

Trial Hearing
Witness: CAR-D04-PPPP-0021

(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, 10 April 2013
8 (The hearing starts in open session at 9.06 a.m.)
9 THE COURT OFFICER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE STEINER: Good morning.
13 Could, please, court officer call the case.
14 THE COURT OFFICER: Yes, Madam President. Situation in the Central African
15 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, case
16 reference ICC-01/05-01/08.
17 PRESIDING JUDGE STEINER: Thank you.
18 Good morning. Welcome the Prosecution team, Maître Douzima, legal
19 representative of victims. Good morning Defence team, Mr Jean-Pierre Bemba
20 Gombo. Good morning to our interpreters, our court reporters. Good morning,
21 Ms Toumaj.
22 THE COURT OFFICER (DRC): (Interpretation) Good morning, Madam President.
23 PRESIDING JUDGE STEINER: And good morning, Mr Witness. How are you?
24 WITNESS: CAR-D04-PPPP-0021 (On former oath)
25 (The witness speaks French)

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 (The witness gives evidence via video link)

2 THE WITNESS: (Interpretation) Good morning, Madam President. I am very
3 well, thank you.

4 PRESIDING JUDGE STEINER: Mr Witness, are you ready to continue with your
5 testimony?

6 THE WITNESS: (Interpretation) I am ready, your Honour.

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

9 THE WITNESS: (Interpretation) Yes, I do, your Honour.

10 PRESIDING JUDGE STEINER: I also want to remind you that you are expected to
11 speak slower than normal, in order to facilitate the work of our interpreters, and also
12 to remind you that you are under protective measures. Your image and voice that
13 are broadcast outside the courtroom are being distorted, and in order to keep the
14 protection of your identity, you should be very careful in not releasing in open
15 session any information that could lead to your identification. Is that fine with you,
16 sir?

17 THE WITNESS: (Interpretation) That is fine by me, Madam President.

18 PRESIDING JUDGE STEINER: Today the Prosecution will start questioning you,
19 and for that purpose I give the floor to Maître Badibanga.

20 Maître Badibanga.

21 MR BADIBANGA: (Interpretation) Thank you, Madam President. I greet you all
22 in the courtroom.

23 QUESTIONED BY MR BADIBANGA: (Interpretation)

24 Q. Good morning, Mr Witness.

25 A. Good morning, Counsel.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. We met very briefly a few days ago, Mr Witness, through electronic channels,
2 and I introduced myself to you, and again as I would do today, my name is
3 Jean-Jacques Badibanga. I am of the Office of the Prosecutor and in that capacity I
4 will be examining you on behalf of the OTP in the present case.

5 On Monday you started testifying, Monday 8 April, and at that time you provided a
6 series of materials in answer to Mr Kilolo's questions. At some point you talked
7 about the functioning of the armed wing of the MLC, that is the ALC. You talked
8 about its functioning in general. Do you remember addressing that question?

9 A. Yes, Counsel, I do.

10 MR BADIBANGA: (Interpretation) Madam President, I'm referring to the
11 transcript of the hearing of 8 April, transcript 301, and I'll be providing references
12 subsequently, should that be necessary.

13 Q. Now, Mr Witness, I will attempt to briefly summarise your testimony, and
14 please correct me if I make a mistake and please provide any necessary corrections.
15 Are we to understand from your testimony of Monday, 8 April, that regarding the
16 armed wing of the MLC, Jean-Pierre Bemba was entirely powerless, so to speak; he
17 was a toothless bulldog, so to speak? Is that the case?

18 A. No, Mr Badibanga, that is not what I said.

19 Q. Are we to understand from your testimony of 8 April, that is of that Monday,
20 that regarding the armed wing of the MLC, the true boss of the ALC, that is the one
21 who actually had the power to make any decisions, was General Amuli; is that the
22 case?

23 A. That is not what I said, Counsel. What you need to understand is that the
24 army is a tool in the hands of politicians, and there were politicians in the MLC who
25 had control over the army, so the army was not an autonomous organ.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. Mr Witness, I have offered this summary of your testimony because when one
2 reads your testimony, one might come to such findings. Now, let me read out some
3 excerpts of your testimony, and, Madam President, I'm looking at page 31, line 14, in
4 the French version, and page 30 for the English version, from the very top of the page,
5 and there is a line on the previous page, page 29, but I'll be looking at page 30 in the
6 English version. This is what you offer by way of testimony, Mr Witness. Question
7 from Maître Kilolo: "Do you know how the command structure of the armed wing
8 of the MLC was organised and structured during that period?" Your answer: "The
9 ALC, the Army for the Liberation of the Congo, was structured as follows: At the
10 top there was a General Staff with various services and a Chief of General Staff. That
11 is the summit of the pyramid. Then it had sector commanders and unit commanders,
12 namely brigades, battalions, companies and what have you, according to the classical
13 or traditional structure of an army."
14 Then Maître Kilolo asked you: "What was the role of the General Staff of the ALC?"
15 Your answer: "The Chief of General Staff was the most highly or the best qualified
16 officer to be appointed to that position. He was the most experienced and was in
17 charge of the daily management or administration of the army, be it in the area of
18 logistics, operations or other."
19 Now, before we read further into your statement, or your testimony, I would like to
20 ask you, Mr Witness, whether you do confirm that the summit of the ALC pyramid
21 was the General Staff of the ALC and its Chief of Staff? Is that the case?

22 A. Yes, I do confirm that.

23 Q. Witness, I will not be providing any information that may disclose your identity,
24 but let me ask you the following: In your position within the ALC, one would have
25 expected that you would know or you would be familiar with the constitution of the

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 ALC. Is that the case?

2 A. Yes.

3 Q. Are you certain that for the period under review the MLC constitution provided
4 that it was the Chief of General Staff who was in charge of the armed wing of the
5 MLC?

6 A. Yes, that is my understanding.

7 Q. Mr Witness, we need to observe the five-second rule to enable our interpreters
8 and our court reporters to do their job properly. You have just stated in your answer
9 that such was your understanding but, Mr Witness, the issue is not about
10 understanding. We want to deal with facts here. I want to find out from you
11 whether this was the provision in the constitution of the MLC and not a personal
12 interpretation. What is the provision of the constitution of the MLC with regard to
13 the summit of the ALC?

14 A. Mr Badibanga, I have not read that constitution in more than ten years and
15 therefore memory may fail me. Please, would you try -- would you help me by
16 reminding me of such provisions?

17 Q. Mr Witness, your entire testimony has been referring to events that took place
18 some ten years ago. On Monday and Tuesday, when you talked with Mr Kilolo, you
19 were referring to events that took place ten years ago and even more. The Lusaka
20 Agreements were signed before the year 2002.

21 So my question to you is the following: Do you know what the provision of the
22 MLC constitution was in relation to the summit of the armed wing of the MLC?

23 A. Counsel, I did not quote any provisions of the Lusaka Agreement when I talked
24 about it, and I hope you can understand that I currently do not have a memory of any
25 specific provisions of the MLC constitution dealing with the summit of the ALC.

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 Q. Let us move on, but we understand then that you do not know who was the
2 number one or who was at the summit of the pyramid of the armed wing of the MLC,
3 namely the ALC, and is it the case that you do not know or you no longer recall?

4 A. Jean-Pierre Bemba was the commander-in-chief. That was his title.

5 Q. And that would be the summit of the pyramid?

6 A. Yesterday, I attempted to explain the confusion that may have arisen in relation
7 to the commander-in-chief and the supreme commander. I think I clarified these
8 two concepts which were being confused by some.

9 Q. Yes, indeed, we shall revisit your explanation to the Court but, Mr Witness, I
10 would like to know whether Mr Jean-Pierre Bemba himself was confused about these
11 issues?

12 A. I do not know.

13 Q. Mr Witness, do you know that Jean-Pierre Bemba signed a number of
14 documents and made a number of statements in which he identified himself as
15 commander-in-chief, chief of the army, supreme commander; in fact posturing, so to
16 speak, as the active commander of that army? Do you -- or are you aware that
17 Mr Bemba himself took that stance?

18 A. Yes, I am aware of those statements.

19 Q. Well, you say that you are aware of those statements. When Mr Bemba was
20 making those statements, is it your understanding that he was also confused as to the
21 meaning of the concepts of supreme commander and commander-in-chief?

22 A. To my mind, yes.

23 Q. Are you saying therefore that the founding father of the MLC, its president,
24 who in his own words said he was the commander-in-chief, was mistaken when he
25 said that he was the commander-in-chief, that he did not fully understand the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 difference between a commander-in-chief and a supreme commander? Is that your
2 testimony, Mr Witness?

3 A. What I have said is that, to my mind, there is a distinction to be made between
4 the commander-in-chief and the supreme commander. Now, if Mr Bemba thinks
5 that the commander-in-chief and the supreme commander are one and the same thing,
6 he's entitled to that opinion.

7 Q. When I introduced myself to you a few days ago at our first contact I told you
8 that my task is to put questions to you on behalf of the OTP with the sole objective of
9 determining the truth, so there is no specific purpose behind any questions I put to
10 you other than seeking to enable the Chamber to understand what happened, how
11 the MLC functioned and to understand the role of all the stakeholders, or actors.

12 Witness, I am in fact not asking you to give an opinion as to the possible
13 interpretation of an instrument, or of a situation. All I ask of you is simply to talk
14 about the facts, about the situation as it was at the time and to share your knowledge
15 in that regard.

16 I want to say this, because I have a sense that you are being a little bit defensive. I
17 simply just want to get the facts from you, and again let me put the question to you.
18 As a member of the MLC, you knew who the commander was and you operated
19 along with the other 20,000 members of the MLC under that commander. How is it
20 that today you now tell us that you have another understanding of these concepts and
21 that he was mistaken? That is my difficulty. Please clarify.

22 A. Counsel, I can understand your approach very, very easily, but let me clarify
23 one thing. I was never a member of the ALC, because from your statement it may be
24 inferred that I was one of the 20,000 men of the ALC. I was never a member of the
25 ALC. I was a member of the political wing, which is a separate unit.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. I will proceed and read on part of your statement in the relevant pages,
2 transcript 8 April, transcript number 301, in the French version -- in the English
3 version, rather, I should be at page 31, and this is what you say at page 32 in the
4 French version, Mr Witness.

5 Question by Maître Kilolo: "When you state that orders came from the General Staff,
6 what do you mean? What do you mean exactly?" Your answer: "What I mean is
7 that if instructions were to be given to a unit, a unit in Basankusu for example, if it
8 had to move to the east, for example, the General Staff or the headquarters would
9 give instructions for that unit to move." Then Maître Kilolo put the following
10 question to you: "When you talk about the General Staff, who issued the orders to
11 the various units under the MLC controlled territories in the Congo at the time?"

12 Your answer: "Ordinarily, the orders came from the Chief of General Staff."

13 So, Mr Witness, maybe you were not part of the ALC but, when Mr Kilolo put that
14 question to you, you were able to provide a specific answer as to how orders were
15 issued in the ALC and this is the same thing that I am addressing with you. Can you
16 help us to understand?

17 A. Yes, of course, Counsel, I can help you to understand. From my position
18 within the political apparatus, I knew a number of things. I didn't have full
19 knowledge of everything, but I had some knowledge of how things were unfolding,
20 and that is why regarding a number of questions I am able to provide clear and
21 specific, albeit nuanced, answers and yet on other questions I am not able to provide
22 any answers.

23 Q. In the excerpt I have just read out to you, Maître Kilolo talks about the general
24 functioning of the ALC and he was not referring specifically to the operations in the
25 Central African Republic. He talked about the general functioning of the ALC, and

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 your answer was that "... the orders came from the Chief of General Staff." Can you
2 confirm that as your testimony, or do you want to further clarify or qualify your
3 answer?

4 A. I stand by my testimony.

5 Q. So in broaching this question, you gave us a brief historical overview of the
6 military matters within the DRC and I continue with my reading here. We are in the
7 English version at page 32 now, and in the French version we have moved on to page
8 33.

9 Now, Mr Witness, if you recall, you explained to us the legacy of the Belgian colony,
10 saying that until the year 1965, the President of the Republic was the supreme
11 commander of the national army, being a civilian, and he was bestowed with the title
12 of "supreme commander" and he had the right to wear military uniform or garb, and
13 you said that this was the legacy of the Belgian colony where the king was supreme
14 commander of the army and wore military garb. So this is how we saw our former
15 President of the Republic officially wearing military garb as the supreme commander
16 of the army, but he was a civilian. Do you recall having stated this and having
17 provided us with this explanation?

18 A. Yes, indeed, I do, Counsel.

19 Q. And you say, in continuing with this explanation, "So this is how things were
20 organised and the manner in which the ALC was structured and the relations that
21 existed between the Chief of General Staff, who was in fact the commander-in-chief
22 and a professional military and number one of the entire army, and the supreme
23 commander, who was the president of the party but, in practice, there was a
24 confusion, where sometimes the supreme commander was called the
25 commander-in-chief."

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Now, do you recall having said that, Mr Witness?

2 A. Yes, indeed, I do, Counsel.

3 Q. Now, Mr Witness, since the year 1965 and up until 1998, much water ran under
4 the bridge, and President Mobutu, was he a civilian wearing military garb during
5 those 32 years during which he reigned supreme over Zaire?

6 A. No, Counsel. Mobutu was in fact a military man.

7 Q. And could you tell us which rank he held when he took power for the second
8 time in 1965, if you recall?

9 A. He was lieutenant-general.

10 Q. I might have been a little bit fast in putting my question. I was asking which
11 rank he held when he took power in 1965; do you recall?

12 A. Mobutu had the grade of lieutenant-general.

13 Q. Very well. I thought it was colonel at the time, but what rank did he have
14 when he left power in 1997, in Zaire? Do you know what rank it was?

15 A. I believe that he left the army with the rank of general. I believe he was a
16 general within the army at the time when he left.

17 Q. Would it not be more specific for us to say that he left the army with the rank of
18 marshal?

19 A. Well, it is not actually a military rank as such. It is an honorary title.

20 Q. I thank you, Mr Witness. In order to base your theory according to which
21 Jean-Pierre Bemba was merely a civilian with the title of supreme commander but
22 that he was not in fact the commander-in-chief, you talked to us about 1965 and
23 Belgian colonisation. But if we were to take the example of the 31 years of power
24 preceding the appointment of Jean-Pierre Bemba as a political man, it is another
25 model that we have before us. We have the model of a military man who has power

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 and who is commander-in-chief. Can we agree on this fact, Mr Witness?

2 A. Counsel, I do believe that my explanation has not been well understood. If
3 you will allow, I might briefly, in a minute, provide you with my opinion on the
4 matter.

5 Q. Yes, indeed, we have all our time, Mr Witness, and I do believe that it is
6 important for you to furnish us with a complete explanation as to what you mean by
7 the testimony you have provided.

8 A. In 1960 the country became independent, with a President of the Republic, a
9 civilian by the name of Joseph Kasa-Vubu, who was the commander -- the supreme
10 commander of the national Congolese army. And within the army there was a
11 commander-in-chief by the name of General Yelsans (phon). So we therefore have a
12 supreme commander and a commander-in-chief, in addition to which we have a
13 Chief of General Staff. In the year 1965 Mobutu became President of the Republic
14 and we still have the same structure in place, notably, a supreme commander, a
15 commander-in-chief, who was General Bobozo, and a Chief of General Staff. As
16 time passed, Mobutu, in his position as supreme commander, did away with the
17 function of commander-in-chief and left in position the Chief of General Staff, so
18 Mobutu, as a military man, then combined the two functions of commander-in-chief
19 and supreme commander throughout his period in office and in power. That's what
20 I wanted to say by furnishing this example.

21 Q. Now, what is of interest to me, Mr Witness, is what actually occurred within the
22 MLC during the period under study. And so the question that I am putting to you is
23 between this model, the Belgian colony model, which came to an end in 1965, and the
24 Mobutu model, which continued until 1998, which model did the MLC and
25 Jean-Pierre Bemba therefore adopt?

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 A. According to our constitution, obviously, it is the second model that was
2 adopted.

3 Q. Very well, Mr Witness. I can see that you have some memory of the
4 constitution.

5 A. Well, you have reminded me of it, but I might like to correct myself somewhat.

6 Q. Yes, please, go ahead.

7 A. I said that in order to fulfil the function of commander-in-chief, that is to say the
8 person heading up the army, we needed a professional military man, so one had to
9 make a difference between Mobutu, the commander-in-chief, who was a military man,
10 and Jean-Pierre Bemba, who was -- had the title of commander-in-chief, and with
11 regard to his knowledge in military matters, I would say that they were quite
12 rudimentary.

13 MR BADIBANGA: (Interpretation) Now, Madam President, I'm going to read
14 from transcript 301, from the testimony of the witness, and this is page 33 in the
15 English version, line 11. And in the French version, we are reading from page 35,
16 from line 20.

17 Q. This is what you say, Mr Witness, in response to a question put to you by Maître
18 Kilolo who says, "Did Mr Jean-Pierre Bemba at the time, and in the context of the ALC
19 military operations within the territory under administration in the Congo, did he
20 have the necessary aptitudes in order to conduct a military operation, an ALC
21 military operation in the Congo?" To which you answer, "Counsel, I believe that
22 military science is a science, military art is an art for which one requires a certain level
23 of knowledge, and the little that I am aware of as to Mr Bemba's professional
24 background, military background, et cetera, I would say that his knowledge is
25 elementary, if not rudimentary, and his knowledge does not allow him to lead

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 military operations of any scale."

2 Do you remember having made such a statement, Mr Witness?

3 A. That is my opinion.

4 Q. I would just like to summarise the question of principle which, to my mind, is
5 underlying or underpinning the comments you made in this regard. Should we
6 therefore understand from your testimony, Mr Witness, that Jean-Pierre Bemba
7 actually adopted or postured in his military capacity over all these years?

8 A. Could you please explicit or explain precisely what you mean by that, Counsel?

9 Q. What was the military -- or what is the military rank of Mr Jean-Pierre Bemba
10 today?

11 A. I do not know whether he has a military rank today but I believe that in the year
12 2002/2003, he had the rank of division general -- major general, correction.

13 Q. And do you understand now whether, in your opinion, Mr Jean-Pierre Bemba
14 actually took on a specific rank?

15 A. No.

16 Q. Mr Witness, you say that Mr Jean-Pierre Bemba, and I quote what you said, "...
17 has rudimentary knowledge of military matters," and just now you have said to us
18 that Mr Jean-Pierre Bemba is major general. Now, are these two positions
19 compatible in your opinion?

20 A. Yes, indeed it is compatible, because it was more an honorific rank
21 because -- rather than a rank given to him according to his military knowledge, or
22 experience.

23 Q. So the fact that he was a major general, this has nothing to do with his military
24 capacity or competence? It has something to do with what you term as an
25 "honorific" title? Is that what I should understand from your testimony,

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 Mr Witness?

2 A. That is what I understood to be the case at the time.

3 Q. And do you recall the date of this appointment to the position of major general?

4 A. I do not have the precise date, but I do recall that it must have been toward the
5 end of the rebellion. I believe that it was the end of 2002 or 2003, if I am not
6 mistaken.

7 MR BADIBANGA: (Interpretation) Could the court officer please present to the
8 witness document number 38 of the list of OTP documents, bearing the reference
9 number CAR-OTP-0032-0367?

10 It would seem that I was too rapid for the British -- for the English booth.

11 THE INTERPRETER: 0032-0167, correction from the English booth. Apologies.

12 Thank you.

13 THE COURT OFFICER (DRC): (Interpretation) Mr Badibanga, this document is
14 currently being presented to the witness.

15 MR BADIBANGA: (Interpretation) I thank you very much.

16 Q. Now, Mr Witness, what you have before you is an article from Le Phare
17 newspaper, which I believe you will be familiar with as a Congolese newspaper with
18 a broad circulation in Kinshasa, and if we move on to the second page, if the court
19 officer could show you the second page, that's page 168, finishing with the number
20 0168 at the very bottom of the page, and in view of the size of the type face I'm going
21 to read it to you. Do you have this second page on the screen before you? Court
22 officer, could you please confirm to us that page 0167 is indeed being shown to the
23 witness?

24 THE COURT OFFICER (DRC): (Interpretation) The bottom of page 168 is being
25 shown to the witness.

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 MR BADIBANGA: (Interpretation) I thank you.

2 Q. So this is an article presenting the restructuring and -- of the ALC, and at the

3 bottom of the page it says that, "Jean-Pierre Bemba is hoisted to the rank of major

4 general." And then we have the rest of the article, "The decision number

5 0001/CPML/07/2002. Meeting this Saturday, 2002, 16 July, in extraordinary assembly

6 the political members have taken ..." --

7 THE INTERPRETER: The English booth requests that the article be read out slowly,

8 or that she be provided with the article on the screen that she can actually read.

9 Thank you.

10 MR BADIBANGA: (Interpretation)

11 Q. I shall read the article more slowly so that the interpreters can actually follow

12 me, "Decision number 001/CPML/07/2002. Meeting this Saturday, 13 July 2002 ..." --

13 THE INTERPRETER: The interpreter does not have it on the screen yet.

14 MR BADIBANGA: (Interpretation)

15 Q. -- "... in Gbadolite, in extraordinary assembly, the members of the Political and

16 Military Council for Liberation have taken unanimously the decision to hoist to the

17 rank of major general the commander-in-chief of the Congolese Liberation Army,

18 Mr Jean-Pierre Bemba Gombo, National President of the Congolese Liberation

19 Movement."

20 Now, Mr Witness, could you briefly explain to us what this Political and Military

21 Council for Liberation precisely was, which unanimously took the decision to

22 promote him?

23 A. The Military and Political Council was a very important part of the MLC. It

24 was an important organ.

25 Q. And what were the members, or who were the members, of this council?

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 A. Counsel, I believe that the members of this council are provided in the article.

2 Q. And could you therefore read it to us, Mr Witness?

3 A. Yes, indeed, Counsel. I read, "The members of the Political and Military

4 Liberation Council: Olivier Kamitatu, Colonel Dieudonné Amuli Bahigwa,

5 Lieutenant-Colonel Mongapa Sumi, Samuel Simene, Commander Valentin Senga,

6 Montfort Konzi and Jean-Pierre Singo."

7 Q. So we understood that Mr Jean-Pierre Bemba was somewhat confused as to the

8 titles of supreme commander and commander-in-chief. Can you now -- are you now

9 telling us that the Political Military Council was making the same confusion, in the

10 sense that they were actually identifying Mr Bemba as the commander-in-chief of the

11 MLC? Do you think that they were equally confused?

12 A. I think I should be able to furnish you with an explanation, but if the President

13 would allow us to go into private session for a minute or two?

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

15 *(Private session at 9.55 a.m.) Reclassified as Open session

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

17 THE WITNESS: (Interpretation) May I go ahead?

18 MR BADIBANGA: (Interpretation)

19 Q. Yes, indeed. We are in private session. Please go ahead.

20 A. Counsel, well, I believe that I was rather clear when I told you about my

21 professional background. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted) I am telling you what my understanding of the situation was

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 when I arrived. For me, Bemba was a civilian.

2 Now, here they're talking about acts of bravery. I was not there during that time. I
3 do not know what happened. This is what I wanted to say, Counsel.

4 Q. Well, whilst we are still in private session, Mr Witness, of course this is the crux
5 of the matter in the questions I am putting to you. I am attempting to understand.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 I would say - and let me be allowed to say - that this is contradictory to what has been
10 said before this very Chamber over the last two years. Those witnesses who
11 furnished testimony here have said something quite different when talking about
12 "commander-in-chief" and "supreme commander." They have never provided us with
13 the distinction that you have provided us with.

14 So I return to this. Would you please talk to us about what actually was, rather than
15 providing us with an explanation that does not actually seem to correspond with
16 reality? (Redacted)

17 A. Counsel, I was invited here to give my opinion on what happened. I have
18 given my opinion and I'm giving my opinion of what happened. That's what I'm
19 here to do, but if this is not the reality as presented by others then I don't know what I
20 should say. I arrived in the structure, I found an established organisation and I'm
21 saying what I found. If other people have not said that, that's different. I -- in fact,
22 this is what I found. He was commander-in-chief, but he shouldn't be
23 commander-in-chief. The Political Military Council met and he was appointed major
24 general. That's their right to do so.

25 So what I'm saying is what I know. Why are we talking about this? There would

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 appear to be a contradiction between my personal appreciation of his military
2 characteristics and the decisions. If the members of the council believed him to be a
3 general who had undertaken acts of bravery, that is their opinion.
4 I never took part in operations commanded by Bemba where he showed the
5 characteristics of a great general and, as I said (Redacted)

6 (Redacted)

7 That's what I have to say, Counsel.

8 Q. One further clarification while we're still in private session. You said you were
9 not a member of the MLC. (Redacted)

10 (Redacted)

11 A. Yes, Counsel, but the -- between the nomination to this rank, I was indeed given
12 a military rank. I had military functions.

13 Q. When you mentioned your military experience nobody followed this up, so
14 I am now discussing this. How long did your training last? You said that you went
15 abroad for training.

16 A. The training lasted three months.

17 Q. So you had a three-month military training; is that what you're saying?

18 A. Yes.

19 Q. May we ask where you undertook this training? Was it a military academy
20 somewhere?

21 A. It was the (Redacted)

22 Q. Was this part of the training given to other members of the ALC, or was this in a
23 different context that you undertook this training?

24 A. This was part of a different framework. It was part of my previous political
25 formation in the RCD.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 MR BADIBANGA: (Interpretation) We can return to open session, Madam
2 President.

3 PRESIDING JUDGE STEINER: Court officer, please turn into open session.
4 (Open session at 10.02 a.m.)

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

6 MR BADIBANGA: (Interpretation)

7 Q. Mr Witness, we will continue reading this extract from the newspaper article
8 and the decision taken by the political and military council. This is in open session,
9 so we will discuss matters without identifying either you or anyone else for whom
10 this would be hazardous.

11 So it seems that clearly, the members of the political and military council had a
12 different understanding of the term "commander in chief" or rather they are applying
13 it here without there being any doubt. Does this lead you to give us any further
14 clarifications as to what you said in open session about this matter and the legacy of
15 the Belgian colony?

16 A. No, Counsel, I don't wish to revisit what I've been saying since the day before
17 yesterday because they've taken a wording that's in these statutes of the MLC. This
18 qualification, I believe that there exists confusion, but whether I do or not, it's not
19 relevant. What's important is that -- is the people who took this decision.

20 Q. Could you read the two paragraphs which follow the paragraph I read out?
21 Could you perhaps do that for us, starting with, "With this decision ..."?

22 A. I'm here to serve, Counsel. "Through this decision, the members of the council
23 appreciate the value, the bravery and the -- what has been done by the
24 Commander-in-Chief of the ALC who, throughout the liberation struggle has
25 conducted -- has led on all fronts the troops of the ALC from victory to victory."

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 Q. If you could continue.

2 A. "They also welcome the rectitude, the sense of duty and the perseverance of the
3 Commander-in-Chief of the ALC who constitutes a model for the thousands of young
4 Congolese who have voluntarily accepted to join the ranks of the combatants of the
5 ALC."

6 Q. I will re-read, Mr Witness. "Counsel, I believe that military science is a science,
7 military art is an art, one needs knowledge. The little that I know about the path of
8 military training or the military knowledge of Mr Jean-Pierre Bemba is that this
9 knowledge is elementary or even rudimentary. This knowledge does not allow him
10 to lead major military operations." In order to resolve this question, Mr Witness,
11 should one perhaps not reconsider the words used in the second sentence, "the little
12 I know"? In other words, you know nothing or you know very little?

13 A. I don't have a full, complete knowledge of the path of a biography of Jean-Pierre
14 Bemba but, as I said, I do know a little and please don't twist my words. Bemba was
15 a great general. That's my point -- was not a great general. That's my point of view,
16 which differs from the members of the political military council.

17 Q. Perhaps it's not been said since you started your testimony, but if you don't
18 have a reply to a question, then it is quite acceptable for you to say, "I don't know."
19 That's an option which is open to you. Please, do go ahead.

20 A. Yes, I do know that if I don't know then I can say "I don't know," but I do, I
21 think, have the right to emit an opinion on him, having known him for some years.

22 Q. Indeed. And again, in this area, I didn't have the chance to say earlier that you
23 are indeed here to give your version of the facts, your understanding of the facts.
24 We are here to hear your testimony. I'm simply here to confront you with elements
25 of evidence which we have in the dossier, and I would ask you to confirm or deny

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 them.

2 I would now like to see from the same document page 172. I'd like that to be shown
3 to the witness.

4 THE COURT OFFICER (DRC): (Interpretation) Page 172 is being shown to the
5 witness.

6 MR BADIBANGA: (Interpretation) Thank you.

7 Q. The top part of this page gives a list of a whole series of people who have been
8 promoted to various ranks, and we have here not only the fact that Mr Bemba was
9 promoted to major general, but also a number of people were promoted to brigadier.
10 And the rest of the text is on this page. Here we see a whole list of people who have
11 been promoted and we see that Major General Dieudonné Amuli, or rather General
12 Amuli becomes major general and a number of people are promoted to colonel,
13 others to lieutenant-colonel and then we have the majors. So the question I would
14 like to ask is whether these nominations were effective? Do these people have
15 military knowledge? Was there a point to these appointments? Or do you believe,
16 as you said of Mr Bemba earlier, it's an appointment on the basis of prestige and they
17 didn't have the capacities one would expect?

18 A. Looking at these names, what I believe is that these people had military
19 knowledge.

20 Q. So apart from Mr Bemba, who was given an honorary nomination, the rest are
21 effective promotions; is that what you are saying?

22 A. Counsel, I've given my opinion on the military knowledge of Mr Jean-Pierre
23 Bemba and I know that a lot of people on this list were career military men. I don't
24 know whether they actually merited the ranks to which they've been promoted here.

25 Q. Do you know whether Jean-Pierre Bemba had military training or not? Did

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 this subject ever come up?

2 A. Yes, I heard talk of this.

3 Q. Could you tell us what sort of training he had, where it took place, how long
4 did it last?

5 A. I understood him to have had military training in La Forestiere at Kisangani,
6 and I believe it lasted a week.

7 Q. Do you know who gave this training?

8 A. I believe it was a Ugandan officer.

9 Q. Have you ever heard of a book called "The Choice of Freedom"?

10 A. Yes, I have.

11 Q. What do you know about this book?

12 A. It's a book written by Jean-Pierre Bemba during the rebellion to explain the path
13 he was following.

14 Q. Do you know whether in this book he speaks of his role as a military man?

15 A. Counsel, I don't recall exactly. I haven't read this book for some considerable
16 time.

17 Q. But you have read it at least once at some point?

18 A. Yes, I have.

19 MR BADIBANGA: (Interpretation) Madam President, I would like the witness to
20 be shown document 58 of the Prosecutor's list, which is CAR-OTP-0069-0372.

21 PRESIDING JUDGE STEINER: Maître Badibanga, before that, I am informed that
22 the press article that was discussed with the witness right now is still classified as a
23 confidential document in the eCourt system and, unless any of the parties has any
24 objection, I don't see any reason for this document, which is a newspaper, to be
25 considered as confidential. So, if there is no objection, I will determine that the

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 document is classified as public.

2 Maître Kilolo?

3 MR KILOLO: (Interpretation) The Defence has no objection.

4 MR BADIBANGA: (Interpretation) I apologise, Madam President. I could have
5 said that we have asked for this document to be reclassified as an open document. I
6 considered that, as it was a press article, it could be presented as such.

7 Thank you.

8 PRESIDING JUDGE STEINER: Therefore, the document CAR-OTP-0032-0167 is
9 reclassified as public.

10 MR BADIBANGA: (Interpretation) So we're now looking at document 58. Could
11 we look at CAR-OTP-0069-0434?

12 THE COURT OFFICER (DRC): (Interpretation) CAR-OTP-0069-0372 finishes early.
13 I don't have a 0434 for this document. It finishes at 42.

14 MR BADIBANGA: (Interpretation) Thank you, Registrar. We're looking at an
15 eCourt version and that's what we have and I see it on the screen. Can the witness
16 see it? Perhaps we could put it on the screen from here to see whether the witness
17 can see this plate?

18 THE COURT OFFICER: Just for the record, the document that is being actually
19 displayed is CAR-OTP-0069-0372, at page CAR-OTP-0069-0434, and it's a public
20 document.

21 MR BADIBANGA: (Interpretation) Thank you. Could the witness be shown the
22 photo that is on the lower part of this page?

23 Q. Mr Witness, could you read the caption under the photo?

24 A. "Early morning on the Ubangi front line, Jean-Pierre Bemba ..." -- "... Jean-Pierre
25 Bemba, Major Genganze and Major Delphin Etula."

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 Q. Mr Witness, during the period you spent in the MLC, have you -- did you ever
2 see Jean-Pierre Bemba in this uniform?

3 A. I saw him in uniform on several occasions.

4 Q. For the report, could you perhaps give us a brief description, Mr Witness, of
5 what you see on the screen?

6 A. On the screen I see a tent, and sitting in front of the tent I see Mr Jean-Pierre
7 Bemba, on his left on a chair Major Delphin Etula and in the background Major
8 Genganze, who seems to be on the radio. At least, he has the -- his left hand close to
9 his ear.

10 Q. Do you know under what circumstances Mr Bemba was on the Ubangi front
11 line, as stated in the caption?

12 A. No, I don't.

13 MR BADIBANGA: (Interpretation) Would the court officer please show page 436,
14 the photo at the top of the page first please?

15 Q. Could you please read the caption at the bottom of this photo?

16 A. "During the attack of the Ubangi battle, Jean-Pierre Bemba is preparing the
17 Buburu attack."

18 Q. Could you please describe the picture you're looking at?

19 A. I can see six people in a prone position on the sand. I can't recognise any of
20 their faces, but it's possible that the one in the middle is Jean-Pierre Bemba. In the
21 background, there are three or four soldiers about 50 or 60 metres behind the front
22 group.

23 Q. Do you know anything about the Buburu attack?

24 A. No, Counsel, I do not.

25 Q. The man in the middle, the one who you say could be Jean-Pierre Bemba, what

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 is he wearing?

2 A. The six people on the sand are wearing camouflage dress.

3 Q. Can you identify what is on the sand in front of the person in the middle?

4 A. Not really, but it could be a pair of binoculars.

5 MR BADIBANGA: (Interpretation) Court officer, please could you show the
6 witness the photo at the bottom of this page?

7 Q. And again, Mr Witness, I would ask you to read the caption.

8 A. "In a defensive position at Businga, Jean-Pierre Bemba and Brigadier James
9 Kazini share a meal."

10 Q. Could you please describe the scene that you are looking at?

11 A. I can see a picture of Brigadier James Kazini, the Chief of Staff of the Ugandan
12 Army, and Jean-Pierre Bemba. Both are wearing uniforms, Jean-Pierre Bemba
13 wearing camouflage uniform and the Ugandan brigadier wearing the UPDF uniform,
14 and they are eating.

15 Q. Mr Witness, on these photos, which all appear in the book written by
16 Jean-Pierre Bemba, are we talking about the same Jean-Pierre Bemba that you say had
17 very little in the way of military knowledge and who would be incapable of leading
18 an operation?

19 A. Counsel, do you really want me to give you my sincere opinion?

20 Q. Mr Witness, I am trying indeed to get a sincere opinion.

21 A. The photos which we have just been looking at are, as far as I'm concerned,
22 propaganda photos. On the last photo we can see the effective commanders of the
23 operation in the Congo, which is General James Kazini who was the commander of
24 the Ugandan contingent deployed in DRC.

25 MR BADIBANGA: (Interpretation) Could the court officer please give page 30 of

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 the book, which is number --

2 THE INTERPRETER: Sorry, the interpreter missed the number, but it's page 30 of
3 the book. 0404.

4 THE COURT OFFICER (DRC): (Interpretation) Mr Badibanga, page 0404 is being
5 shown to the witness.

6 MR BADIBANGA: (Interpretation) Court officer, could you please show the
7 lower part of this page?

8 THE COURT OFFICER (DRC): (Interpretation) The lower part is being shown to
9 the witness.

10 MR BADIBANGA: (Interpretation) Madam President, I will revisit this point
11 because there is a mistake in the page numbering. Maybe I will revisit this point
12 subsequently, but for now I would ask the court officer to please withdraw that
13 document, although I will be revisiting it subsequently.

14 Q. Witness, on several occasions you talked about the Code of Conduct with the
15 Defence counsel, that is the ALC Code of Conduct. Do you recall that?

16 A. Yes, Counsel.

17 Q. Would it be a fair representation of your testimony if I said that there were a
18 number of documents available to the ALC soldiers but that the Code of Conduct was
19 the most popular, the most well-known of all these documents; is that correct?

20 A. Yes.

21 Q. Witness, you went through this document with Maître Kilolo, and I'm sure you
22 were reminded of a number of things in that exercise, but do you recall whether this
23 document contains any provisions on international humanitarian law?

24 A. I do not recall.

25 MR BADIBANGA: (Interpretation) That would be document number 9 on the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Prosecution list. I would like that document to be displayed to the witness,
2 document CAR-DEF-0001-0161.

3 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, document
4 CAR-DEF-0001-0161 is now being shown to the witness.

5 MR BADIBANGA: (Interpretation) Thank you, court officer. I would like you to
6 zoom in the top part of the Code of Conduct and I would like to ask the witness to
7 read out the objectives of the code.

8 THE WITNESS: (Interpretation) "Objectives of the code: Improve military
9 activities within the ALC with a view to achieving the expectations and aspirations of
10 the people, provide guidance, fortify and train the army in its actions with a view to
11 increasing its power and capacity, protect the morale of troops at war and safeguard
12 discipline. This Code of Conduct must be respected and applied at all levels of the
13 Army for the Liberation of the Congo."

14 MR BADIBANGA: (Interpretation)

15 Q. Mr Witness, could it be said that a code, a document, or a regulation that begins
16 with defining its objectives does define the purpose of such an instrument? Is that
17 what we should understand objectives to be?

18 A. Yes, Counsel.

19 Q. Upon hearing what you have read out, it emerges that the objective is to
20 improve activities, military activities, within the ALC, and the two sub-points include
21 guiding, strengthening and providing protection for the army in its actions, with a
22 view to increasing its power and capacity, then protecting the morale of soldiers at
23 war and safeguarding discipline. Can we agree that those are the objectives, in fact,
24 the sole objectives of the Code of Conduct?

25 A. Yes, absolutely correct.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. These objectives do not in any way or manner refer to the protection of the
2 population or respect for human rights or upholding international law or
3 international humanitarian law, and so on and so forth. Am I mistaken in coming to
4 that observation?

5 A. Well, Counsel, that is an interpretation, but all of that could also be interpreted
6 to be included in the expectations and aspirations of the people which appears in the
7 first line of the objectives.

8 Q. Mr Witness, do you recall whether this text contains in any of its provisions a
9 sentence referring to the protection of civilian protection, protection for civilians or
10 dealing with civilians not involved in combat with soldiers? Do you have any
11 recollection of anything in this instrument dealing with the protection of civilians?

12 A. Off-the-cuff, Counsel, I have no such recollection.

13 Q. Do you have any recollection off-the-cuff of any references to the law on wars or
14 do you have any recollection about provisions regarding the protection of hospitals
15 and such facilities that should not be shelled, and churches?

16 A. Well, I don't have such a recollection, but I believe that the Code of Conduct
17 essentially addresses the issue of conduct within the army. It does not deal with
18 matters relating to the relations between the army and the civilian population. That
19 is an entirely different matter which is not covered in the Code of Conduct.

20 Q. Thank you, Witness, for providing such a well-couched answer, because it
21 enables me to move on and the Court will gain some time in relation to the questions
22 that I would have been putting to you on this issue.

23 So if one were to say that the Code of Conduct is the reference document relating to
24 matters such as soldiers having -- or committing any offences against the civilian
25 population, but that it was an internal document for the military?

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 A. I know that I attended some meetings at which these issues were dealt with but
2 were not included in the Code of Conduct. But I was present when these moral talks
3 or chats were organised, at which the soldiers were sensitised or were made aware of
4 the quality of their relationship with the civilian population.

5 Q. Who was in charge of these moral chats? Was it the policy commissioners, the
6 PCs, as they were known?

7 A. Yes, I was present when these PCs gave these moral talks, or moral chats, and I
8 was also present when some unit commanders gave similar moral chats or
9 discussions.

10 Q. Did there come a time when the political commissioners stopped being
11 functional?

12 A. Could you repeat your question?

13 Q. Did there come a time during the operations when the political commissioners
14 stopped to do their job; that is the PCs?

15 A. I have no such recollection that they may have ceased to be operational.

16 Q. As far as you know, did the political commissioners continue to play the
17 popularisation role that was theirs up until the end of the rebellion in July 2003?

18 A. I think -- I think so.

19 Q. When you say you think so, is it that you're not sure?

20 A. Yes, I'm not certain because I don't have any specific material that can enable me
21 to give you specific examples by way of answer to that question.

22 Q. When you went through the Code of Conduct with Mr Kilolo, he asked you to
23 read Chapter 6 of that code. I will ask the court officer to display page 164 for you.

24 THE COURT OFFICER (DRC): (Interpretation) Chapter 6, at page 164, is now
25 displayed to the witness.

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 MR BADIBANGA: (Interpretation)

2 Q. This is the chapter that deals with punishment and sanctions. I will read a few
3 relevant excerpts: "A convicted person may be punishable by the following
4 sanctions: Flogging ...", at (b), "... or whipping; (e) dismissal; and apart from the
5 death sentence here are other possible sentences: (e) forced labour."

6 Now, was the respect of human rights an objective of the MLC? Yesterday you
7 talked about democracy and today I want to ask you about upholding human rights?

8 A. Yes, clearly it was one of the objectives of the MLC.

9 Q. Maybe you understood the thrust of my questions from the points I raised?

10 A. Yes, I've understood, and yesterday I talked about flogging when I said that I
11 was never present throughout my time in the MLC when or if such a sanction had
12 ever been administered. I am also not aware of any application of the sanction of a
13 dishonourable dismissal, or dishonourable discharge.

14 Q. You said that a dishonourable discharge meant that one's name was taken off
15 the list of soldiers of the MLC with dishonourable mention, and one's reputation was
16 thus tarnished because everybody knew why you had been discharged from the army
17 because you were not a respectable person and that you had committed a shameful
18 offence within the army and that you were not a respectful person any longer.

19 That is transcript 301 of 8 April, page 45, in the French version. Let me verify what
20 the English reference would be. Page 42 of the English version.

21 Witness, do you remember this as part of your testimony?

22 A. Yes, I do.

23 Q. A short while ago you just said, Mr Witness, that you never saw any application
24 of those two sanctions; namely flogging and dishonourable discharge?

25 A. Yes. Yes, indeed.

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 Q. But you also said that the Code of Conduct was implemented within the MLC
2 in general terms?

3 A. Yes. Yes, Counsel, I think that that is clear enough. We know what flogging
4 is, but you may never have been present when such a sanction or penalty was
5 implemented. You may know what a dishonourable discharge means and you may
6 know what forced labour means, but you may never have been present when such a
7 sanction was implemented.

8 Q. The purpose of my question is to point out that when you say that, "Okay, I see
9 that the sanctions are there, but I have never seen them being implemented," that
10 leaves me with the impression that those sanctions were indeed never effectively
11 implemented. So what I'm asking of you is to tell us whether this is contained in the
12 Code of Conduct, although it may never have been implemented?

13 A. Yes, that is correct, Counsel. I was not omnipresent. What I have said is that I
14 was never present when any such sanctions were applied.

15 Q. How can one expect soldiers to respect the rights of civilians and to uphold
16 human rights when they themselves are mistreated by the implementation of such
17 measures as flogging, dishonourable discharge and forced labour which one may say
18 are incompatible with the rules of human rights?

19 A. I understand your reasoning. You say that, since soldiers were mistreated,
20 they also mistreated the civilians. Well, as far as I'm concerned, what I observed to
21 be the relations between the ALC soldiers and the population is that there were very
22 good relations. That's what I said on Monday, that's what I will repeat today and I
23 stand by it. In any event, you always have blacklegs in any group and that is why
24 these things do happen.

25 Now, whether this affected the entire conduct or behaviour of the entire army, well,

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 I don't know. There were sanctions and punishments provided for in the Code of
2 Conduct, but whether this affected the entire behaviour, well, that's another issue.

3 MR BADIBANGA: (Interpretation) Could we turn to page 165, the next page, and
4 look at the first two lines at the very top of the page?

5 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, page 165 is
6 being displayed to the witness.

7 MR BADIBANGA: (Interpretation)

8 Q. Witness, you said this -- you read this for Maître Kilolo, but please kindly read it
9 for the Court again, what is displayed on the screen; that is the nota bene.

10 A. "Nota bene: Whosoever loses a firearm in unjustifiable circumstances shall be
11 obliged to go or partake in an operation without a weapon until he recovers a weapon
12 from the enemy."

13 Q. Witness, during the popularisation meetings which you talked about, this is the
14 kind of thing that was said to the soldiers, namely that if they lost their weapon they
15 would have to go fetch one from the enemy; is that the case?

16 A. Counsel, no, not to go empty-handed to fetch weapons from the enemy. No,
17 my understanding was that the one who lost their weapon would go to the
18 battle-front, but would not be on the front line. He will simply be there as part of the
19 operations and if it happened that he were able to recover a weapon from the enemy
20 that would be a good thing, but it didn't mean that they would be forced to the front
21 to recover -- to recover weapons from the enemy. I don't think that we could have
22 such a literary understanding of that provision.

23 Q. And that is the whole problem. Are we to read this code to the letter as
24 convenient, or are we to understand it as a simple evocation of eventual possibilities
25 that are not ultimately implemented and that do not -- that does not reflect what

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 actually happens? How are we supposed to interpret this Code of Conduct,

2 Mr Witness?

3 A. Counsel, you have put questions to me about my opinion on some provisions of
4 the Code of Conduct and I have freely given you my opinion. Now, anyone else is
5 entitled to interpret it the way they wish to. I have given you the understanding that
6 was generally held within the MLC of these provisions.

7 Q. Witness, you did not answer my question. Are we supposed to understand
8 these articles word for word and to the letter, or was it to be interpreted differently
9 according to the circumstances?

10 A. I think it would depend on the provision you are looking at.

11 MR BADIBANGA: (Interpretation) Madam President, can we go into private
12 session briefly?

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

14 *(Private session at 10.55 a.m.) Reclassified as Open session

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

16 MR BADIBANGA: (Interpretation)

17 Q. Witness, I'm not going to re-read all that you said about the popularisation, how
18 effective and how efficient it was and all what you said about the principles in the
19 code. I think you provided sufficient answers to those questions, which the Judges
20 would have an opportunity to look into.

21 At page 47 of the transcript 301 of 8 April 2011, this is what you said. Maître Kilolo
22 asked you the following: "When you say that everything was done to ensure that the
23 code was popularised and the prohibition about these crimes was dealt with, the code
24 had to be popularised; is that the case?" In your answer you said: "I believe this
25 was one of the duties of the Minister of Defence, or of the Ministry of Defence. Can

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 you confirm that?" Witness: "Yes, I do confirm."

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 You therefore ought to be able to tell us the exact messages that were passed on to the
7 soldiers relating to this Code of Conduct on each of the points, on each of the items
8 and in respect of the basic philosophy of the Code of Conduct; is that the case?

9 Answer: Yesterday, Counsel, I explained the philosophy of the MLC to you. I told
10 you about the state of mind of the politicians at that time; that is during the liberation
11 war in the Congo."

12 Madam President, we are talking about page 44 of the English transcript of 8 April.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 A. Yes, I think so.

17 MR BADIBANGA: (Interpretation) Madam President, can we return to open
18 session?

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

20 (Open session at 10.59 a.m.)

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

22 MR BADIBANGA: (Interpretation) Madam President, this might be a good time
23 for the break.

24 PRESIDING JUDGE STEINER: Thank you, Maître Badibanga.

25 Mr Witness, it's 11 o'clock. We'll have half-an-hour break in order for you to take

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

- 1 some rest. We'll be back at 11.30.
- 2 The hearing is suspended.
- 3 THE WITNESS: (No interpretation)
- 4 THE COURT USHER: All rise.
- 5 (Recess taken at 11.00 a.m.)
- 6 (Upon resuming in open session at 11.35 a.m.)
- 7 THE COURT USHER: All rise.
- 8 Please be seated.
- 9 PRESIDING JUDGE STEINER: Welcome back.
- 10 Welcome back, Mr Witness.
- 11 THE WITNESS: (Interpretation) Hello again, Madam President.
- 12 PRESIDING JUDGE STEINER: Maître Kilolo?
- 13 MR KILOLO: (Interpretation) Yes, Madam President.
- 14 I just wanted to say that we have in our midst Madam Natacha Lebaindre, who is an
- 15 intern for the Defence. Thank you.
- 16 PRESIDING JUDGE STEINER: Welcome.
- 17 Mr Witness are you ready to continue with your testimony?
- 18 THE WITNESS: (Interpretation) Yes, indeed I am, Madam President.
- 19 PRESIDING JUDGE STEINER: Maître Badibanga, you have the floor.
- 20 MR BADIBANGA: (Interpretation) I thank you, Madam President.
- 21 Q. Mr Witness, when we parted company at the break we were talking about the
- 22 ALC Code of Conduct and I asked you whether the Code of Conduct should be
- 23 considered as being applied to the letter or word-for-word, if you like. I would like
- 24 to have your opinion on the following matter. Every time we have asked a Defence
- 25 witness whether the MLC felt that they were authorised to commit acts of rape,

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 looting or murder, the answer we received was that, no, in the Code of Conduct they
2 knew that they would be sanctioned or punished.

3 Now, I would like you to tell us clearly whether the Code of Conduct should be read
4 as being a text that was strictly applied as a repressive or criminal code, if you like, or
5 is it a text, legal instrument, that can be freely interpreted and followed?

6 A. The Code of Conduct should be considered as a document that is applicable.
7 However, Counsel, if I remember correctly when I was studying law, there is a
8 provision within French law, a very old provision, that forbids anyone to predict the
9 future. However, in this context, this provision is no longer applied. Why am I
10 saying this? Because the Code of Conduct was a document that was to be applied
11 but some provisions that were anachronistic or archaic were not applied as such.
12 That is what I meant thereby, Counsel.

13 Q. And every ALC soldier could know the difference between those articles that
14 were due to be applied and those that were anachronistic and that were not applied;
15 is that your testimony?

16 A. No, Counsel, the soldiers, could of course, not make this distinction. It was the
17 commanders, the people who had a certain level of education who could make such a
18 distinction.

19 Q. And, Mr Witness, do you remember what is provided for as punishment
20 of -- for the act of rape in the Code of Conduct?

21 A. I believe that it was the death sentence.

22 Q. And can you remember what the Code of Conduct provides for, for the murder
23 of a civilian, in terms of punishment?

24 A. I also believe that it was the death sentence.

25 Q. And do you know what is provided for in the Code of Conduct for looting,

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 extortion or robbery, theft?

2 A. No, I do not recall specifically.

3 Q. You explained to Maître Kilolo that the Code of Conduct was applied in

4 combination with other legal instruments, such as the Military Code of Justice and the

5 Penal Code. Do you know what the Penal Code provides for as a form of

6 punishment in the case of rape?

7 A. No, Counsel. I believe that it is a prison term.

8 Q. And with the authorisation of the Chamber, Mr Witness, I would also request

9 your understanding here. I would like to save the Court's time by not presenting on

10 the screen some of the Penal Code and Military Code of Justice. I would like to just

11 read through what you read through with Maître Kilolo.

12 So I will start with the Military Code of Justice. You read Article 523 that said that

13 the murder of a person, by virtue of reprisal is paramount to murder.

14 THE INTERPRETER: The interpreter does not have the document before her.

15 THE WITNESS: (Interpretation) Yes, indeed, Counsel.

16 MR BADIBANGA: (Interpretation)

17 Q. You read Article 525 which says that for abusive requisition and confiscation of

18 property, there is a sentence of 20 to 25 years of imprisonment; do you recall this?

19 A. Yes, I do recall having read this Article.

20 Q. With regard to the Penal Code, you read Article 84 thereof, that says that a

21 prison sentence of 5 to 20 years is handed down for he or she who has embezzled

22 funds or goods; do you recall having said that?

23 A. I recall only too well, Counsel.

24 Q. You read Article 85, which says that murder committed in order to facilitate

25 extortion is punished by the death sentence. Do you recall this?

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 A. Yes.

2 THE INTERPRETER: Message from the English booth: Could Counsel please be
3 requested to slow down when reading from legal instruments at great speed? Thank
4 you.

5 MR BADIBANGA: (Interpretation)

6 Q. And lastly, you read three articles in combination. These were Articles 170, 171
7 of the Penal Code, which says that is punishable by a prison term of 20 to 50 years he
8 who has committed a rape by threatening, and rape with violence, and the only fact of
9 carnal knowledge or sexual acts committed upon persons as provided for or
10 described in Articles 167, and the Article 167 talks about children aged under 14 years
11 of age; do you recall this, Mr Witness?

12 A. Yes indeed.

13 THE INTERPRETER: Could the five-second pause please be observed? Thank you.

14 MR BADIBANGA: (Interpretation)

15 Q. So, in order to summarise, the Penal Code provides for prison terms of five to 20
16 years in duration for extortion, for rape and provides for a death sentence in the cases
17 of rape and murder, the Military Code of Justice with regard to the article that you
18 have just read for -- from talks of five to 20 years for abusive confiscation and
19 extortion, and finally you said that the Code of Conduct provides for the death
20 sentence in the cases of rape and murder of civilians.

21 Now, Mr Witness, amongst the 1,500 ALC soldiers who took part in the operations in
22 the Central African Republic, could you please tell us to your knowledge how many
23 were convicted and received a sentence; one of the sentences that we have just made
24 mention of in one of these -- in any of these three texts?

25 A. I am not aware of any conviction as such with regard to the sentences that you

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 have just made mention of.

2 Q. And do you recall the duration of terms of imprisonment for the persons who
3 were convicted - tried and convicted - for the abuses committed in the Central African
4 Republic?

5 A. I seem to recall that some individuals were sentenced to a two-year prison term
6 for rape.

7 THE INTERPRETER: Correction, for theft. Correction from the English booth.

8 MR BADIBANGA: (Interpretation)

9 Q. And if this is the case, Mr Witness, what -- the soldiers know that there are three
10 reference texts, the officers know that there are three reference texts, notably the Code
11 of Conduct, the Military Code of Justice and the Penal Code, and in those three codes
12 there are -- they provide for prison sentences and none of these sentences have been
13 applied. Now, to your understanding, what kind of message is being sent to the
14 soldiers here?

15 A. The message sent to the soldiers is as follows: Any individual who commits
16 abuses will be punished according to the crime committed.

17 Q. And amongst the 1,500 soldiers in the Central African Republic over that period
18 of five months, nobody committed any offence that can be compared to those
19 provided for in these texts; is that your testimony?

20 A. No, Counsel, do not put words in my mouth. The aim of this is to establish
21 three truths, the first of which is the reality of the crimes committed. I believe that
22 that is one of the objectives of this trial; the truth with regard to the crimes that were
23 committed in the Central African Republic.

24 Now, the second truth would be with regard to the perpetrators of these crimes, and
25 the third truth to be established would be as to who should be held responsible for

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 those crimes perpetrated in the Central African Republic.

2 That is my understanding. Maybe I have misunderstood the entire purpose of the
3 trial. This is how I have understood the situation, but before we reach any
4 conclusion, Counsel, I -- how can we convict anybody before these truths have been
5 established? Otherwise, this trial would have no purpose. In other terms, I believe
6 that those soldiers who were tried and convicted in Gbadolite were done so on the
7 basis of those charges levelled against them. It is on the basics of those facts that
8 sentences were handed down.

9 Now, were any abuses or rapes, barbaric acts, et cetera, looting carried out, then I
10 believe that the purpose of this trial is to establish the truth and draw any conclusions
11 therefrom.

12 MR BADIBANGA: (Interpretation) Madam President, I would like for document
13 19 of the OTP list to be presented to the witness. This is the statistics from the court
14 martial of -- bearing reference number CAR-OTP-0017-0351.

15 THE INTERPRETER: The interpreter did not catch the entire title, as it was read at
16 great speed.

17 THE COURT OFFICER (DRC): (Interpretation) Document CAR-OTP-0017-0351 is
18 currently being presented to the witness.

19 MR BADIBANGA: (Interpretation)

20 Q. Mr Witness, can you see the document before you on the screen?

21 A. Yes, indeed, Counsel. I do have the document before me.

22 Q. Is this a document that you are familiar with?

23 A. No, Counsel, I'm seeing it for the first time.

24 Q. This document is a document of statistics drawn up by the MLC and which
25 seems to list all of the convictions and sentences handed down by the military courts

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 in the period from 2001 until 2003. I would like for the last page to be presented to
2 you.

3 MR KILOLO: (Interpretation) Madam President, I believe that this document
4 currently being presented to the witness is not entirely correct because these are the
5 legal statistics made by the court martial. These are not all the decisions that were
6 taken during that period. These are merely those decisions taken by the court
7 martial during that period, so I think it would be wrong to present this in another
8 manner to the witness.

9 PRESIDING JUDGE STEINER: Maybe Maître Badibanga could clarify? The first part
10 does not make any reference -- the first page, 349, to the martial court. It's the
11 second part that talks about "statistique de la cour martiale." Maybe we can -- Maître
12 Badibanga, or maybe even Maître Kilolo, can clarify? It appears that there are two
13 different documents.

14 MR BADIBANGA: (Interpretation) Yes, indeed, Madam President. It would
15 seem to me that the second document was more complete with regard to this same
16 period and that is why I directly turned to the second document, but we might
17 present the previous document to the witness. That's the document 18 on the list of
18 OTP documents, bearing reference CAR-OTP-0017-0349. 349.

19 PRESIDING JUDGE STEINER: So which one the Prosecution is going to discuss
20 with the witness?

21 MR BADIBANGA: (Interpretation) In order to be comprehensive I would like to
22 present both the first and the second document to the witness, but my explanation
23 will have a bearing on the second document. I wanted him to see the entirety of this.
24 So, Madam President, the document was confidential at the outset. These are purely
25 statistical documents on judiciary matters. We ask for it to be reclassified as public.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. Now, in order to be fair to you, Mr Witness, you can see that these are statistics
2 for criminal acts between 2002 and 2003. There is no information as to which court
3 this applies to. You can see to the left of the document that this is a document that
4 was drawn up by the ALC, the G2 section of the General Staff, and if you take the first
5 date of arrest, this is of 2 July 2001, this is the second column, and were we to turn
6 over to the second page and show it to you, you would see that this document
7 finishes at 2 February 2003.

8 We have two documents of this ilk. I shall now return to document 19, bearing
9 reference CAR-OTP-0017-0351, and you will note that this has the same format as the
10 document we have just viewed, the title of which is, "Legal criminal statistics
11 established by the court martial," and this also comes from the ALC General Staff
12 headquarters, Section G2.

13 Now, what I would like for you to be presented with is the last page of this document,
14 bearing reference CAR-OTP-0017-0354.

15 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, the last page of
16 the document is currently being presented to the witness.

17 MR BADIBANGA: (Interpretation)

18 Q. Mr Witness, if you view the columns from the right-hand side of the page, you
19 can see that the third column from the right is that mentioning the offences of which
20 the individual is charged within these statistics. Now, you can see that the
21 penultimate line -- at the penultimate line you can see the word "Rape." Can you see
22 that?

23 A. Yes, I can see it.

24 Q. And if you look to the far right-hand side of the page, you will see that for this
25 crime of rape a sentence - a prison sentence - of three years was handed down. Can

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 you see this up on the screen?

2 A. Yes, indeed I can.

3 Q. And, Mr Witness, from the period of 15 June 2001 until 6 January 2003, this is
4 the only conviction for rape handed down by the court martial. Did you know that
5 over that period of approximately two years in duration, there was only one
6 conviction for the crime of rape handed down by the court martial?

7 A. According to this document, indeed, that seems to be the case.

8 Q. And to your knowledge, what was the situation?

9 A. I have no additional information to that contained in this document, Counsel.

10 Q. Mr Witness, and on 6 January 2003, was the Code of Conduct, had it entered
11 into force by that time?

12 A. Yes, Counsel.

13 Q. On 6 January 2003, was the Military Code of Justice in force at the time? Was it
14 being applied?

15 A. Yes, Counsel.

16 Q. And on 6 January 2003, was the Congolese Penal Code also in force?

17 A. Yes, Counsel.

18 Q. Mr Witness, if I say that there seems to be little rapport between the texts here
19 and what you say, then what would you say?

20 A. I would say that I have little explanation to give for this state of affairs.

21 Q. Mr Witness, the first document I showed you, the other statistics of criminality
22 that I showed from 2001 to 2003, mentions no case of rape, and obviously I am
23 working here being monitored by my colleague for Defence and the Chamber. So, I
24 would like to have your opinion on the deterrent nature of the measures taken within
25 the MLC. It would appear that between 2001 - 2003 there was only one case of rape

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 for which there was a conviction, at least only one for which statistics are available in
2 the military sphere. Would this be because, to your knowledge, Mr Witness, there
3 was only one single case of rape during this period?

4 A. As far as I know, during that period, the ALC soldiers had very good relations
5 with the population under our jurisdiction.

6 Q. Why do you say "under our jurisdiction"? Was there another jurisdiction,
7 other than yours?

8 A. I mean in the area covered by our jurisdiction. There were others covered by
9 people from Kinshasa and the third parties from the DRC.

10 MR BADIBANGA: (Interpretation) Would the court officer please present to the
11 witness the document CAR-OTP-0001-0034?

12 PRESIDING JUDGE STEINER: Before that I'd like to ask whether Defence has any
13 objection in that both documents, document CAR-OTP-0017-0349 and
14 CAR-OTP-0017-0351, be reclassified as public? They have been discussed many
15 times in public sessions, just for reference.

16 MR BADIBANGA: (Interpretation) Madam President, I would like to point out
17 that these documents contain the names of people who have been convicted and their
18 privacy should be preserved.

19 Madam President, I think that the Defence has amply explained that the legal
20 procedures in the area controlled by the Congo were public legal procedures and
21 therefore I believe that this information is also publicly available. These are statistics
22 that were published by the MLC, so I don't think they should cause any problems.
23 So we believe that this document could be classified as public and, as you have
24 reminded us, it is discussed at length in this courtroom and used in this way in public
25 session.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 PRESIDING JUDGE STEINER: Maître Kilolo?

2 MR KILOLO: (Interpretation) I believe, Madam President, that this is an internal
3 document, drafted for use within the MLC, and also there are references to legal
4 decisions. I think everyone is aware that a legal decision which may have been
5 given in a public sitting, there are also those which, for reasons for good public order
6 or others, that these decisions may have been given in a private session, so I would
7 not wish to speak on the reclassification of this document.

8 PRESIDING JUDGE STEINER: The Chamber therefore keeps the document for the
9 time being as confidential until further deliberation and decision of the Chamber.

10 You can proceed, Maître Badibanga.

11 MR BADIBANGA: (Interpretation) Thank you, Madam President.

12 Q. Mr Witness, do you see the document that I asked be shown to you?

13 A. I see the document.

14 Q. Do you recognise this document? Have you at any time had a chance to read
15 through this document, or otherwise see the information contained?

16 A. No, Counsel.

17 Q. Mr Witness, this is a report from the International Federation of Human Rights,
18 published in February 2003, and which dealt with the Central African Republic.

19 Even if you haven't read it, have you heard about this FIDH report?

20 A. Yes, I believe I have heard talk of it.

21 Q. To be quite clear, you think that you have heard about it, or you have heard
22 about it?

23 THE INTERPRETER: The interpreter did not hear the witness's answer because he
24 was speaking at the same time as Counsel.

25 MR BADIBANGA: (Interpretation)

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. I would remind you that we need to observe the five-second rule between
2 interventions. Mr Witness, do you know whether, when this report was published,
3 Mr Bemba was aware of it?

4 A. I don't know whether he was aware of it.

5 Q. Do you know, Mr Witness, that Mr Bemba had an exchange of correspondence
6 with the FIDH about this report?

7 A. I learnt that Mr Bemba is believed to have written to the FIDH.

8 Q. Mr Witness, without saying anything that can identify you, but remembering
9 that you are a senior officer of the MLC and bearing in mind this information would
10 have been accessible to you, so why are you using the conditional tense that "Bemba
11 is believed to have written"? Would you not have been aware of this in your
12 position?

13 A. Because I never saw the correspondence in question myself.

14 Q. And did you attend meetings where this question was discussed?

15 A. No.

16 Q. Mr Witness, when this report was published in February 2003, a report which
17 presents accusations to the MLC and the soldiers of the MLC, was there no discussion
18 in the hierarchy of the MLC to discuss its possible implications or the responses and
19 reactions that it might bring forward?

20 A. I was never made aware of the content of this report and I never attended any
21 meeting of the MLC at which this report was discussed.

22 Q. Please answer my question, if you can. Is this because there was never any
23 discussion of this report, or is this because you were perhaps not considered of a
24 suitable level of responsibility to be part of such discussions?

25 A. I think it's more because I was not in Gbadolite at the period in question.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. Once again, because we are in a public session I would ask you to be cautious.

2 Please don't tell us where you were, but could you tell us whether you were or were
3 not in Gbadolite?

4 A. I am not going to give precise details, but during this period I was frequently
5 absent and it is probably during one of my absences that the question was discussed.

6 Q. I think, Mr Witness, to help you recall the period I could -- you could perhaps
7 recall the period of February, 23 in relation to other events; for example the fact that
8 the operations in the Central African Republic finished in March 2003, it was in
9 July 2003 that there was reunification and the city of Kinshasa was integrated. We
10 know, unless I am much mistaken, that it was in January 2003.

11 There are signs coming from the interpreters' booth that, not only are we not sticking
12 to the five-minute -- the five-second rule, but we are also speaking very fast and so we
13 have committed two major errors here.

14 So, I will repeat what I said. When did the negotiations of the Sun City agreement
15 finish? When was the agreement signed?

16 A. If I remember correctly, the Sun City agreement was signed in April 2003.
17 March or April 2003.

18 Q. That is correct. That is the date of the official signature, indeed. And when
19 did the negotiations finish; and please do wait five seconds before replying?

20 A. 17 January.

21 THE INTERPRETER: Sorry, the witness corrects himself. "17 December 2002."

22 MR BADIBANGA: (Interpretation)

23 Q. So I think this will enable you to recall the period in question. The negotiations
24 finished in December 2002, this was a very important milestone for the events, and
25 you know that the operations finished in the Central African Republic in March 2003.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 We know that in April 2003 there was official signature for the Sun City agreements,
2 and we know that in July 2003 there was the entry into Kinshasa with the composition
3 of the one-plus-four government. So these events should allow you to recall the
4 period of February/March 2003. Were you during that period more likely to be in
5 Gbadolite, or travelling elsewhere?

6 A. I was travelling abroad during that period because there were seminars being
7 organised in Kinshasa and elsewhere, which may explain why I did not take part in
8 any meeting which had the FIDH report on its agenda. Or you may also be correct,
9 perhaps I was not part of the meetings even if I was in Gbadolite. I don't have an
10 explanation, but one thing is certain. I didn't attend any such meeting.

11 Q. So when you came back from your seminars and workshops in Kinshasa or
12 elsewhere, did nobody ever say to you by way of information that there was a very
13 accusatory report from the FIDH? Did nobody ever mention this to you?

14 A. No, Counsel. As I said, I was informed of the existence of the report, even
15 though I never read it.

16 Q. In this report, Mr Witness, there is a chapter dealing with the facts imputed to
17 the Banyamulengue. Even though you've never read the report, are you at least
18 aware of the serious events attributed to the MLC in the FIDH report?

19 A. I am aware because I think this was relayed; relayed by the media I believe.

20 Q. And did you hear some of the information broadcast in the media? You said it
21 was relayed by the media. Do you say that because you yourself heard some of the
22 reports in the media talking about the abuse committed by the MLC soldiers?

23 A. I believe so.

24 Q. Mr Witness, following what you heard in the media about what was said in the
25 FIDH report, to your knowledge what action was undertaken by the MLC?

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 A. The actions I recall are the organisation of an information mission by the
2 movements to the location -- to Sibut.

3 Q. And other than this mission, were there any other actions taken by the MLC as
4 far as you're aware?

5 A. I think that the president of the party of the organisation wrote to the Special
6 Representative of the Secretary-General, requesting additional information from the
7 FIDH, and I believe that for their part the Central African Republic set up inquiry
8 commissions.

9 Q. I don't quite understand the aim of the mission that went to Sibut. I believe
10 you were saying yesterday, when questioned by Maître Kilolo, that it was not an
11 inquiry mission and that it was under the control of the Central African Republic
12 authorities. Did I understand correctly?

13 A. Yes, Counsel, you understood me correctly. It was a mission to test the
14 temperature in the area.

15 Q. Let's try and be clear. To take what temperature? With what aim? I don't
16 understand the purpose of the mission.

17 A. I'll try and reword my answer. Having heard rumours about the situation in
18 the Central African Republic, the MLC decided to send a team to the location in order
19 to find out exactly what were relations between the ALC contingents deployed in the
20 Central African Republic and the civilian population, so to make inquiries about the
21 situation. I don't know whether I've made myself clearer now?

22 Q. And what was the actual objective behind this? Imagine that the mission had
23 found some information that there were difficulties, what would have been the next
24 step? You say it was the responsibility of the Central African Republic authorities.
25 What would the MLC then have done? What was the point of taking such steps?

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 A. The purpose was to have full information about the situation in the field.

2 Q. And might one think, Mr Witness, that by landing a helicopter in a village
3 square and bringing together a population surrounded by soldiers, that that would be
4 the most efficient way of getting information about events?

5 A. Yes, yes, because the people had the opportunity to have separate discussions
6 with the international press who were there with us.

7 PRESIDING JUDGE STEINER: Maître, I'm sorry to interrupt you. Just a very quick
8 follow-up question. Does the witness have any knowledge on the reasons why this
9 mission was just decided to go to Sibut only? Why Sibut? Any special reason for
10 going to Sibut and not to Bangui, Damara, Bossembélé, Bossangoa, or -- why Sibut?

11 THE WITNESS: (Interpretation) No, Madam President, I don't know why Sibut
12 was chosen.

13 MR BADIBANGA: (Interpretation)

14 Q. Mr Witness, I will follow up on the point raised by Madam President because
15 it's something that I find very interesting myself. I note that every time you talk
16 about this mission you talk about launching the mission on the basis of rumours and I
17 would now like you to be more exact. What were these rumours? Could you
18 please give some content to the word "rumours"? To be fair towards you I would
19 say there have been rumours since October and November, so why in February 2003
20 did these rumours become so important to the MLC that a delegation was sent to
21 Sibut to investigate these rumours? Could you perhaps give us some more content
22 and say which facts had come to the ears of the MLC and why did these justify a
23 mission?

24 A. The rumours we'd heard at the time were that MLC soldiers, Banyamulengue,
25 had committed abuse vis-à-vis the population in the Central African Republic.

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Secondly, with regard to Sibut, I don't know why that location was chosen. In any
2 case, when the delegation arrived in Bangui, this delegation was led to Sibut by an
3 officer from the Central African Republic. Who had chosen Sibut -- who chose Sibut,
4 I have no idea.

5 Q. Mr Witness, who gave the order, or instructions, to the MLC representatives to
6 go to Sibut?

7 A. The president of the movement, Jean-Pierre Bemba.

8 Q. When the president of the movement, Jean-Pierre Bemba, assigns some
9 members of his organisation to travel to Sibut, I believe that he tells them the purpose
10 of the mission and the rationale for the mission; is that not the case?

11 A. The purpose of the meeting was to have them cross-check what was happening
12 on the ground, the state of the relations between the contingent of the MLC and the
13 civilian population.

14 Q. A short while ago you referred to the letter written by Mr Bemba to the
15 Representative of the Secretary-General of the United Nations. I would like to help
16 us gain time, that is you and the Court as well. I will tell you that the letter is dated
17 4 January 2003, and that is one month -- or more than one month before the mission to
18 Sibut. There were already some rumours circulating, sufficient enough to cause
19 Mr Bemba to write to the Representative of the Secretary-General of the United
20 Nations. So, Mr Witness, those rumours existed at that time. You told us a short
21 while ago that you went because there had been rumours about abuses being
22 committed in the Central African Republic. Let us be more specific. What types of
23 rumours existed in relation to Sibut? What were the rumours that made it necessary
24 for a delegation to travel right to Sibut?

25 A. I was not aware of any specific rumours relating to Sibut. I have already told

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 you about the rumours that I was aware of: acts of violence, pillages, crimes against
2 the civilian population. Those are the types of rumours that I was aware of. Now,
3 Counsel, I really do not know what you want me to add to what I have already talked
4 about in terms of what I knew or what I learned about.

5 Q. What I know is that you were a member of the MLC during that period, and I
6 want to get as much of your knowledge as possible while as receiving as specific as
7 possible answers because this is what the Judges need.

8 A. I will do my best to be as useful as possible to you.

9 Q. Thank you very much, Mr Witness. Now, you said that this trip, or this
10 mission, in fact those who went there travelled by helicopter; is that correct?

11 A. Yes.

12 Q. Who made available the helicopter for the mission?

13 A. Mr Jean-Pierre Bemba.

14 Q. You said that there were some journalists, international journalists, on that
15 mission; is that the case?

16 A. Yes.

17 Q. Do you remember any of their names? Were you able to know any of the
18 names of the journalists and the media houses for which they worked?

19 A. I may be able to remember a few media houses, but individual names I don't
20 remember. There was someone from AFP, Agence France-Presse, and from BBC. I
21 don't know whether RFI, whether the RFI journalist in Gbadolite came along with us
22 or whether he remained in Gbadolite. In any event, I believe that AFP and BBC were
23 present.

24 Q. We were shown a video yesterday, in which some people were putting
25 questions to the witness and receiving answers. Do you know whether those who

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 recorded the statements we listened to on video were local journalists, or journalists
2 from elsewhere?

3 A. I believe that they were local journalists.

4 Q. Therefore, on that mission you had both international and local journalists.

5 Now, when you say local journalists, are you talking about local journalists from the
6 Congo or local journalists from the Central African Republic?

7 A. They were Congolese.

8 Q. Was one Gabriel Kahn one of the international journalists on that mission?

9 A. Yes, I believe that Gabriel Kahn was there.

10 Q. Was Marco Longari also one of the journalists on that mission?

11 A. That name doesn't ring a bell.

12 Q. Do you know the liaison officer's name, the officer whom you referred to as
13 being a captain and who was waiting for the helicopter in Bangui? Do you know his
14 name?

15 A. I do not remember his name.

16 Q. You have told the Court that it is the President of the MLC who ordered the
17 mission, that it was the President of the MLC who made available the helicopter.

18 Who informed the journalists that a trip was being planned to Sibut and who invited
19 them to be part of that mission to Sibut?

20 A. I believe that it was Mr Bemba.

21 Q. If the purpose of the mission was for MLC officers or officials to gather
22 information on the relations between the troops and the population, such information
23 I guess being useful for Jean-Pierre Bemba, why were journalists invited to be part of
24 that mission?

25 A. Counsel, I think you can put that question directly to him.

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. Witness, you agreed to testify. You were invited to testify by the Defence team
2 and you accepted to do so, so I have every reason to put questions to you, to
3 determine your knowledge of the events. Maybe the time will come for putting
4 questions to Mr Bemba, but for now you are the one in the witness box and so I
5 would like to find out from you whether you are aware of the reasons of the mission
6 to the -- of the mission to Sibut. If it were simply for internal reasons relating to
7 relations between the troops and the population, why were national and international
8 journalists invited to be part of that mission?

9 A. I do not know why.

10 Q. My knowledge of air navigation is rather very limited and I need your
11 assistance. Yesterday you said something which I did not quite understand. You
12 said that the captain boarded the helicopter and that he was part of the delegation
13 because he was supposed to show them the way to Sibut; is that what you said?

14 A. Yes, that is correct.

15 Q. Do helicopters not fly using compasses and other cardinal points to show them
16 directions and what have you? Does a helicopter drive like a car, going left and right
17 as you may wish? I'm sorry, I may be ignorant on these things, Witness, but would
18 you please clarify the point for us?

19 A. Well, Counsel, your question is quite pertinent, but I do not think that in Sibut
20 you have such navigation facilities that will make it easy for aircraft to land.

21 In any event, well, Madam President, could we go into private session, please?

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

23 *(Private session at 12.42 p.m.) Reclassified as Open session

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

25 THE WITNESS: (Interpretation) Thank you very much, Madam President. I

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 wanted to tell Mr Badibanga what actually happened.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MR BADIBANGA: (Interpretation) Madam President, could we return to open
9 session?

10 PRESIDING JUDGE STEINER: Just then one follow-up question if you would allow
11 me, Maître Badibanga?

12 Mr Witness, these Congolese journalists, they were with the delegation, or were they
13 already there when the delegation arrived?

14 THE WITNESS: (Interpretation) The Congolese journalist was part of the
15 delegation. He had come with the delegation.

16 PRESIDING JUDGE STEINER: So they travelled in the same helicopter as the
17 delegation?

18 THE WITNESS: (Interpretation) Yes, that is the case, Madam President.

19 PRESIDING JUDGE STEINER: Thank you.

20 Court officer, please turn --

21 MR BADIBANGA: (No interpretation)

22 PRESIDING JUDGE STEINER: Oui, Maître Badibanga?

23 MR BADIBANGA: (Interpretation) Maybe I'll avail myself of this private session
24 to seek further detail on a small point from the witness.

25 Q. Witness, was it within the prerogatives of the Minister of Defence, or the one in

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 office at the time, to be part of that mission? (Redacted)

2 A. (Redacted)

3 (Redacted)

4 MR BADIBANGA: (Interpretation) We can now return to open session, your
5 Honour.

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

7 (Open session at 12.46 p.m.)

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

9 MR BADIBANGA: (Interpretation)

10 Q. Mr Witness, if I were to put it to you -- I'm sorry, let me rephrase. You do not
11 recall the date on which the mission took place, but can you tell us the specific date on
12 which that mission took place; the mission to Sibut?

13 A. Correct, Counsel, I don't recollect the exact date.

14 Q. If I put it to you that it was on 20 February 2003, would that jog your memory?

15 A. Maybe.

16 Q. Now, when that delegation travels to Sibut in February, Mr Witness, the ALC
17 troops had been in the Central African Republic for several months already. Do you
18 know the officials of the MLC who were present in the Central African Republic who
19 may have received or who may have had discussions with that delegation?

20 A. (Redacted)

21 (Redacted)

22 Q. From what you learned or what you were told about that mission, did anyone
23 tell you or inform you that the commander-in-chief who was on-site, or rather the
24 commander of the troops who was on the site, or any of his deputies, were you
25 informed that any other member of the army may have met that delegation? No one

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 ever mentioned to you that there were any contacts with the Central African, or rather
2 the Congolese officials or officers who were already in the Central African Republic?

3 A. What I know is that the delegation went to Bangui and then to Sibut. In
4 Bangui there was no contact with any civilian, or official -- or military official of the
5 MLC. In Sibut, clearly there was contact with the Congolese officers who were there
6 in Sibut.

7 Q. That indeed was the thrust of my question. Do you know which of the
8 Congolese officials on the ground met the delegation? Do you know who may have
9 met the delegation?

10 A. I think there was a major, but I no longer recall the name that was mentioned at
11 the time.

12 Q. Very well. Maybe when you were told of this that major's name was not
13 mentioned, but were you told of any Central African officials, apart from the captain,
14 who were present during that mission?

15 A. No, the only Central African officials that I was told of was the -- or that I was
16 told of was the mayor of Sibut.

17 Q. Do you know whether, apart from the captain, there were any other
18 representatives of the Central African authorities in Bangui? Apart from that captain,
19 were there any other representatives of the Central African authorities present during
20 the visit of that delegation?

21 A. The only person who was mentioned I no longer remember his name, but that
22 person was European, who appeared to be playing a specific role for President
23 Patassé.

24 Q. When you say a special or specific role regarding President Patassé, would you
25 please clarify what do you mean by that?

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 A. I believe that someone had seen his business card, and on it you had the title
2 "Maître du palais," some type of comical or far-fetched title.

3 Q. If I were to mention Lionel Gan-Befio, would that name ring a bell, Witness?

4 A. Please repeat that name, please.

5 Q. If I were to mention the name Lionel Gan-Befio, would that help?

6 A. That must be the name. That must be the gentleman, going by what I was told.

7 MR BADIBANGA: (Interpretation) Madam President, could we go into private
8 session please?

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

10 *(Private session at 12.54 p.m.) Reclassified as Open session

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

12 MR BADIBANGA: (Interpretation) I asked for private session because I wanted to
13 show the witness a number of photographs on the documents of the OTP from
14 number (Redacted), and these are all photographs relating to that mission. It
15 was -- it would have been possible to show some of these pictures in open session, but
16 the documents are of a confidential nature and so maybe we should proceed in this
17 manner. I know that we did not apply for a reclassification of this bundle of
18 photographs, but I'll simply proceed in private session so that these pictures are not
19 seen outside of the courtroom.

20 With the leave of the court officers here and in Kinshasa, please do show the witness
21 documents ending with 199, document number 43 of the OTP list,

22 CAR-OTP-0046-0199.

23 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, document
24 CAR-OTP-0046-0199 is being displayed to the witness.

25 MR BADIBANGA: (Interpretation) Madam President, we will revisit this issue of

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 confidentiality. While we viewed the video in open session and these pictures are
2 classified as confidential, I think that maybe the Chamber would consider an
3 application for reclassification right away, or would you rather we proceed in
4 closed -- in private session? You see, yesterday we watched the videos for quite
5 some time and it doesn't make sense for us to use these pictures this way.

6 PRESIDING JUDGE STEINER: Maître Badibanga, I think we may keep it
7 confidential for the time being, because I remember that there are some other pictures
8 that are confidential in order to protect the identity of the photographer. So I
9 don't -- I'm not sure about the situation of the photographer that took these pictures
10 here, so we can -- we can analyse the request at a later stage after listening to the
11 Defence of course.

12 MR BADIBANGA: (Interpretation) That is correct, your Honour. We are dealing
13 here with archived documents and there were no photographers, but we have other
14 pictures which we must be careful when using them.

15 Q. Now, Witness, have you looked at the photographs? The person on the
16 telephone, is that the person we are talking about?

17 A. Yes, Counsel.

18 Q. The soldiers you can see on the photograph, are they ALC soldiers or soldiers of
19 another army?

20 A. Those are ALC soldiers.

21 Q. Do you know who that gentleman leaning on the vehicle is talking to on the
22 phone?

23 A. Counsel, I have no idea.

24 MR BADIBANGA: (Interpretation) I would like document number 0046-0217, the
25 next document, document number 44, to be shown to the witness.

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

- 1 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga document
2 CAR-OTP-0046-0217 is being shown to the witness.
- 3 MR BADIBANGA: (Interpretation)
- 4 Q. Mr Witness, was this photograph taken during that trip, during the mission
5 we've been talking about?
- 6 A. Yes, Counsel.
- 7 Q. To which army do these soldiers on the picture belong?
- 8 A. I believe that they are ALC soldiers, except for the gentleman who is moving. I
9 think he was the captain that came (Redacted) from Bangui and who was (Redacted)
10 guide, if I am not mistaken.
- 11 Q. And the gentleman wearing a T-shirt, with a beard, who is looking at the
12 gentleman walking, could you please identify him for us?
- 13 A. I believe that this was the commander of the unit present.
- 14 Q. And were you referring to him when you said the major whose name you no
15 longer recalled?
- 16 A. Yes, I believe that is him.
- 17 Q. Mr Witness, when comparing or cross-checking a number of witness
18 testimonies, we could identify which troops of the MLC were located at which
19 locations, and the commander at that time in Sibut was Major Kamisi. Now, does
20 that name ring a bell and could this be one and the same individual?
- 21 A. Yes, indeed it could be this individual, even if I did not know him personally.
- 22 Q. And does the name Major Kamisi ring a bell?
- 23 A. At first blush, no.
- 24 Q. And to the extreme left in the background of the photograph, we can see an
25 individual being interviewed to journalists; is that what we can see here?

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 A. Counsel, I would request that we zoom in on the photograph, please.

2 Q. Well, if you do not see this clearly, Mr Witness, I'm not going to tire your
3 eyesight, and I would request that the following document be presented to you.
4 This might be of help to you.

5 Court officer, please present to the witness document ending with document number
6 208. It's -- 218. It's CAR-OTP-0046-0218 and it's number 48 on the list of OTP
7 documents.

8 THE COURT OFFICER (DRC): (Interpretation) This document is currently being
9 presented to the witness.

10 MR BADIBANGA: (Interpretation)

11 Q. Now, Mr Witness, can you see slightly better to the background now and does
12 this help you answer our question, or my question?

13 A. Yes, indeed, Counsel, I can see somebody talking to members of the press in the
14 background.

15 Q. And so the gentleman to the forefront, with the beret, or with the cap, is he the
16 person who had a particular or specific relationship with the president, is that
17 correct?

18 A. Yes indeed.

19 Q. And a last photo for this series, this is document CAR-OTP-0046-0224, and this
20 is the forty-seventh document on the OTP list of documents, 0224, that is.

21 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, this document
22 is currently being presented to the witness.

23 MR BADIBANGA: (Interpretation)

24 Q. Now, Mr Witness, this is indeed the helicopter, is it not, (Redacted)
25 (Redacted)

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Private Session)

ICC-01/05-01/08

1 A. Yes, indeed, Counsel.

2 Q. Do you recognise the licence number of this helicopter?

3 A. I believe that I can read 9 Tango-Bravo-November-Tango.

4 Q. Your eyesight is excellent, Mr Witness, but the truth be told I think it's "Mike"
5 rather than "November," but indeed, yes, you are reading well. (Redacted)

6 (Redacted)

7 A. Yes, it was.

8 Q. Now, Mr Witness, you really do need to wait for those five seconds before you
9 answer me.

10 A. I truly am sorry.

11 Q. Now, and on the return leg of the journey, is it true to say that the helicopter
12 had to land or was it because of the bad weather?

13 A. The helicopter landed because of bad weather. (Redacted)

14 (Redacted)

15 Q. So I shall briefly present a last photograph. This is document ending with the
16 number 229 and this is the forty-ninth document on the list of OTP documents,
17 CAR-OTP-0046-0229.

18 THE COURT OFFICER (DRC): (Interpretation) Maître Badibanga, this photo is
19 currently being shown to the witness.

20 MR BADIBANGA: (Interpretation)

21 Q. (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 A. (Redacted)

Trial Hearing

(Private Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 Q. And who are the people Mr Jean-Pierre Bemba is talking to?

2 A. I recognise the members of the international press (Redacted), and
3 standing behind Mr Bemba, to the background, in the background, he's Ugandan.
4 The person taking the photograph is also Ugandan. The person in the black T-shirt
5 is Gabriel Kahn. The person writing with his left hand is a BBC journalist in
6 Tanzania. The photographer, well, I don't know which press body he works for.

7 Q. (Redacted)

8 (Redacted)

9 (Redacted)

10 Do you agree?

11 A. Yes, okay, Counsel.

12 PRESIDING JUDGE STEINER: Mr Badibanga, before we turn into open session,
13 Judge Aluoch wants a clarification.

14 JUDGE ALUOCH: Mr Witness, I'm interested in the Congolese journalist (Redacted)
15 (Redacted). In this last slide, does he appear here at all? Because you've
16 talked about a Ugandan and somebody else and somebody else. Is he also here?
17 And is he the one who was taking all these photographs, do you know? (Redacted)
18 (Redacted)

19 THE WITNESS: (Interpretation) No, your Honour, the Congolese journalist does
20 not appear in this photograph.

21 JUDGE ALUOCH: And what was his name? Do you remember his name at all?
22 We are in private session.

23 THE WITNESS: (Interpretation) His name was Imana.

24 JUDGE ALUOCH: Thank you.

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

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 (Open session at 1.09 p.m.)

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

3 MR BADIBANGA: (Interpretation)

4 Q. Now, Mr Witness, when talking about the mission that Mr Jean-Pierre Bemba
5 sent to Sibut, we said -- or, in fact, you testified to the effect that the objective was to
6 gather information. We have tried to understand why the journalists were present,
7 and the second question that I wanted to put to you was why make a video? Why
8 film a video of this visit, the video footage that has already been presented to us, in
9 fact?

10 A. I believe that the main motivation for the presence of the international press was
11 to gather correct information without in any way tainting it.

12 Q. So maybe we might be more specific with regard to the recce, or the prior
13 mission. I presume that this was reported on to Mr Bemba upon their return?

14 A. Yes, indeed, Counsel.

15 Q. Could you please tell us what the report said, the report that was made to
16 Jean-Pierre Bemba on the subject?

17 A. The report made to Mr Bemba, according to the information I received, was as
18 follows: The MLC contingent in Sibut was enjoying very good relations with the
19 civilian population.

20 Secondly, there were abuses committed in Sibut, and the population attributed them
21 to Bozizé's rebels.

22 Thirdly, there were some instances of misconduct on the part of ALC soldiers, but the
23 major and commanders of the unit clamped down on this.

24 Fourthly, some of the inhabitants of Sibut were concerned by the forthcoming
25 departure of the ALC contingent. Well, that was really the substance of the report

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 made to Mr Jean-Pierre Bemba on the mission.

2 Q. And you say at point 3, Mr Witness, that there were some instances of
3 misconduct on the part of ALC soldiers and that the major clamped down or put a
4 stop to this. Do you know how many soldiers were punished and for what crimes or
5 for what abuses or acts?

6 A. If my memory serves me correctly, and according to what I was told, I believe
7 that it was cases of theft and that four soldiers were involved.

8 Q. And what did those soldiers actually steal and from whom?

9 A. I believe that these were loin cloths and wax from a lady. I don't know -- I
10 don't know, maybe some bicycles were stolen as well.

11 Q. So no case of murder, or --

12 A. The members of the delegation in Sibut did not tell us of any case of murder.

13 Q. Was there any case of rape that the major might also have punished, or
14 sanctioned?

15 A. There was no case of rape, as far as we are aware.

16 Q. So what measures were taken against these individuals? In what way and how
17 were they convicted, those individuals who were accused of theft?

18 A. I did not know what happened in this case subsequently.

19 Q. Do you know why it was that those four people were not committed to trial
20 before the court martial, in comparison to the seven other individuals who were
21 accused at the end of November of having also perpetrated such acts of theft?

22 A. No, Counsel, I do not know.

23 Q. And during the mission itself, whilst the team was on location in Sibut, do you
24 know whether they were in contact or do you know whether they were
25 communicating with Mr Jean-Pierre Bemba in Gbadolite?

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 A. To my knowledge, no.

2 Q. So the delegation left of a morning, did it?

3 A. No, Counsel. According to what I was told, it may be that it was at the end of
4 the morning or at approximately midday.

5 Q. So the delegation left at the end of the morning and they returned on that -- on
6 the evening of the same day, because you said that --

7 THE INTERPRETER: Counsel does not finish his sentence.

8 THE WITNESS: (Interpretation) Yes, indeed.

9 MR BADIBANGA: (Interpretation)

10 Q. And during the duration of the mission, to your knowledge he was not in
11 contact with Mr Jean-Pierre Bemba, was he?

12 A. To my knowledge, no.

13 Q. And those people within the delegation, were they in contact with the
14 presidency, or the Central African authorities, throughout the duration of the
15 mission?

16 A. To my knowledge, no.

17 Q. And the report for this mission, is it accessible in one form or another?

18 A. No, Counsel, this was in fact a verbal report. Of course, it had video footage to
19 support it.

20 Q. We started talking about this mission, Mr Witness, because you were answering
21 my question with regard to the International Federation of Human Rights and the fact
22 that they had gone to Sibut to ascertain that relations were good between the civilians
23 and the soldiers.

24 Now, a mission was sent subsequent to such grave allegations. Is it true that there
25 was no written trace of this mission that could then have actually contradicted the

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 accusations made by the International Federation of Human Rights, is it true to say?

2 A. The video support is there and the reports of the journalists who took part in the
3 mission. I am not aware that a written report was provided on the subject.

4 Q. And could we expect that such a favourable report, notably based on the four
5 points that you provided me with, (1) excellent relations between the population and
6 the MLC soldiers, secondly that abuses were attributed to Bozizé's rebels and that
7 thirdly the few instances of misconduct were taken on by the major and that secondly
8 (sic) the ALC was expected to depart, now would not such a piece of information be
9 extremely useful for the MLC against which allegations were being levelled left, right
10 and centre?

11 A. Counsel, I do not have any explanation for this attitude.

12 Q. Now, before we break for the day, I would like to broach an issue with you that
13 you mentioned yesterday, that is notably the withdrawal of the MLC troops, and I
14 would like you to clarify your testimony. Who decided that the MLC troops were to
15 be withdrawn from the CAR to the DRC; that is they were going home? Who took
16 this decision and who set the date for the withdrawal?

17 A. Counsel, as I said yesterday, I do not have any further information with regard
18 to the date or the person who decided. I provided you with my view-point; notably
19 that organising the withdrawal of such a large-scale operation or contingent required
20 co-operation with the local authorities. That's what I said. Now, as to who decided
21 what and when and how, I have no further information to provide you with.

22 Q. Now, of course we should decide or agree on what is detail and what is the
23 essential information. My question is who decided that the troops were going to
24 leave? That is the most important thing to me.

25 Now, of course there were discussions as to some of the practical measures to be

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

1 taken, I can imagine that of course, but of course my question was not whether a bus
2 or a lorry be lent. My question was as to whether the decision, or as to who took the
3 decision - military and political decision - to withdraw the troops from the Central
4 African Republic? I am talking about the -- that you, as a person of authority within
5 the MLC, be able to provide us with an answer?

6 A. Counsel, maybe I do not have the necessary rank in order to provide you with
7 this piece of information today. I cannot tell you who took the decision, but I can
8 imagine that at a political level some -- Mr Bemba was involved in the taking of this
9 decision.

10 Q. And on the basis of your knowledge of the MLC, on the military level whose
11 prerogative was it to take such a decision? If you do not know who took it in
12 concrete terms, can you tell us who it was within the functioning of the MLC whose
13 position it was to take that decision?

14 A. On a political level, it was Mr Bemba.

15 Q. And on a military level who was it?

16 A. Well, Counsel, you're taking us right back to the beginning here; that is
17 between -- the confusion between the commander-in-chief and the supreme
18 commander. We have gone full circle. We were talking here -- to my mind, it was
19 more on a political level that decision was taken. As to the military aspect, I think it
20 was at the Chief of Staff, or General Staff.

21 PRESIDING JUDGE STEINER: Maître Badibanga, I am sorry to interrupt you. We
22 have only two or three minutes left and I think there are still some questions related
23 to this specific topic and the Chamber needs to issue a short oral decision, so if you
24 allow the Chamber to suspend your questioning for today and we can turn back to
25 the same topic tomorrow.

Trial Hearing
Witness: CAR-D04-PPPP-0021

(Open Session)

ICC-01/05-01/08

1 Before we adjourn, the Chamber needs to address a procedural matter concerning the
2 order of witnesses to appear after the completion of the testimony of the current
3 witness.
4 By oral decision of 20 March 2013, the Chamber approved the Defence's witness
5 schedule for the period between 8 April and 10 May 2013, transcript 298.
6 According to this schedule, Witness D04-21 was to be followed by Witness D04-39,
7 scheduled to start his testimony on 12 April 2013.
8 However, by email of 9 April 2013, the VWU informed the Chamber of difficulties
9 with ensuring the appearance of Witness D04-39 as scheduled.
10 In that respect, the VWU submitted that the Defence had proposed a number of
11 alternative witnesses who may be available to testify following the completion of the
12 testimony of Witness D04-21.
13 The Chamber regrets that once more its order on scheduling of witnesses needs to be
14 reviewed. In view of this situation and in order to ensure the efficient presentation
15 of evidence by the Defence and the expeditiousness of the trial proceedings, the
16 Chamber pursuant to Article 64(2) of the Statute and Regulation 43 of the Regulations
17 of the Court instructs the Defence, in co-ordination with the VWU, to do its utmost to
18 ensure the appearance of witnesses without delay and to submit by 4 o'clock on 11
19 April 2013 a new proposed order of witnesses to be heard following the completion of
20 the testimony of Witness D04-21.
21 I would like to thank very much the Prosecution team, the legal representatives of
22 victims, the Defence team, Mr Jean-Pierre Bemba. I would like to thank very much
23 our interpreters, our court reporters and to thank very much Ms Toumaj.
24 THE COURT OFFICER (DRC): (Interpretation) Thank you, Madam President.
25 PRESIDING JUDGE STEINER: Mr Witness, thank you very much. We will

Trial Hearing

(Open Session)

ICC-01/05-01/08

Witness: CAR-D04-PPPP-0021

- 1 adjourn for today. We hope you have a very, very restful afternoon and evening and
- 2 that you come back tomorrow morning ready to continue giving your testimony.
- 3 Tomorrow we resume at 9 o'clock.
- 4 The hearing is adjourned.
- 5 THE COURT USHER: All rise.
- 6 (The hearing ends in open session at 1.31 p.m.)
- 7 RECLASSIFICATION REPORT
- 8 Pursuant to Trial Chamber III 's Orders, ICC-01/05-01/08-2223 and ICC-01/05-01/08-3038,
- 9 the version of the transcript with its redactions becomes Public.