I did not understand. I just

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 mentioned the two investigations mentioned by the witness. I never said that these were
2 the only evidence in the case. The witness mentioned two investigations, one by a
3 commission to which he belonged, and the other, the one conducted by Colonel
4 Mondonga that was shown to him during his testimony.

5 MR HAYNES: Well, if your Honour looks at page 44, lines 2 and 3, I think you will see
6 my concern. You characterised Mr Mondonga's investigation as only being into
7 pillaging, and I don't believe there is any evidence in the case at the moment which would
8 support that characterisation of his investigation and I, as I said, I use the word "yet."

9 PRESIDING JUDGE STEINER: Of course, I was referring to the document that was
10 under discussion and that was shown to the witness, and this document talks only about
11 pillaging. If there is another document that has not yet been brought to the attention of
12 the Chamber, is another issue.

13 MR HAYNES: Your Honour, it may not be a document, but I'll leave the point there.

14 PRESIDING JUDGE STEINER: Just in order to calm the spirit of Mr Haynes, when I
15 referred on page 44 to the investigation conducted by Colonel Mondonga, I was referring
16 to the document that was analysed today during the questioning of the current witness.
17 Is that fine with you, Mr Haynes?

18 MR HAYNES: Yes, your Honour.

19 PRESIDING JUDGE STEINER: So you can proceed, Mr Iverson.

20 MR IVERSON: And just so the Prosecution is clear, we believe we have a total good faith
21 basis in talking about a pillage investigation based on the dossier disclosed by the
22 Defence themselves which, on the first page, says "Transmission of the pillaged dossier,"
23 and it refers throughout to the pillaged dossier. Nowhere in there does it say that it's a
24 rape dossier, so that is our good faith basis for proceeding in the way that we are.

25 PRESIDING JUDGE STEINER: Just one second, Mr Iverson.

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 I wanted to apologise to the interpreters. The same thing that I recommend to the parties
2 and participants, to give the five seconds, because at one point we were all speaking in
3 English, we did not respect the rule ourselves. So I apologise to the French interpreters.
4 Mr Iverson.

5 MR IVERSON: Thank you, Madam President.

6 Q. Sir, was the Zongo investigation -- and is it okay if I call it "the Zongo investigation"
7 for shorthand?

8 A. Yes, there's no problem.

9 Q. (Redacted)

10 A. (Redacted) I don't really follow you.

11 Q. You're right. I'll be more specific. (Redacted)

12 (Redacted)

13 A. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 Q. (Redacted)

23 (Redacted)

24 (Redacted)

25 A. (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. Now, would it be fair to say that (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted) is that fair to say?

8 A. No. I really don't understand (Redacted)

9 Could you repeat your question? I really haven't grasped it entirely.

10 Q. Okay. Well, (Redacted)

11 (Redacted)

12 (Redacted) So would it be fair to say then that (Redacted)

13 (Redacted)

14 (Redacted)

15 A. No. I think it's important to refocus. Now, (Redacted)

16 (Redacted)

17 knowledge. As for political matters and the administration of justice, I was the one who

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted) I think that would be pretentious.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. Right, that's fair, I mean, that no one has perfect knowledge. And I guess what I
2 mean by knowledge is that (Redacted)

3 (Redacted)

4 A. (Redacted)

5 (Redacted)

6 Q. Sir, could you tell the Chamber, in your opinion, what constitutes a good
7 investigation, a quality investigation?

8 A. A quality investigation, what that means? Well, it's an investigation during which
9 all the items to be checked have been checked, cross-checked.

10 Q. In a quality investigation, would it be a good idea to interview victims, if there are
11 alleged victims in the case?

12 A. In principle, if one has the opportunity to have access to the victims for a quality
13 investigation, you have to hear from the victims, from the perpetrators and establish guilt.
14 You even have to compare the versions of the two parties for it to be a quality
15 investigation, but you have to have that opportunity to have access to both; namely, to the
16 victims and to the guilty, and to have that opportunity to compare and contrast. That's
17 what a quality investigation is all about.

18 Q. What about visiting crime scenes, would that be a good idea in an investigation, to
19 visit crime scenes, as an investigator?

20 A. Well, it all depends, you have to have that opportunity to go. If you don't have any
21 opportunity, it's always said no one can do the impossible. If you're not in a position to
22 actually go to the crime scene, you have to make do with statements from witnesses.

23 Q. And none of those things happened in this Zongo investigation. (Redacted)
24 (Redacted) is that right?

25 A. I've already said, Mr Prosecutor, in Zongo there were no victims. One couldn't

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 imagine. The events occurred in Bangui, there were no victims in Zongo, (Redacted)
2 (Redacted) They didn't exist. And, you see, Congo has a border with
3 the CAR, and soldiers agreed to went there. That doesn't mean that magistrates could
4 travel to some neighbourhood in Bangui and start to interview people. That wasn't
5 possible. Not even this Honorable Court. You need to have leave to investigate. You
6 can't just go into another territory and begin investigations. Even if you are aware of
7 what a perfect investigation is, you can't just impose yourself, just go on to the soil of a
8 state that hasn't invited you to come and conduct an investigation. That's all about the
9 sovereignty of a state.
10 To go and -- because you're concerned about conducting a good or a better investigation,
11 and you want to go against the will of the authorities of that country, what I'm saying here
12 is that if the CAR authorities had invited us and asked us to come and investigate, (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 not have any ability to go and find victims in the CAR.
18 Q. What about access to soldiers, to alleged perpetrators?
19 A. First of all, the fact that the victims were not identified, it's clear that -- well, already
20 I've said this, and the investigation concluded, (Redacted)
21 (Redacted)
22 (Redacted) it would be important to determine who it belonged to,
23 and the person would have to say who took the good away from him or her. So not only
24 (Redacted) but also it was not possible to identify the various
25 perpetrators and put them in contact. The only place where a true investigation could

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 have been done was in the CAR.

2 THE INTERPRETER: The English interpreter missed the last sentence. Could the
3 witness please be asked to repeat his last sentence?

4 MR IVERSON:

5 Q. Sir, the English interpreters are requesting that you just repeat your last sentence,
6 because it was -- he missed it.

7 A. I said the place where the best investigation would have been held would have been
8 in the Central African Republic.

9 PRESIDING JUDGE STEINER: Mr Iverson, may I ask a clarification from the witness,
10 please?

11 Mr Witness, on the second page of the report, which is document -- final number 0157, we
12 are in private session, this gentleman, Mr Vicky Engembe the secretary of the MLC, he
13 says, and I'll have to read it in French because it's the only version I have, that they have
14 not seen any pillaged goods and he said: (Interpretation) "The soldiers allegedly
15 looted in Bangui are leading a miserable existence in Zongo." (Speaks English) "That
16 they knew what were the militaries ..." (Interpretation) "... allegedly looted in Bangui."
17 (Speaks English) How do you interpret what is said here? So they knew who could be
18 the perpetrators of the pillaging, since they say that they ... "vivent misérablement à
19 Zongo."

20 THE WITNESS: (Interpretation) That doesn't mean that they knew the individual
21 soldiers. They were speaking generally. They say the soldiers, so it's indefinite, ma'am.
22 It's not specific.

23 PRESIDING JUDGE STEINER: Mr Witness, I understand a little bit of French, not too
24 much, but a little bit. And here it said, (Interpretation) "The soldiers who allegedly
25 looted lead a miserable existence." Whatever military, but the ones "qu'on prétend avoir

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 pillè."

2 THE WITNESS: (Interpretation) No one is identified. No one has identified the
3 soldiers. He's talking about ALC soldiers who were in Bangui. They were the ones,
4 they were the ones who had been accused of looting, and so he doesn't mention any
5 individual person; he's talking about soldiers who had been sent. All those soldiers who
6 had been sent to Bangui and who had been accused of looting, that is what he's saying,
7 unless -- unless I haven't -- unless I no longer understand French correctly.

8 PRESIDING JUDGE STEINER: I'm sure you understand much better than I.

9 Mr Iverson.

10 MR IVERSON:

11 Q. Sir, I just want to ask you a follow-up question, and this is from today's transcript,
12 page 52, lines 1 to 8, part of your answer in my last question, and I'm just going to read
13 what you say. You say, (Redacted)

14 (Redacted) it would have been -- it would be important to
15 determine who it belonged to and the person would have to say who took the good away
16 from him or her. So not only did (Redacted) but also it was not
17 possible to identify the various perpetrators and put them in contact. The only place
18 where a true investigation could have been done was in the CAR."

19 And my question is this: If a person is convicted of a crime without any evidence from a
20 victim or the physical evidence, and the victim is unidentified, and there's no other
21 evidence than a statement from the accused denying the offence, would that be a valid
22 conviction in your system?

23 A. No. It means within our system an accused person, whose victim has not given a
24 statement or given testimony, unless the prosecution has other evidence, the evidence
25 being what the victim has said, but there's also what the scientific people say.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 If it's established that A plus B equals -- well, you can be found guilty on the basis of
2 evidence held by the prosecution. It is -- that is possible. I'd like to be clearer. It
3 means that if you go to this room alone, and then later a computer disappears, it is
4 possible that the prosecution may establish that you were the one who took the computer
5 which disappeared, because no one else except for you was present on the scene -- at the
6 scene of the crime.

7 PRESIDING JUDGE STEINER: Mr Iverson, Judge Ozaki would like to put a follow-up
8 question.

9 JUDGE OZAKI: Mr Witness, were there any procedures in your jurisdiction at that time
10 to enable you to extradite military personnel who committed some crimes during the
11 military operation in the outside country? For example, if CAR authorities started
12 investigation, and found someone, some MLC soldiers guilty of -- or suspects of guilt of
13 some specific MLC soldiers, was it possible for MLC authorities to extradite those soldiers,
14 or not?

15 THE WITNESS: (Interpretation) Let's say the authorities of the Congo not only could
16 accept that those soldiers be tried in the CAR, but also could allow that soldiers facing
17 charges in the CAR be tried and incarcerated in the Congo. This is truly possible within
18 our system.

19 PRESIDING JUDGE STEINER: Judge Aluoch.

20 JUDGE ALUOCH: Mr Witness, I'm looking at page 52 in the transcript, the English
21 version, line 14, where your answer was, "I said the place where the best investigation
22 would have been held would have been in the Central African Republic." That was your
23 answer.

24 Now, given that answer, Mr Witness, I go back to the transcript of yesterday, again the
25 English version, although it's headed - and this portion of evidence was given in private

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 session, but it doesn't contain any names of anybody, so maybe I can just read line 15 on
2 page 44, where it says, "I think the question was, and would you just read us their
3 conclusion?" I think the conclusion of the magistrates. And the answer was, "Their
4 investigation reveals that nothing allows one to establish from a legal point of view that
5 acts of pillaging were conducted by ALC soldiers."

6 Now, that is their conclusion and this is your testimony this morning. So they made
7 the -- would I be right in saying that these - the magistrates - made their conclusion,
8 whereas you're really saying that the best investigation would have been held in the
9 Central African Republic? So they missed -- would you agree that there was something
10 missing in their conclusion, because they did not investigate fully, or would you say that
11 as far as investigations in Zongo only was concerned their conclusion was right? I'm just
12 looking at the two sides of the coin, if I can say that. I hope I'm clear, Mr Witness?

13 THE WITNESS: (Interpretation) Yes, you are clear. I did in fact read the conclusion of
14 the report and it is valid for an investigation conducted in Zongo, but an investigation is
15 never really final. If the investigation had been conducted in Bangui I do not think that
16 they would have arrived at these conclusions, because they would have contacted victims,
17 interviewed them and taken statements from witnesses. I do not know how this
18 conclusion, the way it would have changed, but given that they did not go to Bangui, they
19 carried out investigations in Zongo, they arrived at this particular conclusion.

20 JUDGE ALUOCH: Thank you.

21 PRESIDING JUDGE STEINER: Yes, Mr Haynes?

22 MR HAYNES: I have to say I'm concerned at the introduction of the concept of
23 extradition. It's a particular legal term of art and I'm not sure if it's the word Judge Ozaki
24 intended to use, but to put it in concrete terms, if a British citizen commits an offence in
25 the United States of America and then returns to the United Kingdom, the United States

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 can apply for his extradition back to the country where the offence was committed. And
2 so there are two essential ingredients here: One, it is the removal of a citizen from his
3 home country to another country where an offence has been committed and with which
4 there is a treaty of extradition.

5 It seems to me that that has absolutely no application to this case, where the allegations
6 are that citizens of the Democratic Republic of Congo committed offences in the Central
7 African Republic. That would be, as it were, a request for them to be returned to their
8 home country to face charges in relation to an offence which occurred outside that
9 country's jurisdiction.

10 And so I think to be fair to the witness if that question of Judge Ozaki's could be
11 rephrased, because it seems to me extradition has absolutely no place in this case at all
12 and it's a misuse of a quite specific legal term of art.

13 JUDGE OZAKI: Well, I posed that question on the understanding that the legal system
14 in DRC is based on continental law, rather than common law, and my understanding is
15 that in continental law system the extradition of their own nationals can be -- it's possible
16 under some legislation. That's why I asked that question and I think as a lawyer from
17 DRC the witness perfectly understood, but if the witness has any clarification I'm ready to
18 clarify?

19 PRESIDING JUDGE STEINER: Mr Witness?

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

21 I believe that before this Court it was not necessary for me to consider that extradition can
22 happen only when there is an agreement between two States. I believe we all know that
23 it is not automatic.

24 But in answer to the Judge, I can say that we are not opposed to the fact that a Congolese
25 citizen who commits a crime abroad should be investigated, so investigations can be

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 carried out on an alleged crime abroad, but it is on a case-by-case basis. If a crime is
2 committed in Congo and the person hides abroad, then we talk about extradition. Congo
3 can ask that a country with which it has an agreement repatriates somebody who went
4 and hid there, so in this particular case nothing prevents Central African Republic
5 authorities to investigate the behaviour of Congolese soldiers who were in the CAR.

6 That is what I wanted to add.

7 PRESIDING JUDGE STEINER: Mr Iverson, we are disturbing a little bit your line of
8 thoughts, but since we are still talking about the very same report would you allow me to
9 put another question, because otherwise it goes to the beginning of the transcript and it
10 appears much more complicated?

11 Mr Witness, I'm talking here about page 47, line 15, and we are in private session. You
12 said, among other things, (Redacted)

13 (Redacted) This is what you say.

14 You confirm that?

15 THE WITNESS: (Interpretation) Yes, I confirm that, your Honour.

16 PRESIDING JUDGE STEINER: And that's why (Redacted)

17 (Redacted) is that correct?

18 THE WITNESS: (Interpretation) That is correct.

19 PRESIDING JUDGE STEINER: If we go to the last page of the report, which is
20 page -- document 0158, may I ask you for the sake of the record to read such conclusion?

21 THE WITNESS: (Interpretation) I have already read it. It comes out from the
22 investigation that, from a legal point of view, there is nothing to show that there were acts
23 of violence committed by the ALC. That is why the public opinion is accusing France
24 and Central African opponents of intervention in the MLC and for having deliberately
25 carried out this campaign of vilification to tarnish the regime of President Ange-Félix

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Patassé that they want to get rid of.

2 PRESIDING JUDGE STEINER: I can understand the first part of the conclusion that

3 (Speaks French). The continuation, when it starts (Speaks French), what opinion they are

4 talking about? Is it their opinion?

5 THE WITNESS: (Interpretation) They are talking of the opinion of the inhabitants of

6 Zongo.

7 PRESIDING JUDGE STEINER: So it's the population of Zongo that is of the opinion that

8 there is a (Speaks French) against MLC? This is -- do you understand that this is, if I may

9 say, a strictly technical conclusion for a legal report, or you agreed with this conclusion,

10 my first question, that this kind of opinion was part of the conclusion of the report?

11 THE WITNESS: (Interpretation) I believe that maybe that is not where it should have

12 been. Maybe it should have been in the body of the text. They should have mentioned

13 that this is what such-and-such a person said. They talked about the statement of

14 Mr Papy and what he said, so they could have taken this statement and identified the

15 person who mentioned it in the body of the text. That is what I think.

16 PRESIDING JUDGE STEINER: Thank you.

17 Mr Iverson?

18 MR IVERSON: Madam President, your question actually triggered another question

19 from me, but I will come back to that question:

20 Q. And just I want to go back to we were speaking about the investigation, and I

21 wanted to ask you, sir, that you mentioned yesterday that (Redacted)

22 gentleman, Mongapa, along to be able to summon soldiers; is that right?

23 A. I don't quite get you. Soldiers did what?

24 Q. Well, I remember from the transcript yesterday - and I don't have it in my

25 hand - that you said something along the lines (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 (Redacted) is that

2 right?

3 A. Yes. I remember that I said that (Redacted) to be accompanied

4 by Colonel Mongapa, who was the personnel officer of the ALC, so that in case (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted) identified someone, a suspect, this person would

9 be called to appear, and Colonel Mongapa knew most of those men and he would be

10 useful for the investigation. That is what I said, and I confirm it.

11 Q. But you never actually used his power to summon soldiers (Redacted)

12 (Redacted) did you, sir?

13 I'm sorry, I wasn't picking up an answer here. Did you get my question, sir, that you

14 (Redacted) is that

15 right?

16 A. Let us say that since no looted property was found, the magistrates could not ask

17 him to summon all the soldiers. That would have been difficult. The approach was as

18 follows: People would be interviewed and (Redacted) whether there had been

19 property crossing over to Zongo, whether civilians bought those -- that property or those

20 goods, and if that was confirmed then (Redacted) who brought over those

21 goods, and it was at that level that (Redacted) made use of the colonel, but since no property was

22 found, the magistrates could not have asked Colonel Mongapa to summon all soldiers

23 who had gone to the CAR without having any specific charges against any individual

24 soldiers. That would have been pointless.

25 If some of the soldiers had been identified as having sold certain goods, and those goods

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 were found and seized, then the magistrates would have sought the assistance of the
2 colonel to summon those soldiers that were alleged to have committed the crimes.

3 Q. Well, were there any soldiers in Zongo that could have been interviewed? (Redacted)
4 (Redacted)

5 A. I do not understand the question.

6 Q. (Redacted)

7 (Redacted)

8 A. The Presiding Judge raised this issue here. The MLC authorities in Zongo said that
9 the soldiers who had come from Bangui were there and they were living in misery. That
10 was the statement that was got from one of the witnesses.

11 Q. (Redacted) it was too difficult to summon these soldiers, to interview
12 them about potential pillage; is that right?

13 A. No. What I'm saying is that since (Redacted) any specific information on
14 looted property, because that was our approach, (Redacted)
15 (Redacted) the police commander, the head of internal security, the head of frontier
16 security. (Redacted) MLC authorities on the ground and the President of the Boat
17 Owners' Association. No one said that any soldiers had arrived with property. So just
18 summoning soldiers for the purposes of summoning them would have been pointless. If
19 X or Y had been identified as having brought over a TV set or mattresses that they sold to
20 citizens there in Zongo, that would have been a different matter.

21 Q. So you're saying you needed a certain level of suspicion in order to interview
22 soldiers; is that right?

23 A. At least the perpetrators would have been mentioned. You cannot call up people
24 simply for the purpose of calling them up. If Mr X was mentioned in a case, then we
25 could summon him.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. But wait a minute. These eight people you interviewed, you didn't suspect them,
2 but yet you called them up to ask information about alleged pillage. Why couldn't you
3 do the same thing with soldiers?

4 A. These people live in Zongo. These were innocent people, and they were called up
5 by the magistrates to give them any possible leads because they had gone there without
6 leads except the information from the radio, but then you have 2,000, 3,000 soldiers, as
7 you mentioned, and you could not call up those soldiers one-by-one to interview them.
8 And given the resources at their disposal, there was no possibility of interviewing 2,000
9 people, so they needed to have someone mentioned or identified as a perpetrator, and any
10 such people would have been summoned.

11 Now, after having listened to all those representatives of the various groups, the
12 magistrates decided that it was pointless to continue, so they put an end to the inquiry
13 and prepared their report.

14 Q. So the magistrates (Redacted) based on
15 the investigation, based on really these interviews with eight people who appeared to be
16 relatively random, a random selection of Zongo residents?

17 A. What I'm saying is that those people were not selected at random. These were
18 people who occupied specific positions in the socio-economic life of the inhabitants of
19 Zongo. They were not chosen at random. (Redacted) if any property had been
20 looted from the CAR, the property could only be brought to Zongo across the river.
21 There was no other way. So the boat owners were the people best placed to provide
22 information about the transportation of property to Zongo.
23 Then there was the border security officer, and he can give information about who left
24 Zongo to Bangui and came back with property. They would have had information on
25 that.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 The officer responsible for internal security would have had an idea of who changed
2 lifestyles in Zongo, this person has a motorcycle and before he did not have one, and even
3 the police would have information. So these people were not chosen at random, they
4 were chosen on the basis of their responsibilities.

5 There was also a notable, that is, who had civil responsibility in Zongo, and he was
6 interviewed. So it was based on interviews with these people that (Redacted)
7 (Redacted) but since no one was mentioned, the
8 magistrates had to put an end to their inquiry because since no property had been brought
9 over, you could not identify people who were not there. But here, in this Court, I have
10 discovered that there was a joint commission in Bangui and they discovered something
11 else but, in Zongo, no property was found. (Redacted) just started
12 interviewing soldiers who had retreated in disarray, without any specific facts. That is
13 why the magistrates stopped there and arrived at the conclusion that they arrived at.

14 Q. Sir, now yesterday you said, and this is transcript 267, page 86, lines 4 to 8, that "It
15 would be very strange for a judge to be investigating anything out on the street," and I
16 noticed that Monsieur Pascal was a judge. Does this indicate to you that there's a
17 problem here?

18 A. I believe there is no problem. I said that, in the Congolese system, judges are not
19 authorised to just investigate anyhow on the streets. I stand by that.

20 Pascal Zanzu, who is a judge and who went there with the person who was the Minister
21 of Justice, he has a role to play, draft a report. He was accompanied by the Prosecutor of
22 the Republic. He does not have the responsibility to investigate, to go somewhere and
23 investigate people, but a judge can go on a mission. I did not say he cannot go on a
24 mission. That is outside of his investigation in the court. He cannot just go to the street
25 and investigate, but he can go on mission.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 You have the famous mobile courts that travel to the field and carry on their mission. So,
2 a judge cannot start an investigation himself and then judge or try a case, but he can go on
3 a mission as a magistrate.

4 Q. So you don't believe that there's any implications on the independence of the
5 judiciary when, on 7 December 2002, this judge and this prosecutor were sitting at
6 opposite ends of the courtroom, but yet less than a month later they were working
7 together on an investigation whose subject matter just happened to be the same subject
8 matter in the trial? You don't find a problem with that, sir?

9 A. But the judges and the prosecutors always work together in all cases. They are not
10 opponents, they are not enemies; the work they do is complementary, so they work
11 together.

12 Q. And if you're setting up a whitewash investigation and you don't have -- you're not
13 investigating with an eye to prosecute, it doesn't matter who you put on the investigation;
14 right? You could put a judge on the investigation. You said you have the lack of judges,
15 but yet you use a judge for the investigation. Does that make sense to you, sir?

16 PRESIDING JUDGE STEINER: Mr Haynes.

17 MR HAYNES: That's another speech, and we can save that for the final arguments as
18 well.

19 PRESIDING JUDGE STEINER: Again, I tend to agree with Mr Haynes. Mr Iverson,
20 please put an objective question to the witness.

21 MR IVERSON: I'm sorry, Madam President, I was just trying to quickly summarise some
22 of the testimony into a question here.

23 Q. But if you're looking to investigate with the possibility of a prosecution coming out
24 of it, it's probably not a good idea to have a judge do the investigation; is that right?

25 A. No, I do not believe that a judge would compromise his conscience by the simple

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 fact of having participated in an investigation. I do not think that a magistrate, who is
2 really proud to be one, can be frustrated by the fact that he participated in an investigation.
3 Maybe members of the defence can say, look, the judge participated in the investigation,
4 but nothing prevents a magistrate to take part and keep a clear conscience consistently
5 with the law.

6 MR IVERSON: Sir, I believe it's time for the lunch-break. Thank you.

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

8 (Open session at 12.30 p.m.)

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

10 PRESIDING JUDGE STEINER: Mr Witness, we have now our lunch-break. It's 12.30.

11 We will resume at 2 o'clock.

12 I ask, please, the court officer to turned into closed session for the witness to be taken
13 outside the courtroom. In the meantime, we will suspend and resume at 2 o'clock.

14 (Closed session at 12.31 p.m.) * Reclassified as Open session

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

16 (The witness stands down)

17 THE COURT OFFICER: All rise.

18 (Recess taken at 12.32 p.m.)

19 (Upon resuming in closed session at 2.12 p.m.) * Reclassified as Open session

20 THE COURT USHER: All rise.

21 Please be seated.

22 PRESIDING JUDGE STEINER: Welcome back, and on behalf of the Chamber I

23 apologise for the delay. The Chamber was in deliberations.

24 I ask, please, court usher to bring the witness in.

25 (The witness enters the courtroom)

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 PRESIDING JUDGE STEINER: We can turn into open session, please.

2 (Open session at 2.14 p.m.)

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

4 PRESIDING JUDGE STEINER: Thank you very much.

5 Mr Witness, welcome back.

6 THE WITNESS: (Interpretation) Good afternoon, madam.

7 PRESIDING JUDGE STEINER: We apologise for making you wait. We will
8 immediately continue with Prosecution questioning.

9 Mr Iverson, you have the floor.

10 MR IVERSON: Thank you, Madam President.

11 Q. Sir, we have roughly an hour and 45 minutes left today. I would like to finish
12 my questioning today so we can move the proceedings along. You know, I'm not
13 sure that it's going to be possible, but if it is to be possible it will require a little bit of
14 co-operation from you. So, you know, I understand that not every one of my
15 questions is going to lend itself to a "yes" or "no" answer, but if you could just keep
16 your answers to answering my questions and not going on too much in terms of your
17 testimony, I think we might be able to conclude the Prosecution's questioning today.
18 Would that be an acceptable way to proceed for you, sir?

19 A. I have no problem with that.

20 MR IVERSON: Madam President, could I ask for private session, please?

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

22 (Private session at 2.16 p.m.) * Reclassified as Open session

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

24 MR IVERSON:

25 Q. Sir, do you still have the Zongo investigation report in front of you?

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 A. Yes.

2 Q. Sir, could I ask you to turn to page 2, and it's 0157 of the report and the 2 -- the
3 number "2" is at the top of the page, and could I have you please read the sixth full
4 paragraph from the top, talking about the chief of the notables of Zongo. Could I
5 have you read that out loud to the Chamber, please?

6 A. "The said Monganiala (phon), chief of the notables of Zongo, was heard one day
7 later on 22 December 2002. He asserted that he had heard rumours of goods having
8 been looted from Bangui and taken across to Messi (phon) and Tongo (phon) and
9 added among other things that soldiers coming from the front only had their bags
10 with them, but he did not know what the contents were thereof."

11 Q. Did you -- sir, did you think that this person's statement (Redacted)
12 deserved a follow-up?

13 A. You asked whether this person's statement required a follow-up? Well, it
14 (Redacted) soldiers who had arrived in Zongo, where he was, only had
15 their bags on them. They had only their bags with them.

16 Q. And couldn't pillaged goods be placed in the bags? Wouldn't that be a
17 reasonable conclusion?

18 A. Pillaged goods in bags? Well, I think from the statement it is indicated that
19 none of the pillaged goods came to where he was. He also stated that he had heard
20 rumours that the goods had or may have been taken to another area, so he says
21 himself that in Zongo all that he saw was the soldiers and their bags.

22 Q. And, sir, I hope you realise that if I expressly or impliedly criticise (Redacted)
23 (Redacted) it is not to be meant for you to take personally. It's -- I'm just doing my
24 job to point out some of the more obvious portions where further investigation could
25 be taken and I am just asking if you agree that further investigation could be taken on

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 that particular area?

2 A. Yes, that is possible. You see, investigations are only concluded when a clear
3 definition or determination has been made of those who need to be prosecuted, so
4 investigations can always be ongoing, (Redacted) it is stated that
5 there were no goods in Zongo where we went, or no pillaged goods were found in
6 Zongo, where we had been.

7 Q. So based on the fact that there were no pillaged goods found in Zongo, (Redacted)
8 (Redacted)
9 (Redacted) Is that a reasonable conclusion, sir?

10 A. The soldiers who went with their bags, with their backpacks so to speak, were
11 deployed on the battle ground. Now if the soldiers had left or had gone there
12 empty-handed, then we could have maybe considered that they came back with
13 looted property. Now, pillaging as you know is a wide-scale theft, so I say again
14 that it would have been necessary for a broader investigation to be conducted in this
15 case, but I must confess that it would not have been the ideal investigation because it
16 was not possible to get a handle on all aspects, victims and what have you, including
17 cross-checking the facts, because there would not have been an in situ situation where
18 to do that. This is my position.

19 Q. So considering that, what you just said, and taking into account that (Redacted)
20 (Redacted), would it be fair to say that this
21 investigation was not really sufficient?

22 A. Well, as for Zongo, as far as Zongo is concerned, yes, the investigation was
23 sufficient, but regarding the whole picture I have already said that the better
24 approach would have been to conduct an international investigation in the Central
25 African Republic.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. On page 3, which is 0058, the final statement made, it seems to be pretty
2 conclusive that there's no evidence of -- or legally speaking there is no evidence that
3 pillage occurred and the allegations were designed to demonise the MLC. Is that a
4 fair summary of the last part of the statement?

5 A. What assertion?

6 Q. Well, simply that the statement says that legally speaking there's no evidence
7 that pillage occurred and that the allegations were designed to demonise the MLC.
8 Is that a fair summary of the last part of that statement there?

9 A. I have said that the first part of this statement, from a legal point of view, can
10 stand but what follows is really a story, or an expression of public opinion on that
11 point. (Redacted)

12 (Redacted)

13 (Redacted) So being a report it should have strictly addressed legal issues
14 and nothing else.

15 Q. What else do you remember from (Redacted)

16 (Redacted)

17 PRESIDING JUDGE STEINER: Yes, Mr Haynes?

18 MR HAYNES: I think the reference to "the President" is your Honour, not
19 Mr Bemba.

20 MR IVERSON: He's probably right. I'll move on.

21 PRESIDING JUDGE STEINER: Before you move on, if you allow me?

22 MR IVERSON: Of course, Madam President.

23 PRESIDING JUDGE STEINER: I promised to myself that I would not interrupt, but
24 since you were analysing the summary of the statement of the chef de notable de
25 Zongo, Mr Mangall Nyanya, here, Mr Witness, in the report is 0157, the -- this person,

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 the chef de notable, he says that he heard some rumours about the cross of the river of
2 the pillaged goods. At the -- in the localities, in the villages, of Imese and Dongo.

3 Where are these villages? In Congo, or in Central African Republic?

4 THE WITNESS: (Interpretation) Those localities are in the DRC.

5 PRESIDING JUDGE STEINER: Are you aware that on the basis of this information
6 given by one of the witnesses (Redacted) that there were

7 rumours that pillaged goods were arriving in Imese and Dongo, any investigation
8 was opened to investigate these rumours? Are you aware of that?

9 THE WITNESS: (Interpretation) (Redacted)

10 (Redacted) which was quite remote from the combat zone. This area was quite far
11 away and the reference is made to soldiers who had come back from Bangui.

12 PRESIDING JUDGE STEINER: (Redacted), wouldn't be in your view more let's say
13 accurate for the conclusion to say that as a result of the inquiry it was not possible to

14 establish that it was -- there had been pillages in Zongo, because at the end the

15 investigation was only in Zongo? When one of the witnesses mentions two other
16 places in which apparently there were rumours that there were lots of

17 pillaging -- pillaged goods arriving, this does not deserve any investigation, so the
18 conclusion is not in accordance with the testimony that was given (Redacted)

19 Do you agree with that, or not?

20 THE WITNESS: (Interpretation) Madam President, I think you are right. I said
21 and I repeat that these persons were heard by magistrates. (Redacted)

22 (Redacted) I do agree with you that the information collected in

23 Zongo indicates that there were no pillaged goods in that area. Well, maybe there
24 should have been a general investigation, but even if we were to take it that by some

25 circumstances these magistrates or judges had travelled to other circumstances in the

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Congo, what still would have been the best option would have really been to conduct
2 those investigations in the Central African Republic.

3 PRESIDING JUDGE STEINER: But do you agree that in Centrafrique it would not
4 be possible to check whether goods that were pillaged crossed the river to DRC?
5 You agree with me?

6 THE WITNESS: No, no, Madam President. I think that from the Central African
7 Republic it could have been determined that goods had crossed over to the Congo.
8 That would have been possible.

9 PRESIDING JUDGE STEINER: (Redacted) commission went to Zongo to check
10 whether the authorities of Zongo found any pillaged goods there, in the houses of the
11 military, that was possible?

12 THE WITNESS: (Interpretation) Yes, (Redacted) because the
13 soldiers were there and if there had been any pillaged property there, pillaging being
14 defined as large-scale theft, (Redacted) find those items in
15 Zongo and that would have been the first area in the Congo where those goods would
16 have been visible and that is why we went there. (Redacted)
17 (Redacted) whether those rumours were correct and if
18 they were then the property would be in Zongo.

19 PRESIDING JUDGE STEINER: My last question, and then I'll back the floor to Mr
20 Iverson: Is it your opinion that pillaging is only a large-scale theft, or is something
21 that is contained in the body of law in DRC?

22 THE WITNESS: (Interpretation) Well, let's put it like this: There are different
23 concepts to indicate that goods have been taken from another. Theft is one. Theft is
24 understood as taking a good belonging to another person in a fraudulent way. Then
25 there is also theft with violence. That means that somebody takes your goods and

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 they use threat and violence in order to do so. And then there is theft with an armed
2 weapon and then they take your goods because they have used an armed weapon.
3 This is armed robbery. And then you have pillaging as well in Congo and it's
4 supposed that this is a wide scale or large scale, and that means you're unable to do
5 anything because there are lots of people who are stealing at the same time and
6 they're taking goods in all different directions and that's when we talk about pillaging
7 in that sense.

8 But when you take somebody's goods, even if you're armed they talk about armed
9 robbery for example or theft and these are the concepts that we have in the Congo.
10 When the judges speak it's possible that they refer to this definition, but we are sure
11 that this was a large-scale theft. A widespread theft.

12 PRESIDING JUDGE STEINER: Interesting.

13 Mr Iverson.

14 MR IVERSON:

15 Q. Sir, and just a follow-up question to Madam President's question. Sir, were
16 you aware that Imese, the village of Imese, was the brigade headquarters of Colonel
17 Moustapha?

18 A. No. No, I didn't know. As I said, (Redacted)

19 (Redacted)

20 Q. Sir, I'd like to read a portion of your testimony from yesterday and then ask you
21 a question about it. On page 92 of yesterday's transcript, 267, lines 15 to 19, so upon
22 being asked (Redacted)

23 (Redacted)

24 (Redacted) All of the leadership of the

25 party, or of the movement, was committed to obtaining a situation whereby the party

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 was cleaned of these allegations, which had no foundation."

2 And my question is: The Movement - or MLC - had an interest in making sure it
3 was cleaned, as you put it, for these -- from these allegations; right?

4 A. What I said and I repeat it here is that the MLC was recognised for its capacity
5 to have soldiers who were disciplined. The MLC was created with a view to
6 replacing a government which was characterised by injustice, impunity, dictatorship,
7 et cetera, and so accusations heard on RFI would detract from the honour of the MLC
8 and as such, any member of the MLC, starting with the president himself, should do
9 everything to ensure that these suggestions, if they were ever checked, that they be
10 punished severely such that the image of the movement could -- the politico-military
11 movement could be restored and that's how this statement came out. I think that's
12 what I say. That's what I'd like to repeat.

13 Q. So the goal was to secure the image of the MLC, as you put it; is that right?

14 A. The goal, the -- the objective was to prosecute all those who were guilty such as
15 to privilege the rule of law as was stated in the statement creating the MLC, that the
16 MLC was created in order to obtain a situation where the rule of law was established
17 in Congo, a State in which law would have primacy, and so this stab was followed
18 such that there would be no crimes that remained unpunished in MLC territory.

19 Q. It's -- well, it's just interesting, because that's not what you said yesterday. You
20 used the word "cleaned" and that's of interest. I mean, it seemed like the primary
21 focus here was to clean the image of the MLC. Am I wrong about that?

22 A. No, I don't think you're really understanding what I said. When a movement
23 is accused, that there are abuses committed by its men, and this movement organises
24 investigations, it apprehends those who are guilty, is this movement afterwards
25 cleaned or not?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 What I'm speaking about is I'm saying that the MLC wanted to obtain a situation
2 whereby it couldn't have serious statements of such kind put against it and the only
3 way to do that, to combat what was said by the RFI so that that wouldn't stick on the
4 MLC, was to carry out investigations and to make sure that those who were guilty
5 were punished and that these people aren't considered -- that people don't consider
6 that's the organisation of the MLC which privileges impunity, no.

7 Q. And how many investigations to your knowledge were carried out with that
8 intent in mind?

9 A. Where it concerns this case, what I'm saying and this morning once again I said
10 it, I said that this investigation (Redacted) in Zongo there's another one which
11 I discover here carried out in the Central African Republic and the most important
12 was that Mr Bemba asked for an international investigation knowing that this
13 investigation would not spare anyone. So I can say that the concern was to favour
14 the primacy of law.

15 Q. But Mr Bemba had the capacity to address these crimes himself. He had a
16 functioning justice system; is that right?

17 A. Well, I don't know if we're speaking the same language here. I'm saying that
18 where it concerns the crimes that happened in the Central African Republic,
19 Mr Bemba -- well, I think there's an exaggeration here and you're exaggerating the
20 power of Mr Bemba. Mr Bemba had no power to go into the Central African
21 Republic to say, "Okay, well, I'll set up my institutions here and I'll have
22 investigations there." No. What was necessary was that they be called.
23 If the Central African authorities thought that they didn't have the possibility to try
24 and investigate with regards to all the different crimes that happened in their territory,
25 they could ask for co-operation. What was the power that he had to go into the

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Central African Republic to say that I want to investigate; I want to see all the victims;
2 I want to see the persons guilty; I want to sanction them. If he did have that power
3 then there was no reason why he would have addressed the Secretary-General of the
4 United Nations in order to carry out such investigations, because he was unable to
5 investigate with regards to all these different crimes that he had to go to the
6 Secretary-General of the United Nations.

7 Q. Sir, I would like to read out another passage of something you said yesterday.
8 Page 92, lines 22 and 23, and you say, "I think it was just with propaganda objectives,
9 in my opinion," and here you're referring to the RFI allegations.

10 Do you confirm that statement that you made yesterday under oath, sir?

11 A. Well, I confirm that I said that -- well, it didn't want to trust what RFI was
12 saying because RFI had already accused the members of the MLC in another case of
13 having practised cannibalism and this is the reason why I said that it was a source of
14 propaganda because some time before RFI had accused the MLC of having practised
15 cannibalism and what I said yesterday was that the persons who were supposed to
16 have been killed and eaten are still alive. They exist today. And when I spoke, I
17 referred to them.

18 PRESIDING JUDGE STEINER: Mr Iverson, if you allow me a follow-up question?
19 But you also said in relation to this very same passage that in relation to these acts of
20 cannibalism that RFI withdrew its statement; is that correct?

21 THE WITNESS: (Interpretation) Yes, I stated that some time afterwards we no
22 longer heard that statement and even the NGO which had seized the French
23 authorities such that these statements gone RFI, this NGO retracted its statement
24 afterwards.

25 PRESIDING JUDGE STEINER: And in relation to the other accusations of pillaging,

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 rapes and murder, did RFI or the NGOs or whatever NGOs withdraw their
2 statements at any point?

3 THE WITNESS: (Interpretation) Well, I don't know that. What I do know is that
4 when it concerns cannibalism, what I learned was that the NGO withdrew its
5 comment, retracted its comments, ultimately.

6 PRESIDING JUDGE STEINER: Thank you.

7 Mr Iverson.

8 MR IVERSON:

9 Q. So, sir, let's be clear. You personally believe that the RFI allegations were
10 nothing more than propaganda objectives; is that right?

11 A. No, I, sincerely, I think that we don't understand each other. What I said was
12 that I stated that this was propaganda, but referring to the statements on cannibalism
13 which were withdrawn some time afterwards. I didn't say that everything that RFI
14 said was propaganda.

15 Q. Okay, and I don't believe that that statement you made yesterday, "I think it was
16 just with propaganda objectives, in my opinion," had anything to do with cannibalism.
17 I'm sure somebody will correct me if I'm wrong, but I think it was just in the context
18 of generally RFI --

19 PRESIDING JUDGE STEINER: Mr Iverson, one second.

20 Mr Haynes?

21 MR HAYNES: I'm not necessarily going to correct him, but we are not interested in
22 Mr Iverson's opinions at this point. He should ask questions of the witnesses.

23 PRESIDING JUDGE STEINER: I think Mr Iverson, maybe I am wrong, was quoting
24 the witness. The witness said, "in my opinion," but Mr Iverson, correct me if I am
25 wrong.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 MR IVERSON: Well, I was intending on asking a question before I was interrupted.

2 Q. So are you saying that you now withdraw the statement you made under oath
3 yesterday that "I think it was just with propaganda objectives, in my opinion,"
4 referring to the RFI allegations?

5 A. I'll repeat again here. I said sincerely we don't understand each other. You
6 asked a question. A question was asked to me yesterday whether the statements of
7 RFI were credible or not and I said you couldn't consider them as credible. It was
8 just considered as propaganda because we had already been accused by the same
9 radio station of having committed acts of cannibalism, killing people and eating them.
10 I said these things afterwards were withdrawn by RFI and by the NGO in question
11 which had -- was considered as the basis, or source, of the information. It retracted it.
12 I didn't say that everything that RFI had said was propaganda, or if that's what it says,
13 I wasn't well understood.

14 Q. So, sir, do you today right now believe that these RFI allegations were part of a
15 propaganda campaign?

16 PRESIDING JUDGE STEINER: Mr Iverson, in order to avoid misunderstanding,
17 could you please explain which allegations you are referring to?

18 MR IVERSON: Absolutely, Madam President.

19 Q. I'm referring to RFI allegations made strictly in relation to the Central African
20 Republic, not to any allegations made with regard to anything in Ituri province or
21 cannibalism. So let me ask the question again. Do you believe today that the RFI
22 allegations made about crimes committed by ALC in the CAR were nothing more
23 than a propaganda campaign?

24 A. No, I don't think so. It's not today, and I said yesterday that it was because of
25 the fact that this information is important in our eyes that many investigations were

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 opened, and I think even this morning the President asked me a question with
2 regards to how many investigations and I spoke about different investigations.
3 I think nobody could be insensitive, at least to these allegations that were made, and
4 that's the reason why several investigations were carried out. I'm not saying today
5 that where it concerns what happened in the Central African Republic, that it was
6 propaganda. I didn't say that. What I said was, with all the statements at the time
7 when they had been made, we considered that as not credible because of the fact that
8 there had been previous accusations which had been subsequently withdrawn.
9 That's what I'm saying.

10 Q. So you believe then that there's probably something to the allegations; is that
11 fair to say?

12 A. That's what I'm saying. I'm saying that we need the truth in this case and I say
13 again that, if we considered that it's propaganda, then we didn't have a reason to go
14 to the Secretary-General of the United Nations to have an international investigation
15 to be carried out. If not, that would be nonsense.

16 Q. Sir, when (Redacted) did you consider it to
17 be the end of the matter in terms of allegations of pillage and rape in the Central
18 African Republic?

19 A. (Redacted)
20 (Redacted) but that didn't put an end to the
21 investigations which could be carried out. We were still waiting for an investigation
22 from the United Nations and we never said that it was the end. No, and we believe
23 that everybody, having heard the seriousness of the accusations made, would work
24 diligently, such that this investigation commission would work very quickly, would
25 start working very quickly. That's what we were expecting at least.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. What led you to believe that there would be an international investigation
2 commission as of 17 January 2003?

3 A. In fact, it's not from 17 January. Long before 17 January, we had already
4 thought that it was important, and I think that Mr Bemba had already written. We
5 were expecting this investigation commission because in the field in the Central
6 African Republic there were troops from several different countries. There were
7 Central Africans, there were Chadians, there were Libyans and there were Congolese
8 as well. There were others who weren't -- like, rebels or armed groups, people. So
9 we really had to have an international investigation commission which was able to
10 re-establish the truth - the entire truth - by looking at where people were at the time
11 of the operations and in that way we could see things more clear. We could
12 interview witnesses, criminals, we could confront them with the witnesses and have
13 all the evidence, and then the investigation would be credible. We were expecting
14 that because the crimes were so serious. We couldn't imagine that it wouldn't take
15 place.

16 Q. (Redacted)

17 (Redacted)

18 (Redacted) but yet you believe, despite that it's a demonisation

19 campaign, you believe that there is an international investigation commission that's
20 necessary? How's that, sir?

21 A. Well, that's not correct what I said. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted) would seize the Secretary-General of the United

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

- 1 Nations, and I was perfectly aware that this letter had been sent and that the special
2 representative of the Secretary-General had acknowledged receipt thereof, (Redacted)
3 (Redacted)
4 (Redacted)
5 Q. I see. Sir, I notice that you (Redacted) is this correct?
6 A. Yes, that's correct, (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted) I explained all that yesterday.
10 Q. So there was no possibility to (Redacted) sir?
11 A. (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 Q. (Redacted) sir?
18 A. Well, what I said was that (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 Q. Sir, (Redacted)
24 A. Yes.
25 Q. And how (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 A. The means of transport? Is that what you want me to explain? Well, (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. (Redacted)

5 (Redacted) is that right?

6 A. No, (Redacted)

7 (Redacted)

8 Q. Sir, I'd like to ask you, and I can certainly pull it up on the screen and -- or ask
9 the court officer to do so and show you, but I just want to ask you, do you remember

10 yesterday when Mr Haynes went through the confinement orders with you, the

11 confinement orders of each of the seven individuals who were sentenced in the

12 December 7th trial? Do you remember that, sir?

13 A. Could you ask me the question again? I didn't -- I didn't understand.

14 Q. Well, Mr Haynes showed you a series of confinement orders. I call them
15 confinement orders. I'm not sure what the term of art would be that you would

16 understand, but essentially it showed the date of the offence and it showed the date of
17 the initial confinement and then it showed the projected date of the release. Do you

18 remember that from yesterday, sir?

19 A. Oh, yes, the confinement orders and the sentence documents. Is that what
20 you're talking about? Yes, I remember that. Yes.

21 Q. Right. And I just wanted to ask you a simple question about that. That
22 indicates what the projected release date is, correct? It doesn't show what the actual
23 release date was; is that correct, sir?

24 A. Well, the effective date of what? I think you have to be more precise here.

25 The effective date? The effective date of what?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. The confinement orders showed a few dates. One of the dates was entry into
2 confinement and another date was projected release from confinement and I just want
3 to establish that that projected release from confinement date is in the future. It
4 hasn't happened yet. In other words, that is the expected date. It is not the actual
5 date of release; is that right?

6 PRESIDING JUDGE STEINER: Mr Iverson, I think it would be fair with the witness
7 if the document, at least one of them, is displayed for the witness to confirm.

8 THE WITNESS: (Interpretation) Yes, that is correct.

9 MR IVERSON: One moment, please, Madam President.

10 (Pause in proceedings)

11 MR IVERSON: I guess we can use the example here of -- the initial ERN number is
12 CAR-DEF-0002-0001, at page 0091. I think we need to look at the bottom of the page,
13 please.

14 Q. Okay. Sir, do you remember going through this exercise with Mr Haynes
15 yesterday?

16 A. Yes, I do.

17 Q. Do you see the portion where it says "date de sortie"?

18 A. Yes.

19 Q. That date is the projected date, it's not the actual date of release, is that right,
20 because the document, it appears to have been written before the date of release, so
21 that's the projected date of release; is that right?

22 A. No. Let me explain clearly what happened. This is a document that was
23 issued by the director of the prison. He relies on the initial document that was
24 drawn up and he puts the two documents together and then forwards the documents
25 to the Prosecutor who signs it, and this document can only be signed when the

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 convicted person is released or is about to be released from prison.

2 Q. Okay, but -- you say that, but it appears that the document was executed on
3 7 December 2002. According to you, is that wrong then?

4 A. No, this document was not issued on 7 December 2002. This is a document
5 that has -- there is another document which is not linked to this document which was
6 sent to the director of the prison when the suspect was taken to the prison. In that
7 case he is given the committal order or confinement order, and then when it is time
8 for the prisoner to be released then this document is signed which he then takes to the
9 Prosecutor who puts it alongside with the committal order and then he can
10 cross-check as to what the actual situation is and then the director of the prison can
11 sign the final release document. So if you had access to all the documents, you
12 would find that there is a previous document which would come along with this
13 second document. So that second document was not signed on 7 December.

14 MR IVERSON: Okay. Could I ask the court officer to please display this same
15 document, 0061, and could you please go to the bottom of the page and then on to the
16 next page, please? Okay, I'm sorry, I actually would like 0068. Sorry, I misstated
17 that.

18 Q. Sir, do you recognise what this document is?

19 A. Yes, I know what it is.

20 Q. And what is it?

21 A. It is a summons; a summons for the suspect to appear in court.

22 Q. Right. This is a notification to the accused of the date and time of trial, is that
23 right, and the place of trial?

24 A. That is correct.

25 Q. And this is the only way that an accused knows that they're going to trial;

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 correct?

2 A. That is correct.

3 Q. Sir, could I have you read just the first line under the title "Citation a prevenu"?

4 A. "The year 2002, 5 December, around 6 p.m."

5 Q. Is that 6 p.m. or 6 a.m., do you think?

6 A. Or rather 6 hours. 6 a.m. 6 p.m. would be 18 hours.

7 Q. Now, when we start trial here in the morning a lot of times we start at 9 o'clock
8 or 9.30. Do you know when trials would start in Gbadolite?

9 A. Generally at 9 a.m., 9 hours.

10 Q. So is that pretty typical that an accused receives three hours of notice that
11 they're going to be going to trial and they're given a service of process at 6 in the
12 morning and they go to trial at 9 in the morning?

13 A. This in principle is in situations where the accused person is in preventive
14 detention. He may have the benefit of a counsel, there might be some delays, but in
15 any event he is in detention and is therefore available to the court already.

16 Q. So if an accused is rushed through trial from investigation to the decision for
17 trial, notification to trial and then trial, that doesn't indicate to you any kind of
18 irregularity?

19 A. Well, does that amount to an irregularity? Well, I don't know. I know that
20 timelines can be shortened depending on the court and then there is also voluntary
21 appearance and that exists in the system. So you have a number of dead-lines which
22 can be shortened and then there is also voluntary appearance. Now, I don't know
23 what happened in this specific case, (Redacted)
24 (Redacted)

25 Q. Sir, have you ever heard of the concept of railroading a person through trial?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 And I can rephrase the question. Have you ever heard of the concept of sending an
2 accused to prison by sending them through a quick process designed solely to convict
3 and whitewash the affair? Have you heard of that?

4 A. No, no, I don't know.

5 Q. That kind of thing never happens in DRC?

6 A. Well, in the DRC you can be quickly brought before the judge in case of
7 flagrante delicto and then judgment can be reached quite expeditiously in a very short
8 period with conviction following. That can happen in the DRC and that is in relation
9 to flagrante delicto offences or offences deemed to be flagrante delicto in which cases
10 there is a speed up, so to speak, on the dead-lines.

11 Q. What might be some of the indications that somebody is being brought through
12 trial quickly just to convict them and whitewash the affair? What might be some
13 indications in your opinion?

14 A. Really, I don't know. I don't know what you're saying. What I'm saying is
15 that procedures can be sped up in cases of flagrant delicto. For example, if you are
16 caught red-handed by the public you are deemed to be in a flagrante delicto situation
17 where you can be judged quite rapidly and either convicted or released, depending
18 on the outcome of the trial.

19 Q. What about when suspects are interrogated without the benefit of having legal
20 counsel and the result -- the resulting statement from that interrogation is the only
21 evidence used in their trial? Would that be any indication of railroading somebody,
22 or sending them to trial solely to convict and whitewash?

23 A. Are you saying that when the trial takes place in the absence of a defence lawyer,
24 is that what you are saying? You talked about defence lawyers. What do you mean?
25 Please, can you restate your question?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. I'm talking about the scenario where a suspect, suspected of committing a crime,
2 is interrogated by judicial authority or police without the benefit of having counsel to
3 advise them and then the subsequent statement produced from that interrogation is
4 the sole evidence used to convict that person at trial. Is that any indication to you
5 that the trial may have been designed solely to convict and whitewash?

6 A. Well, generally speaking, when a suspect is interviewed, ordinarily he should
7 have the benefit of counsel, but I have already told you with regard to the MLC how
8 difficult it was to find counsel on MLC territory. But when a suspect appears before
9 the judges and makes statements or confessions, then such a suspect may be
10 convicted on the basis of the confession; confession being the best evidence.
11 So when there is lack of counsel, that is sufficient grounds to appeal the judgment and
12 the suspect or accused person can then appeal on the grounds that there was no
13 counsel available to him for the decision or the judgment to be reviewed, but there are
14 other accused persons who defend themselves, and who choose to do so, and so the
15 desire of the witnesses must also be taken into account.

16 Q. And appeal was not an option in your system at the time; correct?

17 A. Yes, I was saying at the beginning that we did not have an appellate jurisdiction.
18 It is only later on (Redacted) For civil matters, an appeals
19 court was set up in our area and that is how it became possible for appeals to be
20 lodged at the Mbandaka appeals court for civil matters, but with regard to military
21 matters (Redacted)
22 (Redacted) So in the case at hand I don't know whether any
23 appeals were lodged or not. I have no information in that connection.

24 MR IVERSON: Madam President, for the next set of questions I believe that open
25 session will be okay.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 PRESIDING JUDGE STEINER: Court officer, please.

2 (Open session at 3.18 p.m.)

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

4 PRESIDING JUDGE STEINER: If you allow me, Mr Iverson, just another follow-up
5 question here?

6 MR IVERSON: Certainly, Madam President.

7 PRESIDING JUDGE STEINER: Before we -- the witness started being asked about
8 the problem of the lack of defence counsel, Mr Iverson was asking you about the
9 judgment can be reached quite expeditiously in a very short period. I've found it.
10 This is your answer on page 93, as from line 6, "Well, in the DRC you can be quickly
11 brought before the judge in case of flagrante delicto and then judgment can be
12 reached quite expeditiously in a very short period. That can happen."

13 In relation to the inquiry involved Mr Bomengo and others, I can see that the suspects
14 were brought before the judge, the judge -- no, not the judge, I'm sorry, the official of
15 the ministère publique, so the prosecutor I suppose, on 27 November at
16 20-to-midnight, the other at midnight, the other at 10-to-1 in the morning and the
17 other two ones we don't have the hour, but because it repeats 27 November and the
18 numbering is in the sequence we suppose that we're after midnight, and I'm talking
19 about documents CAR-DEF-0002-0029, 0031, 0032, 0033 and 0034, and my question is:
20 Is that common in DRC, that accused or suspects are brought before the prosecutor in
21 the middle of the night, at midnight/1 in the morning?

22 THE WITNESS: (Interpretation) Madam President, when we are dealing with
23 flagrante delicto offences, that is where someone is caught red-handed, then things
24 can proceed at any time, even at night, but it is not the ordinary procedure because
25 these types of offences do not occur or offences deemed to be flagrante delicto do not

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Open Session)

ICC-01/05-01/08

1 occur frequently, so this can be processed so expeditiously even up to the level of the
2 war council, by the way.

3 PRESIDING JUDGE STEINER: Thank you.

4 Mr Iverson.

5 MR IVERSON:

6 Q. Sir, were you aware that the Prosecution requested to meet with you prior to
7 your testimony?

8 A. Well, what I can say is that the Court had contacted me inviting me to come
9 here earlier, but I lost my mother and I was not able to come in time to meet with the
10 Prosecution. I -- my mother died and that is why I said that I couldn't travel before
11 Sunday.

12 Q. And I think we may be talking about two different things. Did Mr Kilolo or
13 anyone from the Defence contact you and let you know that the Prosecution was
14 requesting to meet with you a few weeks ago?

15 A. I have said that I had been asked to come earlier to meet with people from the
16 Office of the Prosecutor and I said that it was not possible because I did not have the
17 time to do that. I would have loved to, but it was not possible for me to come at the
18 time.

19 Q. So you were told that you would be -- it would be necessary for you to come
20 earlier for you to meet with the Prosecution? Am I understanding that correctly, sir?

21 A. No, that's not what I said. What I said is that I was not able to come earlier.
22 My mother was unwell and she died in the end, so when I was contacted and asked
23 whether I could see you it was not possible for me to come to meet you at that time
24 since my mother had died and it happened on the day on which I was asked to come.
25 I think I was asked to do so by some official from this Court and I told them I was not

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 able to come on that day because I had to deal with my mother's funeral before
2 coming.

3 Q. Sir, were you aware that there were members of the Prosecution who travelled
4 to Kinshasa hoping to meet with you in Kinshasa? Were you aware of that?

5 A. Members from the Prosecution, what? All who came here to -- came to meet
6 me met me. I met Mr Coombe (phon). I met all those who came from the Court
7 and who wanted to meet me. Who wanted to meet with me, I met them. And we
8 also met, didn't we, before this hearing?

9 Q. Were you aware that the Prosecution wanted to sit down with you and ask you
10 some substantive questions about your knowledge of the case, so not just any meeting
11 but a meeting where we asked questions? Were you aware that that is what we
12 requested of the Defence?

13 A. Well, I have just told you that I was told that I wanted to -- that they wanted to
14 meet me. I received an SMS indicating that it was necessary for me to come earlier
15 to meet with the Prosecution and my reply was that unfortunately the
16 circumstances -- my circumstances do not allow me to come earlier. The SMS was
17 sent from a foreign number and I don't quite remember who sent it, but in my reply
18 to the SMS I indicated that it was not possible for me to come at that time. That is
19 what I said.

20 Q. So just an SMS? No phone call, no email, just an SMS; is that right?

21 A. No. Well, I think it was an email on my phone. It was an email on my phone.
22 That's what it was.

23 Q. And what did it -- what did the Defence state in the email?

24 A. The -- I think they asked whether I had time to come and meet with the
25 Prosecution and I said I didn't have the time because my state of mind did not enable

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 me to travel at that time. (Redacted)

2 (Redacted)

3 Q. I mean, in the email did the Defence explain the purpose of the meeting?

4 A. Well, I no longer recall, but I have my phone with me. I could open up that
5 email again and see. My state of mind really did not allow me to focus on that issue.

6 I know that I had been asked to come and meet with members of the OTP and in my
7 reply I said that it was not possible to come because (Redacted)

8 (Redacted)

9 Q. I understand, sir. How many meetings did you have with the Defence? So a
10 different question. How many meetings or conversations did you have with the
11 Defence team, or anyone on the team?

12 A. I think I met with two lawyers. I was not in Kinshasa, because every now and
13 then I work also in Lubumbashi. I was there. I had a discussion with them over the
14 phone. They told me they were going come on a certain date and at that date I had
15 returned from Lubumbashi and we met in Kinshasa. There were two of them. I do
16 not remember their names. We had a discussion. They were taking down some
17 notes. They put all the questions that they wanted to me and I gave them the
18 answers that I was aware of. What I didn't know I didn't answer to.

19 So they left and I went back to Lubumbashi. (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Well, there are only two Defence attorneys that I'm aware of in this case. Did
23 you talk to Mr Haynes and Mr Kilolo?

24 A. I talked to two persons. There were two persons to whom I talked. There
25 were two of them together when they questioned me.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 Q. Was it the two gentlemen sitting across from me right now?

2 A. Yes, I think it was the two of them. Yes, I met with those two.

3 Q. Okay. I'm sorry. Your response just struck me as a bit bizarre, so thank you
4 for clarifying that. And how long was this meeting when you met with Mr Haynes
5 and Mr Kilolo?

6 A. Well, I don't know. We spent a lot of time together. It was a lot of time. I
7 cannot give you the number of hours and number of minutes. I don't know.

8 Q. And did they show you documents during the time you spent with them?

9 A. What type of documents?

10 Q. Well, let's just start with documents, period. Did they show you any
11 documents during your time with them?

12 A. No, no, they just asked me questions about what I knew. They asked me
13 questions about the duties that I had at the time (Redacted)

14 They asked me what that role was. They explained it to me. They asked if I knew
15 anything about (Redacted) I said, "Yes." Then they asked whether

16 (Redacted) I said, "Yes," and then they put a
17 number of questions to me.

18 Q. And was that the only time that you ever meant -- met with any member of the
19 Defence team, sir?

20 A. I think so. That was the only time that they came to the Congo, I think,
21 because they -- I don't know if they came another time, but I saw them that time.

22 Q. Sir, were there any witness expenses that you incurred that needed to be
23 reimbursed by the Defence team? Did they pay you any money for witness
24 expenses?

25 A. No, what witness expenses? I didn't have expenses, so what were they going

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 to reimburse?

2 Q. I don't know. We've never met, so I don't know the answer to these questions.
3 That's why some of these questions, I just don't know what you know. Were you
4 offered any money or made any promises in return for your testimony, sir?

5 A. No, absolutely not. I didn't ask to be reimbursed and I had no promises from
6 anyone. At my age, how could I make a statement or give testimony on the basis of
7 promises? It's not honourable, as far as I'm concerned. I couldn't accept to give
8 testimony. What could -- what could people pay me for providing testimony? I do
9 it out of a concern that justice be done. That's it, as I said yesterday here, that the
10 double objective of any system of justice is to convict those who are guilty and to let
11 free those who are innocent, and that's the point. I can't accept any proposal to make
12 testimony.

13 MR IVERSON: Madam President, I'd like to ask for private session for the next
14 portion of my questioning.

15 PRESIDING JUDGE STEINER: Court officer, please.

16 (Private session at 3.35 p.m.) * Reclassified as Open session

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

18 MR IVERSON:

19 Q. Sir, you were a former member of the MLC. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. Sir, in yesterday's transcript, you -- and this is transcript 276, page 76, lines 20 to
25 21, you stated that you had the report, and it was confusing to me what report you

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 were talking about and I thought about what report you might be talking about.

2 Were you talking about the FIDH report, by chance? Have you ever seen an FIDH
3 report, reporting about war crimes in Central African?

4 A. No, I've never had an FIDH report. I was speaking about the report (Redacted)
5 (Redacted) I thought that we were speaking about that
6 framework. I never spoke about an FIDH report. In fact, I never saw it.

7 Q. Now, yesterday you mentioned that Mr Bemba wrote a letter to FIDH; is that
8 right?

9 A. The letter was presented here, the letter in which Mr Bemba writes to FIDH, it
10 was shown here.

11 MR IVERSON: Well, I want to take a look at that letter, but first I would like to ask
12 the court officer to please display document number 42 on OTP's list,
13 CAR-OTP-0001-0034, and just display the first page, please.

14 Q. Sir, have you ever seen this report before?

15 A. No, I'm just discovering it here. I've never seen it before.

16 Q. Do you notice the date in the upper right-hand corner? If you could read out
17 the date.

18 A. There isn't a date. There's just a month, February 2003.

19 Q. Thank you. That's exactly what I was asking for. Sir, could I have
20 you -- could I ask the court officer to display 0038 of this same document and could I
21 have you zoom in on the Arabic numeral 1, "Objectives of the FIDH mission."

22 Sir, could I ask you to read the first full paragraph after the Arabic numeral 1?

23 A. "An international investigation mission of the FIDH composed of Bochra
24 Beladjamida, lawyer in the Tunis Bar, Eric Plouvier, lawyer in the Paris Bar, and
25 Marceau Sivieude, African Office at the International Secretariat of the FIDH, stayed

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 between 25 November and 1 December 2002 in Bangui, CAR, supported by the
2 Central African League of Human Rights which is affiliated to the FIDH."

3 Q. Sir, were you aware that (Redacted)

4 FIDH sent -- a human rights NGO, sent three human rights advocates to Bangui for a
5 week-long mission and didn't seem to have any problem gathering information?

6 Were you aware of that?

7 A. No, I wasn't aware of that.

8 Q. And they published their report in February, as you previously noted, 2003,
9 with 64 pages of witness statements and legal analysis, and (Redacted)

10 26 December to 28 December; is that right, sir?

11 A. 25th to the 28th.

12 Q. (Redacted) Do you remember that,
13 sir?

14 A. Well, I can't remember.

15 Q. And that was in 2002; right?

16 A. Yes, 2002.

17 MR IVERSON: Could I ask the court officer to now go to page 0048 of the same
18 document.

19 PRESIDING JUDGE STEINER: I'm sorry, Mr Haynes?

20 MR HAYNES: No, I just wonder whether this is a useful exercise. This is not a
21 document that this witness wrote and it's not a document he's ever read. That is a
22 frequent objection used by the Prosecution to the admission of documents into
23 evidence by the Defence. We all know what's in the FIDH report, but simply asking
24 this witness to read out passages of it when he's never seen it before and had no part
25 in its authorship seems to me not to be a very useful exercise.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 PRESIDING JUDGE STEINER: Mr Haynes, I think your objection respects to
2 potential admissibility of the document. There was never, never any of the parties
3 prevented of using documents even if the witness has not authored the document.
4 It's just related your objection to admissibility.

5 Mr Iverson can proceed.

6 MR IVERSON: Could I ask the court officer to just move the document over so we
7 can see the heading, the title, the full title? It's cut off on the left-hand side, at least
8 on my screen. Okay. Well, maybe it's just me.

9 Q. Sir, could I have you read just the title, starting with the word "viols"?

10 A. Yes. "Rape, pillaging and murder ascribed to Congolese mercenaries,
11 'Banyamulengue'/International criminal responsibility of Jean-Pierre Bemba for war
12 crimes."

13 MR IVERSON: Could I ask the court officer to please display page 0052?

14 Q. Sir, now this a page that is found in the same chapter of the title that you just
15 read, and could I please ask you to read aloud the account given by "E.D." on the
16 left-hand side of the page?

17 A. I shall read it out of respect, "The 30th of" -- sorry, "I am 17 years old. I live
18 behind the Total station, Villa 36, in Bangui. It was 30 October 2002, between
19 1300 hours and 1500 hours when they broke into the house. I was present in the
20 house, as well as numerous other persons. There were 26 of us in total. We were
21 with my aunt whose husband died last August. All the family had come together.
22 One of the assailants asked me in Lingala for jewellery. I told him that I didn't have
23 any. I was very afraid. I thought that perhaps if I said that I had a child that would
24 protect me, so that is what I said to him. He took an object in -- a wooden object and
25 he put it into my vagina. He turned it and then he stopped. Three other persons

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 then continued raping me on the ground in the girls' room. I cried. I was in pain
2 and I was bleeding. I still feel pain today. All the family was present, but they
3 were not able to do anything because the Congolese were armed. I didn't make a
4 complaint. I'm not well. I don't want to speak. The first person to whom -- or the
5 first person who I spoke to was -- or spoke to me about was large and thin and the
6 three others were smaller. They were young. I cannot recognise them."

7 Q. Now, I'm not going to ask you to read out several accounts, but this information
8 was released by FIDH in February 2003. Do you know, were the ALC still in the
9 CAR as of that time?

10 A. No, sincerely I don't know. The document, well, I haven't seen it. I've just
11 discovered it here, so I don't know at what time, at what precise time it was published,
12 and then, well, to know if they were still there, I don't get involved in army issues, so
13 please spare me from this question -- these questions.

14 Q. Okay, but you know a thing or two about investigations. Couldn't this
15 information have been used by the ALC to -- and the MLC to go to that Total station,
16 a gas station in Villa 36, and ask some questions and find out what happened?
17 There's some pretty detailed information in there. They could follow up on it, right,
18 as of February 2003?

19 A. Well, this report, (Redacted)
20 (Redacted)
21 (Redacted)

22 FIDH isn't the MLC. FIDH is an international organisation and it's accepted by the
23 countries that these members of UN. So I don't understand -- well, you have FIDH
24 has -- can approach judges of a country, so no Congolese magistrate would have the
25 possibility to go to that petrol station even if they had this information. You could

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 even debate whether the FIDH had made an effort to send such a document (Redacted)

2 (Redacted)

3 (Redacted) They obtained these statements because they

4 went to Bangui. If they had just stayed in Geneva or in the US then I'm not sure that

5 they would have got these statements.

6 Q. And that's a good question, sir. Was this information made available to the

7 MLC back in February 2003? Do you know?

8 A. (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 A. I stress this investigation could only be carried out if the Central African

13 authorities wanted it. They had primary responsibility to investigate. This Total

14 station couldn't refuse CAR magistrate from going there. The second possibility was

15 to have an international decision which obliges the Central African authorities to have

16 judicial co-operation between several different countries, but one country, whether it

17 is MLC, you couldn't have the possibility to go and investigate in the Central African

18 Republic. It's just not possible.

19 Q. Now, Mr Bemba was aware of this FIDH report and its contents, wasn't he, sir?

20 A. You're asking -- ask the question to Mr Bemba. I can't answer in his stead.

21 Q. Well, since I can't --

22 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

23 MR KILOLO: (Interpretation) Your Honour, could we have the reference to the

24 document about which Mr Iverson considers -- well, this document where Mr Iverson

25 considers that the report was indeed transmitted to the MLC?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 MR IVERSON: Absolutely, Madam President. I'd love to. CAR-DEF-0001-0152.

2 Could I ask the court officer to please display that ERN number, and it's Mr Bemba's
3 letter to FIDH of 20 February 2003.

4 Q. Sir, do you see the MLC letterhead and the date and the mark "Le Président"?

5 A. Yes, I can see that.

6 MR IVERSON: Sir -- could I ask the court officer to please display the second page,
7 0153?

8 Q. Sir, could I ask you to read out loud the paragraph beginning with "Ayant pris
9 connaissance"?

10 A. Yes. "Having learned of the serious accusations against me in your report on
11 war crimes in the Central African Republic, I regret that you didn't find it useful to
12 take up contact with the MLC with a view to learning elements which would have
13 made it possible to work with all impartiality. I therefore have to clarify on certain
14 actions by the MLC and myself from 30 October 2002 in response to the abuses which
15 have been denounced by the media."

16 Q. So, sir, if we want to know what Mr Bemba's knowledge of crimes was as of
17 February 2003, we really have to look no further than this document, the report by
18 FIDH; is that right?

19 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

20 MR KILOLO: (Interpretation) Well, I think, your Honour, to be fair to the witness,
21 it's necessary to also show document 39 of the Prosecution list and that's the answer
22 of FIDH to Jean-Pierre Bemba.

23 PRESIDING JUDGE STEINER: Mr Iverson.

24 MR IVERSON: That's really not relevant, Madam President, to the questions that
25 I'm asking about Mr Bemba's knowledge. Right here Mr Bemba himself, we'll see his

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 signature in a minute, states that he knows of the accusations in the report. So now
2 the question is: What is he going do about it? And that's what I intend to ask this
3 witness, Madam President.

4 PRESIDING JUDGE STEINER: You can proceed.

5 MR IVERSON:

6 Q. So, sir, what did Mr Bemba do after he read through and received the report
7 and knew of the allegations from FIDH?

8 A. Well, I said these type of questions should be put to Mr Bemba. I'm not in his
9 head. I didn't know this report's existence. Now, you are showing me a letter from
10 Mr Bemba. Well, I think you have to ask him the question. If you're asking me to
11 say what he had in mind, that puts me in an awkward position. I don't know.
12 Mr Kilolo has just said that there was another letter. Maybe in that you can see what
13 he wanted to do. I can't know. I wasn't aware of the report, nor of the existence of
14 this letter. I can't answer that question differently.

15 PRESIDING JUDGE STEINER: I'm sorry if I intervene, but, Mr Witness, maybe
16 there is another problem of interpretation. I think the question was not what about
17 was going on on Mr Bemba's spirit or soul. It's whether he did according to your
18 knowledge, (Redacted) is that your knowledge that he
19 take any action in relation to this report? This is the question, not what's going on on
20 his mind. Of course you cannot guess.

21 THE WITNESS: (Interpretation) Well, what I'm saying, Madam, firstly I'm
22 discovering the report here. I'm just also discovering the letter from Mr Bemba here.
23 Perhaps the one he sent -- that was sent to the FIDH can show us what he had in mind.
24 I can't say (Redacted) the measures that he took. If (Redacted)
25 (Redacted) about the letter that

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 was addressed to him.

2 (Redacted)

3 (Redacted)" but I was not aware of this report and I think it's

4 important to ask him the question. One of his lawyers said that he wrote it. Well, is

5 it difficult for us to be able to see what he wrote? Perhaps that's something that

6 could help us.

7 PRESIDING JUDGE STEINER: I think we can do it, to read the answer of Mr Bemba,

8 but the Prosecution question, which is also my question, is that your knowledge that

9 any commission of inquiry was opened, that Mr Bemba ordered the investigations on

10 the facts, that any investigations took place? It's a very simple question. Is it of

11 your knowledge?

12 THE WITNESS: (Interpretation) Yes, the question might appear simple, but the

13 problem is to know if this commission was created following reading this report.

14 That's where it becomes difficult. I can't know if the investigation commission that

15 was created was done on the basis of having read this report. Only Bemba can

16 answer that. It's impossible for me to answer, to say that this commission was

17 initiated on the basis of that report. That's not something I can know.

18 MR IVERSON:

19 Q. Sir, as of February 2003 and after February 2003, were there any investigations

20 or trials based on any of the information found in the FIDH report?

21 A. Once again, I can't confirm that. I said I didn't know the existence of the FIDH

22 report, so I can't say who made the report or that investigations were made on the

23 basis of the FIDH report. I don't have any information in that regard.

24 Q. Sir, I would submit to you that nothing was done. Nothing other than

25 Mr Bemba trying to hold up the trial of seven soldiers from an investigation on

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 30 October 2002 --

2 PRESIDING JUDGE STEINER: Maître Kilolo, Mr Iverson, and I know what is the
3 objection.

4 MR KILOLO: (Interpretation) Well, could we ask Mr Iverson to save us his
5 personal commentary?

6 PRESIDING JUDGE STEINER: I tend to agree with Maître Kilolo. We are not in
7 our final statements, Mr Iverson.

8 MR IVERSON: I understand, Madam President.

9 Q. Sir, nothing was done, was there? Nothing?

10 A. Well, perhaps you have something that says that, but I'm saying that this report
11 from when it -- I wasn't aware of this report that was published. Were actions taken
12 on its basis? Well, if I had known about the existence of the report and Mr Bemba's
13 letter I would be able to say after this such-and-such an action was carried out, but
14 having not been aware of this report I can't take the risk of saying that such-and-such
15 an action that was carried out was done so on the basis of the FIDH report. You in
16 my place would do the same thing.

17 PRESIDING JUDGE STEINER: Mr Iverson, please if you allow me?

18 Mr Witness, forget the FIDH report. As from February 2003, there has been any
19 investigations or trials in DRC in order to investigate crimes allegedly committed in
20 Central African Republic? (Redacted)

21 (Redacted)

22 THE WITNESS: (Interpretation) I am not aware, Madam President. I do not
23 know.

24 PRESIDING JUDGE STEINER: Mr Iverson, sorry, just to complete an objection that
25 was made by Mr Haynes in relation to the comments on this report, I have with me an

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 information that this FIDH report has already been admitted into evidence pursuant
2 to decision 2299, paragraphs 34 to 37.

3 Mr Iverson, you can proceed.

4 MR IVERSON: Since we started late, could I just have a few more minutes because
5 I think I could probably finish tonight if given a few more minutes, Madam
6 President?

7 PRESIDING JUDGE STEINER: It depends on the tape.

8 MR IVERSON: Well, I'll just keep going until I'm told to stop then.

9 Q. Sir, the -- Mr Bemba's response that you read refers FIDF, the president of FIDH,
10 to this 30 October 2002 investigation that was done in response to atrocities
11 denounced by the media. That response doesn't -- there's a disconnect; right? In
12 your opinion, is there a disconnect?

13 A. What do you mean?

14 Q. Well, I mean Bemba's -- Mr Bemba's response doesn't address any of the actual
15 allegations in the FIDH report. It's as if almost he's just using this 30 October
16 investigation as a shield to say, "Hey, we're clean, we took care of this. Nothing to
17 see here."

18 Am I wrong about that?

19 A. Well, that is not the case. In the next paragraph Mr Bemba states that "I am
20 ready if you deem it necessary to work with you within the context of transparency
21 and responsibility to establish the truth, the whole truth on the events that took place
22 in Bangui in the Central African Republic over the last months."

23 PRESIDING JUDGE STEINER: Mr Iverson, we'll have to continue tomorrow. I'm
24 sorry.

25 MR IVERSON: Can I just ask one more question and then I'll be finished, Madam

Trial Hearing
Witness: CAR-D04-PPPP-0048

(Private Session)

ICC-01/05-01/08

1 President?

2 Q. Sir, do you know approximately how many Central African victims suffered as
3 a result of the alleged ALC crimes in CAR?

4 A. No. (Redacted)

5 (Redacted)

6 (Redacted)

7 MR IVERSON: You know nothing about it. Your words, not mine. No further
8 questions.

9 PRESIDING JUDGE STEINER: Let's turn into open session, please.

10 (Open session at 4.04 p.m.)

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

12 PRESIDING JUDGE STEINER: Mr Witness, thank you very much. One more day.
13 We are sure that tomorrow you will be released of your functions as a witness before
14 this Court. We wish you have a very restful night and come tomorrow morning
15 prepared for your last day in front of this Chamber.

16 I thank very much the Prosecution team, legal representatives of victims, the Defence
17 team, Mr Jean-Pierre Bemba Gombo. I thank very much our interpreters and court
18 reporters. Once again, the thanks of the Chamber for allowing us the extended
19 sitting hours.

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

23 (Closed session at 4.06 p.m.) * Reclassified as Open session

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

25 (The witness stands down)

Trial Hearing

(Closed Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0048

1 THE COURT OFFICER: All rise.

2 (The hearing ends in closed session at 4.06 p.m.) * Reclassified as Open session

3 RECLASSIFICATION REPORT

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

5 ICC-01/05-01/08-3038, the version of the transcript with its redactions

6 becomes Public.

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