

Trial Hearing

(Closed Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 International Criminal Court

2 Trial Chamber III - Courtroom 1

3 Situation: Central African Republic

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

5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and

6 Judge Kuniko Ozaki

7 Trial Hearing

8 Thursday, 29 November 2012

9 *(The hearing starts in closed session at 9.05 a.m.) Reclassified as Open session

10 THE COURT USHER: All rise.

11 The International Criminal Court is now in session.

12 Please be seated.

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

14 in closed session.

15 PRESIDING JUDGE STEINER: Good morning.

16 Could, please, court officer call the case.

17 THE COURT OFFICER: Situation in the Central African Republic, in the case of The

18 Prosecutor versus Jean-Pierre Bemba Gombo, case reference ICC-01/05-01/08.

19 PRESIDING JUDGE STEINER: Thank you.

20 Good morning, welcome, Prosecution team, legal representatives of victims, Defence

21 team, Mr Jean-Pierre Bemba Gombo. Good morning our interpreters, court

22 reporters.

23 We will continue and for sure conclude today the testimony of Defence Witness D-16.

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

25 (The witness enters the courtroom)

Trial Hearing
Witness: CAR-D04-PPPP-0016

(Open Session)

ICC-01/05-01/08

- 1 WITNESS: CAR-D04-PPPP-0016 (On former oath)
- 2 (The witness speaks French)
- 3 PRESIDING JUDGE STEINER: We can turn, please, into open session.
- 4 (Open session at 9.07 a.m.)
- 5 THE COURT OFFICER: We are in open session, Madam President.
- 6 PRESIDING JUDGE STEINER: Good morning, Mr Witness, and welcome back.
- 7 THE WITNESS: (Interpretation) Good morning.
- 8 PRESIDING JUDGE STEINER: Mr Witness, we are very close to concluding your
- 9 testimony and to release you from your obligations as a witness. Before I give the
- 10 floor to legal representative of victims, Maître Zarambaud, I need to remind you that
- 11 you are still under oath. Do you understand that, sir?
- 12 THE WITNESS: (Interpretation) I do understand.
- 13 PRESIDING JUDGE STEINER: I also wanted to remind you that you are under
- 14 protective measures, that your image and your voice broadcast outside the courtroom
- 15 are being distorted so that the public cannot identify you and, in order to keep the
- 16 protection of your identity, you are expected not to give any information in public
- 17 session that could lead to your identification.
- 18 You understand that, sir?
- 19 THE WITNESS: (Interpretation) I do understand.
- 20 PRESIDING JUDGE STEINER: And finally, Mr Witness, for the last time I hope,
- 21 remind you about our ground rules. We hope you speak slower than normal and to
- 22 give the five seconds before you start giving an answer, in order to facilitate the work
- 23 of our interpreters.
- 24 I will now give the floor to Maître Zarambaud, legal representative of victims, that
- 25 was authorised to put some questions to you.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 Maître Zarambaud, you have the floor.

2 MR ZARAMBAUD: (Interpretation) I thank you, Madam President.

3 QUESTIONED BY MR ZARAMBAUD: (Interpretation)

4 Q. Good morning, Mr Witness.

5 A. Good morning.

6 Q. Mr Witness, I am Maître Zarambaud Assingambi. I am counsel with the
7 Central African Bar and I am here representing certain victims. The Chamber has
8 authorised me to put certain questions to you. However, it would seem to me that
9 these questions serve little purpose now in view of the fact that you have already
10 provided answers to them when questions were put to you by the parties and by
11 Marie-Edith Douzima Lawson.

12 So I wouldn't have had much to say to you in the proceedings in view of the fact that
13 the examination had a bearing upon the case - the trial - that was ordered -- that was
14 organised in Gbadolite, and the trial was organised at midnight. I don't know
15 whether they were in a normal state, or whether they were sleep-walking as such, but
16 I wouldn't have much to say about that, and that is why I won't -- I will only be
17 putting two questions to you.

18 Now, Madam President, I wasn't able to have access to the edited version of the
19 transcript in time, so with your leave I would like to give two references - transcript
20 references - real-time references from yesterday.

21 Now, the real-time transcript reference for yesterday, page 12, lines 12 to 13 -- lines 12
22 and 13, you stated that the judicial police officer who had conducted the investigation
23 did not have the opportunity to conduct an investigation on foreign soil; that is to say
24 in the Central African Republic. So my question to you would be as follows: In
25 view of the fact that there was military and political co-operation between the two

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 parties, did the President of the Court Martial have the possibility to commission an
2 investigation in the Central African Republic?

3 A. Now, with regard to co-operation in terms of an investigation conducted in the
4 Central African Republic, we should underscore the difficulty at a time when the
5 events were recorded and at a time when the court martial was formally seized of the
6 matter in order to investigate.

7 So we should underscore the fact that to be taken into account was the fact that in
8 power at the time, legally speaking that is, the individual had requested and obtained
9 reinforcement and this individual had fallen.

10 Now, as to what this lack of command meant, was that the co-operation would be
11 facilitated. One should also underline the fact that there were pitfalls in the judicial
12 system with regard to levels of expertise in conducting investigations into crimes of
13 this nature. This is not what we're talking about here, but one does have to
14 recognise that the pitfalls existed.

15 I would also like to say something about the timing of interviews. As I said, and as
16 we said, the Congolese rules and regulations are quite silent on the matter, so when
17 the police services are working night and day and crimes are being committed by day
18 or by night, what meaning should we ascribe therefore to such belated hours? That
19 is the reality of Congolese legislation and it might be the case for certain nations as
20 well. This is how they operate.

21 So in the face of such major -- such a major difficulty, where there is an absence of the
22 chain of command under which one would be able to co-operate, this meant that the
23 judicial police officer investigating the case sent on a mission had therefore limited
24 himself to conducting an investigation within the jurisdiction, that is to say within
25 Zongo itself, for reasons of security of course and he didn't want to put his own life in

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 danger. He didn't want to go to Bangui when the power -- when power had
2 changed hands.

3 I would go on to add that the Central African victims had the right to seize the
4 gendarmerie or the judicial authorities in Bangui with a view to formally lodging a
5 complaint. That was their right.

6 Q. I thank you, Mr Witness. I would just like to say that the case that has brought
7 us together here covers the events of -- from October 2002 to March 2003 and as a
8 result, in view of the fact that the judgment fell on 5 December 2002, the regime itself
9 had not yet fallen. The regime fell on 15 March 2003.

10 Now, secondly, it is quite possible for the judicial police officers to interview people
11 for crimes committed during the night. However, we need to prove here that these
12 crimes were committed in Bangui and that the interviews were conducted in Zongo;
13 that is to say that this was not immediate.

14 Now, Mr Witness, I put this question to you. I might simply have asked you
15 whether in your judicial system you had what we called commission rogatory, i.e.
16 that you could have then tasked the magistrates or official -- or judicial police officers
17 from other countries to put questions and to investigate points that you would have
18 had put forward.

19 Now, did these commissions rogatory exist in those systems?

20 A. The commissions rogatory in the Congolese judicial system do indeed exist for
21 the entire country. I am not aware of any reciprocity agreement and to say whether
22 it is possible or whether it exists, because I would not say that I am au fait with all the
23 ins and outs of judicial procedure in my country.

24 Now, in the instant case, the court did not use the commission rogatory.

25 Q. I thank you, Mr Witness. Now, my second and last question that I mentioned

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 earlier. Now, real-time transcript again, page 56, lines 18 and 19, you said that the
2 tribunal or the court martial would sit in sessions and that after each session the
3 members would then go back to their normal occupation. I would like to know,
4 with regard to (Redacted)

5 (Redacted)?

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE STEINER: (Redacted)

10 (Redacted)

11 (Redacted)

12 *(Private session at 9.23 a.m.) Reclassified as Open session

13 THE COURT OFFICER: (Redacted)

14 THE WITNESS: (Interpretation) (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. I thank you, Mr Witness. (Redacted)

25 (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0016

(Private Session)

ICC-01/05-01/08

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MR ZARAMBAUD: (Interpretation) I thank you, Mr Witness. I have no further
17 questions to put to you and I would like to thank you, Madam President.

18 PRESIDING JUDGE STEINER: Thank you, Maître Zarambaud.

19 Court officer, can we turn back into open session please.

20 (Open session at 9.28 a.m.)

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

22 PRESIDING JUDGE STEINER: Thank you very much.

23 Before I ask Defence whether Defence intends to redirect, I would like to put some
24 final questions to the witness.

25 Mr Witness, yesterday - and it appears on page 28, lines 13 to 14, I also have only the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 real-time transcript here with me - the Prosecution was questioning you on timing
2 and the fact was related to the notification, or "la citation" in French, of the accused for
3 the hearing of the court martial.

4 So the Prosecution says, "The question is from the record that they were served with
5 summons to appear before the hearing on 5 December; is that correct?" And your
6 answer, "If they were to appear on 5 December, then the summons would be served a
7 long time prior to that. As I explained to you, the court clerk would make sure that
8 the information was circulated prior to this. I do not have this here, but you might
9 have this in your file. They are noted ...", I think here it is notified but it is noted, "...
10 a long time prior to this, not on the very same day."

11 In that respect I would like to ask court usher to display document

12 CAR-DEF-0002-0001, on page 0067.

13 Could you please, Mr Witness, read as from "Citation."

14 THE WITNESS: (Interpretation) "5 December 2002, at around 6 o'clock."

15 PRESIDING JUDGE STEINER: Now, please, court officer go to page 68. Can you
16 read as from the title, please.

17 THE WITNESS: (Interpretation) "Summons to the suspect. This 5 December 2002,
18 at around 6 o'clock".

19 PRESIDING JUDGE STEINER: It's fine, sir. Court officer, please can we go to 0069.
20 Can you read from the title, please, Mr Witness.

21 THE WITNESS: (Interpretation) "Summons to appear. 5 December 2002, around
22 6 o'clock, at the request of the Office of Public Prosecutions in the Gbadolite court."

23 PRESIDING JUDGE STEINER: Can we please go, court officer, to document 0070.
24 Again, sir, could you please be so kind in reading from the title.

25 THE WITNESS: (Interpretation) "Summons to the suspect this 5 December 2002 at

Trial Hearing
Witness: CAR-D04-PPPP-0016

(Open Session)

ICC-01/05-01/08

1 around 6 o'clock at the request of the Office of Public Prosecutions at the Gbadolite
2 court martial. I, the undersigned, Gbate Gia Malawe, Registrar at the Gbadolite
3 court martial," illegible. I can see "Lingimba Faustin, sergeant."

4 PRESIDING JUDGE STEINER: Thank you. Let's go to page, court officer, 0071.
5 Could you please, sir, also read from the title.

6 THE WITNESS: (Interpretation) "Summons to the suspect, this fifth day of
7 December 2002 at around 6 o'clock."

8 PRESIDING JUDGE STEINER: Next one, sir. Thank you. Document 0072, please.
9 Again, sir, if you could be so kind.

10 THE WITNESS: (Interpretation) "Summons to the suspect, this fifth day of
11 December 2002, at around 6 o'clock."

12 PRESIDING JUDGE STEINER: It's fine, sir. And finally, 0073.
13 Please, sir.

14 THE WITNESS: (Interpretation) "Summons to the suspect, this fifth day of
15 December 2002, around 6 o'clock."

16 PRESIDING JUDGE STEINER: You please continue. This is the last one.

17 THE WITNESS: (Interpretation) "I, the undersigned, Gbate Gia Malawe, Registrar
18 at the Gbadolite court martial," there is a part that is illegible there.

19 PRESIDING JUDGE STEINER: That's fine, sir. Thank you very much. Sir, these
20 are according to the documents the summons to appear, or la citation de prévenu, for
21 the hearing to take place on 5 December, on the very same day. Is that correct, that
22 according to what you read right now, it appears that the accused were notified at 6
23 in the morning in relation to a hearing that would take place that very same day?

24 THE WITNESS: (Interpretation) Regarding the legislation on judicial proceedings,
25 this confirms that the accused have to be taken out of their place of detention on the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 day of the hearing to take them to the courtroom. I do remember that there is
2 another document, titled "Court Roll," which is a schedule of the cases due to be
3 heard. It is circulated well before the dates of the hearings. There is prison
4 administration that provides that when there is a suspect in detention, there is a legal
5 procedure to be followed for the accused to be taken out of the prison and to the
6 courtroom, and that is a role that is played by the registrar on the day of the hearing.

7 PRESIDING JUDGE STEINER: So this is what the court martial understood by
8 "citation"?

9 THE WITNESS: (Interpretation) Can you kindly repeat your question?

10 PRESIDING JUDGE STEINER: I'm trying to use the word in French, because it's
11 more appropriate for the kind of legal system that you have in DRC, which is civil
12 law system in which the word "citation" has a very specific meaning. The court
13 martial received the procedure from the ministère publique on 3 December. The
14 court martial issued a decision setting the date of the hearing, the court martial, to
15 5 December, and the accused were called on the very same day on this mandat de
16 citation. Is that - this is my question - how a regular procedure takes place in DRC,
17 even in martial courts?

18 THE WITNESS: (Interpretation) I said before that it is in accordance with the
19 procedures applicable in the DRC. (Redacted)
20 (Redacted), but there are expressions used such as "within the shortest
21 possible time." These are some of the problems with Congolese legislation and the
22 procedure applicable is this one, which is used in military jurisdictions.

23 PRESIDING JUDGE STEINER: Mr Witness, I'm just trying to understand what you
24 said yesterday when you said, in answering a question from the Prosecution, that, "If
25 they were to appear on 5 December, then the summons would be served a long time

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 prior to that," and the summons in this case apparently was served a few hours prior
2 to that. So that's why I'm asking you to clarify this contradiction, or apparent
3 contradiction.

4 THE WITNESS: (Interpretation) This summons is signed and notified on that date
5 of 5 December. I confirm that, (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE STEINER: Thank you very much.

10 I ask now whether Defence intends to redirect?

11 MR HAYNES: Just a couple of questions.

12 QUESTIONED BY MR HAYNES:

13 Q. Sir, I don't want to go back through all the documents that you have been
14 shown during the last three or four days, but where was Willy Bomengo held in
15 custody in the month of November?

16 A. In the month of November, there would be two possibilities. I really do not
17 remember, but usually all the suspects had to be detained in a wing of the prison of
18 Gbadolite; all of them.

19 Q. Thank you. You see, we know from the documents you've been shown that on
20 17 November he was being interviewed in Zongo, so when was he brought from
21 Zongo to Gbadolite?

22 A. I do not remember the precise date. However, in Gbadolite, if the legal adviser
23 of the General Staff carried out some of his other -- his responsibilities, then we can
24 have an indication of the date on which this prisoner was transferred, but I do not
25 remember.

Trial Hearing
Witness: CAR-D04-PPPP-0016

(Open Session)

ICC-01/05-01/08

1 Q. Okay. Why was he brought from Zongo to Gbadolite?

2 A. He was brought from Zongo to Gbadolite following a mission of inquiry that
3 had been dispatched by the staff headquarters to Zongo, where he was interviewed
4 alongside other ALC soldiers, and they were heard by the judicial police officer who
5 subsequently took them to Gbadolite with the procès-verbal that he had prepared in
6 Zongo.

7 Q. So all we know is some time between 17 November and 5 December, Willy
8 Bomengo was brought from Zongo to Gbadolite. Would he have known why he
9 was being brought from Zongo to Gbadolite?

10 A. Certainly, yes, because he was interviewed or questioned by an intelligence
11 officer sent on mission to investigate on offences perpetrated by certain soldiers
12 specifically involving items that had been found in their possession, and Bomengo, in
13 his capacity as the intelligence officer of the battalion, was actually a judicial police
14 officer.

15 Certain questions were put to him, and in the report it is indicated that he retrieved
16 certain items from some soldiers and he did not give the identities of the soldier, but
17 he talked of the property that he had retrieved and taken to Commander Moustapha,
18 in the presence of a Central African gendarmerie officer.

19 I remember that in that PV he stated that he had €60, a weapon - specifically a
20 pistol - and if I remember correctly, there were also compact discs and a bottle of
21 perfume, something of the sort, in the case file, that is if I remember correctly.

22 Q. Sir, I'm going to come on to that, but the point here really is when would Willy
23 Bomengo first have known that he was going to face a trial for what had happened in
24 Bangui?

25 A. There was an investigation in Zongo and then the file went to the staff

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 headquarters and then to the prosecutor for the indictment. At that point he was
2 certainly aware of his indictment, as well as the charges against him before the court
3 martial.

4 Q. And when would he first have met his lawyer?

5 A. (Redacted) I believe it would be up to the lawyer to confirm that; that
6 is if there was ever a meeting. During the hearing the lawyer would have been able
7 to raise that issue, but I do not remember what happened precisely.

8 Q. Thank you very much. Now, I want you to clarify something you said a
9 number of times yesterday and I fear that it didn't get well translated into English, but
10 you said on a number of occasions yesterday that Willy Bomengo was arrested by his
11 commander en flagrante. What do you mean by "en flagrante"?

12 A. When we talk of flagrante delicto, it means somebody who is caught
13 red-handed. If Bomengo says that he recovered goods from soldiers, in his capacity
14 as the S2 officer, he was the one responsible for investigations in the unit. According
15 to his statement, some of those goods were handed over, but he was found with other
16 items in his possession and he could not justify where those items had come from.
17 So this was noted by the officer who was responsible for ensuring that there were no
18 abuses committed on the property of the inhabitants, and this is what I meant by
19 flagrante delicto.

20 He himself was the intelligence officer, and the fact that he did not draw up an
21 exhaustive list, including of the property that he claimed to have handed over, well, if
22 he did hand over those goods, he should have at least produced a report and he
23 should have identified the individuals from whom each of the items was retrieved.
24 Given that the identity of the persons involved was not declared, it was a serious
25 omission because it was interpreted as covering up for those people so that they

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 should not be prosecuted for the offences committed. That is what I meant.

2 Q. Thank you. I'm glad you explained that to us. Willy Bomengo was caught in
3 the act, caught red-handed by his commander. Who was the commander who
4 arrested him?

5 A. In his statement, he mentioned Moustapha.

6 PRESIDING JUDGE STEINER: Maître Badibanga?

7 MR BADIBANGA: (Interpretation) Thank you, your Honour. I do not doubt the
8 relevance of the questions put by Mr Haynes, as well as the answers. I am simply
9 wondering about the foundation of those questions. I believe re-direct has to be
10 based on new elements that would have been raised in cross-examination, and I have
11 the impression that the Defence is going back to their examination-in-chief. They
12 had already done that, so I do not see the relevance of the new questions.

13 PRESIDING JUDGE STEINER: Mr Haynes?

14 MR HAYNES: The relevance of these questions is the explicit suggestion by
15 Mr Bifwoli that there was no evidence against Willy Bomengo. The fact of the
16 matter is Willy Bomengo was caught red-handed in possession of stolen goods and
17 I'm clarifying that in re-examination, but I'm going to move on anyway.

18 PRESIDING JUDGE STEINER: I would like to give the witness the opportunity to
19 finish the answer.

20 MR HAYNES: Thank you.

21 PRESIDING JUDGE STEINER: The last answer. You were saying that he was
22 arrested by Commander Moustapha; is that correct?

23 THE WITNESS: (Interpretation) Yes, that was in his statement, and he even stated
24 that on the orders of this officer he received 50 lashes. I remember that.

25 PRESIDING JUDGE STEINER: Maître Badibanga, I will allow Mr Haynes to

Trial Hearing
Witness: CAR-D04-PPPP-0016

(Open Session)

ICC-01/05-01/08

1 continue with questioning, because I think it's directly related to the -- at least this is
2 what I understood, to show that Willy Bomengo and the others knew in advance why
3 they were arrested and sent to trial. This is a consequence of my questions in
4 relation to the citation. So whether it's pertinent or not, it's a matter for the Chamber
5 to examine at a later stage.

6 So you can continue, Mr Haynes.

7 MR HAYNES:

8 Q. Now, you were telling us on several occasions that you're a soldier with many,
9 many, many years' experience. How important in a military operation is your S2
10 officer?

11 A. In the framework of military operations, where it concerns the armed troops,
12 this officer ensures that security measures are in place, that the morale of the troops
13 and of course their behaviour as well in the theatre of operations, their behaviour
14 towards the population, which is in this theatre of operations, and on the other hand
15 it is up to the intelligence officer to find out useful intelligence with regards to the
16 enemy; that is to say the possibilities of manoeuvres, the troops, matériels, their
17 intentions, with a view to analysing them in order to look at the friendly manoeuvres
18 in order to make it possible -- and when I say "the friendly troops," the other S3
19 responsible for operations, to allow that person to plan these manoeuvres, having
20 sufficient strength against the enemy.

21 And in the theatre of operations it is up to the S2 officer, who is responsible for war
22 prisoners, or the enemy who have stopped fighting, or the injured, responsible for
23 questioning them in order to get useful intelligence with regards to the enemy which
24 can help the manoeuvres of the friendly forces. That person is the judicial police
25 officer who -- when troops disobey, he has to immediately find the case file and

Trial Hearing
Witness: CAR-D04-PPPP-0016

(Open Session)

ICC-01/05-01/08

1 establish responsibility in order to see what has happened and when somebody has
2 been caught in the act then he can directly take that to the Conseil de Guerre, or war
3 council.

4 Q. So how serious a step would it be for a commander to arrest his own S2 officer?

5 A. With regards to the seriousness, or this flagrante delicto, the code of the army
6 codified the disciplinary measures on the one hand and on the other hand what the
7 offences were. The source is based on the military criminal code. Pillaging, theft,
8 or mistreatment, these are elements that come under these codified crimes which are
9 well-known by all military officers from the ALC, the code of conduct.

10 And it is even envisaged that in cases where -- even if an officer commits a crime
11 which is so serious and this person has fled, the Code of Conduct of the ALC had
12 envisaged that even the soldier of a lower rank can arrest such a fleeing officer and
13 bring him to their superiors with a view to him being brought to justice. Not doing
14 so would be to breach this code of conduct for flagrante delicto acts.

15 Q. So why were courts martial in the MLC comprised substantially of soldiers?

16 A. Well, it wasn't made up purely of soldiers. I stated that the minister
17 responsible for justice, in the absence of military magistrates among the officers of the
18 MLC, appointed the presiding judge who was a duty judge with the Tribunal de
19 Grande Instance of Gbadolite and was a career magistrate. He also appointed as
20 prosecutor the Prosecutor of the Republic to the Tribunal de Grande Instance of
21 Gbadolite. He was also a career magistrate. He also appointed the Registrar with
22 the Tribunal de Grande Instance who was an auxiliary by profession, a judicial
23 auxiliary, and he was appointed by the central authorities and he was there in order
24 to allow the functioning of this court in order to take into account collegiality and
25 therefore there weren't just soldiers.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 Now, in the case where it was possible to have the magistrate, a judge or president of
2 the garrison, as is the case now where there are military garrison courts and military
3 courts, then it was only this tribunal there, a garrison court, because you have the
4 court martial was called this. It was a -- in fact, that's what it was called, the
5 Tribunal Militaire de Garnison. That was its name.

6 Q. Do you know how courts martial are constituted in other countries, for example
7 France, United States, Great Britain?

8 A. I don't have references in that regard. Generally, in the Democratic Republic of
9 Congo, there is reform under way with regards to the courts and tribunals, whether
10 they are civil or military courts, but in the case in point if it was in a normal situation
11 there would not have been any civilian member other than soldiers, the professional
12 ones firstly.

13 Nevertheless, it is always admitted that among the members of the court that there
14 must be a professional judge of the judicial order. The same goes for the prosecutor.
15 The same is true for the registrar. When it comes to setting up military courts, the
16 effort was made to do so and generally the tribunals are set up in this way, but
17 nevertheless for other cases a maximum of five judges is taken into account as staff.
18 The minimum can go beyond that. This was a decision that couldn't come from the
19 political authorities, but from the hierarchy; the judicial and military hierarchy.

20 Q. In the month of December 2002, how many accused approximately appeared
21 before courts martial in Gbadolite?

22 A. Well, there were many of them. I can't remember, but more than 20, even 50 in
23 total, apart from the other cases in a mobile court, but in Gbadolite there were quite a
24 lot. Between 40 and 50. I can't remember very well anymore.

25 Q. And over what period of time did those people appear?

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 A. The session must have taken three months, I think. I think that -- given that
2 there were ongoing cases, I think it went beyond three months in order to go through
3 all the cases which had been registered and for which the court had been seized.

4 Q. I'm nearly done now. You were referred to some messages about a case in
5 Gemena. Do you remember that?

6 A. I remember that.

7 Q. In that case, a man was sentenced to death. Do you remember that?

8 A. Yes.

9 Q. Do you remember how long his trial took?

10 A. The trial? Well, it was a case of somebody being caught in the act and I think,
11 unless I'm mistaken, approximately five days. It was a case of flagrante delicto with
12 evidence in support of it. The weapon, the bladed weapon, used by the soldier, and
13 the judicial police officer who seized him stayed with this case file -- took the case file
14 to the prosecutor and the soldier recognised before the court the offence that had been
15 committed, admitting that he knew the person concerned and would hang out, as it
16 were, with that person.

17 Q. Did he have a lawyer?

18 A. He had a lawyer. He had a counsel. All cases of suspects had the assistance
19 of counsel. I can't remember, but Gemena was also a Tribunal de Grande Instance
20 where there were lawyers who acted as defence counsel for the tribunal for this
21 district court. I think everybody received a defence.

22 Q. And how long after the act was he tried?

23 A. If my memory serves me well within 48 hours, because when the General Staff
24 seized the prosecutor, given the seriousness of the case and the high tension that there
25 was on the part of the population in Gemena, which could have caused a lot of

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 damages, the prosecutor proposed and the court agreed to have a mobile court there
2 in Gemena and it went there.

3 PRESIDING JUDGE STEINER: Mr Haynes, if you allow me?

4 Court officer, please turn into private session.

5 *(Private session at 10.17 a.m.) Reclassified as Open session

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

7 PRESIDING JUDGE STEINER: Thank you.

8 A clarification, Mr Witness. This trial in Gemena that was -- that took place within
9 48 hours, (Redacted)?

10 THE WITNESS: (Interpretation) Indeed. I said that the court martial, in its
11 composition with the assistance of the prosecutor, registrar, went entirely to Gemena.

12 PRESIDING JUDGE STEINER: Thank you.

13 We can go back into open session, please.

14 (Open session at 10.18 a.m.)

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

16 MR HAYNES: Thank you very much, sir. I have no further questions of you. I'd
17 like to express our gratitude to you for your coming here, doubtless at great personal
18 inconvenience. It has been of great assistance to us.

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

20 Mr Witness, this now concludes your evidence before this Court and, before you
21 leave the Court I would like, as with all other witnesses in this case, to express the
22 thanks of the Judges and of the Court for the time you have taken to come to this
23 country to give evidence in this trial.

24 In order for the Judges to find the truth in this case, it's critical that witnesses such as
25 yourself are prepared, available and willing to give evidence to assist the Judges i

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 the relevant issues of the case.

2 We are aware that this may have been inconvenient for you. You are far, far from
3 your country. You left your occupation, your functions, your family, to come here,
4 stayed for so many days with us, and therefore you leave us now with our sincere
5 thanks.

6 Before you leave the Court, Mr Witness, I would like to ask whether there is anything
7 that you would like to address to the Chamber? If you so wish, this is the
8 opportunity and you may take the floor.

9 THE WITNESS: (Interpretation) Thank you.

10 If I have anything to add, it's in relation to the type of questions of torture with
11 regards to the Congolese legislation on the one hand and on the other in relation to
12 the international legislation that there is.

13 Why do I say that? I say that because in the question going back to the
14 administration of 150 lashes constitutes torture, well, what I wanted to say in that
15 regard is that Article 67 of the Criminal Code, Book 2, of the Congolese legislation,
16 considers torture as an aggravating circumstance to the circumstance of arbitrary
17 arrest or detention, and that's the reason why those people who commit this type of
18 torture, without having committed such offences, well, there are pitfalls,
19 shortcomings. I think there are initiatives under way and the chambers are trying to
20 deal with this issue by penalising torture and aligning itself with the first article of the
21 United Nations Convention on Torture. I want that to be understood as such,
22 because it was made in relation to international law. You could say that this is
23 something that's been taken into account.

24 Now, I would like to finish also by thanking the Court, as well as the Defence and the
25 Prosecution, particularly Mr Bemba, Senator, for formulating at the end of this

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 statement the request that I made to be able to meet Senator Bemba following this
2 testimony on the one hand, a courtesy visit, and on the other the Defence.

3 I had also expressed that I wanted to say thank you for your understanding. I have
4 nothing more to say. I thank everyone.

5 PRESIDING JUDGE STEINER: Thank you very much, Mr Witness, and don't take
6 offence if I signed that you did not reveal in public session what your requests to
7 VWU were. It is in order to ensure your own protection.

8 Again, we thank you very much. Just to inform you that the Chamber has already
9 informed VWU about its position in relation to your request, so you will be in contact
10 with VWU soon after this -- we adjourn this hearing.

11 I thank very much Prosecution team, legal representatives of victims, Defence team,
12 Mr Jean-Pierre Bemba Gombo. I thank very much our interpreters and court
13 reporters. We conclude with testimony of Witness 16. We will adjourn today and
14 resume tomorrow morning at 9 in the morning in order to start with the questioning
15 of Witness 66.

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

19 *(Closed session at 10.26 a.m.) Reclassified as Open session

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

21 (The witness is excused)

22 THE COURT OFFICER: All rise.

23 (The hearing ends in closed session at 10.27 a.m.) Reclassified into open session

24 RECLASSIFICATION REPORT

25 Pursuant to Trial Chamber III 's Orders, ICC-01/05-01/08-2223 and ICC-01/05-01/08-3038,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0016

1 the version of the transcript with its redactions becomes Public.