

1 International Criminal Court

2 Pre-Trial Chamber III

3 Situation in the Central African Republic - ICC-01/05-01/08

4 Confirmation of Charges Hearing - Open Session

5 Thursday, 15 January 2009

6 The hearing starts at 9.31 a.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session.

9 JUDGE TRENDAFILOVA: Please be seated. Security officer, would
10 you be so kind to invite Mr. Bemba into the courtroom.

11 (The suspect entered court)

12 JUDGE TRENDAFILOVA: Good morning, Mr. Bemba. Good morning,
13 everyone. I welcome everyone who is in the courtroom and in the public
14 gallery to the last day of the Confirmation Hearing.

15 Of course I have to check about some new faces. On behalf of the
16 Chamber, I would like to just present Ms. Emmanuelle Debouverie who is an
17 intern to the Chamber. What about the Prosecution's team? Ms. Kneuer.

18 MS. KNEUER: Good morning, Madam President, your Honours. No new
19 faces in the Prosecution's team this morning.

20 JUDGE TRENDAFILOVA: Yes. About the Defence?

21 MR. KHAN: Your Honour, once again the same old faces.

22 JUDGE TRENDAFILOVA: Yes. And Ms. Lindsay is not here.

23 Yes, Mr. Liriss.

24 MR. NKWEBE LIRISS (interpretation): President, your Honours,
25 before I start --

1 JUDGE TRENDAFILOVA: Just a moment. I thought that you would
2 like to mention something about the team of the Defence. That's why I
3 gave you the floor. Just a minute.

4 The victims' legal representatives, the same?

5 MS. MASSIDDA: Good morning, your Honours. No new faces amongst
6 the two legal teams for the victims. Thank you.

7 JUDGE TRENDAFILOVA: Yes. Thank you. Yesterday the team of the
8 Defence started with its presentation to the individual criminal
9 responsibility of Mr. Bemba. The first part of this morning's session
10 till the first break is the time for the Defence to proceed with its
11 presentation and hopefully to finalise it.

12 Before we resume our work and before I give the floor to
13 Mr. Liriss, I would like to ask the Defence team whether they have
14 submitted to the Chamber and to the other participants their
15 presentation, and to make it clear that regardless of whether the
16 Prosecution's team or the Defence team is submitting their presentations,
17 that should be done by the Registry.

18 I'm addressing the Defence team. Could you manage, Mr. Khan, or
19 Mr. Kilolo?

20 MR. KHAN: Good morning, Madam President. Earlier this morning
21 the presentation that was previously used on the screen by Mr. Nkwebe was
22 provided through the Registry, I understand, for your Honours. It had
23 previously been given to the Prosecution and the victims'
24 representatives. There is no additional presentation as such that is
25 going to be use today.

1 JUDGE TRENDAFILOVA: Thank you very much, Mr. Khan. I -- as for
2 myself, I haven't received it until 9.00 yesterday evening, but probably
3 it will come until due time.

4 Without further ado, since time is not on our side, I give the
5 floor to the team of the Defence. Mr. Liriss, you have one hour and a
6 half, till the first break at 11.00. Please, the floor is over to you.

7 MR. NKWEBE LIRISS (interpretation): Madam President,
8 your Honours, in fact I just wish to correct a few errors that were made
9 yesterday and Mr. Kilolo will take the floor and I will speak after him.

10 Yesterday, I got really angry. I apologise. When you have such
11 formidable adversaries in front of one that is the only argument, the
12 argument of anger. So I really apologise for my attitude yesterday. I
13 hope the Prosecution team will understand.

14 JUDGE TRENDAFILOVA: (Microphone not activated) Right now I would
15 like to say that I highly appreciate what you have said right now because
16 we have reasonable Chamber and till now all the participants have been
17 reasonable. And this Chamber rules on the basis of the evidence and the
18 analysis thereof and not on the basis of the passion of the speakers.
19 Thank you very much.

20 MR. NKWEBE LIRISS (interpretation): Thank you, Madam President.

21 I talked about Witness 30. It's true it wasn't about Witness 30
22 I was talking about. I was actually talking about Witness 36 -- or,
23 rather, 37. Witness 37. I give you the EVD number. The witness says
24 that he saw vehicles, but these vehicles didn't have number plates or
25 registration numbers. The only witness who talks about vehicle

1 registration numbers is Witness 32. However, Witness 32, in EVD-P-02370,
2 states that he arrived Gbadolite in the month of February, 2002. That is
3 before the acts. And he says in EVD-P-02370, page 0315, that he left the
4 MLC in July 2002. He came before the acts or the events, and he left
5 after the events, and so he could not have seen these vehicles which
6 purportedly arrived after he left.

7 Witness 37 is EVD-P-0525, page 0538. He states these vehicles
8 had no registration numbers. "I'm not saying they came from the Central
9 African Republic. I don't know where they came from, because the
10 vehicles came in my absence, after I had left."

11 That is the correction I wish to make, Madam President. And I
12 would like to add that contrary to what the Prosecutor said, the
13 commander on the spot did not say that he received orders from Mr. Bemba,
14 and we are going to demonstrate this when we take the floor again.

15 Thank you.

16 JUDGE TRENDAFILOVA: Thank you, Mr. Liriss. And now the floor is
17 over to you, Mr. Kilolo, as far as I understood that you're going to
18 start the presentation this morning. Thank you.

19 MR. KILOLO (interpretation): Thank you, Madam President,
20 your Honours. I will talk on personal responsibility, one aspect
21 thereof, aspects relating to the notion of participation and aspects
22 relating to all the relevant issues. I will also refer to the case law
23 of your court in case ICC-01/04-01/06-803, paragraph 328. It is a
24 judgement issued recently by the International Criminal Court which
25 states that with regard to the application of Article 25(3) of the

1 Rome Statute, we should make a distinction between the co-perpetrator and
2 the accomplice.

3 I say this because in reality, the debate we are holding before
4 you makes us wonder whether considering the various elements found in the
5 Prosecution file, evidence provided by the Prosecutor do we have
6 sufficient elements which give substantial grounds to believe that
7 Mr. Bemba acted such that we can consider that there was co-perpetration.
8 You must realise at that there are three schools of thought with respect
9 to criteria for distinguishing co-perpetration from accomplices.

10 The first school of thought is based on the objective approach.
11 They believe that co-perpetrators are exclusively persons who physically
12 executed one or several elements of the crime.

13 We find that on the basis of this theory no form of
14 responsibility can be retained against Mr. Bemba.

15 The second school of thought is based on the subjective approach.
16 For this school of thought, the co-perpetrator is someone who knows
17 the -- about the intent of a group of individuals to commit a crime and
18 who facilitates such perpetration by contributing to the commission of
19 the crime.

20 The case law of the ICC excluded this second approach in a recent
21 judgement which I quote, number ICC-01/04-01/06-60 -- or, rather, 803,
22 paragraph 329 and paragraph 334 to 337.

23 I have been informed that that is error in the transcript, so I
24 will repeat. ICC-01/04-01/06-803, paragraph 329 and paragraphs 334 right
25 up to 337.

1 You must understand that our discussions have focussed basically
2 on these two theories. In modern doctrine a focus is on the notion of
3 control over the perpetration of the crime. It talks about objective and
4 subjective aspects. And so today, within the framework of this
5 discussion which is based on Article 23 -- or, rather, 25(3) of the
6 Rome Statute, to find that the definition of co-perpetration is based
7 essentially on the notion of control exercised over perpetration of the
8 crime, and this leads us to note that today's debate is going to focus
9 essentially whether -- on whether there was criminal intent on the part
10 of Mr. Jean-Pierre Bemba.

11 We will also in this debate focus on whether materially, when we
12 consider the evidence, there was any participation. It is important here
13 to examine the notion of participation and to state that it does not
14 suffice for the Prosecutor to prove that the behaviour of the suspect
15 contributed to the perpetration of an illegal act in order to establish
16 his individual responsibility.

17 You must understand that in reality, the onus of proof which lies
18 on the Prosecutor goes even further. It is up to the Prosecutor to
19 demonstrate that contribution to the criminal act was substantial. The
20 case law further states in an order -- or in a judgement of the
21 International Criminal Tribunal for Rwanda, in the case of Kayishema and
22 Ruzindana, Trial Chamber of 21 May 1999, paragraph 199. It is the
23 contribution to -- or, rather, the contribution to the criminal act has
24 to be substantial, and I think this is an issue which the Bench has to
25 examine in the light of the evidence tendered.

1 You will also find in another judgement of the ICTR, in the case
2 of Semanza, a Trial Chamber of the 15 May 2003, paragraph 379, and it is
3 stated that the onus of proof on the part of the Prosecutor entails
4 establishing that the participation of the suspect contributed
5 substantially to the perpetration of the crime and that it actually had
6 an important impact or effect on the perpetration thereof.

7 You will find that several judgements, and I will not cite all of
8 them here, have actually focussed on this will notion of participation
9 and each time emphasising the fact that -- that it does not suffice to
10 rely on behaviour or material acts related to the perpetration of the
11 crime. And so the Prosecutor has to go even further to establish proof.

12 I will also like to cite the judgement of Bagilishema, the
13 Trial Chamber of 7 June 2001, paragraph 32, International Criminal
14 Tribunal for Rwanda, which states that the Prosecutor has to prove that
15 the suspect provided material contribution to the perpetration of the
16 crime in the knowledge that such contribution is going to lead to the
17 perpetration of the crime, and furthermore, he must have the intention of
18 providing his contribution in the knowledge that it would lead to the
19 perpetration of the crime in question.

20 And so this brings us back to the case of the Prosecution team
21 and examine whether on the basis of the various items of evidence
22 tendered we can conclude at that Mr. Jean-Pierre Bemba can be considered
23 a co-perpetrator.

24 I would like to tell you that I have reflected at length on this,
25 and I have the objective feeling when I look at the evidence in the case

1 file that Mr. Jean-Pierre Bemba is not a co-perpetrator, because we do
2 not have substantial grounds to state this. He cannot even be considered
3 an accomplice in this case, because even if we are consider him an
4 accomplice your case law is clear. Article 25 of the Rome Statute on
5 which the Prosecution team relies does not allow the establishment of
6 responsibility on the basis of fact that the accused is an accomplice.

7 After examining the submission of the Prosecution team, I
8 realised that we actually have 11 criteria, criteria on which we should
9 rely to examine whether there was co-perpetration in this case.

10 First of all, we have to find out whether Mr. Jean-Pierre Bemba
11 provided essential contribution. We have the question of who provided
12 the vehicles, means of transport to the soldiers, who provided the fuel,
13 who provided money to the soldiers, who was commanding the military
14 operations, who provided combat equipment, who provided the weapons, who
15 provided the ammunition, who issued the orders, who ensured coordination,
16 who provided the uniforms, and lastly, reports on the field operations,
17 to who were they submitted. These are considerations I would like you to
18 examine with me in this case, and you will find that as far as the
19 vehicles are concerned, it emerges from the Prosecution evidence that the
20 vehicles were provided by President Patasse. And here I would like to
21 refer you to Prosecution evidence EVD-P-00006, pages 5 and 6. I will
22 also like you -- to refer you to the same evidence, page 16.

23 Still on the vehicles, it emerges that these vehicles were
24 provided to MLC soldiers by the government of the Central African
25 Republic. And here I'll refer you to a Prosecution witness in

1 EVD-P-02335, page 18, 1-8.

2 Still as far as the vehicles are concerned, it emerges that they
3 were provided by the state or the Central African State. This is what is
4 said by another Prosecution witness, a Central African, in EVD-P-0048 (as
5 interpreted), page 28, pages 28 to 31. Sorry, pages 29 to 31.

6 I think we have an inconsistency in the transcript. Let me
7 cross-check. I will give the reference once more. It is EVD-P-00148,
8 EVD-P-00148. I think there is some error in the French transcript. I
9 repeat once more. EVD-P, like papa, 00148.

10 I think there is still an error in the French transcript.

11 I insisted stating that with regard to the provision of vehicles,
12 a Prosecution witness from the Central African Republic states that
13 vehicles were provided to MLC soldiers by the Central African State.
14 This is said by a Prosecution witness, a Central African, in evidence
15 number EVD-P, like papa, 00148. I repeat EVD-P-00148.

16 Now, as far as fuel is concerned, it also emerges that even the
17 fuel was provided to MLC soldiers by the authorities of the
18 Central African Republic. You will find this in Prosecution evidence
19 EVD-P-0006, page 24.

20 Still on fuel -- we are repeating these things, Madam President,
21 because we don't want to have any errors.

22 Still on fuel, it emerges in the same evidence which we have just
23 referenced on page 24 that fuel was provided to MLC soldiers on the
24 direct instructions of President Patasse.

25 Now, as far as the third criterion is concerned, namely who

1 provided the financial means which enabled MLC soldiers to live
2 comfortably on the spot during the operations, in other words, who
3 remunerated these soldiers. Again it emerges from the testimony of a
4 Prosecution witness from the Central African Republic that financial
5 means were provided by the Central African Republic, which fed MLC
6 soldiers all through the period of the armed conflict, and that is
7 evidence EVD-P-02335, page 18.

8 We are still on the third criterion, namely who provided MLC
9 soldiers with financial means.

10 Another Prosecution witness states that the financial means were
11 also provided by another African State, namely Libya, which at the time
12 held the chairmanship of CEN-SAD. In any case, this is stated by a
13 Prosecution witness in the document EVD-P-02340, page 18.

14 Now, on the fourth criterion, namely who commanded the
15 operations, another Prosecution witness states that the operations were
16 not commanded by Mr. Jean-Pierre Bemba at all. There was another
17 commander, whose name I won't state here for reasons of confidentiality,
18 who was commanding the operations, but you will find that person's name
19 in a Prosecution document which I reference, EVD-P -- (Previous
20 translation continues) ... (in English) page 12. Page 12.

21 Now, on the fifth criterion, that is who provided all the combat
22 equipment to MLC soldiers during the period relevant to the instant case.
23 It emerges from a Prosecution document that -- I have been informed that
24 with regard to criterion number three, namely -- so concerning the fourth
25 criterion, who directed the operations, it appears it was another

1 commander than Jean-Pierre Bemba. This appears in one of the
2 Prosecutor's files, EVD-P (In English) 2296, (No interpretation).

3 (Interpretation) Concerning the fifth criterion, who provided the
4 combat equipment to MLC soldiers in the Central African Republic for the
5 whole of the relevant period. It appears --

6 JUDGE TRENDAFILOVA: I'm sorry to interrupt you, but the
7 transcript should properly reflect the page that you're referring to. It
8 is not page 2. It's page 12.

9 MR. KILOLO: 12, yes.

10 MR. KHAN: Madam President, perhaps I can just clarify. I think
11 this is the reason why my learned friend senior trial attorney for the
12 Prosecution mentioned yesterday that there appeared to be a discrepancy
13 in the transcript between some of the EVD and ERN numbers that the
14 Defence were given and the actual citation when they looked for it.
15 Your Honours, with the written brief that we intend to file, we will
16 annex, with your Honours' leave, a full list of all the EVD and ERN
17 numbers that have been referred to, and hopefully that will dovetail with
18 the revisions that the transcription service will provide the Court --

19 JUDGE TRENDAFILOVA: Thank you very much.

20 MR. KHAN: -- to ensure that all the references are correct.

21 JUDGE TRENDAFILOVA: Thank you very much. It will be very
22 helpful, especially for the case of the Defence. However, I disagree
23 that that has always been the case, and we have to be very cautious
24 following the transcript when the Defence team identifies a mistake like
25 this to right away make the point as now I did. Thank you.

1 Would you proceed, Mr. Kilolo.

2 MR. KILOLO (interpretation): Thank you, President. So as
3 regards the fifth criterion, who provided the MLC soldiers with combat
4 equipment in the Central African Republic. It would appear very clearly,
5 and it is unambiguous, that it was in truth on direct instructions from
6 Mr. Patasse that all equipment was furnished to the MLC soldiers on the
7 whole of the sovereign territory of the Central African Republic. You
8 will find this in the Prosecution's file EVD-P -- (In English) (Previous
9 translation continues) ... 006, page 13. (Interpretation) There is a
10 mistake again in the transcript. I will start again. So I was talking
11 about file (In English) EVD-P-00006, page 13.

12 (Interpretation) Again about the fifth criterion, about criminal
13 participation and the question of whether Mr. Jean-Pierre Bemba actually
14 really substantially participated, we're still talking about combat
15 equipment, and again it appears very clearly in the Prosecution's file
16 that only Central African authorities provided this war equipment.
17 You'll see this, your Honours, President, in the same file with the same
18 references I have just given.

19 As regards the sixth criterion, the armaments, weapons, very
20 important. Of course, you cannot go and fight without weapons.
21 Actually, that is not an essential criteria. Everybody knows this. But
22 who provided the weapons that were used by the Congolese MLC soldiers in
23 the Central African Republic during the whole of the -- the period at
24 issue? Well, you'll see this very clearly. A representative of the
25 Prosecutor said it's an African State, Libya, that provided the weapons

1 used by the MLC soldiers. You will find this in the file EVD-P-02340,
2 page 18.

3 And why am I insisting on this? Because, actually, the whole
4 issue of who provided the weapons is critical in establishing whether
5 there are substantive grounds to believe at this stage that
6 Mr. Jean-Pierre Bemba is a co-perpetrator, and I insist here on the case
7 law which has been cited earlier on on the subject, because we're not
8 dealing here with complicity within the context of Article 25, though we
9 exclude it from what appears in the case record, but we are insisting
10 here on this notion of co-action. We -- in the sense of an essential
11 contribution to the -- to committing the crimes.

12 So, President, you'll see here that if it hadn't been easy for
13 the Central African Republic and President Patasse to call upon the MLC
14 troops as he did for several other troops, what was essential for him
15 wasn't the men. You can find men anywhere. It was the weapons. Weapons
16 are very difficult to come by. And so when we now say Mr. Jean-Pierre
17 Bemba could have abstained from contributing to committing or
18 participating, then that would have prevented the crimes being committed.
19 But we should ask ourselves whether or not the criteria retained by the
20 Office of the Prosecutor actually are relevant for the direct
21 perpetration of the crimes. You will see here that it's not
22 Mr. Jean-Pierre Bemba that provided the weapons that were used by the
23 Congolese Banyamulenge soldiers in the Central African Republic, and it's
24 not us, the Defence saying this. It's something in the file, the
25 evidence that the Prosecutor himself gave us even if they did not insist

1 on that.

2 There's another criterion, a seventh criterion, because you can
3 have weapons, but to use them you need ammunition. Who provided the
4 ammunition used by the MLC soldiers in the Central African Republic?
5 Again, it's not the Defence answering this question. We almost feel like
6 saying it's the Prosecutor answering. Or if it's not them, it's the file
7 that was given to us and the evidence we have found in or amongst the
8 documents. And here again I will quote the documents I mentioned earlier
9 on which states that even the ammunition came from another African State
10 which came to help and which contributed to help a sovereign government
11 which was under threat of an internal rebellion and was entitled to
12 legitimate defence, which my learned colleague, Maitre Nkwebe, will talk
13 about later on.

14 I'm talking here about Libya, and you will see this in the file I
15 have mentioned, EVD-P-02340, on page 18. And it's on the same page in
16 different paragraphs. You will see for yourselves.

17 There's another criterion which is important, the eighth
18 criterion. Who gave orders, instructions for the military operations in
19 the field? Who determined the targets? Who said an intervention was
20 needed in Damara, Bossembele, at PK12? Who gave these instructions?

21 Again, the Prosecution's file provides an answer, a clear answer
22 to this.

23 It wasn't Mr. Jean-Pierre Bemba. It was President Patasse, the
24 president of a sovereign state that had nothing to do with the Congo, or
25 not directly so.

1 You will see this in the file EVD-P-00006, on page 16. 16.

2 As regards the ninth criterion, it's an essential criterion,
3 because it enables us to establish who provided for the coordination.
4 Was there shared coordination? Had Central African authorities
5 authorised a foreign authority, in this case Mr. Jean-Pierre Bemba, to
6 ensure shared command over a sovereign territory, on foreign territory?
7 Actually, this poses the whole issue of principles, because in practice
8 when you call upon foreign troops to intervene on any specific territory,
9 generally as you understand things and what we all know, according to
10 that could an elected head of state with democratic and stable and
11 recognised institutions with diplomatic representation in his country,
12 with his own military hierarchy, with all the institutions of government,
13 a first -- a prime minister, a parliament, a General Staff, with a
14 hierarchy within the Central African Republic, generally speaking could
15 it be possible, on top of having troops available?

16 Actually, there are many examples in which a head of state says
17 to a foreign person, "Well, I have given my troops," but have you ever
18 seen them say, "On top of that I will -- I would ask you to take my place
19 and ensure the coordination of military operations, replace me as head of
20 state of the Central African Republic, when what is at stake is the
21 survival of a democratic regime, state, important for the survival of the
22 democratic institutions which were created through the democratically
23 recognised elections, recognised by the international community and
24 United Nations? That is the question.

25 We have an answer to this question. The answer is in the

1 Prosecution's file. The coordination of President Patasse's troops,
2 there were six of them, we mentioned this yesterday, the coordination was
3 provided by the Central African military, military authorities.
4 Actually, you will see this in the Prosecution's file EVD-P-00004 on page
5 1 -- I beg your pardon. Not on page 1 but on page 2.

6 Concerning the uniforms, who provided uniforms, combat uniforms,
7 which enabled all the combatting troops fighting for their president of
8 the Central African Republic over there during the whole of the time of
9 the conflict? There's a very clear answer. It was President Patasse who
10 gave instructions to provide the Congolese military of the MLC in the
11 Central African Republic with the uniforms.

12 This is very important. This is also clear in Prosecution's file
13 EVD-P-00006, page 13.

14 I would also like you to look at the last criterion which seems
15 to be essential. We have already answered the question of who gave
16 instructions, who gave out orders, and you were able to differentiate
17 here between the MLC soldiers, 1.000 to 1.500 of them according to the
18 Prosecution's files, on the territory of the Central African Republic,
19 differentiate them from the other MLC soldiers that remained on Congolese
20 territory. You'll understand that the points made by the Prosecution
21 yesterday in alleging, wrongly so, that it was Mr. Jean-Pierre Bemba who
22 gave Congolese MLC soldiers orders -- actually, you'll soon find out why
23 the Prosecutor was alleging this. It's because in reality you have to
24 look at the issues. Look at the EVD number that was mentioned yesterday
25 by the Office of the Prosecutor before you look at the answers given by

1 the witnesses. Look at how the Prosecutor's questions are phrased, and
2 you'll see that the way they're worded is clearly focussed on obtaining
3 certain answers to allege that Mr. Jean-Pierre Bemba was giving out
4 orders and in this way confusing the issue of the MLC soldiers which were
5 on the territory of the Democratic Republic of the Congo and which
6 actually at the time were under the Congolese General Staff of the MLC,
7 under the authority of Mr. Jean-Pierre Bemba. But we must differentiate
8 between them and the 1.000 or 1.500 soldiers which were disbanded from
9 the MLC momentarily and made available to the Central African
10 General Staff, and that's where you'll see some level of contradiction.

11 How will we explain the contradictions of the Office of the
12 Prosecutor? Well, we'll find them by asking questions, because if you
13 ask the question about the 1.000, 1.500 military men on the
14 Central African Republic, who gave these men orders? Well, it's the
15 commander of the Central African General Staff.

16 However, if the Prosecutor asks the same question on the same day
17 but slightly differently by wording it differently and by saying within
18 the MLC structure without saying that the question is only -- concerns
19 only the 1.000 or 1.500 MLC soldiers in the Central African Republic. So
20 if they phrase it differently and say generally who within the MLC gave
21 instructions and orders, well, then of course then you'll quote the MLC
22 president and General Chief of Staff. But that's not the point. The
23 point before us is the issue of the criminal participation, an essential
24 contribution which is limited to the 1.000 to 1.500 soldiers in the
25 Central African Republic between October 2002 and March 2003. That is

1 the difficulty the Office of the Prosecutor has put us in today, and if
2 we're not careful, if we don't look carefully at the questions asked by
3 the Office of the Prosecutor targeted or aimed at obtaining certain
4 answers, we will end up being confused, President, your Honours, so we
5 want to re-establish the truth as it appears itself in the very record of
6 the case.

7 And then concerning the 11th criterion. So who did MLC soldiers
8 report to, to which authority, these soldiers that were carrying out the
9 operations in the field? Well, there was a document filed on this, the
10 cahier de communication, the notebook on communications, which contains
11 the messages. It's a document that was filed by the Defence, and its
12 reference number is EVD-PD01-00035 (as interpreted). And here what we
13 see is quite simply that it wasn't Mr. Jean-Pierre Bemba that was daily
14 in contact with -- it wasn't Mr. Jean-Pierre Bemba that the
15 Central African -- that the soldiers in the field reported to directly on
16 a daily basis.

17 I have just received a correction concerning the reference number
18 in the file. So I will modify it. It is file EVD-D01-00036.

19 So you will have a very crystal clear answer. Daily reporting of
20 activities in the field wasn't addressed to Mr. Jean-Pierre Bemba.
21 Actually, we touched upon this issue yesterday when we talked about the
22 knowledge of the crimes in Mr. Jean-Pierre Bemba's counts. You will
23 recall that we mentioned two different types of information at that
24 stage, and it is important to differentiate between these.

25 We had information about the issue of the general military

1 situation. This information wasn't aimed at Mr. Jean-Pierre Bemba.
2 There was only a copy for information, and at no stage during this
3 communication will you find any trace of reporting about the crimes, war
4 crimes, crimes against humanity attributed to MLC soldiers. Actually, we
5 recalled yesterday that the only trace that there was any abuse going on
6 was when information was given, and this only happened once in the case
7 of Mr. Jean-Pierre Bemba, about abuse committed by Chad troops and by
8 Central African troops themselves, troops working for
9 Mr. President Patasse.

10 This was mentioned already. I won't go back to it. You were
11 already given the EVD number.

12 So you'll understand why we mentioned this whole issue of
13 confusion as regards the responsibility of the troops or accountability
14 of the troops. And this brings us back to the issue of essential
15 contribution: Who in practice carried out the actions, contributed,
16 participated physically? I think you have your answers to these
17 questions. This is an essential question.

18 I'm sorry for going on about it, because I needed to cover a
19 number of statements in the Prosecution's file with you, and that's why
20 at times I had to go back to some EVD files. But I also have to mention
21 what is clearly apparent in the Prosecution's file.

22 For instance, look at file EVD-P-0006, on page 13. It was
23 President Patasse who invited to the territory of the Central African
24 Republic MLC soldiers, just as he would have invited soldiers from any
25 other countries, just as he invited other forces. There were six forces

1 in the country. It was on the instructions of President Patasse that
2 they were issued with the official uniforms of the army of the
3 Central African Republic and also provided with combat equipment. That
4 is the conclusion at which the investigators arrived.

5 We should not forget that before this case was referred to the
6 International Criminal Court, judicial proceedings had been initiated in
7 the Central African Republic. There was an investigation. An examining
8 magistrate initiated proceedings. A Prosecutor of the republic initiated
9 proceedings, and the case was referred to a major court, that is a high
10 court in the Central African Republic.

11 The conclusion of those proceedings will be found in the document
12 which I am quoting now. And it is stated very clearly that Jean-Pierre
13 Bemba has to be excluded from such perpetration.

14 And so when we read these documents, we ask ourselves that we
15 know the case law. We know judicial traditions. Even in the
16 Central African Republic the examining magistrate, a magistrate -- you
17 know, in criminal law magistrates are experts. He found out that
18 Jean-Pierre Bemba was not responsible. He did not have responsibility.
19 In fact, it had been requested that the charges should be dropped against
20 Mr. Jean-Pierre Bemba.

21 So it was other persons who asked for the case to be referred,
22 and given the political situation in the Central African Republic at the
23 time, the case was referred to the International Criminal Court. But we
24 should not lose sight of the content of the file, the file referring this
25 case to the International Criminal Court. This same file talks about the

1 need to drop charges against Mr. Jean-Pierre Bemba, but then you will
2 find that Mr. Jean-Pierre Bemba is today appearing at court. In any
3 case, I will not deal at length on this, because my colleague will say
4 more on this during a closed session which we may request for later on.

5 And I would like to state that this request for charges to be
6 dropped is found in the document EVD-P-00006.

7 In that same document, on pages 20 and 21, pages 20 and 21, no
8 information relating to the investigations carry out in the
9 Central African Republic before the competent courts in Bangui can enable
10 us to prove the participation of Jean-Pierre Bemba in the perpetration of
11 crimes allegedly committed by MLC soldiers even though Mr. Jean-Pierre
12 Bemba went once or twice through the territory of the Central African
13 Republic during the conflict and allegedly met certain MLC soldiers in
14 the Central African Republic. Of course we all know what happened in
15 Begoa. We've talked about this. When Mr. Bemba heard contradictory
16 information on abuses allegedly committed, he went to Begoa and drew the
17 attention of the soldiers on the need for discipline, the need to respect
18 the code of conduct and he took action immediately against MLC soldiers,
19 and the two commanders were destituted from their positions. My
20 colleague Mr. Nkwebe is going to say more on this because he will focus
21 on personal responsibility after me.

22 The Prosecution witness states Mr. Jean-Pierre Bemba Gombo had --
23 remains innocent with respect to the use of MLC soldiers on the
24 Central African Republic. The participation -- or, rather, the
25 intervention of the MLC in the Central African Republic was limited to

1 putting soldiers at the disposal of the Central African Republic, and
2 Mr. Jean-Pierre Bemba's role is limited to putting these troops at the
3 disposal of the state, and he had nothing to do with how these soldiers
4 were actually used on the territory of that country.

5 That's it, Madam President, your Honours, pages 20 and 21,
6 investigations conducted, the conclusions of a magistrate from the
7 Central African Republic. And I can tell you that these are conclusions
8 taken within a context, in a country that is hostile to Jean-Pierre
9 Bemba. And I will tell you that when these investigations were
10 conducted, they were conducted under the Presidency of current president
11 Bozize, who at the time of the conflict was the rebel leader. He was the
12 adversary to the troops that were defending President Patasse, including
13 MLC troops. And so it is under this regime, a regime which we could fear
14 would be partial, but you will find that we had to deal with objective
15 magistrates, magistrates who were independent and who stated that charges
16 should be dropped against Jean-Pierre Bemba with respect to
17 participation.

18 You will find that when the case was referred to the
19 International Criminal Court the government of the Central African
20 Republic does not ask you to convict Mr. Jean-Pierre Bemba. The
21 government is asking you to continue with criminal investigations,
22 criminal proceedings involving several suspects. And the investigations
23 had found that charges should be dropped against Mr. Jean-Pierre Bemba,
24 especially as his participation in the crimes was not established.

25 Why do I say this? I say this because if you look at the

1 documents from the Central African Republic, you will find that that
2 document does not even talk about co-perpetration. They only talk about
3 complicity, which is a lower level of participation compared to
4 co-perpetration.

5 How then can you understand that before your International
6 Criminal Court and pursuant to Article 25(3) of the Rome Statute you
7 cannot consider the -- or establish the responsibility of a person on the
8 basis of complicity? Only co-perpetration can allow you to convict
9 Mr. Jean-Pierre Bemba pursuant to Article 25(3) of the Rome Statute.

10 You will also find that in the document from the Central African
11 Republic, which does not make any mention of co-perpetration, you will
12 find that that document only talks about complicity, and it also asks for
13 charges to be dropped. So even complicity is excluded by the legal
14 authorities. And these are the conclusions of a magistrate in Bangui,
15 who lives on the territory.

16 And now someone said the International Criminal Court is probably
17 a good mechanism, but we have to wait to see how this court is going to
18 evolve, because the notion of territorial jurisdiction is important. Why
19 is it important? It is important because it enables magistrates who live
20 on a given territory, who understand the mores and customs of that
21 territory, who understand local realities to be able to establish the
22 truth in order to render justice which is as fair as possible. We all
23 know that no human endeavour is perfect.

24 So those same magistrates on the ground who carried out the
25 investigations, who experienced the conflict personally, state that

1 Mr. Jean-Pierre Bemba is not even accomplice.

2 You know, when we talk about complicity, complicity is not as
3 serious as a co-perpetration. And you know better than I do that an
4 accomplice cannot be prosecuted alone, because when you -- an accomplice
5 does not act on his own. An accomplice acts with the principal
6 perpetrator. But Mr. Bemba is appearing before the court alone. And
7 even the documents of the prosecutor of Bangui, which feature in the
8 Prosecution file of the ICC, whose EVD number I have just given you,
9 states that Jean-Pierre Bemba is not even an accomplice. And so don't
10 you think this debate should stop here and now? That is the question I
11 am putting before you.

12 Now, if we were to limit ourselves to the issue of criminal
13 participation as developed by your own case law and as developed by the
14 case law of the International Criminal Tribunal for Rwanda, can't we
15 therefore say that today at this juncture there is -- or there are no
16 substantial grounds to believe that Jean-Pierre Bemba made an essential
17 contribution to the perpetration of war crimes and crimes against
18 humanity committed in the Central African Republic. That is what I find
19 within the framework of this case.

20 Page 24. I give you the EVD number again. EVD-P-00006, page 24.

21 It emerges clearly from the investigations carried out by the
22 criminal courts in the Central African Republic that it is not
23 Mr. Jean-Pierre Bemba but, rather, the authorities of the Central African
24 Republic who provided fuel to Congolese soldiers, MLC soldiers, who had
25 gone to intervene in the Central African Republic. This was done at the

1 behest of an authority of the Central African Republic whose name appears
2 on page 24, a name which I cannot give for reasons of confidentiality.
3 Page 24.

4 Madam President, your Honours, I would like to refer you also to
5 another document, EVD-P-00001. It's a document of the FIDH.

6 These documents are important, because in actual fact before this
7 case was referred to your Court officially, under the situation in the
8 Central African Republic this NGO was the first to carry out independent
9 investigations, and it sent information to the Office of the Prosecutor.
10 In fact, it is on the basis of FIDH investigations that the Prosecution
11 team is building its case, because most of the investigators of the FIDH
12 were actually on the ground in the Central African Republic. Some were
13 Central Africans, those who experienced the reality and who understand
14 the local realities of the country.

15 Page 21. The FIDH states, I will even go as far as saying it
16 clearly states, that there is no evidence that allows us to establish the
17 direct participation of Mr. Jean-Pierre Bemba to the perpetration of the
18 crimes. That is a finding, a conclusion of the FIDH, which carried out
19 investigations using some investigators from the country who had
20 experienced the conflict. So the whole case of the Prosecution team is
21 built on this report. And so from this entire report why does the
22 Prosecution team extract such important exculpatory material?

23 That is the situation that led to the outrage expressed yesterday
24 by my esteemed colleague.

25 Madam President, I would like to refer you to the investigation,

1 the investigation conducted in the Central African Republic.

2 In a Prosecution document, EVD-P-00006, ERN 0077, as well as
3 ERN 0080, 0080, and also ERN 0086, 0086. As concerns essential
4 contribution, it emerges clearly that it was the authorities of the
5 Central African Republic who provided uniforms of the regular army of the
6 country to MLC soldiers, and also provided combat equipment. It was
7 President Patasse and not Mr. Jean-Pierre Bemba who provided the means
8 and issued operational instructions with regard to the offensive on the
9 ground.

10 MLC soldiers were provided with fuel on the direct instructions
11 of President Patasse as soon as they arrived in Zongo. Madam President,
12 this is information from the Prosecution file.

13 Do you think we need to carry on with this discussion again, with
14 this debate? There's a question I wish to put before you now, that is
15 with respect to the essential contribution of Mr. Jean-Pierre Bemba, or
16 should we rather consider that the information from the Prosecution file
17 speaks for itself?

18 With your permission, Madam President, I would like you to take
19 all this information into consideration, and I would like to conclude
20 with respect to the participation on the -- in the Central African
21 Republic. To conclude, therefore, I would like to refer to the
22 testimony, the direct testimony, of the magistrate who carried out the
23 investigations in the Central African Republic. Rest assured I will not
24 give his name. Neither will I give his function. It was a magistrate of
25 the Central African Republic who carried out the investigations of the

1 FIDH. I'm not talking about investigations carried out by someone who
2 does not speak with the authority of a magistrate. I am talking about an
3 investigation carried out by one of your peers at a national level.

4 This magistrate was interviewed by the investigators of the
5 Prosecutor. They asked him many questions. "Really, do you have the
6 impression that Mr. Jean-Pierre Bemba allegedly participated?" And this
7 magistrate answered -- and may I inform you that this is a magistrate
8 appointed by President Bozize. That is the political adversary of
9 President Patasse, President Patasse who was supported by MLC soldiers.
10 And so this magistrate had every reason, every reason to bury Mr. Bemba,
11 figuratively speaking. And I think that this debate on criminal
12 participation would have been limited to telling you that the magistrate
13 who carried out the investigation gave his word as a magistrate.

14 Now, listen to what he says, and for that I'd like to refer you
15 to Prosecution document EVD-P-00148, 4-8, ERN 0148. And again, ERN 0150.
16 0150.

17 The magistrate says it was the government of the Central African
18 Republic under the presidency of Patasse who provided Congolese MLC
19 soldiers with all the vehicles, all the means of transport to facilitate
20 their movement in all the military operations carried out in the
21 Central African Republic during the entire period, that is, between
22 October 2002 and March 2003.

23 Now, where is the essential contribution of Mr. Jean-Pierre Bemba
24 in this case?

25 I would like to return to two points. The Prosecutor is taking a

1 shortcut by telling you that combat equipment and weapons were provided
2 from Gbadolite by Mr. Jean-Pierre Bemba. I'd like to focus on this for a
3 moment. Madam President, your Honours, I refer you to EVD-P-00143,
4 ERN 0419, 0419. I think there is a small error in the French transcript.
5 It's corrected now.

6 Madam President, I'd like to return to the testimony of this
7 Prosecution witness on which the Prosecution wishes to rely in order to
8 invalidate the declarations of all the others, and this is Witness 0036.
9 This witness who claims that some equipment left from Gbadolite to be
10 transported to Bangui. Now, in actual fact if this witness talks about
11 an airlift between Gbadolite and Bangui, why is it that in his
12 investigations the Prosecutor does not say that in actual fact all the
13 equipment came from Libya. And this has been corroborated by another
14 witness, another Prosecution witness who was based there on the spot in
15 Bangui. So in actual fact, what actually happened? What really
16 happened? Gbadolite had never provided any weapons or combat equipment.
17 What happened was clear. And I will conclude in about three or four
18 minutes, Madam President, with your permission.

19 The airport in Gbadolite is an international airport. I'm
20 certain that the Prosecution team is aware of this. They carried out
21 their investigations. It is an international airport with about
22 3.600 metres, compared to the airport in Bangui, which at the time had
23 about 2.600 metres. And so we think that it would have been normal that
24 with respect to this point, which will be elucidated by my colleague
25 Mr. Liriss, that the airport in Gbadolite is used as an international

1 airport for the transit of equipment which was coming not from the MLC
2 but, rather, from Libya. This is crucial information which the Office of
3 the Prosecutor should have provided to you instead of giving you
4 incomplete information.

5 As proof of this, and I will end on this point, I refer you to
6 the document EVD-P-02340, 02340. ERN 0483. 0483 ERN. I think also an
7 error in the French transcript. Corrected now. And so this Prosecution
8 witness, therefore, actually gave information to the Prosecution team.
9 He said I was on the ground in Gbadolite and I know exactly what
10 happened. And this Witness 0045 says that it was Libya that provided all
11 the weapons and ammunition and financial support needed for the
12 intervention for the government of the Central African Republic.

13 President, please take stock, as I am, of the fact that there are
14 no substantial grounds to believe that Mr. Jean-Pierre Bemba was or could
15 or would have participated in any substantial way in the war crimes and
16 crimes against humanity committed in the Central African Republic.

17 Thank you.

18 JUDGE TRENDAFILOVA: Thank you, Mr. Kilolo. I thank you for not
19 taking advantage of my silent consent, and you really proceeded only
20 three minutes more.

21 We shall adjourn the hearing and resume after the break at 11.35.
22 Thank you.

23 MS. KNEUER: Madam President, may it please the Court.

24 JUDGE TRENDAFILOVA: Yes, please.

25 MS. KNEUER: Very briefly. The Prosecution is concerned about

1 the handling of the corrections of the EVD and ERN numbers, and with your
2 permission perhaps you can allocate the Prosecution a couple of minutes
3 after the break to address this issue.

4 (Expunged)

5 (Expunged)

6 JUDGE TRENDAFILOVA: Would you not repeat, please, this
7 information. We have taken notice. The Chamber is very attentive. We
8 follow everything, and we are going to take our decision.

9 MS. KNEUER: Thank you very much, your Honours.

10 JUDGE TRENDAFILOVA: Thank you.

11 The hearing is adjourned.

12 COURT USHER: All rise.

13 Break taken at 11.04 a.m.

14 On resuming at 11.33 a.m.

15 COURT USHER: All rise.

16 JUDGE TRENDAFILOVA: Please be seated. The Confirmation Hearing
17 is resumed.

18 Security officer, would you be so kind to invite Mr. Bemba into
19 the courtroom.

20 (The suspect entered court)

21 JUDGE TRENDAFILOVA: We proceed with the presentation of the
22 Defence -- or Ms. Kneuer, you wanted to raise an issue about EVD numbers.
23 You have the floor before we proceed with the Defence.

24 MS. KNEUER: Thank you, Madam President, your Honours. The
25 Prosecution would like to respectfully request that corrections of EVD or

1 ERN numbers are submitted before the closing of the hearing, because
2 otherwise the Prosecution would be deprived to respond to the
3 corrections. The Prosecution believes that this is essential that we
4 have is the opportunity to do so.

5 The Prosecution would be ready to share with the participants and
6 the parties and the Chambers the corrections on the side of the
7 Prosecution. We need to make nine corrections in total.

8 Thank you, Your Honours.

9 JUDGE TRENDAFILOVA: Thank you, Ms. Kneuer. I think that this is
10 a reasonable request, and I grant it. I think that it's very important
11 when everyone starts working as of tomorrow on this case to have absolute
12 clarity about the evidence. And when are you going to submit your
13 corrections?

14 MS. KNEUER: Your Honours, we can do this right now.

15 JUDGE TRENDAFILOVA: Well, not now. We are going to proceed with
16 the session, but after the lunch break.

17 MS. KNEUER: Sure.

18 JUDGE TRENDAFILOVA: Will the Defence team be in a position to
19 submit these corrections which are essential for the case of the Defence?

20 MR. KHAN: Your Honour, the difficulty is it appears as two types
21 of error. There's the error that may have crept into the LiveNote
22 transcript that -- I think that has happened on various occasions and
23 perhaps wasn't spotted by the Defence previously. I think we've been
24 more alert since my learned friend highlighted the difficulty of
25 ERN numbers. That's one type of mistake. The second type, of course,

1 there's the possibility that due to inadvertence or omission the wrong
2 number has been read out in the first place. I would ask that no
3 prejudice really would be caused if we could file this list tomorrow.

4 My learned friend has said on numerous occasions, of course, and
5 it's quite right she knows the evidence of the -- of the Prosecution.
6 The substance of the submissions put forward by the Defence are accurate
7 and will be verified in due course. To the extent that they're not
8 verified of course your Honours will disregard them, but, in my
9 submission, on a practical step, you've got the ERN numbers on the
10 provisional transcript courtesy of LiveNote.

11 It's going to be difficult today, we've got one case manager,
12 that's all -- that's the only resource we've got. I've got a legal
13 consultant working on something else, to go through the last three days
14 of transcripts and then go to Ringtail to double-check each of the ERN
15 numbers. We also don't have any interns, so it's -- there's one person
16 upstairs who's working on the matter. So I would ask that we file
17 tomorrow to the best our ability. Otherwise, of course, your Honour, the
18 ERN numbers will have to be taken as they are in the LiveNote transcript
19 at this juncture. But in any event, the record of proceedings is not
20 determined by the LiveNote transcript but by the final transcript that
21 will be in your Honours' possession, and to the extent that there is any
22 mistake that prejudices the Prosecution now, that can hardly be helped if
23 my learned friend has read out and Mr. Nkwebe have read out previously
24 and myself the correct ERN numbers, but I don't think in the next short
25 while while we are in court we can troll through the last three days'

1 transcripts and double-check it with Ringtail. I don't see how we could
2 do it in good faith.

3 JUDGE TRENDAFILOVA: I would like to make two points. Point
4 number one is that in their closing statements the parties are supposed
5 to make an overall assessment of the evidence that has been presented and
6 discussed, to analyse it and on the basis of the evidence to make
7 suggestions with regard to the decision to be taken by this Chamber. So
8 I have to pay tribute to the concerns of both parties to have the strict
9 EVD numbers. At the same time, my second point is that such omissions
10 happen in criminal proceedings, and we have to be realistic, although I
11 very much rely on the diligence of the team of the Defence to do your
12 utmost to the extent possible to supply what the Prosecution's team
13 needs. But if it is not possible to make it as diligence as it is
14 required, the Chamber will accept tomorrow your submission.

15 MR. KHAN: I'm grateful.

16 JUDGE TRENDAFILOVA: So without any further ado, I will give the
17 floor to the Defence, however, asking the Defence how much time the
18 Defence will need to finalise its presentation on the individual criminal
19 responsibility. My calculation shows me that from the previous sessions
20 you have 42 minutes left.

21 MR. KHAN: Your Honour, I did as a precursor before this
22 Confirmation Hearing started anticipate that the Defence would be
23 applying for a further two hours to deal with the issue of individual
24 criminal responsibility. My learned friend Mr. Kilolo will require about
25 40 minutes or thereabouts to finish his section, and co-lead counsel

1 Mr. Nkwebe will need about two hours to deal with the other aspect.

2 Your Honour, I do understand the imperative of the Trial Chamber
3 that the proceedings finish today. We will ensure as far as we're able
4 that it will finish today, and I'm perfectly willing to adapt my closing
5 according to the time that's available, but I think these components, as
6 your Honours would have heard, are exceptionally important to
7 your Honours' overall determination of this matter and whether or not the
8 charges should be confirmed.

9 Your Honours, given that this issue was quite clearly and
10 squarely raised by the Defence before the proceedings started, I would
11 ask that your Honours be indulgent and grant us the two hours, but in
12 total two hours 45 minutes.

13 JUDGE TRENDAFILOVA: Of course the Chamber would never accept to
14 prejudice the work of the Defence and the interests of the Defence, and
15 we shall grant this opportunity, this time, in addition to the time
16 allotted to the Defence. However, I would ask you very much to be
17 mindful of our responsibilities to the interpreters, that we cannot have
18 session longer than one hour and a half, and there should be always
19 30 minutes break. So it's not up to the lack of understanding on behalf
20 of this Bench. We're Judges that have to follow very strictly the
21 regulations of this institution in addition to our obligation to follow
22 the law.

23 So you have the floor now. Mr. Kilolo, will you proceed, or
24 Mr. Nkwebe Liriss? It's you. The floor is over to you.

25 Just to remind you, we have to finish at 1.00, five minutes past

1 1.00. Thank you.

2 MR. KILOLO (interpretation): Thank you, Madam President,
3 your Honours. I think I'll need about 45 minutes. I'll be dealing with
4 the subject of the mental element, because in this case the most
5 important thing is to ask ourselves whether Mr. Jean-Pierre Bemba
6 actually had -- or, rather, acted with criminal intent with regard to the
7 crimes that are now attributed to MLC soldiers.

8 I'd like to refer to international jurisprudence in this respect.
9 In a judgement rendered by the ICTR, Trial Chamber I, case ICTR-96-4-T of
10 the 2nd of September, 1998. The case is Akayesu, the Akayesu case,
11 paragraph 476, and this jurisprudence insists on the fact that the
12 Prosecution is obliged to present proof or has the burden of proof and
13 must demonstrate that there was criminal intent, there was deliberate
14 action -- or, rather, deliberate intent that the crime should be
15 committed. This is also covered by Article 30 of the Rome Statute, which
16 states that the Prosecution has that very same obligation. And with
17 regard to the case, I have to say that the Prosecution does not succeed
18 in proving this intention. The Prosecution does not succeed in proving
19 that Jean-Pierre Bemba had such intent. It does not demonstrate that
20 Mr. Bemba was aware of the fact that troops were being sent to the CAR
21 and that as a result there would be war crimes committed there.

22 In the case -- in the Prosecutor's case that we will go through,
23 you can see that at no point in time did Mr. Jean-Pierre Bemba have
24 knowledge or feel that crimes would be committed, war crimes would be
25 committed. There are no objective elements in the Prosecution case that

1 would allow us at this stage of the proceedings to believe that there
2 was -- that it was quite probable that crimes would be committed by MLC
3 soldiers.

4 Madam President, your Honours, you know that the MLC had a code
5 of military conduct which included clauses on respecting human rights.
6 All the reports we have mentioned already that came from the authorities
7 in the field in the CAR mentioned the fact that hostilities were being
8 conducted under normal conditions. At no point in time were any
9 violations of human rights reported.

10 Mr. Jean-Pierre Bemba, as you will see from the case, never
11 permitted himself to take the slightest risk with this regard. He always
12 attached much importance to human life. At no point in time did he show
13 indifference with regard to human life. We've already evoked this issue.

14 He had an internal investigation launched to the extent that this
15 was possible. Naturally, this was without bypassing the prerogatives of
16 the CAR authorities which communicated information, in which information
17 was relayed on cases of theft, isolated cases of theft, isolated
18 incidents, and this was not attributable to all MLC soldiers but only to
19 a few of them who were also punished.

20 With regard to this matter, I would also like you to refer to the
21 following: Prosecution document EVD-P-00033, page 1. It's a press
22 article from the CAR local press, which insists on the fact that
23 Mr. Bemba made sure that if MLC soldiers had been identified as guilty of
24 committing acts of abuse against civilians in the CAR, he would -- they
25 would be arrested and punished.

1 In EVD-P-0087, you'll see that in order to prevent and punish
2 criminal acts committed by MLC soldiers Mr. Jean-Pierre Bemba, on the
3 16th of November, 2002, issued a decree organizing courts for the Army
4 for the Liberation of Congo. You will also see that in another
5 Prosecution document, EVD-P-00088, you can quite clearly see that as of
6 the 15th of January, 2003, before the end of the armed conflict,
7 Mr. Jean-Pierre Bemba wrote to the UN Special Representative in the DRC,
8 and in this letter you can clearly see that he did everything that it was
9 possible for him to do to punish the crimes that some MLC soldiers had
10 allegedly committed, and this was following the internal report on the
11 MLC.

12 In the document there is no trace of reproaches made by the UN.
13 He, in fact, asked for the UN to collaborate within the framework of an
14 international investigation. This document demonstrates that
15 Mr. Jean-Pierre Bemba categorically condemned these crimes and expressed
16 his compassion for all the families affected by them. He confirmed that
17 soldiers had in fact been prosecuted for rape, pillaging, and theft, even
18 if later on the court seized of the case decided that the only elements
19 demonstrated against these soldiers were elements concerning theft and
20 pillaging.

21 This was his position with regard to violations committed by the
22 soldiers. By taking this position, Jean-Pierre Bemba said that the MLC
23 soldiers knew that the golden rule in the code of conduct was that
24 civilians should be protected and that human rights should be respected
25 as well as international humanitarian law, whatever the circumstances.

1 You will immediately see with regard to this part of the
2 Prosecution case that Mr. Jean-Pierre Bemba, in particular, asked for the
3 assistance of the UN, who are better equipped to carry out investigations
4 that he had initiated. He said, and I quote: "Given that the
5 investigation is being proceeded, I'd be grateful if you could disclose
6 any incriminating evidence to me and also the names of anyone involved in
7 this affair. I have already made such a request in the letter. The
8 assistance of various services and other humanitarian organisations and
9 human rights organisations would help me to make sure that the law
10 prevails. The investigation carried out by the MLC in foreign territory
11 was limited. They had a very limited margin for manoeuvre with regard to
12 the Central African authorities."

13 So this is the exchange of letters that Mr. Jean-Pierre Bemba had
14 at the time, in January 2003. So this was far before the hostilities in
15 March, at a time that there was no suspicion.

16 Madam President, could you also have look at a another document
17 from the Prosecution, EVD-P-00089, where you can see, Madam President, on
18 pages 1 and 2 that Mr. Jean-Pierre Bemba is addressing a letter to the
19 Special Representative of the Secretary-General of the UN. It's on the
20 31st of December, 2002, as early as that date. Far before the end of the
21 armed conflict.

22 "I completely disapprove of summary executions, of rape and theft
23 committed by soldiers when MLC soldiers were intervening." He didn't
24 evoke the situation in Central African Republic at the moment. He
25 referred to the situation that the Prosecution went back to a minute ago

1 in Ituri, and he said that those responsible acted in violation of the
2 MLC code of conduct. "I ordered that the commander of the operations in
3 the east should be preventively arrested. I'm writing to you to ask for
4 your support in the investigations that have to be carried out in order
5 to shed light on what actually happened in the field." So that is the
6 state of mind that we can attribute to Mr. Jean-Pierre Bemba at the time
7 of the events.

8 In another Prosecution document you will be able to see -- and
9 the document is EVD-P-00090, you will be able to see at page 3 that there
10 is a letter Mr. Jean-Pierre Bemba addressed to the Secretary-General of
11 the UN. It was on the 14th of February, 2002. In that letter he said he
12 would not let perpetrators of crime act with impunity. "The preliminary
13 results of the investigations carried out by your investigators led to
14 your official declaration dated the 15th of January, 2003, in which you
15 asked me to assume my responsibilities in order to put an end to the
16 serious or rather grave violations of human rights and in order to ensure
17 that the responsible soldiers be arrested. There will be an
18 investigation and everything will be done to respect judicial
19 independence."

20 In another Prosecution document, EVD-P-0002371 -- EVD-02371, you
21 will see on pages 13 and 14 that this Prosecution witness himself made
22 the following claim: This witness claimed that most of the troops in the
23 MLC in fact came from Congolese armed forces. These soldiers were well
24 trained with regard to respecting military rules. The witness also
25 stated that the recruits benefitted from military training, especially by

1 the -- by Uganda, and Uganda would send officers from Uganda and they
2 also benefitted from training by other Congolese officers in training
3 centres.

4 The witness adds that there was discipline within the MLC, in
5 particular when the soldiers were in the presence of their superiors.
6 The witness states and confirms that there was a code of military contact
7 in place.

8 In another document, EVD-P-02296, EVD-P-02296, this witness
9 states that the ALC soldiers were trained, and there were training
10 centres in Buta, Lisala, Bumba, Golombe. And the witness says that the
11 ALC didn't take any risks when placing at the disposal of the CAR
12 soldiers who had been well trained, who were familiar with the rules, the
13 necessity to show respect for international humanitarian law.

14 The witness added that the ALC soldiers were trained for about
15 six months, and apart from combat technique, they had a code of good
16 conduct that they had to be familiar with during their entire training
17 period. This code had rules on the rules or laws of war. There was a
18 manual that was used with regard to how soldiers should act in given
19 situations within an armed conflict, within the framework of an armed
20 conflict.

21 When you read this code you can see it was well adapted for the
22 soldiers. Even an average soldier could assimilate or could benefit from
23 the use of such a manual. This is what a Prosecution witness has relayed
24 to us.

25 In another Prosecution document, EVD-P-02345, on page 19, the

1 witness states that the only time that the witness met soldiers in the
2 CAR, Mr. Bemba spoke to them and addressed two issues. The first one had
3 to do with discipline and necessity of acting in a disciplined way. The
4 second issue had to do with the punishment that would be meted out to any
5 soldiers from the Congo in the CAR who failed to act appropriately.

6 This witness states on page 23 that Mr. Jean-Pierre Bemba asked
7 the troops during this very same visit in the CAR not to dare to commit
8 acts that weren't part of their mission, otherwise, they would be
9 punished. The witness added that after that conversation with the troops
10 their behaviour in general terms changed in a significant way.

11 Madam President, your Honours, could you please have a look at
12 another Prosecution document, EVD-P-02349, ERN page 0658, 0659, 0661.
13 And here the witness states that there were political commissars who came
14 and acted as professors of morals, and they told the MLC soldiers about
15 the various rules that pertained to the MLC code of conduct. This code
16 had been orally translated into Lingala and into other local languages
17 for the benefit of the soldiers.

18 If one asks -- if one asks how well-instructed MLC soldiers were,
19 how well educated they were to determine whether they could understand
20 the Code of Conduct because this is a major concern that was raised by
21 the Prosecution in the course of their investigations, well, if one posed
22 this question one's in fact asking oneself about the principle of having
23 soldiers in African countries even though one knows that their level of
24 education is quite low. So we're posing the question of an entire
25 educational system, in particular in Africa, whereas one is well aware of

1 the fact that a number of African soldiers were involved in peace
2 missions, in regional, international organisations, and they satisfied
3 the criteria. These weren't Western criteria. The criteria used were
4 average criteria in the region. I think it's important to bear this in
5 mine.

6 It's also necessary to note that the MLC soldiers satisfied the
7 same criteria of training, of instruction, and of discipline as that of
8 the Congolese forces and as that of the armies in this area of
9 Central Africa.

10 Madam President, your Honours, you shouldn't look at them or
11 examine them from the point of view of the West. I think this is
12 important. As we have already said, this is all the more the case
13 because most of the MLC soldiers came from the former army of the
14 Republic of Zaire, from Mobutu, and even some of them came from the armed
15 forces of the Democratic Republic of Congo. There are very few recruits
16 who came, and they were trained as stated by the witness Prosecution.

17 I would also like to point out the -- that the code of good
18 conduct was a reference document for the soldiers, the Congolese
19 soldiers, in the MLC. For them it was a Bible. So this is the state of
20 mind. This is the intent of Mr. Bemba.

21 I would refer you to EVD-P-02352, ERN 0742, which speaks to the
22 training of soldiers on the laws of combat.

23 The MLC army was made up of very experienced soldiers, soldiers
24 who had proven themselves under the Mobutu regime as well as Congolese
25 forces of the Democratic Republic of Congo under the presidency of

1 Kabila, who had joined the MLC army. So they were not simply adventurers
2 who had been picked up along the way. It was not an undisciplined
3 militia.

4 Let me refer to EVD-P-02337 at ERN 0378. This witness states
5 that a -- a global food allowance was paid to the soldiers in the
6 Central African Republic. So it cannot be said that these soldiers were
7 not paid and that they had to loot and use the spoils of war as a means
8 of survival as the Prosecutor claims.

9 Your Honours, I would also direct you to another important
10 witness at document EVD-P-00138, ERN 0548. In fact, this witness
11 confirms that the Geneva Conventions were part of the training given to
12 the Congolese soldiers in the MLC and that there was indeed a code of
13 good conduct which stipulated the requirement to respect civilians, and
14 another regarding soldiers.

15 Furthermore, you will also see at ERN 0456, statement of the same
16 witness, that he specifies that there was an MLC code of conduct which
17 set out the general rules to be followed by the soldiers and the
18 sanctions which would be handed down to them should they violate the
19 rules. He also states that that self-same code refers to sanctions
20 against extortion, theft, looting, and murder of civilians.

21 Your Honours, I refer to document EVD-P-00102 at ERN 0368 and
22 0369, and ERN 0432.

23 This other Prosecution witness affirms that the only time that
24 Bemba met with part of the MLC troops he spoke to them in the strongest
25 of terms, drawing their attention to their obligation to respect

1 discipline and that soldiers had to be contained to avoid misconduct and
2 pillaging. He says that Mr. Bemba was unhappy and was most annoyed by
3 allegations of abuses carried out. The witness says that Mr. Bemba did
4 not approve the news -- news of that type which he received. He states
5 that on that visit, Mr. Bemba punished certain leaders amongst MLC
6 soldiers who were suspected as having committed thefts and pillaging and
7 that that had had a significant impact on the troops and that there had
8 been a return to order in the wake of that action by Jean-Pierre Bemba.

9 These, your Honours, are the documents that speak to the state of
10 mind.

11 I draw again from the Prosecutor's file at EVD-P-02356, ERN 0853.
12 This witness states that MLC men were even taken back to their base when
13 they committed abuses in the field.

14 And another Prosecution witness at EVD-P-00099, ERN 0465, this
15 witness specifies that once on the territory of the Central African
16 Republic the MLC soldiers were taken in hand, and the commanders of the
17 MLC and their group were able to go to the restaurant, and all of this
18 was taken in hand by Mr. Patasse, and all of this argues against
19 malicious intent on the part of those soldiers.

20 Another Prosecution witness, this time at EVD-P-00142, ERN 0382.
21 This Prosecution witness advances that MLC troops were made up of
22 permanent soldiers who had certainly not been recruited simply for one
23 military operation but, rather, they were a standing force. That is to
24 say that the force in question was made up of professional soldiers who
25 were trained.

1 I arrive now at my final submissions, and what I need to say is
2 that all -- the full investigation which has been carried out has failed
3 to demonstrate the existence of war crimes or crimes against humanity
4 which could be -- for which the MLC soldiers could be held to account.
5 The various steps taken by the NGOs, et cetera, or the various
6 deputations made to NGOs and international organisations remained without
7 reply, response, and therefore there is nothing to be held against
8 Mr. Jean-Pierre Bemba.

9 Your Honours, at this point in time, or at another, you will need
10 to question the submissions which have been put forward by the Prosecutor
11 and accept that in the absence of proven criminal intent or malicious
12 intent in the mind of Jean-Pierre Bemba, that negligence might be
13 referred to as underlying war crimes and crimes against humanity. But I
14 would like to draw your attention to a judgement of the ICTY, dated the
15 31st of July, 2003, which highlights that gross negligence does not meet
16 the requirements of the mens rea, the criminal intent, necessary for
17 events to be assimilated to crimes under international law. This is
18 ICTY case IT-97-24-T, in the Stakic case, dated 31st of July, 2003,
19 paragraph 643.

20 Your Honours, I'm obliged to note that evidence has not been
21 gathered to underpin this essential element which is required. The
22 Prosecution's file and case currently does not contain the evidence
23 necessary to conclude that the criminal intent criterion is met or that
24 there is a substantial grounds to believe that the criminal intent
25 required here has been met.

1 These are my submissions.

2 JUDGE TRENDAFILOVA: Thank you, Counsel Kilolo.

3 Now, Mr. Liriss, are you going to proceed with your presentation?

4 Was that the announcement made by Mr. Khan?

5 MR. NKWEBE LIRISS (interpretation): Your Honours, is there not a
6 break before we continue?

7 JUDGE TRENDAFILOVA: No. The break will be at 1.00. At one
8 point yesterday you mentioned that you would ask the Chamber to go into a
9 closed session or private session. Will -- will you repeat this request
10 to the Chamber now or later on? Nothing escapes our attention, so I
11 recall what you said yesterday.

12 MR. KHAN: Well, your Honour, perhaps it can be left to
13 Mr. Nkwebe. At the time he needs to go into closed session he makes the
14 application then. I think he wishes to start in public session.

15 JUDGE TRENDAFILOVA: Then I would very much like to once again
16 turn the attention of the Defence team to the concerns of everyone here
17 in this courtroom, not only the Bench -- not only in addition to the
18 Bench the Prosecution team but the Defence team as well, that no one
19 should suffer as a result of our endeavours to prove -- to establish the
20 truth. So I would ask Mr. Liriss to refrain from identifying any status
21 in the criminal proceedings of anyone he's referring to.

22 Thank you in advance, Mr. Liriss. You have the floor.

23 MR. NKWEBE LIRISS (interpretation): Thank you, Your Honour.

24 Your Honours, the fact of the matter is that I'm on my feet today
25 to say that were we to hypothesize for a moment that the crimes had taken

1 place, if we were to hypothesize that Mr. Bemba had known of them, the
2 question would still remain was he responsible for them. And that is why
3 yesterday in opening my submissions I felt the need to familiarise the
4 Chamber with a number of abbreviations which I will be using.

5 I spoke, for instance, of the community of Sahel-Saharan States.
6 This is a community of 11 African states, including Libya and
7 Central Africa. It's abbreviated name is CEN-SAD or COMESSA in French.

8 I also referred to the Economic and Monetary Union of
9 Central African, CEMAC.

10 JUDGE TRENDAFILOVA: As far as my memory serves me well, I think
11 that yesterday you made, kindly, this clarification. Should you refer
12 once again to it? Let us -- let us not lose time.

13 MR. NKWEBE LIRISS (interpretation): Your Honour, if you were
14 happy to proceed without this clarification, that's fine. That's fine.

15 JUDGE TRENDAFILOVA: I remember from yesterday the clarification,
16 so would you proceed in order to spare time of the proceedings.

17 MR. NKWEBE LIRISS (interpretation): Thank you, your Honour.
18 Yesterday I said that on the 2nd of December, 2001, the 3rd of December,
19 2001, a meeting was held, a mini-summit attended by a number of heads of
20 state, of members of CEN-SAD in Khartoum, the capital of Sudan. And I
21 said that in attendance at that summit were President Beshir of Sudan;
22 President Chiluba Frederick of Zambia, in his capacity as president of
23 the Africa Union; Idriss Deby, the president of Chad; Ange-Felix Patasse,
24 who at that time was the president of the Central African Republic;
25 General Abu Younis representing Colonel Gaddafi; Mr. Amara Essy,

1 Secretary-General of the African Union; Dr. Mohammed al-Madani,
2 Secretary-General of CEN-SAD; and Mr. Lamine Cisse, the Special
3 Representative of the UN Secretary-General for -- that is to say, the
4 Special Representative of the UN Secretary-General to the Central African
5 Republic.

6 At that meeting a decision was taken. This summit and the
7 decision taken at it are referred to in document EVD-D01-00053.

8 At the summit it was decided to constitute an African force for
9 the purpose of peacekeeping and maintaining stability in Central Africa.
10 Subsequently, at the meeting which was held on the 26th of January, 2002,
11 in Tripoli by the central organ of the African Union, the central organ
12 for conflict prevention and settlement which I will refer to as the
13 central organ, this was the central organ enlarged at ministerial level,
14 and it decided to adopt the decision taken in Khartoum and spoke in
15 favour of CEN-SAD and CEMAC establishing such a force. It decided and
16 exhorted the United Nations to dispatch a peacekeeping mission to the
17 Central African Republic, but that in the interim it lended its support
18 to the efforts of CEN-SAD. The decision -- this decision taken by the
19 organ, the central organ you will find in EVD-D01-00056.

20 Now, two months later the Security Council took note of that
21 decision taken by the regional organisation in the report made to it by
22 its president, and this you will see in EVD-D01-00032.

23 And so it was that some months later Sudan, Djibouti, and Libya
24 dispatched some forces, 100 soldiers in the case of Sudan or Libya, and
25 100 for the other two countries. These forces entered the Central

1 African Republic on the basis of a CEN-SAD Resolution which had been --
2 or had the backing of the African Union.

3 Later, President Patasse asked Colonel Gaddafi, who was the
4 coordinator of this force as stipulated in the decision to which I have
5 referred, asked him to reinforce that force in the wake of the failed
6 coup d'etat, and in particular in light of the instability. That request
7 made by President Patasse is confirmed in the Prosecutor's files.

8 When we read the document, that is to say the document relating
9 the account of Witness 06, Witness 46 recounts the trip made by Mr. Bemba
10 to Libya, and Witness 0025 also.

11 According to the document in our possession and which has been
12 filed in the record of the case, a Central African subject, former
13 minister of state and former ambassador to the United Nations, a charge
14 de mission of President Patasse from the 2nd of November, 2000, to
15 March 2003 states the following: "In October 2002 President Patasse
16 requested the assistance of the ALC militiamen, the Army for Liberation
17 of the Congo, that is to say of the MLC, to counter the Bozize rebellion.
18 I confirm the statement of Witness 46 as regards the negotiations
19 conducted in this connection with Treki and Mohammed al-Madani, and that
20 list that is not -- these are not the only ones because I know of other
21 members of the Jamahiriya who attended the meetings. As regards these
22 events, between January and March 2002, I can attest that Mr. Bemba was
23 not physically present in the CAR, and the militiamen lent to the -- to
24 CAR received their orders from (Expunged)
25 (Expunged), commander Paul Barin (as

1 interpreted) -- from Commander Paul Barin (as interpreted), security
2 advisor." The authorities of the CAR were addressed to Witness 40,
3 EVD-D01-00055, number 0 -- sorry, 0582.

4 Witness 45 states that this is the reason why Patasse request the
5 reinforcement of troops of -- of Colonel Gaddafi and that Colonel Gaddafi
6 had said that he would resolve the problem by negotiating for him with
7 Mr. Bemba.

8 Witness 31 confirms that negotiations took place. Witness 06
9 states that a decision was taken by the head of state of the Community of
10 Sahel-Saharan States to intervene in Central African. The Movement for
11 the Liberation of Congo was involved in this.

12 The report of the Central African court states that the
13 intervention of Jean-Pierre Bemba's fighters in Central Africa followed
14 on the negotiations conducted in Tripoli, Libya, and then in Gbadolite
15 between Ali Treki, the Libyan minister who presided over the
16 negotiations; Mohammed al-Madani, Secretary-General of CEN-SAD; the
17 Commander-in-Chief of the Libyan troops in Central Africa; and
18 Jean-Pierre Bemba. It's only after the completion of these -- of this
19 agreement -- it's only after this agreement had been reached that an air
20 bridge was established between Tripoli and Gbadolite, and then
21 Mr. Jean-Pierre Bemba's intervened in the CAR. This is document P-406,
22 page 2086.

23 So we agree that MLC troops intervened in the CAR within the
24 framework of a regional agreement, the regional entities recognised by
25 the international community, or if not, by the African Union. And what's

1 the legal basis?

2 Madam President, your Honours, the Rome Statute, in the preamble,
3 refers to the UN Charter. It follows that the UN Charter is a
4 fundamental principle, a principle upon which the ICC is founded, and
5 therefore the principles of the UN Charter are principles that have to be
6 followed by the ICC. The Court won't apply the Statute in any way. It
7 will be on the basis of international humanitarian law, and it will be on
8 the basis of the UN Charter.

9 Have a look at Article 51. "No provision of this Charter shall
10 prejudice the natural and legitimate rights to individual or collective
11 defence if a member of the UN is subject to armed aggression until the
12 UN Security Council has taken the necessary measures to establish peace
13 and international security."

14 Madam President, your Honours, Central Africa was the subject of
15 aggression. The Prosecution and myself agree on this point.

16 The Prosecution says up to the period covered by the charges in
17 1993 Ange-Felix Patasse was elected as president of the CAR, and he was
18 re-elected in 1999. The Prosecution adds in the amended DCC he remained
19 president of the CAR during the entire period relevant to the DCC. We
20 agree on this.

21 The Prosecution adds that on the 25th of October, 2002, the rebel
22 forces launched an attack directed against the democratically elected CAR
23 government, and we agree on this point too.

24 In response to this attack, armed attack, the rebel forces --
25 they say rebel forces. We can discuss this. Mr. Bemba deployed troops

1 in the CAR to support Patasse's presidency. No, to support a
2 democratically elected regime. We agree with this. We agree with the
3 Prosecutor on this.

4 The Prosecution adds the main objective of the common plan,
5 that's what they call a common plan, this is something that will also be
6 a subject of discussion, was to defend the democratically elected
7 government of Patasse, and we agree.

8 The Prosecution continues. The transport of MLC troops was
9 coordinated by Patasse's subordinates, and they then explained how the
10 troops entered the territory.

11 Even if we accept that -- if we accept that it was a
12 democratically elected government, if we accept that Article 51 of the
13 UN Charter gives them the right to defend themselves, and the
14 jurisprudence says one has the right to defend oneself -- rather,
15 Article 51 says the right to self-defence permits a country, a
16 Member State to request the assistance of a third party, a third country.

17 The Prosecution admits that it's to defend a sovereign state that
18 is the subject of aggression, and it is at that point that the Bemba
19 troops entered the country. So how can this be considered to be a
20 criminal act? How can the right to self-defence be considered to be a
21 criminal act by deciding that it amounts to a joint or common criminal
22 plan?

23 So the request for assistance from Bemba was made to a
24 non-conventional group. That's what one will say. Since 1999, the MLC
25 was not a non-conventional group. That's what we'll say. After the

1 agreement in Lusaka that I have mentioned, the MLC, just like the
2 Kinshasa government that was only a government in name, or the DRC, well,
3 these bodies represented three distinct bodies. Each governed part of
4 the territory until the reunification that took place with the global and
5 inclusive agreement at Sun City. We will then say even it was only an
6 armed group, Article 51 would still be applicable, because in the case
7 that opposed the Democratic Republic of Congo and Uganda, the ICJ said
8 that the Democratic Republic of Congo even had the right to request
9 assistance from a rebel group from Sudan.

10 Madam President, your Honours, the key error committed by the
11 Prosecution was to consider that the agreement reached between CEN-SAD,
12 I'll say between the organisation of the African entity and Bemba and
13 Patasse, was a criminal plan. Having said that, I would like the
14 Prosecution to tell us that when NATO troops entered Kosovo, this was
15 tantamount to carrying out a criminal plan.

16 I'm not saying that when there is an operation of legitimate
17 defence crimes are not committed. I won't deny that this is possible.
18 There's a multinational operation that is ongoing in Afghanistan today,
19 and crimes are committed, but can we say that the operation itself is no
20 more than a criminal common plan? And this is the distinction that the
21 Prosecution should be making. Today troops from the African Union,
22 poorly equipped are sent to Somalia, and if these troops commit crimes,
23 does this mean that the operation itself is no more than a common
24 criminal plan involving all the African leaders? Crimes may be committed
25 in the course of a legitimate operation conducted for the purpose of

1 self-defence. We don't contest the fact. But the operation itself
2 cannot be considered to be a common criminal plan. If that's not the
3 case in Kosovo, then it's not the case in Central Africa either. But if
4 it is the case in Central Africa, it must also be the case in Kosovo.
5 According to the international humanitarian law -- well, international
6 humanitarian law cannot be applied in different modes. We cannot have
7 two measures.

8 The second error committed by the Prosecution is to consider that
9 in the course of this operation Mr. Bemba nevertheless remained the
10 person responsible. Well, it's true you'll hear certain witnesses, when
11 it's necessary, that's why I'm being a little brief now, but that said
12 that Bemba was the almighty head of the MLC, it's true. But even if we
13 provide contrary evidence -- let's say that that is the case. Was he
14 indisputably the head of the MLC in Bangui? De facto and de jure control
15 of the troops made available to the CEN-SAD organisation, did Mr. Bemba
16 still have such control? We should examine the answers provided by the
17 Prosecution witnesses.

18 First we have the Central African authorities that examined this
19 case, and they state that the troops were made available to the CAR
20 government, and they were coordinated by the chief of presidential
21 security who reported to the head of state. The same Central African
22 authority adds it wasn't for Bemba to provide them with food. They were
23 serving the state, that the best person who provides evidence that the
24 troops were under the command of the Central African government, well,
25 it's the Prosecution that provides such evidence in its DCC. In its DCC,

1 the Prosecution states that Patasse provided Bemba's militia with food,
2 and the Central African treasury paid for it. That's true. Patasse gave
3 them the means they needed for transport, vehicles. That's true. The
4 Prosecution says he gave them uniforms. That's true. He took them to
5 the territory, to the battlefield. That's also true. So in this case,
6 who had de facto and de jure authority over the troops in the CAR?

7 Madam President, two weeks ago, no more than that, Mr. Sarkozy
8 visited his troops who were in FINUL in Lebanon.

9 Madam Registrar, if I'm going too fast please tell me.

10 President Sarkozy, as I said, visit the troops in Lebanon. And
11 does this make President Sarkozy of France the commander, the de facto
12 and de jure commander of the troops in FINUL? So in that case, if
13 Mr. Bemba visited his troops given to another state, why should that make
14 him the de facto and de jure control of his troops or commander of his
15 troops?

16 In the statement I read out a minute ago, I mentioned who had
17 command of the troops in question.

18 His report. He says, "When we arrived, I was placed under the
19 command of the Presidential Guard commander, the commander of the
20 operations, the chief of the main staff in charge of the operations, the
21 delegated minister, the coordinator of the operations."

22 I'll provide you with the EVD number. EVD-D01-00051, page 0567.

23 In response to the question put by the Prosecution, the question
24 about who gave this person orders in Bangui, the person replied, "I
25 received orders from the operations centre."

1 "Where was the operations centre in Bangui? Did you receive
2 orders from Gbadolite?" The witness said, "No." "Were you in contact
3 with Gbadolite?" "Only with my Chief of Staff." "Why?" "To inform him
4 of the state the troops were in. He said quite clearly, the troops don't
5 belong to me. It's my obligation to tell my superiors that there were so
6 many wounded, so many killed. Morale at is a good level or morale is at
7 a very poor level." And, Madam President, this is why we produced these
8 logs which have all messages, which contain all the messages that cover
9 the period in question. This is still in our office, although the
10 Prosecution has been through them. I'm surprised that these logbooks
11 weren't placed under seal.

12 There's an insidious question: "Did you report to Mr. Bemba on
13 issues involved in the operations?" He said, "Yes, through the Chief of
14 Staff. I said we were fighting in such a such a place or in such and
15 such a place." "Who decided that you were obeying?" He said, "It wasn't
16 a matter of obeying. I informed them. I wasn't obeying. I was only
17 obeying the CAR government, in fact."

18 The Trial Chamber in the Katanga case stated that criminal
19 liability had to take into consideration the criterion of control.

20 Madam President, your Honours, in light of all the evidence of
21 the Prosecution, all the Prosecution witnesses, although there aren't
22 many left, I think there are only 7 out of the 26 left, but with regard
23 to all the Prosecution's statements, in light of all these statements the
24 organisation of the troops, the operations were carried out by the CIA
25 government. In the DCC the Prosecution states quite clearly that there

1 was an operations centre called Beal, Camp Beal. The commander of the
2 Congolese troops said they were there. The commander of the MLC troops
3 says yes, it was there. It's even said that the operations were
4 conducted in such a manner that the Central African troops were at the
5 head, followed by MLC troops, and in the rear there were CEN-SAD troops.

6 I'll provide you with the relevant reference. P-406, page 0078.
7 These are statements made by a high-ranking Central African functionary.
8 It's also the statement given by Witness 25. All the armies were
9 together.

10 And now as for responsibility. Well, if we agree with the
11 Prosecution -- given that we agree with the Prosecution that the
12 objective was to support a democratically elected government, and if we
13 know that such an objective is not contrary to the UN Charter, if we know
14 that matters were coordinated in Africa and the troops were under the
15 command of the CAR government, in that case who is responsible for crimes
16 that may have been committed? And I will repeat. I'm not saying that
17 when one is involved in a peacekeeping operation or in self-defence,
18 legitimate self-defence crimes are not committed, but the issue is how
19 one can determine who is responsible.

20 The ICJ has already ruled on two separate occasions on the
21 matter. In the Nicaragua v. the United States case, the contracts -- the
22 Contras case. The ICJ and Nicaragua had referred the case to them
23 because the United States had trained, equipped, and transported the
24 so-called Contra Rebels in order to destabilise the Sandinista
25 government, and these rebels committed crimes against humanity.

1 Nicaragua seized the court of this case. And what did the ICJ say about
2 the case? The court stated the following: "To establish the legal
3 responsibility of the United States, it is necessary to demonstrate that
4 they had effective control, even if it was only partial, during the
5 operations during which the crimes were committed. So this control would
6 have to be partial at least. So it's not clearly established that the
7 United States had effective control. We cannot consider that they were
8 acting on their behalf."

9 In the Bosnia-Herzegovina v. Serbia case, the ICJ stated the
10 same. On the basis of what principle? On the principle of
11 resubordination. If troops are sent to be involved in an international
12 mission, they are subordinated to the organisation or to the country that
13 they have been sent to.

14 Your Honours, to say that Bemba is responsible for crimes that
15 may have been committed following an international mission, an African
16 mission, is contrary to Article 51. It violates Article 51 of the
17 UN Charter. And to say the exercise of this right is criminal means that
18 the ICJ -- or would mean that the ICJ is undermining the basis upon which
19 the UN organisation is founded.

20 These proceedings are being badly conducted. If there are
21 crimes, you have to address the legitimate government to which the troops
22 are being sent, but we didn't want to stop there. We wanted to follow
23 the Prosecution's charges, all the details of the Prosecution's charges
24 in order to prove that they are wrong. Our defence is based on
25 Article 51. Our fundamental defence is based on Article 51, and

1 therefore it has not been proven that Mr. Jean-Pierre Bemba is
2 responsible for the alleged acts.

3 Madam President, your Honours, I thank you.

4 JUDGE TRENDAFILOVA: Mr. Liriss, I didn't want to interrupt your
5 presentation, but now is the time to remind you that in the afternoon
6 session we have only -- in the afternoon hearing, we have only two
7 sessions, each one hour and a half. The schedule has allotted to the
8 Prosecutor's team one hour for closing statements. To the victims' legal
9 representatives in total 40 minutes, 20 minutes each, and one hour to the
10 Defence.

11 We have agreed that we shall respect the schedule that was
12 submitted to you on the 29th of December and that we shall finish today.
13 This was our agreement as of yesterday and this morning.

14 Yesterday the Chamber granted 30 minutes to the Defence. This
15 morning's session was at the disposal of the Defence team, and it makes
16 in total three hours and a half.

17 I would like to excuse not only to the participants but to the
18 public that I appear to be too picky and as if narrow-minded following so
19 strictly the minutes and the time allotted to everyone, but this is my
20 role. I have to play it properly according to the law. So I would very
21 much ask the team of the Defence to decide how best you're going to use
22 your one hour in the afternoon.

23 With this I adjourn the hearing, and we shall resume at 2.30.

24 Thank you.

25 Luncheon recess taken at 1.04 p.m.

1 On resuming at 2.31 p.m.

2 COURT USHER: All rise.

3 JUDGE TRENDAFILOVA: The Confirmation Hearing is resumed. Please
4 be seated.

5 The security officer, would you be so kind to invite Mr. Bemba.

6 (The suspect entered court)

7 JUDGE TRENDAFILOVA: Now we come to the final part of our agenda,
8 the closing statements of the two parties and the victims' legal
9 representatives. The parties have been allotted one hour each for their
10 closing statements. The legal representatives for victims 20 minutes
11 each, in total 40 minutes.

12 Of course I wouldn't like to direct the strategy of the parties
13 and of the legal representatives, but I will still allow myself to say
14 use wisely your time, be focussed and to the point.

15 With these words, I invite the -- Ms. Bensouda, your team. You
16 have the floor for closing statements.

17 MS. BENSOUDA: Thank you, Madam President, your Honours.

18 Madam President, on behalf of the Prosecution's team, I will be
19 presenting the closing submissions of the Prosecution.

20 Madam President, before starting to make my submissions, I just
21 wish to inform the Court that we will be incorporating -- we wish to
22 incorporate all the submissions that have been made during the course of
23 this Confirmation Hearing proceedings, and for that reason, your Honour,
24 I would not necessarily be referring to any EVD numbers. They will be
25 the ones that have already been referred to. Unless it is a new one, I

1 will not make reference to them as I make my submissions. If that is
2 acceptable to the Chamber, Madam President, your Honours, I wish to
3 proceed.

4 JUDGE TRENDAFILOVA: Yes, please go ahead.

5 MS. BENSOUDA: Thank you.

6 Madam President, your Honours, the evidence establishes
7 substantial grounds to believe that Jean-Pierre Bemba is criminally
8 responsible for the crimes as charged in the amended document containing
9 the charges; the three counts of crimes against humanity, namely rape,
10 torture, and murder; and the five counts of war crimes, namely rape,
11 torture, committing outrages upon personal dignity, murder, and pillaging
12 a town or place.

13 At the beginning of this hearing, your Honours, the Chamber
14 explained that this is not a trial, and in contrast to the trial, this
15 Chamber does not have to decide a person's guilt or innocence. Rather,
16 its purpose, you explained, is to act as a filter, distinguishing cases
17 that should go to trial from those that should not by simply determining
18 whether there is -- there is sufficient evidence to establish substantial
19 grounds to believe that the person committed the crimes as charged.

20 Similarly, your Honours, the standard for evaluating the evidence
21 at the Confirmation Hearing was also stated in the case of
22 Thomas Lubanga Dyilo, as well as in the case of Germain Katanga and
23 Mathieu Ngudjolo Chui. Confirmation Hearings, your Honour, are the means
24 to ensure that Pre-Trial Chamber commit for trial only those persons
25 against whom the Prosecution has brought sufficiently compelling charges

1 at that go beyond mere theory or mere suspicion. The Prosecution,
2 your Honour, must only provide concrete and tangible proof demonstrating
3 a clear line of reasoning underpinning its specific allegations.
4 Your Honour, the Prosecution does not need to prove that -- the guilt of
5 Jean-Pierre Bemba, that Jean-Pierre Bemba is guilty beyond reasonable
6 doubt. That is not the Prosecution's duty at this stage.

7 Madam President, your Honours, the Prosecution, we are
8 submitting, satisfies this standard at this stage.

9 In your deliberations, your Honours, after you receive evidence
10 from both sides, you must, your Honour, essentially answer three
11 questions. And the first one is: Does the evidence establish
12 substantial grounds to believe that the civilians in the Central African
13 Republic suffered crimes against humanity, the crimes of rape, of
14 torture, and murder, and whether they also suffered the war crimes of
15 rape, of torture, of outrages upon personal dignity, of murder, and
16 pillaging?

17 The second question that your Honours will have to answer is:
18 Does the evidence establish substantial grounds to believe that the MLC
19 soldiers perpetrated those crimes, the crimes that I have just mentioned?

20 And thirdly, your Honours, the question that your Honours will
21 have to answer is: Does the evidence establish substantial grounds to
22 believe that Jean-Pierre Bemba is criminally responsible for the crimes
23 of his troops against the civilians?

24 In these closing submissions, your Honour, I will summarise how
25 the evidence that we have presented to your Honours affirmatively answer

1 all these questions.

2 On the first question, your Honour, whether the civilians of the
3 Central African Republic suffered the crimes of rape, of torture, murder,
4 pillaging, and outrages upon personal dignity, firstly, your Honours, the
5 evidence establishes, I'm submitting, substantial grounds to believe that
6 the Central African Republic civilians suffered the crimes as charged,
7 and they suffered these crimes during the period between 26th of October,
8 2002, and the 15th of March of 2003.

9 Throughout this Confirmation Hearing, your Honours, the
10 Prosecution has presented substantial credible evidence of the crimes
11 that Central African Republic civilians suffered. Evidence from victims,
12 from witnesses, from MLC insiders, and NGO, and media and other reports,
13 all these sources are consistent, your Honour.

14 The main physical acts underpinning the charges of rape, of
15 torture and outrages upon personal dignity is rape in this case. The
16 Prosecution has relied on the statements of numerous witnesses, several
17 of them, who describe being raped. They describe the violence with which
18 the groups of MLC soldiers raped them, holding them down, your Honours,
19 tearing off their clothes, holding guns to their heads. The victims
20 describe crying in terror and in pain as MLC soldiers, one after the
21 other, one after the other, raped them anally or vaginally. Some
22 describe the MLC soldiers that raped them, these MLC soldiers who raped
23 them, that they raped them in front of their families. Others describe
24 MLC soldiers raping their family members whilst they were forced to
25 listen or to watch, and always powerless to stop it.

1 Your Honours, all of the evidence that the Prosecution has
2 presented shows that the victims of these -- this violence, of these
3 crimes, were all civilians. Your Honours, they were in their homes or
4 fleeing to safer areas where they could be safe. The MLC, your Honours,
5 at no point in time, it is shown, that they mistook the civilians for
6 combatants. In fact, the MLC attacked the Central African Republic
7 civilian population usually after they secured the areas where these
8 civilians lived. They attacked civilians to eradicate the support for
9 Bozize's rebels by destroying either their ability to support the rebels
10 or even their desire to do so.

11 These brutal and terrifying rapes caused the Central African
12 Republic civilians to suffer severe mental and physical pain, and
13 suffering, your Honours, that rose to the level of torture. These rapes
14 that the Prosecution has presented during the course of this
15 Confirmation Hearing also humiliated, it degraded, and it violated the
16 dignity of the rape victims, thereby constituting outrages upon personal
17 dignity.

18 Your Honours, the Defence objects in their submission that the
19 Prosecution has not presented any medical corroboration of the rapes,
20 but, your Honours, under the Statute medical corroboration is not
21 required. It is not required to substantiate the charges, to
22 substantiate, your Honours, the charge of rape. Rape constitutes a crime
23 against the physical and the mental integrity of the victims. The
24 witnesses, as we have described, their vivid and horrific description of
25 the crimes they endured, your Honours, are sufficient evidence to

1 establish these crimes. In addition, your Honour, numerous and credible
2 reports bring consistent information on the massive rapes.

3 And further to this, the horrendous rapes that Central African
4 Republic civilians suffered, the MLC soldiers randomly, your Honours,
5 randomly murdered Central African Republic civilians. Any excuse was a
6 valid reason to kill civilians in order to terrorise the population.

7 Your Honour, they killed civilians who attempted to prevent them
8 from pillaging their possessions, their livestock. They killed civilians
9 who they accused of supporting the rebels. They killed women who
10 resisted to be raped.

11 Your Honours, these murders, these killings, were not an
12 accident. They were not the collateral damage of an armed conflict.
13 Your Honours, these killings, the murders, were intentional.

14 Central African Republic civilians also watched as MLC soldiers
15 pillaged all of their possessions. MLC soldiers took everything they
16 could take, including food, livestock, electronics, and furniture.
17 Witnesses saw soldiers transporting pillaged items on their backs, in
18 vehicles, and into the Democratic Republic of Congo, and these items that
19 they took were often taken during the course of rapes, or they were taken
20 at gunpoint or after killing those who tried to protest. Further,
21 your Honours, by permanently depriving them of these possessions, their
22 possessions, the MLC soldiers also left the population with no tool to
23 protect themselves from further attacks.

24 Much of the Central African Republic population was subject to
25 multiple crimes. Often, your Honours, MLC troops simultaneously raped

1 and pillaged from the same victim, and sometimes they killed those
2 victims' family, the family members, as part of just one attack.

3 Your Honours, the Prosecution is additionally submitting that
4 these crimes that we have described, presented in the course of the
5 Confirmation Hearing, that these crimes were committed as both war crimes
6 and crimes against humanity. The evidence before your Honours, I'm
7 submitting, is sufficient to establish the contextual elements for both
8 Article 7 and Article 8 of the Rome Statute, crimes against humanity and
9 war crimes.

10 As to crimes against humanity, your Honours, the evidence
11 establishes that MLC soldiers committed crimes as part of a widespread or
12 systematic attack against the Central African Republic population and
13 that, your Honours, the MLC knew that this conduct was part of or was
14 intended to be part of that attack. The MLC troops, your Honours,
15 specifically targeted the civilian population as they moved into and as
16 they withdrew out of the Central African Republic.

17 Attacks on civilians, your Honours, were typically carried out in
18 an organised manner. It wasn't chaotic. And it is also carried out
19 often in the aftermath of military clashes between the MLC and Bozize's
20 rebels, and particularly in the former rebel territory.

21 Your Honour, the pattern you've seen is that after establishing
22 control over these territories, the MLC systematically attacked the
23 civilian population, conducting house-to-house searches of the
24 neighbourhood where they attacked civilians and pillaged property. The
25 circumstances of the attack, usually or in most cases or even in all

1 cases, I would submit, in public, in front of family members and with
2 inhuman brutality. These attacks show that the MLC intended to target
3 the Central African Republic population.

4 Bemba's troops were punishing them. They punished them for their
5 perceived support for the rebels and attempted to prevent any support for
6 future rebellions.

7 As to the crime -- as to the counts of war crimes, your Honour,
8 the evidence is sufficient to establish that these crimes were committed
9 in the context of a protracted armed conflict of a non-international
10 nature between Bozize's rebels and troops supporting Central African
11 Republic President Patasse, including, your Honours, the MLC. This was
12 more than an internal disturbance. This was an intense fighting between
13 high numbers of troops. The conflict lasted five months, yet witnesses
14 estimate that the number of victims were to be in the hundreds or were in
15 the hundreds. And, your Honours, this is a high number given the
16 relatively short duration of the conflict.

17 There is also no dispute that there is a nexus between the
18 criminal conduct and the armed conflict. MLC soldiers committed crimes
19 in Central African Republic only when they entered the country to fight
20 on behalf of President Patasse, and they attacked the Central African
21 Republic civilian population in attempt to traumatise and terrorise the
22 Central African Republic civilian population and to make them unable and
23 unwilling to support Bozize's rebels.

24 Your Honours, we ask ourselves, Did the MLC soldiers perpetrate
25 these crimes? And the answer is in the affirmative. Based on all the

1 evidence, all this evidence that we have presented, it is undisputed that
2 the Central African Republic civilians suffered horrendous crimes from
3 26th of October, 2002, to 15th March of 2003, and that these crimes
4 constitute crimes against humanity and war crimes.

5 The next question, your Honours, is who committed the crimes
6 charged therefore? And as I answered before, the evidence establishes
7 that it was the MLC.

8 The Defence does not -- has not disputed that the MLC soldiers,
9 the troops were physically present in Central African Republic from the
10 26th of October through to March 15 of 2003. The evidence shows that it
11 was these MLC soldiers who attacked the Central African Republic civilian
12 population. Victims of and witnesses to rapes, murders, and pillaging
13 identified the perpetrators as MLC soldiers. They describe how the
14 attackers consistently identified themselves as Bemba's men,
15 Jean-Pierre Bemba's troops, and MLC combatants. They also used the term,
16 as we have presented, "Banyamulenges" as the way of referring to the same
17 group of people. They describe how the perpetrators spoke Lingala, the
18 language spoken by those who came from on the other side of the river.
19 In other words, your Honours, from the Democratic Republic of Congo.

20 The Defence argued that Central African Republic civilians'
21 characterization of the perpetrators as Banyamulenge demonstrates that
22 the perpetrators were in fact not MLC soldiers. This is their argument.
23 Their argument, I'm submitting with the greatest respect, has no merit
24 and, in fact, confuses the issue. The issue here, your Honours, is not
25 whether MLC soldiers actually are Banyamulenge. That is not the issue.

1 That's not the point, your Honours. As we have submitted, and I submit
2 again, the term "Banyamulenge" has been used in Central African Republic
3 in a generic way to describe the MLC combatants as a whole irrespective
4 of their actual ethnic affiliation. This is the Prosecution's
5 submission.

6 What is relevant, your Honours, is that this term central -- this
7 term that is used, the Central African Republic civilians consistently
8 used it to describe a group they identify as the MLC. In addition, NGO
9 and media reports contain statements from other witnesses who are also
10 identifying their attackers as MLC soldiers. For example, the
11 Amnesty International report says that MLC soldiers raped Central African
12 Republic civilians in part to punish them for their assistance to
13 Bozize's rebels. Similarly, Radio France Internationale reported that
14 Jean-Pierre Bemba's troops massacred many people in PK22.

15 The Defence, your Honour, has also argued that many perpetrators
16 were Central African Republic soldiers, Chadian mercenaries, or Bozize's
17 rebels. They point to the evidence before the Court suggesting this.
18 But the fact is, your Honours, the main perpetrators were the combatants
19 of the MLC, and this is rooted in the evidence. All the sources have
20 been consistent in the Prosecution's presentation.

21 Let me recall, your Honours, that this was a fact that was
22 accepted by all during the conflict. The victims and witnesses described
23 the attackers as MLC soldiers, as Bemba's men. The evidence is clear;
24 the soldiers who were committing crimes in Central African Republic were
25 Jean-Pierre Bemba's MLC soldiers.

1 Thirdly, your Honours, and finally, on the questions I raised,
2 and this is specifically on the question whether Jean-Pierre Bemba is
3 criminally responsible for the crimes committed by his MLC soldiers. The
4 evidence that has been presented, your Honour, establishes substantial
5 grounds to believe that Jean-Pierre Bemba is criminally responsible for
6 the crimes that his MLC soldiers committed in Central African Republic.
7 Jean-Pierre Bemba sent his troops to Central African Republic in October
8 of 2002 as part -- and this he did as part of a common plan with
9 Central African Republic president, President Patasse, in order to
10 protect the presidency of Patasse from a coup attempt by former FACA
11 general, General Bozize.

12 Throughout 2002 to 2003, Central African Republic -- in this
13 operation in the Central African Republic, Jean-Pierre Bemba remained the
14 de jure and de facto Commander-in-Chief of the MLC, and as such,
15 your Honours, he defines and is responsible for the MLC's conduct.
16 Numerous witnesses have already described Jean-Pierre Bemba as the
17 Commander-in-Chief of the MLC, as the one in control of and making all
18 the major decisions for its army. Even Jean-Pierre Bemba himself has
19 publicly and repeatedly emphasised that he, as Commander-in-Chief of the
20 MLC, he controlled all their actions.

21 Further, the MLC's hierarchical structure established layers of
22 reporting that funneled directly back to Jean-Pierre Bemba. And
23 consistent with his de jure and de facto control, the evidence also shows
24 that Jean-Pierre Bemba made the decision to send the MLC troops into
25 Central African Republic in 2002 and that he could decide, he could

1 decide, your Honours, when to withdraw them.

2 In contravention of the Defence argument that he relinquished
3 control to Patasse once the MLC troops arrived in Central African
4 Republic, the evidence that we have presented substantiates his command
5 and control during the course of the intervention in Central African
6 Republic. Your Honours, we have presented that he received daily reports
7 from the field throughout the course of the operation. Witnesses confirm
8 this fact.

9 Jean-Pierre Bemba retained control over the MLC troops during the
10 2002 Central African Republic intervention. Specifically, your Honours,
11 one witness confirms that the commander of the MLC Central African
12 Republic operations received his orders for the operation in Bangui from
13 Jean-Pierre Bemba. This witness also further explains that this
14 commander could have only received orders only from Jean-Pierre Bemba.

15 The evidence that the Prosecution has presented further
16 establishes that Jean-Pierre Bemba sent his soldiers to Central African
17 Republic. When he did send them there, he knew that they would rape. He
18 knew that they would murder, and he knew that they would pillage from the
19 Central African Republic civilian population. His whole concept of
20 operation was that such acts would terrorise the population and
21 annihilate their ability to support the rebels. This is what he did
22 before. This is evident from the MLC's conduct in two operations prior
23 to the 2002 Central African Republic incursion, both, both of which
24 Jean-Pierre Bemba controlled.

25 First, when Jean-Pierre Bemba sent MLC soldiers to

1 Central African Republic in 2001 to help Patasse again defeat a coup
2 attempt, MLC soldiers raped, they murdered, they pillaged as they fought.
3 Then only days, just days, your Honours, before the 2002 Central African
4 Republic incursion, MLC in Mambasa raped, murdered, and pillaged again.

5 The evidence establishes that Jean-Pierre Bemba knew of the MLC's
6 crimes in the prior incursions. Witnesses and NGOs such as
7 Amnesty International, they report that Jean-Pierre Bemba received
8 reports of these crimes. Additionally, your Honours, witnesses state
9 that Jean-Pierre Bemba made an effort to be well informed, and he must
10 have known that the numerous media reports about the MLC's violence was
11 taking place.

12 Witnesses, your Honours, also describe seeing Jean-Pierre Bemba
13 and his guard in possession of the looted vehicles taken from
14 Central African Republic. It was with this knowledge and under these
15 conditions that Jean-Pierre Bemba sent his troops to Central African
16 Republic to help Patasse fight Bozize in the coup attempt of 2002.
17 Jean-Pierre Bemba approved the operation that included the destruction of
18 the perceived rebels in Central African Republic civilian population.

19 Your Honours, once his soldiers arrived in Central African
20 Republic and began to rape and to kill and pillage from the civilian
21 population, Jean-Pierre Bemba knew that the crimes were being committed,
22 and he did nothing to stop them. He maintained strict control over the
23 MLC while they fought in Central African Republic in 2002, and he
24 received information about his soldiers' conduct from numerous sources.
25 He maintained direct communication with the MLC commanders in

1 Central African Republic. He received daily oral or written reports from
2 General Staff and from the military and civilian intelligence bureaus.
3 He visited troops in the Central African Republic, and he addressed them.
4 He regularly followed the press which reported the MLC crimes, and he
5 also learned of the crimes directly from the Central African Republic
6 population.

7 Both Jean-Pierre Bemba and Patasse have acknowledged the MLC
8 crimes in November 2nd, 2002, and the 25th of November, 2002. Despite
9 reporting from the variety of sources including victims, media sources,
10 they continue the coordination of their essential contributions.
11 Jean-Pierre Bemba continued to provide troops, to control logistics,
12 communications, air transportation to the Central African Republic, and
13 he visited the troops. Patasse continued to provide the MLC with bases,
14 transportation, fuel, and food. Together, Jean-Pierre Bemba and Patasse
15 coordinated the conduct of the MLC troops in the Central African
16 Republic, and together, your Honours, despite their knowledge by
17 deploying an additional battalion to attack the civilian population in
18 five towns, the inescapable conclusion that cannot be avoided is that
19 Jean-Pierre Bemba and Patasse intended for the crimes to occur as part
20 and parcel of their common plan.

21 Your Honours, in their submission the Defence has argued that the
22 Prosecution failed to present evidence regarding Jean-Pierre Bemba's
23 knowledge and intent of the specific crimes charged. This again, with
24 greatest of respect, is incorrect. It is sufficient to establish that
25 Jean-Pierre Bemba and Patasse were aware that implementing their common

1 plan would result in the commission by MLC soldiers of rapes, murders,
2 and pillaging and that they acted with intent to bring about said crimes.

3 In fact, your Honours, the Defence supports its arguments by
4 purported quoting from the ICTY Krnojelac trial judgement that, and I
5 quote: "The more physically distant the suspect was from the scene of
6 the crimes the more evidence may be necessary to prove that he had actual
7 knowledge of them." The citation was made by the Defence. Your Honour,
8 we have carefully reviewed sections from the judgement that has been
9 referred to by the Defence, I believe that paragraphs 332 to 345, and it
10 is our submission, your Honour, that it points -- it points out that
11 neither the section of the judgement referred to by the Defence nor any
12 section, any other section from this trial judgement include the quote
13 used by the Defence, nor does the decision itself support the argument by
14 the Defence in any way.

15 To the contrary, your Honour. It is established -- established
16 practice by the Appeals Chamber of the ICTY that the specificity
17 requirement for pleading the details of a particular crime decreases the
18 more remote the accused is from the physical commission of the crime.
19 This is particularly relevant, your Honour, in cases against political
20 and military leaders who are usually not present at the crime scenes but
21 who control, remotely, what is happening there, who control remotely and
22 ensure that the crimes are committed.

23 For example, in the Kvočka judgement of 28 February of 2005 at
24 paragraph 65, the Appeals Chamber of the ICTY stated, and I quote from
25 them: "As the proximity of the accused person to those events become

1 more distant, less precision is required in relation to those particular
2 details, and greater emphasis is place upon the conduct of the accused
3 person himself upon which the Prosecution relies to establish his
4 responsibility as an accessory or a superior to the persons committed the
5 acts giving rise to the charges against him."

6 The Defence has also argued, your Honour, that Jean-Pierre Bemba
7 is absolved of responsibility for the MLC crimes because he sent his
8 troops to the Central African Republic for allegedly lawful reasons. In
9 fact, your Honours, this is partly one of their main arguments. And they
10 claim that the MLC was recognised as a legitimate government entity and
11 that Jean-Pierre Bemba sent his troops to the Central African Republic
12 only to defend Patasse's democratically elected government, and they went
13 there, your Honours, as peacekeepers in accordance with international law
14 and regional agreements.

15 Your Honours, the evidence does not support this contention by
16 the Defence. It does not support this argument. The most important
17 argument is that any comparison between the MLC and the peacekeepers,
18 your Honours, with due respect, is meaningless. MLC cannot be compared
19 to peacekeepers. The MLC had no international mandate. We're aware of
20 that. Peacekeepers, your Honour, blue helmets, blue helmets,
21 your Honours, have no mandate to rape or murder civilians or pillage
22 their property. These acts were the acts of Jean-Pierre Bemba's MLC.
23 The MLC were not peacekeepers. They were in Central African Republic to
24 commit crimes, and they did commit crimes.

25 Furthermore, the Defence would also have your Honours believe

1 that Patasse is solely responsible for the MLC crimes and that
2 Jean-Pierre Bemba bears no responsibility for those crimes. Jean-Pierre
3 Bemba would not have, could not have sent the MLC troops to
4 Central African Republic in the absence of his common plan with Patasse,
5 and Patasse certainly provided logistical support for the MLC, giving
6 them food, giving them fuel, and giving them uniforms.

7 The argument asserted by the Defence overlooks the fact that the
8 evidence we've presented demonstrates that Jean-Pierre Bemba retained
9 power over the MLC soldiers, power that Patasse did not have.

10 Besides maintaining control of their conduct in the field, the
11 evidence shows that Jean-Pierre Bemba, and Jean-Pierre Bemba alone,
12 controlled the MLC troops that entered the Central African Republic, and
13 more importantly when they left, when they withdrew from the
14 Central African Republic, he and he alone maintained control.

15 It was against Patasse's wishes that Jean-Pierre Bemba pulled his
16 troops out of Central African Republic in March of 2003. But because of
17 this control that Jean-Pierre Bemba had, him alone, he was in the best
18 position to end the MLC crimes in Central African Republic, because he
19 could have, he could have order the MLC to leave Central African
20 Republic. He could have, your Honours, presented [sic] hundreds of
21 crimes -- he could have prevented hundreds of crimes.

22 In addition, the Defence has also argued that Jean-Pierre Bemba
23 simply did not learn of the extent of the crimes that happened in
24 Central African Republic in 2002. Rather, the Defence would have you
25 believe that Jean-Pierre Bemba knew of only of the crimes of a handful of

1 soldiers, and, according to the Defence, all of whom he punished at the
2 Gbadolite trials. But, your Honours, numerous witnesses described that
3 these trials, these so-called Gbadolite trials, are a sham, and not one
4 single soldier, not one single soldier, your Honours, was ever prosecuted
5 for rapes committed in Central African Republic. The punishments that
6 were meted out in these sham trials were inordinately small in comparison
7 to the crimes, the horrific crimes of rape and killing and pillaging that
8 took place.

9 Those who were initially tried and so-called convicted and
10 sentenced for crimes committed in Central African Republic were amnestied
11 by Jean-Pierre Bemba himself. None of them, the Prosecution has
12 submitted, served a full-term sentence.

13 Clearly, your Honours, Jean-Pierre Bemba organised those trials
14 in an attempt to shield himself from responsibility. The trials
15 demonstrate only Jean-Pierre Bemba's knowledge that international crimes
16 were committed, his awareness of his complicity in those crimes, and his
17 intent to protect himself from further punishment.

18 The Prosecution would also want to emphasise that the crimes
19 committed in 2001 were only one factor, your Honours, only one factor for
20 the Pre-Trial Chamber to consider. It is not the only factor. It's just
21 one factor for the Pre-Trial Chamber to consider.

22 The Defence, your Honour, has also repeatedly and flagrantly,
23 with due respect, misstated and mischaracterized the evidence. For
24 example, on page 41 of the transcript of this hearing, 14th of January,
25 2009, the Defence represented that Jean-Pierre Bemba had no knowledge of

1 the fact that certain commanders allegedly encouraged acts of extortion
2 committed by soldiers. A review of the ERNs cited by the Defence,
3 your Honour, reflects that the witness in question, the witness that was
4 cited, in fact, your Honour, said exactly the opposite of what the
5 Defence said. This witness, in fact, stated, and I wish to quote from
6 the witness: "What I know for sure is that he," referring to
7 Jean-Pierre Bemba, "knew that the troops were misbehaving in the field."

8 On yet another occasion, your Honour, when discussing the
9 statement of Witness 69 -- I'm sorry, your Honour, Witness 68, the
10 Defence submitted that the only reason this witness thinks
11 Jean-Pierre Bemba is being connected to the crimes is because the
12 soldiers were Congolese. In fact, Witness 68, your Honour, again,
13 specifically states the opposite of what the Defence said, and this
14 witness said again, and I'm quoting from the witness: "He's responsible
15 there. He's the one who sent them over there -- over here to commit what
16 they did."

17 Your Honours, with the greatest respect, the Defence
18 characterization of the evidence is clearly not to be relied upon.

19 Your Honours, I would like to briefly now address the Defence
20 submission, I believe on the first day of the Confirmation Hearing, that
21 the amended document containing the charges is not pled with sufficient
22 specificity. First, your Honours, the Prosecution reiterates that the
23 Defence, we submitted before, we're submitting again, that the Defence
24 should have raised this submission at the latest on the 8th of January,
25 2009. The Single Judge had given this order specifically that it should

1 be done by the 8th of January, 2009. This was not done.

2 Secondly, your Honour, the Prosecution submits that the amended
3 document containing the charges does not, in fact, lack specificity. The
4 amended document containing the charges specifically pleads the incidents
5 of rape, of torture, murder, pillaging and the like, and support each
6 specific count. As such, your Honour, the amended document containing
7 the charges is sufficiently specific and thus satisfies the pleading
8 requirement of Article 61(3), and 67(1)(a) and (b) of the Statute as well
9 as Rule 121(3) and Regulation 52.

10 Shortly, your Honours, your Honours will retire to examine the
11 evidence and determine whether it establishes substantial grounds to
12 believe that Jean-Pierre Bemba committed the crimes as charged.
13 Your Honour, the Prosecution has performed a fair and unbiased
14 investigation. We have disclosed, your Honour, all evidence which might
15 or can exculpate Jean-Pierre Bemba, and we have disclosed this as readily
16 as we have disclosed incriminating evidence.

17 Further, your Honour, we have carefully reviewed all evidence
18 that the Defence submitted to the Chamber contrary to what the Defence is
19 alleging against the Office of the Prosecutor. And, for example,
20 your Honours, the Defence has argued that the Prosecution never reviewed
21 a notebook that the Defence submitted. This submission was made by the
22 Defence, I believe, yesterday, and probably this morning. And it was
23 their allegation that we did not review the notebook that they have
24 submitted which contains all the transmission to Jean-Pierre Bemba during
25 2002 in Central African Republic operation.

1 Your Honours, the Prosecution, I'm submitting, has carefully
2 reviewed this notebook. In fact, your Honour, it's just a four-page
3 document, the first page of which is a cover page, and it is -- the cover
4 page, it's a blank cover page. It contains no information as such.
5 These four pages, your Honours, I'm submitting cannot possibly constitute
6 all the transmissions that Jean-Pierre Bemba received during the
7 five-month 2002 Central African Republic operation, these four pages.
8 The evidence that is contained in the notebook and the remainder of the
9 Defence's evidence does not, your Honour, cannot frustrate the
10 Prosecution's case against Jean-Pierre Bemba.

11 And, your Honours, this is significant, particularly for the
12 victims in Central African Republic, the victims who were raped and who
13 were brutalised, victims, your Honour, who were violated and killed.

14 If the charges, your Honour, if the charges against
15 Jean-Pierre Bemba are confirmed and this case goes to trial, this case
16 will usher in a new phase in clarifying the understanding of the
17 realities of the crime of rape, especially, your Honours, of its profound
18 human -- human rights implications.

19 The evidence again, I submit, your Honours, is sufficient to
20 establish that Jean-Pierre Bemba is responsible for the rapes, for the
21 torture, for the murders, for the outrages upon personal dignity, and for
22 the pillaging that his, Jean-Pierre Bemba's, MLC soldiers committed in
23 Central African Republic in 2002 and in 2003. Your Honour, the
24 Prosecution respectfully requests that your Honours, in light of the
25 evidence that the Prosecution has submitted in these confirmation

1 proceedings, that you confirm all the charges against Jean-Pierre Bemba
2 and to commit Jean-Pierre Bemba for trial.

3 Your Honours, on behalf of my team, the Prosecution's team, it
4 has been an honour and a privilege to represent the -- the Prosecution,
5 I'm sorry, at this Confirmation Hearing. I thank you, your Honours.

6 JUDGE TRENDAFILOVA: Thank you, Ms. Bensouda, for your statement.

7 Now, following the schedule, I shall give the floor to the
8 victims' legal representatives in the order they have decided between
9 themselves. It's -- the floor over to you, Ms. Massidda. You're the
10 first.

11 MS. MASSIDDA: Yes, your Honour. Thank you. I will start and
12 Ms. Douzima will conclude.

13 JUDGE TRENDAFILOVA: You have in total 40 minutes, but we have to
14 stop at 4.00 and continue for the rest of your statement. The floor is
15 over to you.

16 MS. MASSIDDA: Thank you, your Honours.

17 (Interpretation) Your Honours, the crimes alleged against
18 Mr. Jean-Pierre Bemba Gombo were committed in the context of an armed
19 conflict involving, in particular, Patasse's forces, which included the
20 MLC forces, and General Bozize's rebels. This was part of a widespread
21 and systematic attack carried out against the civilian population in
22 various localities in the Central African Republic.

23 None of the victims whom I am representing here today actively
24 participated in the hostilities during the period covered in the document
25 containing the charges. That is to say, between the 26th of October,

1 2002, and the 15th of March, 2003. Each one of them thus was a civilian.
2 Furthermore, it appears clear that the perpetrators of the crimes knew
3 that they were civilians in that the victims were taken by surprise in
4 their own homes or were fleeing and had only with them their families and
5 a few basic necessities.

6 At the time of the events, the 20 victims who I represent were
7 living in the towns of Bangui, Damara, Sibut, Bozoum, and Mongoumba.
8 They all survived and therefore were present at the events.

9 The evidence produced by the Office of the Prosecutor are
10 relevant to the submissions I am making today regarding the interests of
11 victims. I will in particular address elements of the crimes of rape,
12 sexual violence, torture, and pillaging. My conclusions will -- or,
13 sorry, my submissions will therefore deal with these issues, the issues
14 of elements of these crimes, as well as the crime of outrage upon
15 personal dignity and the personal responsibility of the suspect as well
16 as the harm suffered by the victims who I represent. I will start off
17 with the elements of the crime of rape.

18 The descriptions which have been given by the victims all refer
19 to one or several acts of penetration committed by threat or by force.
20 These are the elements of the crime of rape as a war crime and a crime
21 against humanity as advanced by the Office of the Prosecutor. Given that
22 the Office of the Prosecutor has been exhaustive in its presentation, I
23 would simply like to underline two specific elements related to the
24 personal interests of the victims who I represent here today.

25 The first element relates to an argument which was put forward by

1 the Defence yesterday whereby an element of the crime of rape, that is to
2 say force and coercion, has not been fully proven. In this connection, I
3 would put to you that the counts of two victims which I represent reflect
4 entirely the witness declarations or statements which have been put to
5 you by the Office of the Prosecutor. Witness 465, for instance, states
6 that when she opened the door, three soldiers came towards her. They
7 gestured towards her and forced her to remove her clothing, told her to
8 lie on the ground and raped her. She say it was a way of humiliating
9 her.

10 Pre-Trial Chamber I in its decision confirming the charges in the
11 case of the Prosecutor v. Germain Katanga and Mathieu Ngudjolo said that
12 as regards the term of coercion, the Chamber notes the conclusion drawn
13 by the Trial Chamber of the ICTR in the Akayesu case whereby physical
14 force is not necessary to define a coercive environment. Rather,
15 threats, intimidation, blackmail, and other forms of violence which
16 exploit fear can characterize coercion. Coercion can also be inherent in
17 certain circumstances. For example, an armed conflict or a military
18 presence.

19 Furthermore, as stipulated in the final report on systematic
20 rape, sexual slavery and practices analogous to slavery in periods of
21 armed conflict which was issued by the special rapporteur of the
22 United Nations on the 22nd of June, 1998, the absence of consent is not
23 an element of crime when coercive circumstances such as an armed conflict
24 are involved.

25 The second element which I would like to highlight is linked to

1 the absence of a gender-specific connotation when it comes to the victim
2 of a rape. We will -- we shall recall that the Pre-Trial Chamber in the
3 Katanga case stated that the concept of invasion is intended to be broad
4 enough to be gender neutral. Furthermore, the International
5 Criminal Tribunal for former Yugoslavia in the Furundzija case stated
6 that the term "invasion" is considered to be gender neutral and thus that
7 the crime of rape can be committed against a man or a woman.

8 On the basis of these elements, it can be concluded that there is
9 sufficient evidence to prove substantial grounds to believe that members
10 of the MLC invaded the body or any parts of the body of women, men, and
11 in particular children and elderly people by force or by threat during a
12 conflict and during attacks which took place in various localities in the
13 Central African Republic between the 26th of October, 2002, and the
14 15th of March, 2003.

15 Turning now to the elements of the crime of torture, and this is
16 my second point.

17 The descriptions of the harm suffered by the victims all refer to
18 severe physical or mental pain when they were under the control of the
19 perpetrators by threat and by force, the perpetrators having as manifest
20 purpose to intimidate and punish them because they were suspected of
21 supporting the rebels. All of these are elements of the crime of torture
22 as a war crime and as a crime against humanity as advanced by the
23 Office of the Prosecutor.

24 Once again, I shall focus my attention on certain specific
25 elements which are linked to the personal interests of the victims who I

1 represent. First of all, in relation to the argument put forward by the
2 Defence yesterday whereby the purpose of acts of torture had not been
3 proven, I would refer to the ICTY's case law in the Furundzija case
4 whereby humiliation was explicitly cited as being an example of a purpose
5 underpinning an act of torture even if it is not mentioned in the torture
6 convention itself. The list appearing in that convention -- the list of
7 motives appearing in that convention not being exhaustive.

8 Regarding -- with regard to the element of crime according to
9 which acts committed within the context or framework of legal sanctions
10 or in the wake of such sanctions are not included in the definition of
11 the crime of torture and in the light of the various Defence submissions
12 over the last few days, I would like to put the following question to the
13 Pre-Trial Chamber: Should the acts referred to by the Office of the
14 Prosecutor be considered as acts that are not tantamount to torture
15 because they were allegedly perpetrated in the wake of so-called legal
16 sanctions or were an inherent part of such sanctions which allegedly
17 resulted from a MLC intervention that hadn't been requested by the CAR
18 head of state? This is how the Defence has described it, and according
19 to the Defence the legality of this operation cannot be subject to
20 judicial and legal review today.

21 As regards the elements of the act of torture as a crime against
22 humanity, the evidence produced by the Prosecutor leaves no doubt but
23 that a widespread and systematic attack was perpetrated against the
24 civilian population in the Central African Republic. The evidence put
25 forward by the Office of the Prosecutor prove that acts of torture were

1 perpetrated on a massive scale. It also demonstrates that
2 Jean-Pierre Bemba Gombo had knowledge of the acts perpetrated.

3 My third point is the elements of crime -- of the crime of
4 outrages upon personal dignity. Here we are discussing outrages upon
5 personal dignity as a war crime, and on a number of occasions the
6 Defence, notably yesterday, referred to these events as being minor
7 incidents punished locally.

8 Having heard the Office of the Prosecutor's conclusions, I would
9 like to start off by recalling that the International Criminal Tribunal
10 for the former Yugoslavia and the European Court of Human Rights have
11 developed a body of case law whereby the crime of rape meets the critical
12 threshold necessary to be considered a crime of torture.

13 The descriptions given by the victims which I represent refer to
14 humiliation, degradation, and violation of their dignity. They refer to
15 the severity of the outrages committed against them by threat and by
16 force, and these are the elements of crime necessary to prove these
17 outrages were war crimes and crimes against humanity.

18 The accounts given by the victims which I represent corroborate
19 the Prosecutor's evidence, in particular when it comes to group rapes
20 carried out under threat of a weapon, through manhandling, with
21 humiliation, and degradation, carried out in public and in front of
22 families who were made helpless. Such acts have had an impact on these
23 victims who I represent, an impact on their daily lives and over the
24 long-term. Several victims continue to suffer from the humiliation
25 because certain members of their communities continue to refer to them as

1 being the -- those who, and I would quote, "slept with the MLC soldiers."
2 Some of them still suffer from the wounds and illnesses related to these
3 acts.

4 Turning now to the elements of the crime of pillaging. It seems
5 that the Banyamulenge occupied and destructed -- and destroyed, rather,
6 the villages which they encountered on their route as they pushed back
7 Bozize's troops. They looted house after house as alleged by the
8 Office of the Prosecutor.

9 Now, the accounts given by the victims which I represent
10 corroborate the information gathered by the Office of the Prosecutor in
11 this connection. All refer to intentional appropriation of goods
12 belonging to them without their consent, that is to say appropriation for
13 the manifest personal use of the pillagers. These are the elements of
14 the crime of pillaging as a war crime as described by the Office of the
15 Prosecutor.

16 In connection with the crime of pillaging, I would like to focus
17 on three facts -- factors which relate to the personal interests of the
18 victims who I represent. The International Criminal Tribunals for former
19 Yugoslavia and Rwanda have set an important precedent regarding pillaging
20 stipulating that traditionally this implies an element of violence. Now
21 it appears that this element, that is to say the use of violence has been
22 very largely proven by the Office of the Prosecutor in this case and also
23 emerges from the statements of the victims whom I represent.

24 The evidence presented by the Office of the Prosecutor show that
25 civilians in the Central African Republic lost their means of subsistence

1 which consisted largely in the use of basic commodities and commonly used
2 articles, materials for the construction of their homes, money, objects
3 of value, and family papers.

4 My third point, your Honours, is the issue of the criminal
5 responsibility of Jean-Pierre Bemba and the mode of liability.

6 Pursuant to Article 25(3)(a) of the Statute of Rome,
7 Jean-Pierre Bemba Gombo is considered to be individually criminally
8 responsible of crimes against humanity and war crimes that were committed
9 jointly with Patasse through MLC troop action. The suspect's liability
10 is therefore envisaged by the OTP as the liability of co-perpetrator.
11 Co-perpetration can therefore be taken to be a functional division of a
12 criminal task between at least two perpetrators through an agreement or a
13 common plan. The OTP has demonstrated that Patasse and Bemba had an
14 agreement or a common plan. The OTP explained the different interest
15 that the two co-perpetrators had. The OTP has also clearly explained
16 that Bemba's and Patasse's actions were concerted actions and they were
17 coordinated. Each of them were aware of the fact that they had put into
18 effect a common plan that would result in the commission of crimes.

19 With regard to this issue, it is not sufficient to say, as the
20 Defence claims, that Mr. Bemba being aware of the fact that some crimes
21 were committed had taken the necessary measures to punish those
22 responsible.

23 First of all, we're not only dealing with isolate cases, and in
24 addition the voluminous evidence presented by the OTP shows for certain
25 that Mr. Bemba was aware of crimes committed because he received daily

1 reports. He went to the CAR, spoke to victims, and in spite of this fact
2 failed to take measures to punish those responsible -- to punish those
3 responsible or to prevent crimes from being committed.

4 The thesis on individual criminal liability as presented by the
5 bureau -- the Office of the Prosecution pursuant to Article 25(3)(a) of
6 the Statute of Rome has therefore been significantly supported or
7 corroborated nevertheless. Since we want to bear in mind the Defence's
8 submissions that tries to ensure that the responsibility of the suspect
9 doesn't fall under the jurisdiction of the court because they say that
10 there was a political dimension to the conflict in the CAR in 2002 and
11 2003 and they allege that the intervention of the troops under
12 Jean-Pierre Bemba Gombo to support a democratic regime that was
13 threatened with being overthrown, well, with regard to this matter I
14 would like to emphasise the fact that Jean-Pierre Bemba Gombo and his
15 troops intervened in response to an invitation from a head of state in
16 order to defend the government of this head of state. On the one hand,
17 this is subject to the principle of proportionality of the acts that are
18 committed on this occasion with regard to the danger or the risk one is
19 taking; but on the other hand, the fact that this intervention took place
20 within the framework of an allegedly defensive military mission does not
21 constitutes in itself a reason for which the suspect should not be
22 considered individually criminally responsible.

23 The theory of legitimate defence of a democratic regime within
24 the framework of a regional action would therefore not be a theory that
25 could exonerate the suspect of individual responsibility pursuant to the

1 various provisions of the Rome Statute, and in particular pursuant to
2 Articles 21, 27, 28, 31, and 33.

3 And finally, Madam President, I would like to address my last
4 subject, the damage inflicted on the victims that I represent.

5 All the victims that I represent were morally damaged. They have
6 nightmares, they're traumatised. They suffer from psychosis due to the
7 presence of soldiers. They've been humiliated, stigmatised. They
8 also -- they were also subjected to physical damage, material damage,
9 sexual violence, physical violence, torture, and outrages to their person
10 given that their family members were killed and they were witnesses of
11 attacks, massacres, they lost their property, their resources, their
12 means of subsistence.

13 Before I conclude I would like to go back to an affirmation made
14 by the Defence on the 13th of January in the morning. According to this
15 statement, the documents produced by the OTP and by the victims and the
16 witnesses have dates that are subsequent to the fact. For example,
17 medical documents. With regard to this matter, this is what the victims
18 unanimously told me in response to the question as to the existence of
19 such documents: Following the armed conflict, the pillaging and the
20 subsequent destruction and the fleeing of the population in various
21 directions in the country, the hospitals had been abandoned and the
22 victims could not consult doctors or obtain medical supplies or medicine.
23 Some were lucky enough to meet medical personnel who worked for
24 associations or international NGOs. But this was not the case for all the
25 victims. In addition -- in addition given the humiliation and the shame

1 they felt, some victims took a while before they sought help.

2 In addition, most of the victims following the looting of all
3 their property and their money were harmed, and it wasn't possible for
4 them to start working again. They didn't have the financial means to go
5 and have themselves treated.

6 And in conclusion, Madam President, your Honours, the OTP has
7 established as demonstrated that there is sufficient evidence to
8 demonstrate substantial grounds to believe that the suspect committed the
9 crimes that he is charged with, and this has attained the probative
10 threshold that is required at this stage of the proceedings pursuant to
11 Article 61(5) of the Rome Statute. There are sufficient elements to lead
12 one to believe the following: To lead one to believe that Jean-Pierre
13 Bemba Gombo was the military head of the MLC and exercised his authority
14 within that movement, that he was the co-perpetrator of crimes that
15 consisted in attacking, amongst others, the locations of Bangui, Damara,
16 Sibut, Bozoum, Bossangoa, Bossembele, Mongoumba, and when doing so they
17 targeted civilians who were not participating in the hostilities. He had
18 knowledge of the existence of a calmed -- of an armed conflict in the CAR
19 during the relevant period referred to in the DCC. He had knowledge of
20 the widespread and systematic nature of the attacks carried out. During
21 the attacks massive violations -- violations of massive scale were
22 committed, and in particular acts of rape, sexual violence and torture.

23 The MLC troops systematically pillaged and destroyed the civilian
24 property in the course of the attacks.

25 And finally, Jean-Pierre Bemba Gombo did not prevent or punish

1 the crimes committed by his troops. All of these facts have been
2 established by the Prosecution with reference -- which used evidence that
3 is sufficient at this stage of the proceedings, at this -- in this
4 Confirmation Hearing to allow the Chamber, the Pre-Trial Chamber, to rule
5 that the charges against Jean-Pierre Gombo should be confirmed and he
6 should stand trial. And finally, most of the victims I represent here
7 today mentioned the fact that the damage that they suffered and they are
8 still suffering has not been remedied, has not been treated, and finally
9 the expression or the possibility of giving them a voice in this
10 participation is, I hope, a way in which we can alleviate their
11 suffering.

12 Thank you, Madam President; thank you, your Honours. I will
13 conclude in Sango, the language that they would probably have used if
14 they were here today. (No interpretation). I thank you.

15 JUDGE TRENDAFILOVA: Thank you, Ms. Massidda. Now I give the
16 floor to Ms. Douzima to proceed with the presentation as victims' legal
17 representative. You have the floor, Ms. Douzima, we'll have the
18 opportunity to listen to you just 10 minutes, and then we shall proceed
19 after the break. We are bound by these regulations.

20 Please.

21 MS. DOUZIMA-LAWSON (interpretation): Your Honours, in order that
22 my statement can be followed well and well understood by all here, I
23 suggest that I take the floor after the break rather than breaking it
24 into two parts.

25 JUDGE TRENDAFILOVA: Ms. Douzima, I think that you have a point.

1 We shall adjourn for half an hour, and we shall come to the courtroom
2 20 minutes past 4.00.

3 The hearing is adjourned.

4 COURT USHER: All rise.

5 Break taken at 3.54 p.m.

6 On resuming at 4.20 p.m.

7 COURT USHER: All rise.

8 JUDGE TRENDAFILOVA: The Confirmation Hearing is resumed. Be
9 seated, please.

10 I would again ask the security officer to please kindly invite
11 Mr. Bemba into the courtroom.

12 (The suspect entered court)

13 JUDGE TRENDAFILOVA: Now we are in the last session of this
14 Confirmation Hearing. We shall proceed with the presentation of the
15 victims' legal representatives, namely the presentation of Ms. Douzima.

16 Ms. Douzima, you have 20 minutes, please. The floor is over to
17 you.

18 MS. DOUZIMA-LAWSON (interpretation): Thank you, your Honour. I
19 would first like to point out that in fact I have an extra four minutes
20 in hand, I believe, that can be added to my 20 minutes. Your Honour, I
21 was saying that I believe -- I believe that I had four minutes
22 outstanding.

23 JUDGE TRENDAFILOVA: I heard you, Ms. Douzima. If that will make
24 you feel comfortable contributing to your 34 victims that you represent,
25 the Court is ready to listen to you, please.

1 MS. DOUZIMA-LAWSON (interpretation): Thank you, your Honour.

2 As you have pointed out, I am representing 34 victims in these
3 proceedings, and also as you said at the outset of this hearing, this
4 hearing is not a trial. Your Chamber is not going to rule on the guilt
5 or innocence of Mr. Jean-Pierre Bemba. At this stage in the proceedings,
6 your Chamber is only going to act as a filter. Your task is to apprise
7 the evidence to establish whether there are substantial grounds
8 underpinning the charges brought against the suspect.

9 In the arrest warrant issued on the 23rd of May, 2008, counts are
10 brought against Jean-Pierre Bemba for acts taking place in the
11 Central African Republic, acts which are war crimes and crimes against
12 humanity, and this in the period between the 26th of October, 2002, and
13 the 15th of March, 2003, during an armed conflict.

14 Allow me just to set the scene. Mr. Ange-Felix Patasse, who was
15 president of the Central African Republic at the time, was faced with an
16 attempted coup d'etat perpetrated rebels, rebels from his chief of --
17 under his Chief of Staff, and he called Mr. Jean-Pierre Bemba to the
18 rescue. He entered into an agreement with Mr. Bemba, a military
19 assistance agreement whereby MLC troops would provide assistance under
20 the leadership of Mr. Jean-Pierre Bemba.

21 Mr. Bemba answered the call of the president, President Patasse,
22 and immediately dispatched troops via the Oubangui River to the
23 Central African Republic. This is the context. This is agreed. It is
24 not contested. This is what we have learnt from the proceedings which
25 have taken place over the last few days. And it is because these facts

1 stand and are acknowledged that the ICC's jurisdiction has been chosen.

2 Now, what is important is to know that -- or is to establish
3 whether war crimes and crimes against humanity were committed in
4 connection with this conflict. Once again, we can affirm without doubt
5 that serious evidence is available that such crimes were perpetrated and
6 that evidence has not been contested in any serious fashion.

7 Your Honours, the Defence claims that it wasn't the MLC troops
8 who committed the crimes, because there were also FACA in theatre, Libyan
9 troops. There were also troops of Abdoulaye Miskine and troops of
10 Paul Barin (as interpreted). As a consequence, holding MLC alone for the
11 crimes would be tantamount to a plot hatched against the president of the
12 MLC and his arrest is allegedly political. The Defence also claims that
13 MLC troops were under the control of the president of the -- or the head
14 of state of the Central African Republic. He is the one that ensured
15 their transport, their clothing, their food, and that he is the one who
16 called upon them to save his democratically elected regime. It is said
17 that the arms were provide by Libya at the request of President
18 Ange-Felix Patasse and that he alone, thus, should be held for --
19 responsible if crimes have taken place.

20 The Defence also claims that saving a democratically elected
21 regime is not a crime and that, in other words, the crimes which were
22 committed against that background cannot be prosecuted. It's also
23 claimed that Jean-Pierre Bemba was not at all happy with the way in which
24 his troops acted and that he had a military court set up and that those
25 responsible for misconduct were -- were convicted, and that therefore

1 these proceedings today are without foundation. It is also claimed that
2 the number of victims is not known and that the medical certificates of
3 rape victims are contrived, et cetera.

4 Now, we're not going to stand here and oppose the allegations
5 made by the Defence. However, we have noted in the course of these
6 proceedings that the leader of the MLC does recognise that his troops
7 committed war crimes and crimes against humanity but that they are not
8 the only ones who did so.

9 The reason why his troops intervened in the country was
10 praiseworthy according to him, but that does not mean that the crimes
11 need not be answered for. A -- the motive or the purpose is not a
12 justifying fact. The responsibility of the superior stands in the event
13 of a violation of the war by the subordinates of the hierarchical leader.
14 This is stipulated in Articles 25 and 28.

15 The victims of these crimes were civilians. They were targeted
16 because they allegedly supported the rebels. They were humiliated. They
17 were reduced to nothing. This went on for three months and went on
18 systematically after the rebels had been driven back.

19 As regards the proceedings which have been initiated against the
20 perpetrators of the -- these crimes, Article 20 of the Rome Statute,
21 ne bis in idem, stipulates that the court -- this court does not have
22 jurisdiction or that crimes only formed within its jurisdiction if the
23 court which previously tried the case shielded the perpetrator.

24 "A person who has been tried in another court -- no person who
25 has been tried by another court for conduct also proscribed by the

1 Statute of the court shall be tried by the court with respect to the same
2 conduct unless the proceedings in the other court were for the purpose of
3 shielding the person concerned from criminal responsibility for crimes
4 within this jurisdiction of this court; or otherwise were not conducted
5 independently or impartially in accordance with the norms of due process
6 recognised by international law and were conducted in a manner in the
7 circumstances was inconsistent with an intent to bring the person
8 concerned to justice."

9 Your Honours, when we are told that the court which judged these
10 cases applied the penal code of the DRC, let's remember that this is a
11 code which had not been aligned on the Rome Statute at the time.
12 Furthermore, those trials were organised simply to give a good impression
13 to the international community. There are reasons to believe that the
14 proceedings were not conducted in an independent fashion, nor were they
15 conducted in an impartial or fair fashion. These trials organised by
16 Jean-Pierre Bemba and this correspondence with the representative of the
17 Secretary-General of the United Nations prove that not only was he
18 perfectly aware that crimes were being committed but also that he knew
19 that his troops were responsible for them.

20 As regards identifying Jean-Pierre Bemba's soldiers, so MLC
21 soldiers, as a Central African lawyer I feel it is incumbent upon me to
22 address this because it has been brought up by the Defence. As regards
23 the language, contrary to what has been affirmed here, Lingala is not
24 spoken in Central African Republic. Indeed, although some
25 Central Africans can speak Lingala, that does not mean that we can draw

1 the conclusion that Lingala is spoken in the Central African Republic.
2 It would be like concluding that English is the language of the
3 Central African Republic because some people speak it there. Sango is
4 the national language, and French also is spoken in the Central African
5 Republic as official language. Lingala has never been a lingua franca in
6 the Central African Republic.

7 As regards accent, there is a very clear difference between
8 the -- a Central African accent and a Congolese accent. A Congolese
9 accent can be identified immediately. Let me give you an example. The
10 vowels I, U, and E accent acute, are clear markers here.

11 As regards Congolese refugees, it has been claimed that Congolese
12 refugees may have been involved or may have been responsible for these
13 crimes. The Congolese refugees in the CAR are based in a camp called
14 Molange in Lobai (phoen) locality, and that locality is not part of the
15 towns covered by these proceedings. In addition, these refugees are not
16 armed, whereas the persons who committed these crimes were soldiers and
17 were armed.

18 To justify its case, the Defence has sought out extracts from the
19 witness testimony to prove that the alleged crimes were perpetrated by
20 General Bozize's rebels. However, the Defence has not stated that the
21 majority of the Defence witnesses are people who are in the entourage or
22 are allies of Ange-Felix Patasse's -- of Ange-Felix Patasse. However,
23 President Patasse, when interviewed by RFI in November 2002 in response
24 to a question as to whether he regretted having called in the MLC troops
25 who had raped girls and women in Central Africa, the president responded,

1 "I regret nothing."

2 Well, I leave it up to the judgement of the Court to draw the
3 conclusions on that. Can one be more Catholic than the Pope?

4 We are told that the crimes were committed after the 15th of
5 March, 2003, but the Defence specifies -- is very specific about these
6 crimes and speaks of crimes which have nothing to do with the present
7 proceedings. We've even heard that some victims were happy to give their
8 money away. Rape victims, however, have been abandoned by their
9 husbands, rejected by society, stigmatised, suffer trauma day and night
10 to this day. Others can no longer conceive. Others are a laughingstock.
11 They have been scarred by the atrocities which they have lived through.
12 Many suffer -- are HIV positive or suffering from AIDS and are condemned
13 to death when they cannot get access to tried therapy. Some are dead.
14 Underage children have been abandoned in the streets. It's misery,
15 your Honours. Do you think the victims would be willing to sacrifice
16 their very dignity on a promise of money?

17 The victims of pillaging, heads of households, widows, traders,
18 farmers have been reduced to being beggars. They have been stripped of
19 their savings, their savings accumulated over the years. They're unable
20 to provide for their families and to rebuild what they once had. Others
21 were cold-bloodedly killed because they resisted having their property
22 forcibly appropriated or they resisted being raped or seeing their loved
23 ones raped. They were killed because they were suspected of being in
24 cahoots with the rebels or simply because they were young people and
25 considered rebels.

1 These humiliations, this inhumane and degrading treatment, these
2 outrages to personal dignity, raped in front of one's children, in front
3 of one's family-in-law, sodomised in front of one's wife and children,
4 brothers and sisters, but here we hear people go as far as to cast doubt
5 on the medical certificates of rape victims.

6 Your Honours, to our knowledge there is no dossier or no expert
7 report which has established that these medical certificates are frauds.
8 They -- on the contrary. They have been issued by doctors, doctors who
9 are under oath and not least doctors of Medecins sans Frontieres, for
10 instance.

11 Yes, we hear that the international community met on various
12 occasions here and there and voted Resolutions to assure the protection
13 of democratically elect governments, but the question that needs to be
14 answered is whether MLC troops in combatting General Bozize's rebels had
15 the right and total impunity to abuse the civilian population, civilians
16 who had not participated in the conflict, who were unprotected and were
17 already victims of the military and political conflicts of the time.

18 Reference is made by the Defence to a code of conduct. I wonder,
19 does this code of conduct authorise MLC troops to act like real
20 barbarians vis-a-vis the civilian population? And why were these crimes
21 only committed in towns which had been conquered by the MLC?

22 I would like to point out that the charges which are listed
23 against the suspect draw on the Rome Statute and thus they are judicial
24 in nature and not political.

25 I would like to return to an argument which has been presented by

1 the Defence, as is its wont. Reference is made to the decision taken by
2 the investigating magistrate in the Central African Republic, a decision
3 stating that there were no grounds to prosecute Jean-Pierre Bemba.

4 I would like to remind you here of the following: First of all,
5 why did the investigating magistrate take that decision? The Judge
6 should not say, "I do not have before me evidence of a quality which
7 merits the prosecution of Mr. Jean-Pierre Bemba as -- for crimes against
8 humanity or war crimes." I would refer you to the judgement of the Court
9 of Cassation of the CAR of the 11th of April, 2006. This judgement was
10 issued in response to an appeal for Cassation against the decision to
11 which I refer. The investigating magistrate says that Jean-Pierre Bemba
12 who was responsible for the Banyamulenge rebels and based on the impunity
13 which he -- immunity which he enjoyed at the time in his capacity of
14 vice-president could not be prosecuted. That was the judgement of the
15 Court of Cassation in the case against Ange-Felix Patasse et al. and also
16 Jean-Pierre Bemba, and this is the decision to which the Defence refers.

17 Now, this is no immunity before the International Criminal Court.
18 The Rome Statute allows the International Criminal Court to prosecute
19 individuals irrespective of their capacity or the function which they
20 have including crimes perpetrated by their subordinates. Also, the
21 Court of Cassation said the senior Judge had charged the individuals for
22 these acts, had issued arrest warrants against them but that these
23 remained the sole concrete acts which had been taken. The individuals
24 had not been interviewed nor had they been the subject of serious
25 investigation. And thus, the Court of Cassation heard from the

1 Prosecutor General and remitted the case to the International Criminal
2 Court.

3 War crimes and crimes against humanity. Your Honours, I do not
4 propose to give a lecture on international humanitarian law and the
5 protection of civilians in times of war. However, I would like to refer
6 to the relevant provisions of the Rome Statute and the other subsequent
7 texts. I would like to cite certain articles.

8 Article 7(1)(a) regarding murder. Victims have seen their
9 relatives, their brothers, sisters, husbands and wives killed by MLC
10 troops. One victim specifies that her -- her husband, returning from the
11 fields, was killed by the Banyamulenge and his body was abandoned.
12 Another victim refers to -- or witness to the murder of her son who was
13 the leader of the village who had his throat slit and his body cut into
14 pieces.

15 Turning now to rape. One victim states that when the
16 Banyamulenge entered her home for the second time on the night of the
17 30th to the 31st of October, 2002, at around 9.00 p.m., she was raped
18 time and again by three MLC soldiers, each of whom ejaculated in her
19 vagina and today she has HIV-AIDS.

20 Your Honour, group rapes took place in the presence of relatives,
21 of husbands, wives, and the children of victims. They were perpetrated
22 against women who had recently given birth. Those who were menstruating
23 were not spared. Several of them suffered barbarous acts. Soldiers
24 would ram the barrel of their weapon in their vagina.

25 All of the rape victims and those who witnessed rape are also

1 victims of torture pursuant to international case law.

2 Turning now to war crimes. Of course there is torture. There is
3 pillaging, but I would like to point out, your Honours, that in almost
4 all villages taken by MLC soldiers civilians found themselves the
5 systematic victims of pillaging as if there had been clear instructions
6 to appropriate by force the property of the residents. The domestic
7 animals were looted, as were furniture and other movable items. Also,
8 cattle, to reduce these people to poverty.

9 In Mongoumba, a border town with the DRC, Jean-Pierre Bemba's
10 troops occupied the area all day, searching through each and every house
11 and looting all that they could carry with them and gradually taking
12 their spoils across into the Congo.

13 I must stress that the systematic pillaging took place in almost
14 all villages occupied by Jean-Pierre Bemba's troops.

15 Your Honours, the question today is whether war crimes and crimes
16 against humanity were perpetrated. The answer is yes, and this in the
17 circumstances with which we are all familiar. And these crimes were
18 perpetrated MLC troops. Yes, they were. The testimony taken, the
19 accounts of victims, the circumstances bear witness to this.

20 At these proceedings, we noted that Jean-Pierre Bemba also
21 addressed his troops in the field and had contact with his leaders, but
22 he never prevented the commission of these crimes, and that is where the
23 problem lies.

24 In consequence, your Honours, the victims simply ask that the
25 charges brought against Jean-Pierre Bemba be confirmed, confirmed so that

1 justice is finally done, that justice being essential to peace.

2 And I conclude. Your Honours, these are -- we're speaking of
3 private individuals who have been murdered, who have been the victims of
4 rape, victims of torture, and the property which has been pillaged are
5 the belongings of private individuals and institutions, and these all are
6 protected under the Rome Statute.

7 Thank you.

8 JUDGE TRENDAFILOVA: Thank you, Ms. Douzima. You have taken five
9 minutes more from your -- in addition to your allotted time, but I didn't
10 interrupt you because we have allowed the same to other participants in
11 these proceedings. Thank you.

12 Now I turn to the Defence. On behalf of the team of the Defence
13 who is going to speak? Obviously you, Mr. Khan?

14 MR. KHAN: I am, Madam President. Although before I do give the
15 closing speech, I understand that my friend Aime Kilolo wishes to provide
16 some ERN numbers and read it into the court record. So I'd ask that he
17 be granted five minutes that will come out of my time.

18 JUDGE TRENDAFILOVA: Okay. You have the floor, Mr. Kilolo.

19 MR. KILOLO (interpretation): Thank you, Madam President,
20 your Honours. I will very briefly provide you with a clarification in
21 response to an important issue that was raised by the OTP with regard to
22 a fundamental piece of Defence evidence, the reliability of which has
23 been contested by the OTP. We're dealing with EVD-D01-00036. This
24 document which was filed by our colleague Mr. Nkwebe attempts to
25 demonstrate three things: That the MLC entered the CAR as of the 30th of

1 October. Secondly, that the person to which daily reports on military
2 operations in the field were sent was a different authority, a different
3 person and not Jean-Pierre Bemba. So this naturally overthrows the
4 allegations made. And then the contents itself that state that at no
5 point in time was any reference made to crimes committed by troops. This
6 was never done through official channels of communication.

7 This document is important, and the OTP just a while ago said
8 that the Defence never produced these communications logbooks. We only
9 produced four pages. And in its closing statement they asked how can one
10 explain that we have four pages from the communications logbook for four
11 months of armed conflict, and this is why I wanted to draw your attention
12 to the fact that these OTP statements coming from the -- these OTP
13 statements are contradicted by a document that was signed by a member of
14 the OTP. This is document ICC-01/01/08-290-ANX B. This is a document
15 filed by the Prosecution on the 26th of November, 2008, and the document
16 quite clearly states that these -- that this evidence from the Defence,
17 the two logbooks, were in fact disclosed to the OTP by the Defence. And
18 in fact the four pages that were included were only extracts from these
19 communications logbooks which illustrated the three main points. You
20 know that this disclosure was made pursuant to Article 78 -- or, rather,
21 Rule 78 of the Rules of Procedure and Evidence, and this made it possible
22 for the Prosecution to inspect or, rather, examine the communications
23 logbooks that I am referring to.

24 And we are now asking ourselves whether the Prosecution forgot to
25 read through its very own documentation whereas we have a very precise

1 document here. It's been signed and someone signed to show that it had
2 been received. So this draws us to conclude that the investigation has
3 been carried out not only in a superficial way but in a partial way too.

4 And finally my -- for my last comment, well, the Prosecution says
5 that the MLC was never a peacekeeping force because to be a peacekeeping
6 force you need to have an international mandate issued by the UN, and to
7 this we respond very briefly that it's a matter of confusion. It's
8 necessary to make a distinction between a peacekeeping force that has a
9 UN mandate, and that's not at all what we're referring to. My colleague
10 Nkwebe said a while ago that the MLC intervened as a stabilisation force
11 on the basis of a regional mandate from the African Union and as such
12 while the African Union gave or issued this mandate, and the union -- the
13 European Union acts in a similar way sometimes. And the three
14 EVD numbers are EVD-D01-00053, EVD-D01-00056, and finally EVD-D01-00009.

15 We just wanted to respond to these matters. Thank you very much.

16 JUDGE TRENDAFILOVA: Thank you, Mr. Kilolo, for this
17 clarification. It is important for your case. And now I shall give the
18 floor to Mr. Khan on behalf of the Defence for the closing statement.
19 This will be the final statement during this final session of the
20 Confirmation Hearing. You have the floor, Mr. Khan.

21 MR. KHAN: Madam President, your Honours, I'm most grateful. And
22 on behalf of Mr. Bemba may I start by extending our great thanks for the
23 indulgence and patience that the Trial Chamber has shown and also to the
24 participants in the courtroom, the Prosecution and the representatives
25 for the victims as well as, of course, to the court staff. An awful lot

1 of ground has been covered in a very short amount of time, and if one
2 compares this, of course, with other Confirmation Hearings, I think the
3 time schedule has been quite tightly handled and quite a lot of ground,
4 as I said, has been covered.

5 Both parties, the Prosecution and the representatives for the
6 victims started more or less by reaffirming that this is not a trial.
7 Your Honour, of course, that is the case, and I will, with your
8 indulgence, repeat that whilst it is not a trial, it serves an important
9 evidentiary function. It's to prevent unnecessary proceedings going
10 forward. It is to prevent an individual who has been castigated and has
11 been charged by an international court from having to defend himself in
12 The Hague, away from his family, away from his geographical location in
13 many instances, and it's a function also and evidence of intent by the
14 drafters of the Rome Statute to incorporate the highest standards of
15 justice in this international court.

16 Your Honours, it is important when one is assessing the purpose
17 of this hearing to have a moment's pause and have some regard at least to
18 some principles that I may roughly describe as evidentiary
19 considerations.

20 Your Honour, because this is not a trial, your Honours have not
21 had the benefit of hearing witnesses live. The Prosecution, as is their
22 right, have reviewed -- presented summaries and have presented witness
23 statements to your Honours. In assessing the credibility of this
24 witness, it is my respectful submission that certain factors should be
25 borne in mind and I will deal with it briefly.

1 Where a witness has been granted anonymity so that the Defence
2 are not able to know about the witness or have certain information
3 withheld, your Honours should be slow as a matter of principle in
4 accorded undue weight to that evidence by itself. Your Honours,
5 similarly where witnesses have been interviewed and have been granted
6 conditional immunity, as it were, your Honours should bear that in mind
7 when evaluating the evidence in context with the evidence as a whole.

8 What your Honours and Madam President should be slow to do, in my
9 respectful submission, is to pass the evidence, to dissect it and look at
10 it in isolation. It is important, of course, to look at the evidence in
11 its entirety. And when one is performing that function, again the
12 identity of the individuals that your Honours are -- the evidence of
13 which your Honours are considering can be borne in mind, whether or not
14 individuals come from different tribes or different political parties
15 that may have an axe to grind.

16 Your Honour, the experience and understanding, not just as
17 jurists but as experienced individuals in your own right, should be
18 brought to bear when one is reviewing the evidence, and the evidence
19 itself should be looked through -- looked at through the prism of this
20 experience, this wealth of experience, your Honours, that you bring to
21 bear.

22 Your Honour, where there is a disparity or a contradiction or
23 there is some doubt over some aspects of the Prosecution evidence, it is
24 my submission that, Madam President, your Honours, the Bench should be
25 very slow, as it were, to pick out the plums and leave the duff behind.

1 One cannot simply take the good bits of the Prosecution evidence, the
2 portion that help the Prosecution and turn a blind eye, as it were, to
3 the welter of evidence that the Defence say contradicts the evidence, the
4 core evidence that the Prosecution relies to persuade your Honours to the
5 necessary standard that this case should proceed.

6 Your Honours, as I said, one should look, and it's my respectful
7 submission that your Honours are entitled to look at the deficiencies and
8 the drawbacks, the inconsistencies of the Prosecution's evidence in its
9 entirety when you decide whether or not substantial grounds have been
10 established.

11 Now, your Honour, I'm not going to go over -- as your Honours
12 have been very indulgent with the Defence, I'm not going to go over all
13 the arguments that have been put forward particularly the very extensive
14 arguments put forward today by co-lead counsel Richard Nkwebe and
15 co-counsel Aime Kilolo. I'm going to simply -- all of that, of course,
16 is part of the record, and all of that, your Honours, will be considered
17 with due diligence when your Honours are making the determination.

18 But in my respectful submission, if I can respond to one issue
19 that was touched upon by Mr. Kilolo, the issue of subordination still has
20 not been grasped, in my respectful submission, by the Prosecution.

21 Despite the great eloquence of the speech of the
22 Deputy Prosecutor, which of course I enjoyed immensely, she did not --
23 the Prosecution failed, in my respectful submission, to establish that
24 the issue of subordination is simply contained -- or confined, as it
25 were, confined to those that are wearing blue helmets. The authority

1 which I raised in my opening speech, of course, is well known, and I gave
2 the full citation. It is the genocide case, Bosnia and Herzegovina
3 against Serbia and Montenegro, 26th of February, 2007. And once again
4 I'll read it, because perhaps it was missed the first time.

5 Paragraph 389: "The Court notes that in any event the act of an
6 organ placed by a State at the disposal of another public authority shall
7 not be considered an act of that State if the organ was acting on behalf
8 of the public authority at whose disposal it has been placed."

9 I accept this deals with state responsibility, but, your Honour,
10 the principle, in my submission, can be adopted. The ICJ case was not
11 speaking to the issue of blue helmets. It was speaking directly to the
12 issue of subordination, and that issue has not been grasped -- that
13 nettle has not been grasp by the learned friends for the Prosecution.
14 And I understand why. Because if that nettle was grasped, of course, the
15 case falls away because the Defence primary submission all along has been
16 that pursuant to all these African agreements and the Lusaka Accords and
17 other agreements that have been mentioned in quite some detail, Mr. --
18 the head of the MLC, my client, Mr. Bemba, sent a contingent of forces to
19 help the democratically elected government of the Central African
20 Republic.

21 Now, your Honours, we've given quite extensive evidence and
22 brought to your Honours' attention, we hope, quite a lot of evidence of
23 the Prosecution's own record on the issue of subordination. We've
24 referred to Witness 40. We've referred to numerous other witnesses that
25 state that they were not answerable to Mr. Bemba but, rather, they were

1 answerable to President Patasse.

2 Your Honour, I'm not going to go through all that evidence. It's
3 been mentioned, as I said, in quite some detail. Suffice it to say we've
4 referred to Witness 40, Witness 26, a whole host of ERN numbers that are
5 all part of the record.

6 Your Honour, the other issue that infects the whole of the
7 Prosecution's case, as I've said previously, is the fallacy, the legally
8 erroneous common plan and factually erroneous common plan.

9 Now, it was said on the 14th of January, it's transcript page 76,
10 line 3 to 8, the Appeals Chamber of the Special Court for Sierra Leone in
11 the CDF case was referred to and my learned friend for the Prosecution
12 said that the Appeals Chamber stated: "It is manifestly incorrect to
13 conclude that widespread or systematic attacks against a civilian
14 population cannot be characterized as crimes against humanity simply
15 because the ultimate objective of the fighting source was merely to
16 respond to aggressors."

17 Well, your Honours, that's not our point. We accept, of course,
18 the ends do not justify the means. It's simple as that. Of course we
19 accept it. But the Prosecution's case all along has been that the common
20 purpose was sending troops to President Patasse and the government of the
21 Central African Republic, and the Prosecution have said repeatedly on the
22 issue of intent that the -- they accept on the one hand that they must
23 prove intent and they accept superficially, it seems, the requirements of
24 Article 30 to prove intent and knowledge. They go through very nicely
25 and with great eloquence Article 25. Legally it seems perfect. But,

1 your Honour, we have to pierce that patina of appropriateness and
2 correctness and see what evidence the Prosecution are relying upon.

3 Now, your Honour, I referred previously to the document
4 containing charges at paragraph 73. I mentioned it in my opening. I'm
5 not going to read it again.

6 On the 1st of December, it was said, and I'll quote, page 27,
7 line 22 to 25: "Jean-Pierre Bemba's intent regarding the commission of
8 crimes are firmly based, firmly based, on the MLC's prior behaviour in
9 the Central African Republic in 2002 and also in Mambasa 12 days before
10 the 2002 Central African Republic intervention in October 2002." So
11 they're very clear. Document containing charges, their case is that past
12 conduct, past knowledge allegedly of conduct of troops is the main
13 evidence, is the primary evidence to their bid to prove intent relevant
14 to the matters that your Honours must consider. They reaffirm it, of
15 course, on the 12th of December in the section I have just read.

16 Of course this was not a simple flight of fancy by the
17 Prosecution. This has been their consistent position. Because the next
18 day -- on the 13th of January, at page 23, lines 7 to 11, they say:
19 "Further, Jean-Pierre Bemba had the requisite intent and knowledge." So
20 we wait, breath held, great anticipation. What is this evidence that
21 they are going to seek to prove my client's intent and knowledge? What
22 is the answer the Prosecution give? I continue: "As you will hear
23 shortly, at the time Jean-Pierre Bemba deployed his troops in the Central
24 African Republic in 2002, he knew that they had committed similar crimes
25 in the Central African Republic in 2001 and Mambasa in 2002."

1 Now, your Honour, of course previously I had referred to the case
2 of Hadzihasanovic and Kubura before the Appeals Chamber of the
3 International Criminal Tribunal for the former Yugoslavia, and I made in
4 the opening, put it -- laying the Defence cards on the table that we said
5 that legally this was an error, that the precise position the Prosecution
6 would have your Honours adopt in this case has been rejected by five
7 Judges, five experienced Judges for the International Criminal Tribunal
8 for the former Yugoslavia. It was my respectful submission that
9 your Honours should give that decision, that judgement great persuasive
10 authority, and your Honours should view it with the utmost scrutiny.

11 Your Honours, perhaps the point was not put well by me the first
12 time, so let me try again.

13 The Prosecution's position was that because members had
14 committed -- because the accused who was a superior had knowledge of
15 plunder committed by his subordinates in 1993, therefore he would know,
16 he had good notice and necessary knowledge to know that those troops were
17 likely to repeat that conduct later on. And the Appeals Chamber said
18 very clearly, and the Prosecution acknowledged this later on, that the
19 Chamber cannot automatically conclude that an accused's knowledge of and
20 past failures to punish his subordinates implies that he knew or had
21 reason to know -- beg your pardon, that he knew or had reason to know of
22 their subsequent acts.

23 Now, your Honour, it seems that the penny dropped, because for
24 the third day running the Prosecution went back to how they were going to
25 prove intent in this case, and on the third day they say at 14th of

1 January, page 106, line 4 to 9 -- sorry, lines 2 to 9, "Your Honour, the
2 facts in Kubura are not analogous to the facts of our case." Well,
3 your Honours, you must review it carefully. My understanding is that the
4 Prosecution are saying that alleged crimes in 2001 and 2002 in the DRC
5 provided the foundation of the Prosecution's assertion that my client had
6 intent in relation to the charges relating to the Central African
7 Republic that your Honours must consider. And the Appeals Chamber in the
8 ICTY decided that very issue, that it is not enough to conclude that
9 simply past conduct by troops is evidentially sufficient to make that
10 quantum leap, particularly, your Honour, when the investigation has been
11 superficial.

12 Your Honour, why do I say superficial? I say it's superficial
13 because the Prosecution acknowledge in their document containing charges
14 that there are three -- at least three groups of the MLC that are
15 operating in the Central African Republic. No attempt, no attempt by the
16 Prosecution to tie those troops in to 2001 or to 2002 incidents that they
17 rely upon. No attempt by the Prosecution to show that the soldiers are
18 the same, the troops are the same, the commanders are the same. They, of
19 course, are confident, this being a new court, perhaps, that it will be a
20 smooth ride straight through to trial. Everybody wants to be busy.
21 Your Honours, that is -- that would be perilous in the extreme.

22 Your Honours, just one moment.

23 Your Honour, of course the Prosecution said repeatedly in the
24 document containing charges and in the opening statement, and they
25 maintain the assertion that has not been qualified at all that

1 Mr. Bemba -- sorry, I apologise, that no individuals were punished for
2 what occurred in 2001. And, your Honour, I did mention previously the
3 individual, the head of the operation in 2001 that was not only dismissed
4 and not only brought to trial but was convicted for two years. Now, that
5 of course is evidence that the Prosecution had in its own possession, and
6 I would have thought, Madam President, that the Prosecution would have
7 grasped that particular nettle. That's EVD-P-00074, and also
8 CAR-OTP-00290481. And that was that a Mr. Diku was punished and sent to
9 gaol for two years.

10 So that factual assertion that they presented to the Court
11 appears to be wrong, and I'm sure it's an oversight, unless I'm mistaken.
12 But one would expect at the end of a hearing when one is confronted with
13 this evidence one would clarify the position and put forward another
14 argument and accept, well, somebody was punished but nonetheless our
15 primary assertion remains. But I did not expect complete silence on this
16 important issue that was relied upon in the opening speech of the
17 Prosecution and it was relied upon in the document containing charges.
18 As I said, I'm sure it was an oversight but an unexpected one
19 nonetheless.

20 Your Honour, the other issue, of course, is knowledge. What is
21 the knowledge that the Prosecution would attribute to Mr. Bemba? Well,
22 my learned friend Ms. Tai in her submissions yesterday, I believe it was,
23 it's transcript page 11, at page 88, made one particular submission at
24 that reference. It was said that three witnesses told Mr. Bemba about
25 the crimes. Now, your Honours I'm not going to go into this issue in

1 great detail. You have the whole record of Defence submissions that you
2 will evaluate and decide the merits of in due course, but who are the
3 three witnesses?

4 Witness 15 is the first. Your Honours, that's Exhibit P-2168 at
5 ERN 540. These are the references you've been given. But this
6 particular witness only talks about going to Paris and being told that
7 Mr. Bemba should withdraw troops by people he knew there. None of these
8 three, to cut a long story short, none of these three have direct
9 evidence of crimes, of rapes, of pillaging that they bring to the
10 attention of Mr. Bemba and say, "This is what we've seen. It's
11 absolutely horrendous. You must do something about it. You can't allow
12 this to stand." It's all hearsay.

13 The second witness, Witness 45, what does this witness say that's
14 relied upon by the Prosecution at P-2340, at ERN 484 and 485. Well, this
15 witness states: "First, the international press. And then I went to
16 Bangui with my wife, people from Central Africa, would discuss it. They
17 would talk about it. And there was tangible hostility against Congolese
18 people because of what the military or the people of the MLC did. And as
19 soon as I was back, I discussed it with Jean-Pierre Bemba, told him that
20 there was growing hostility against MLC intervention and that really
21 punishable acts were denounced."

22 And, your Honour that particular witness states that he learned
23 it from an individual, incapacitated individual who never went out of the
24 house.

25 So again it's hearsay evidence. It's not direct knowledge.

1 And the third of course is Witness 37. And he states at P-139 at
2 ERN 477 that: "For example, concerning the example of Ituri, there was a
3 lot of media talking about violations of human rights, but it's only ...
4 we heard that in the media a lot. Concerning CAR, we heard it in the
5 media, but it was never checked out whether it was true or not, that
6 there were problems following the intervention of troops of the MLC. In
7 Ituri ... concerning Ituri, Jean-Pierre Bemba created a court, a tribunal
8 which judged the people who were responsible for the abuses.

9 "And we were telling him that it was very badly perceived and
10 that there was a war in CAR. We had to find a solution. And I
11 personally told him," the witness continues, "I personally told him and
12 other people talked to him as well.

13 "And Bemba's answer was the following: 'I was called by the
14 president and that's why I -- I was called by an elected head of state.
15 That's why I'm here.'"

16 Now, your Honour, in the fog of war, particularly a bitter
17 conflict of the type described by the Prosecution, I have previously said
18 in the opening that your Honours should be aware that an awful lot of
19 propaganda and disinformation and rumour and gossip is bandied about.
20 What information have the Prosecution proved was given to Mr. Bemba? Of
21 course you've got the communications logs that the Defence have provided,
22 and you'll give that such weight as you think. But what evidence have
23 the Prosecution given from reliable witnesses, witnesses who stand to
24 gain nothing, witnesses that not suspects saving their own skin? What
25 reliable evidence have they given that Mr. Bemba knew that crimes were

1 going to be committed?

2 What evidence is there not? There's no satellite intercepts.
3 Many countries, many powerful so-called line-minded states are
4 signatories to the Statute. The Prosecutor is not slow, as we know,
5 using his great charm, going to the diplomatic capitals of world and
6 getting cooperation and assistance. What evidence has been provided? No
7 telephone intercepts, no radio intercepts, no Thuraya satellite phones.
8 It's all deficient, unsatisfactory to allow a case of this gravity, of
9 this magnitude to be allowed to proceed.

10 And I should say in fairness that later on Ms. Tai refers to
11 another witness that says during the CAR operation Bemba gave
12 instructions to the commander of the MLC's CAR operation, but there is no
13 citations for that from the transcript I have seen. But, your Honours,
14 it seems that maybe Witness 46 is being referred to, and I stand to be
15 corrected to that. But in assessing that, your Honour, you must look at
16 Witness 46 alongside Witness 40 that contradicts that particular witness
17 in almost every important material particular.

18 I will give just one example for the sake of expediency. At
19 EVD-P-02295, Witness 46 stated that he received instructions every day
20 from the operations -- CAR operations. I think it should be the CAR
21 operations headquarters. "He did not do anything without instructions
22 from operations headquarters." That's the CAR operations headquarters.
23 "He no longer" -- this is the critical piece. "He no longer received
24 instructions from Bemba." How much clearer does it have to be?
25 EVD-P-02297, and ERN 239.

1 He does go on to say that sometimes he would call Bemba to let
2 him know what instructions he'd been given so to let him know what orders
3 had been given to them. ERN 240. But he makes it quite clear the calls
4 were informational only and it never happened that an order from the CAR
5 operations headquarter was countermanded by Mr. Bemba. Your Honour, this
6 Witness 40 can't be just -- in relation to this issue can't be simply
7 swept under the carpet.

8 Your Honour, the other issue of course is the Prosecution have
9 led evidence and they accept, of course, that in October 2002, at the
10 time this operation was launch, Mr. Bemba's focus was not completely on
11 events in Bangui. Of course he was -- my client has been the
12 vice-president of the Democratic Republic of the Congo. That is his
13 constituency. That is his home, and those are his people. And in
14 October 2002 at the time the Prosecution allege that he had knowledge, he
15 was engaged in operations -- MLC was engaged in operations in Mambasa,
16 and perhaps even more importantly in relation to the final status and the
17 path towards democratisation it was hoped, the Sun City agreement was
18 being negotiated.

19 So, your Honours, in assessing knowledge one must not focus in a
20 kaleidoscope type of fashion simply as if Mr. Bemba is looking over the
21 river with a pair of binoculars and surveilling all operations in the
22 Central African Republic. He was the head de facto of a state, a third
23 of the territory of the Democratic Republic of the Congo. And not just a
24 head of an entity of the DRC. He was engaged in diplomatic negotiations
25 of extreme sensitivity in South Africa, and he was also engaged in a

1 military operation against opponents.

2 Your Honours, in relation to knowledge, the other issue, of
3 course, is prior to the events alleged in the indictment by the
4 Prosecution, and I quote "The Bemba Surprise." It's EVD EVD-P-02153,
5 page 7. It's said in that report that many observers, and I quote:
6 "Many observers considered the ALC," and of course that's the military
7 component of the MLC, "Many observers considered the ALC to be the best
8 trained and most disciplined of the Congolese armed groups. Even Bemba's
9 critics in that highly charged political environment, I add. "Even
10 Bemba's critics acknowledge that the MLC vastly improved security in the
11 region, which is why the movement enjoyed considerable popular support in
12 the territories it controlled." Not a marauding pack of bandits the
13 Prosecution it seems will have you believe from the evidence presented in
14 relation to the Central African Republic.

15 This report continues and I quote: "Polling data conducted in
16 Gemena in 2002 showed that nearly 70 per cent of respondents felt
17 protected against crime."

18 Now, of course, your Honour, things change and allegations came
19 out in October 2002 in relation to Ituri in relation to the
20 Central African Republic, but, your Honour, the Prosecution cannot be
21 Janus-faced. It cannot on the one hand allege that Mr. Bemba's troops
22 were marauding and were sent there with the intent of committing rape and
23 mayhem and plunder and pillage, the Vikings of the modern age. Not at
24 all. And then on the other hand, their own evidence states, well, they
25 were known as having the most disciplined troops in the region. Not only

1 that they accept there were codes of conduct. And as I mentioned before,
2 these were not dead letters, but training actually was given.

3 Now, your Honours, there is some intellectual, and I'm sorry to
4 say it, but there is some intellectual dishonesty that must be simply
5 exposed. Your Honour, I go to yesterday's transcript, page 91,
6 line 20 -- just one moment, your Honour.

7 And, your Honour, at page 91, line 20, a learned trial attorney
8 in the Prosecution stated -- and let's consider this. Let's put it under
9 the microscope. At EVD-P-00102, ERN 0413. "We can find evidence that
10 the FACA called on the MLC representative often," not once, often, "when
11 pillaging began."

12 Now, when I heard this evidence, of course, your Honours, I pause
13 there, I thought it must be to encourage. It's a joint operation,
14 co-perpetrators. Go ahead, more pillage, more plunder, more rape. But I
15 was flabbergasted from the Prosecution's perspective when my learned
16 friend continued: "They called on him. They called on the MLC to help
17 report cases of pillaging and theft to his superiors."

18 Now, your Honours, I don't get it. How on the one hand can the
19 Prosecution say, with great emotion, with great eloquence, that my client
20 was responsible for rape and murder and pillage and inhumane acts as a
21 tool of war and turn a blind eye not only to the codes of conduct, not
22 only to trials that may be deficient and may have problems and may not be
23 perfect and may have grave inadequacies, but then also turn a complete
24 blind eye to their other evidence that they read into the record in which
25 they say the other part of this criminal endeavour is saying don't do the

1 pillaging.

2 Well, which is it? Is it a joint operation in which it is said
3 that Patasse and Bemba decided to commit rape and attack the civilian
4 population as a tool of war? Or was it one in which one side said, "No,
5 we don't want rape and pillaging as a tool of war"? They can't have it
6 both ways. It is an elementary point in my position and it is one that
7 the Prosecution, with the greatest of respect, have singularly failed to
8 grasp.

9 Just one moment.

10 Your Honour, at this point, with your Honours' leave I will seek
11 to play a short video. Just to put this in context, the Prosecution of
12 course have said that one of the reasons why Mr. Bemba in cohorts with
13 President Patasse engaged in this attack upon the civilian population was
14 because they were unwelcome and the people of the Central African
15 Republic were rising up in a democratic movement against the government
16 that they themselves elected. But, your Honours, I wish to play -- and I
17 would be grateful for the assistance of the Court Officer. It's
18 EVD D-010042, and the ERN is CAR-DEF-0010832. Your Honour, there's three
19 extracts. The first is 18 minutes, 27 seconds to 21 minutes and
20 40 seconds. Your Honours, this is Mr. Bemba when he arrives in the CAR
21 on one of two occasions and he goes to the town of Sibut. Your Honours
22 will find it no doubt from the Prosecution's map, and your Honours, it
23 can be watched.

24 (Videotape played)

25 "THE INTERPRETER (Voiceover): What is your relationship with the

1 troops of President Jean-Pierre Bemba?

2 "President Jean-Pierre Bemba's troops, I had reason to talk to
3 them last night. They went to the crossroads at the mission over there.
4 I stopped them."

5 COURT OFFICER: Madam President, if you want to see the video,
6 you have to turn to PC1.

7 (Videotape played)

8 THE INTERPRETER (Voiceover):

9 "Q. What is your relationship with the troops of President
10 Jean-Pierre Bemba?

11 "A. President Jean-Pierre Bemba troops? I had reason to talk to
12 them last night. They were going to the crossroads at the mission over
13 there. I stopped them. We chatted. I was -- I was at home. I stopped
14 them and we chatted for 15 minutes, and I was so happy, and they were so
15 happy. I congratulated them, and I said again that they had come to
16 liberate us, that they're Liberators, that I -- I encouraged them to
17 complete their work, see the job through, to drive those people back to
18 where they came from, back to Sidu over there. This is not their home,
19 and the whole community is very happy that they have come, and I, too, am
20 happy.

21 "Q. And now they are preparing to leave the Central African
22 Republic in accordance with the agreement signed in Libreville. CEMAC
23 will replace them. Jean-Pierre Bemba's troops are going to be replaced
24 by CEMAC. What is your analysis of the matter?

25 "A. I personally -- I wouldn't like to see them go, not too

1 quickly. They should stay. They should free us totally before leaving
2 Congo. If those troops go, we're sure to be invaded for a second time.
3 They should liberate us totally. They should first close the border over
4 there before they leave. Going, why? They're going to go. Even if they
5 stay here they're going to go. That's not a problem. They're going to
6 live here with us, stay together here with us, and then afterwards
7 they'll go, but they are -- but if they don't liberate us, if they leave
8 too quickly, that will be very danger for us. It's a big danger for us.
9 I am very happy with President Ange-Felix Patasse who has kept them.
10 Everybody knows that they have to go from the 15th. We still see them.
11 It's a very good idea. They came to liberate us, but the work is not yet
12 done. And if they leave -- they can't leave. They have to finish the
13 work that they came to do first. And those other people, the rebels,
14 they're still over there. Those troops, if they pull back a bit, we will
15 be invaded again.

16 "Q. Where are the rebels? How many kilometres are they from
17 here?

18 "A. I heard this morning that they're in Gifa.

19 "Q. Gifa, where's that is?

20 "A. 50 kilometres from here. It's on the road 50 kilometres
21 away, near here. We can't sleep tranquilly at night. We listen out for
22 them over there. The intelligence says that they're nearby and we still
23 feel disturbed. They should liberate us totally before they leave.

24 "Q. Mr. Mayor, what is your name?

25 "A. My name is Gabriel Mote Bibiringo, mayor of the town of

1 Sibut."

2 MR. KHAN: And your Honour, with the assistance of the Court
3 Usher perhaps we can go to the second portion of the video which is at
4 27 minutes and 30 seconds to 31 minutes and 5 seconds. Your Honour,
5 while that's being done, I should say that this is the video, in fact,
6 that my learned friend Mr. Yillah, I think, was confused with and it was
7 provided by the Prosecution to the Defence as exculpatory evidence. It
8 is a video, I understand, that was taken by the MLC, but, your Honours,
9 we take the view, from what we understand, that it should be put before
10 your Honours' attention because it is relevant to some of the issues that
11 the Prosecution have raised and your own understanding of the case.

12 We can proceed to the second portion, please.

13 (Videotape played)

14 "THE INTERPRETER (Voiceover): My name is Madam Maliomo Lucienne,
15 president of the organisation of women, Central Africa. I'm the
16 president of l'AGEMO.

17 "Q. You live in Sibut. For how long have you been living here,
18 Maman?

19 "A. Well, always. My husband bought a property here in '58. We
20 came, we didn't live there but when I retired I came back to the village
21 in '94.

22 "Q. You've been living here since '94? Do you have a family?

23 "A. Yes.

24 "Q. And children?

25 "A. I have ten children. They are abroad. There are four who

1 are abroad and six others are here. I am here with my grandchildren.

2 "Q. How do you account for their youthful joy? How do you
3 account for the joy of these young people?

4 "A. These young people, as you can see, they're joyful because
5 they have been liberated, because we went through four months of
6 suffering. We had nothing. They went into the bush. They didn't eat
7 what they should. There was no medicine to treat them. There are
8 children who died in the bush. There are women who came back
9 empty-handed. They left with their babies in arms but they died in the
10 bush through lack of medicine and food. So -- so above all, my thanks go
11 to the troops of Mr. Bemba, who helped our president to bring us out of
12 the bush and return to the town. And that's why you hear the children
13 shouting. They're joyful again.

14 "Q. What is your greatest hope now?

15 "A. Our biggest hope is that we move to dialogue and also that
16 the road be reopened. For those of us who have children in Bangui, three
17 months like that, without seeing my children, my wish is that the road be
18 reopened so that everybody can come and see the family.

19 "Q. Now, you're in contact with your children in Bangui?

20 "A. Yesterday my son, my second eldest son came to visit me. He
21 left again this morning.

22 "Q. He went back to Bangui?

23 "A. Yes.

24 "Q. So the road is open?

25 "A. No. He came because I complained a lot. I was crying a lot,

1 and the colonel -- I said to the colonel, 'I'm going to die if I don't
2 see my children.' He took pity on me and my son came. I saw him. I
3 took him in my arms. We slept in the same bed, and I told him that I had
4 found him again. He was surprised to hear me say that, but I say thank
5 you, thank you to God and thank you that the suffering is over.

6 "Q. Thank you, Maman. What is your message to Jean-Pierre Bemba?

7 "A. That I thank him, that the whole population of Sibut, each
8 and every one of us thanks him. Even the babies thank him for what he
9 did for us."

10 MR. KHAN: And, your Honour, if we can go to the third and final
11 extract of this video that's before your Honours, and it's 35 minutes and
12 30 seconds on the counter to 38 minutes and 17 seconds.

13 (Videotape played)

14 THE INTERPRETER (Voiceover):

15 "Q. What is the relationship that you have with Jean-Pierre
16 Bemba's troops who came to assist you here?

17 "A. Well, they're really Liberators. They're Liberators. And I
18 thank them. You can see for yourself there are children among us. There
19 are women, et cetera, which means that -- well, the atmosphere is really
20 normal now. The other one over there has returned. Everyone is happy.
21 You can see that there are children, there are women. It means that the
22 atmosphere is, so to speak, back to normal. We're really very happy.

23 "Q. If you were faced with President Bemba today, what would you
24 tell him.

25 "A. Well, I would say, 'I don't know how to thank you,

1 President Bemba. I don't know how to do that. It's really a dream.
2 Thank you, thank you.' It's great that President Bemba could help
3 President Patasse to liberate us.

4 "Q. With regard to the agreement reached, well, the troops of
5 President Bemba have to leave this month. How do you analyse this? What
6 would you say?

7 "A. Well, it's something that I myself don't understand. Bemba
8 troops were asked to leave the country, and -- well, as you yourself
9 know, the town was in a situation you are familiar with, and this is a
10 situation -- this is a situation that Bemba himself is aware of. He
11 knows that Patasse is his -- his father. He gave a helping hand to
12 Patasse, to help with these rebels who took over most of the towns in
13 Central Africa. That's how Bemba assisted Patasse, to push back the
14 rebels. But I understand these others. If they say that they don't want
15 to see Bemba's troops, well, perhaps they have assisted these rebels to
16 harm us. It's something that I don't understand. But since they came
17 here to liberate us, well, that won't prevent there being a dialogue, but
18 one can engage in a dialogue. While waiting for such a dialogue,
19 Jean-Pierre Bemba's have been doing their work to deliberate us. That's
20 what I wanted to tell you, Mr. Journalist."

21 MS. BENSOUDA: Madam President.

22 JUDGE TRENDAFILOVA: Yes, Ms. Bensouda.

23 MS. BENSOUDA: Yes, Madam President. I'm sorry, and I really
24 hate to interfere whilst my learned friend is making his submissions, but
25 I -- I think, Madam President, the purpose of a closing statement is to

1 summarise what has been presented during the Confirmation Hearing. My
2 colleague is presenting new evidence that was not presented during the
3 course of the confirmation proceedings, and we don't have a problem with
4 that, but we do not have the advantage of responding to this new evidence
5 because we've already closed. Perhaps we can have guidance from the --
6 from the Bench as to what the Prosecutor -- the Office of the Prosecutor
7 can do under the circumstances, because this is new. And not that we
8 cannot respond to it, but we do not have the possibility of responding to
9 it after we have made our closing remarks.

10 MR. KHAN: Well, your Honour, I do understand --

11 JUDGE TRENDAFILOVA: Thank you --

12 MR. KHAN: -- in general the point of my learned friend and it
13 would have been a good point if it wasn't for the fact they're not taken
14 by surprise. This document has not been shown for the first time today.
15 Firstly, it came from the Prosecution; they gave it to us. Mr. Yillah
16 stood up the other day and said he'd given us a video. Well, this is
17 that video. And the second point is that it was on our list of documents
18 that we intended to use.

19 Now, your Honours, we cannot possibly have a hearing in three and
20 a half days and put all the evidence before your Honours, comparing that
21 to the two other Confirmation Hearings that have taken place in the three
22 other cases that take three weeks. We can't put all that evidence in in
23 three and a half days. Our duty of notification, in my respectful
24 submission, was discharged when we included these EVD numbers on our list
25 of evidence, and your Honours, of course -- your Honour, you want to say

1 something.

2 JUDGE TRENDAFILOVA: Yes. I would like to respond. I would like
3 to -- to make several points. Point number 1, Ms. Bensouda, that it is
4 not the task of the Chamber to guide the parties how they would like to
5 approach the Chamber in their presentations in their closing statements.
6 This is point number 1.

7 Point number 2. From the previous statement of the Defence, the
8 Chamber had the impression that these videos had been disclosed between
9 the parties. So this is -- this is my question, whether these videos had
10 been disclosed as required by the statutory provisions and especially by
11 Rule 121(3), sub-rule 4, and 6.

12 MR. KHAN: Your Honour, they have --

13 JUDGE TRENDAFILOVA: Sub-rule 3 and 4 -- just let me finish,
14 Mr. Khan. Sub-rule 3 and 4 are dealing with obligations of the
15 Prosecution's office, at least 30 days before the date of the
16 Confirmation Hearing or 15 days if they present new evidence as a result
17 of ongoing investigation. Sub-rule 6 is related to the obligation of the
18 Defence, 15 days before the date of the Confirmation Hearing. And the
19 previous days I made it very clear to the Defence that they will never be
20 limited in presenting new evidence whenever find it necessary but only
21 related -- could I ask for your attention, please, but only related to
22 two issues, alibi or grounds for excluding a criminal responsibility.
23 Otherwise, the Defence has the same obligations. However, it enjoys the
24 privilege of a shorter time to present its evidence before the date of
25 the Confirmation Hearing.

1 Now, on behalf of the Chamber, I would like to have some clarity
2 whether this video is part of the evidence that has been disclosed
3 regardless of whether by the Prosecution's office or by the Defence, but
4 the deadlines have to be respected.

5 In addition to this, if this is something that -- like an
6 approach on behalf of the Defence a little bit disappoints me, because
7 still now we will a perfect approach by the two parties to these
8 proceedings, I would like to assure the parties, not only the
9 Prosecutor's team, not only the victims' legal representatives but as
10 well the Defence team, that these pieces of evidence will not be taken
11 into account when the Chamber is going to issue the decision.

12 MR. KHAN: Your Honour has raised a number of issues. Let me
13 answer them in order. The first issue is that this document has been
14 disclosed in accordance with the relevant rules that your Honour has just
15 adumbrated. Of course, it's source was the Prosecution, and we're very
16 grateful that they provided it to us. Of course that did not discharge
17 us from our obligation to give them notice that we were going to rely
18 upon that evidence in today's hearing, and I'm told by the case manager
19 that on the 25th of November, 2008, we did precisely that. So -- is that
20 correct? And there is absolutely no prejudice at all. We got it from
21 the Prosecution. They know about it and we told them we were going to
22 use it.

23 Now, your Honours, I must confess. I wasn't intending on using
24 this video in my closing. I don't need to pierce legal professional
25 privilege but, of course, a lot of matters are decided at the last

1 moment, but on the core issue of prejudice, well, none is shown. They
2 knew. They gave us the document. They know its provenance. They are
3 the ones that obtained it. They served it upon us, and they knew last
4 year that we were intending to use it in court today.

5 JUDGE TRENDAFILOVA: Thank you, Mr. Khan. If this is the case,
6 please proceed with the video.

7 MR. KHAN: I'm grateful, your Honour.

8 MS. BENSOUA: I'm sorry, your Honour. If I may just clarify.

9 JUDGE TRENDAFILOVA: Yes.

10 MS. BENSOUA: Your Honour, contrary to what my colleague is
11 saying, my learned friend, they gave it to us. And we're not denying
12 that it has been disclosed to us. In fact, according to my colleagues,
13 it was given to us on the 15th of December, 2008. They gave it to us.
14 It's theirs, but however --

15 JUDGE TRENDAFILOVA: Ms. Bensouda, excuse me. Just to clarify --

16 MS. BENSOUA: Your Honour --

17 JUDGE TRENDAFILOVA: -- that according to the decision defining
18 the final date of the Confirmation Hearing to commence, as far as I
19 recall, and I have good memory, the 15th of December was the final day
20 for the Defence to disclose its evidence. So I think that they're not
21 violating neither the statutory provisions nor the decisions of this
22 Chamber.

23 MS. BENSOUA: Your Honour, my -- my query is not to quarrel
24 about whether it has been disclosed or not. This is not the point that
25 we are raising. Our point is that there's time. Time has been allocated

1 to the different teams to make their presentations, and the Bench has
2 allocated to us one hour, which maybe we have not even used, but having
3 said that, your Honour, if the Defence is raising this issue now at the
4 closing, and this is why I said in view of the time I'm seeking
5 clarification what should the Office of the Prosecutor do. We know what
6 we can do, your Honour, but it's because now we are restricted by time,
7 because --

8 JUDGE TRENDAFILOVA: I understand --

9 MR. KHAN: Your Honour, can I say -- your Honour, it may assist.
10 I do understand my learned friend's difficulty, and as I said, ordinarily
11 I would have put this in the main case but these decisions were taken
12 just before we entered, the final decision. Your Honour, perhaps if I
13 can just conclude a few comments. I've finished showing the video.

14 JUDGE TRENDAFILOVA: Mr. Khan --

15 MR. KHAN: Your Honour, may I just finish, may I just finish,
16 with your leave. And then I have no objection if my learned friend
17 wishes five minutes to make some observations and then I'll conclude my
18 speech.

19 JUDGE TRENDAFILOVA: Mr. Khan, thank you very much. I would ask
20 you politely to listen to what I'm going to say.

21 Of course during the Confirmation Hearing there are parts of the
22 Confirmation Hearing where the evidence should be presented, and the
23 closing statements are -- and the opening statements are not these parts
24 of the Confirmation Hearing. However, as far as the disclosure has been
25 properly conducted, I do not consider it to be a problem, and as I see

1 this is the approach of my colleagues but let me confer very shortly with
2 them. And for the moment there are two possible solutions. The one in
3 your written submissions, if you would like you may make your comments of
4 course, or the Chamber is going to ask the blessing of the interpreters
5 to give you the floor, but remember that the Defence has always the final
6 word so it will extend the hearing. Just a moment to confer with my
7 colleagues.

8 (The Trial Chamber confers)

9 JUDGE TRENDAFILOVA: I would proceed with some clarifications on
10 behalf of the Bench. Of course the Chamber wouldn't like at the end of
11 this hearing that has been very professionally conducted to -- to have
12 incidents where some of the parties feel that they have not been equally
13 treated, because this has never been the intention of this Chamber.

14 In addition to this, however, I would like to make a different
15 point, that while you, Ms. Bensouda, have presented the final closing
16 statements of the Prosecutor -- of the Prosecution's office, you have
17 been referring to some pieces of evidence, and you have been quoting
18 their EVD number.

19 As far as this piece of evidence, the videos, have been disclosed
20 between the parties, we do not find it to be -- it is not very precise,
21 not to use it at the proper time, but it's not violation of the way the
22 parties are supposed to -- to participate in the closing statements.

23 But I'm seeking the blessing of the interpreters. Will the
24 interpreters agree that we proceed a little bit more in order to satisfy
25 the requirements of the parties and to absolutely equally treat them?

1 They grant us ten minutes.

2 So, Mr. Khan, would you be so kind to finalise as soon as
3 possible because we have to give then five minutes to the Prosecution's
4 office. Then you will have the right to reply, and the Chamber has to
5 announce its decision on the written submissions.

6 MR. KHAN: Yes, I'm grateful. Well, your Honour, the only other
7 comments -- you've seen the video, you've seen the face, I think, for the
8 first time in these hearings of a national of the Central African
9 Republic, three particular extracts, and these individuals are not
10 anonymous. They gave their positions. One is the governor of Sibut.
11 The lady was the president of an organisation of women, and the third of
12 course you also saw and it's before you.

13 Now, your Honour, the Prosecution may well say, because they're
14 not relying upon this it was exculpatory evidence, that it's taken by the
15 MLC and therefore -- which we accept, therefore it should be given
16 minimal weight. Well, your Honour, in response to that, it's my
17 respectful submission, that you must view the body of the video for any
18 signs of intimidation or coercion. And if the Prosecution was saying
19 that merely the -- by dint of the taker of the video it was unreliable,
20 one would have hoped, and certainly I haven't seen it although I came at
21 the 11th hour to this case, one would have hoped for some evidence from
22 the governor of Sibut or the ladies that were identified that --

23 JUDGE TRENDAFILOVA: Mr. Khan, I'm very much sorry to interrupt
24 you. I've just received a message from the Court Officer that there are
25 only 14 minutes left on the tape. So we are technically absolutely

1 restricted. How much time do you need?

2 MR. KHAN: Well, your Honour, I finished that particular point
3 and I will allow my learned friend to respond and then I'll finish my
4 closing in five minutes.

5 JUDGE TRENDAFILOVA: Okay. Ms. Bensouda, you have the floor.

6 MS. BENSOUDA: Your Honour, to save the time of the tape, we
7 would prefer to make our submissions in a written -- in a written form.
8 When we make written submissions, we will address this point. I think
9 this can --

10 JUDGE TRENDAFILOVA: Ms. Bensouda, however, I would like to share
11 with you that we have been provided with an opportunity in five minutes
12 to change the tape. So it's up to you.

13 MS. BENSOUDA: We still -- we still, your Honour, we will make
14 our submissions in writing.

15 JUDGE TRENDAFILOVA: Okay. Thank you.

16 MS. BENSOUDA: On this point. Thank you.

17 JUDGE TRENDAFILOVA: So, Mr. Khan, you have several minutes to
18 conclude.

19 MR. KHAN: I'm most grateful. Your Honour, the individuals one
20 has seen on the video, their statements that have been recorded are
21 hardly consistent with a populous -- a population that is being hounded
22 and hunted by so-called "Bemba's men." Rather, they converse. They are
23 welcoming the assistance of the MLC to support the government that they
24 themselves elected. Your Honours, in assessing the overall veracity and
25 credibility of the Prosecution evidence, when weighing it with evidence

1 which is fundamentally and irreconcilably contradictory, your Honours
2 should bear in mind the evidence of the type that has just been put
3 before you.

4 Your Honour, another issue, of course, perhaps merits a certain
5 degree of reflection. My learned friend has said, and of course it
6 appears to be the case from what I've seen, that there's no -- despite
7 the inquiries that Mr. Bemba made later on regarding investigations,
8 there's no official communication during the period of the charges
9 putting him -- telling him definitively that the crimes have taken place
10 and should be investigated. But, your Honour, be that as it may, it does
11 seem when one looks at the statements that an awful lot of statements
12 have been taken after the transfer of Mr. Bemba to the seat of this
13 court, and also a certain number of others take -- are taken some years
14 after the alleged crimes.

15 Now, your Honours, when assessing and weighing the Prosecution's
16 evidence, it is my respectful submission that it is quite appropriate to
17 bear in mind the government on the ground in the Central African
18 Republic. It is the rebel leader that is now the president, of course,
19 who was the military opponent of the MLC. And your Honours, of course,
20 now have seen there are a lot of documents in the record, newspaper
21 reports, Human Rights Watch reports, radio reports making all kinds of
22 allegations against Mr. Bemba and the MLC.

23 And the question I put, your Honours, and it's a matter of
24 evidential analysis rather than a clearcut submission, is your Honours
25 should perhaps prudently consider whether or not some of these witnesses

1 have been affected by the media controlled by President Bozize and the
2 allegations that all these crimes are being put at the door of the MLC
3 and, therefore, Mr. Bemba.

4 Your Honour, if that is the case, whether or not some of these
5 witnesses may be mistaken, your Honours, these ordinarily I accept.
6 These ordinarily are issues for trial. I accept that. But in totality,
7 I would ask that you give that submission such weight as you think is
8 appropriate in the circumstances. It is, of course -- it used to be in
9 the courts of England and Wales a rule that one would come to courts of
10 equity with clean hands. Of course this is not a court of equity, but it
11 is, of course, a court of justice. And similarly when reviewing the
12 evidence of the Prosecution in totality and deciding upon the merits or
13 the inadequacies of the Defence submissions, it's my submission that
14 your Honours are entitled to look at the government that referred the
15 case to this court and whether or not that will have any part to play,
16 I'm not saying it definitely does, whether that has any part to play in
17 the evidence that is put before you.

18 Your Honour, on the issue of knowledge I have addressed you. On
19 the issue of intent I have addressed you. As far as punishment is
20 concerned, the Prosecution did say in their speech -- they referred to
21 Mr. Bemba giving an amnesty. Well, your Honour, I would urge the Bench
22 to look at that evidence. What is the basis of this witness's knowledge?
23 It is based upon hearsay, based upon the evidence of a third person, and
24 there's no basis given in that evidence, as far as I could see overnight,
25 as to why that individual would know that such an amnesty had been given.

1 That's the first point.

2 The second point, of course, is the Prosecution have got various
3 judgements from the courts in the DRC. Is there any document, anything
4 from the gazette, Official Gazette, anything from newspapers? Is there
5 anything at the time, any court document to show that Mr. Bemba amnestied
6 these individuals? Your Honour, in my submission, that's a bit of a side
7 issue and it's to fog up the fact that trials were held, and that, more
8 importantly, for all the deficiencies, for the all the complications,
9 fighting taking place in the DRC, trying to assist in relation to the
10 African Union, a neighbouring country, for all the inadequacies, that
11 Mr. Bemba did invite international agencies who have the experience and
12 the resources and the ability to scrutinise and investigate, to enter the
13 theatre, to settle this matter that has become one of international
14 controversy.

15 Your Honours, Human Rights Watch and Amnesty International are to
16 be applauded, in my respectful submission, when they took up the offer of
17 Mr. Bemba to investigate the allegations of cannibalism of the Pygmies.
18 And your Honours will see, because I referred it in my opening, that they
19 when they did so they very largely debunked what I put, what I say is the
20 propaganda and hyperbole that was being bandied about at the time in a
21 bid to further besmirch the name of Mr. Bemba and the MLC for perhaps
22 political reasons.

23 Your Honours, not only that. In writing to the -- General Cisse,
24 the special representative of the Secretary-General and asking for
25 assistance, in writing to the president of the International Federation

1 of Human Rights in Paris, in my submission, Mr. Bemba signified his
2 intention to ensure that if there is evidence he would ensure that the
3 judicial process, for all its faults, was implemented in his territory.
4 And it is a matter, I say, of standing regret that neither the
5 United Nations, for all its high hopes, high ideals, and fantastically
6 good work in many theatres of the world did not take him up on that
7 offer. The Prosecution say repeatedly it's all a sham. These trials are
8 all a sham. Well, they also refer to seven people. In my respectful
9 submission, not much of a sham. It could have been 70. Not many of a
10 sham.

11 It's very easy to be rather -- there is a saying that if one is
12 jaundiced everything seems yellow. It is my respectful submission that
13 the benefit of the doubt in accordance with in dubio pro reo should be
14 afforded to Mr. Bemba even at this stage of the proceedings when
15 assessing whether or not the Prosecution has discharged its burden to
16 show that there are substantial grounds for believing these charges
17 should be confirmed. In my respectful submission, in viewing the
18 totality of the evidence in the round, they have failed to discharge that
19 important burden.

20 It is my respectful submission that the charges against Mr. Bemba
21 should not be confirmed, and once you have made that finding, its my
22 respectful submission there is no justification for him to stay in
23 custody a moment longer.

24 JUDGE TRENDAFILOVA: Thank you, Mr. Khan.

25 Just for clarification, this Chamber has announced during the

1 first day of the hearing that the Chamber is not going to rely only on
2 the evidence disclosed during the Confirmation Hearing presented by the
3 parties but all the evidence disclosed during the disclosure proceedings.
4 So you shouldn't worry that you -- if you have not displayed something
5 that has been disclosed, it will escape our attention.

6 MR. KHAN: I'm most grateful.

7 JUDGE TRENDAFILOVA: Now, this brings us to the end of the
8 Confirmation Hearing. Before I declare the end of the Confirmation
9 Hearing, I will announce the decision of the Chamber to give the parties
10 and the victims' legal representatives the opportunity, not the
11 obligation, if deemed necessary, to file written submissions not
12 exceeding 25 pages for the parties and 25 pages in total for the victims'
13 legal representatives no later than 26th of January, 2009, at 4.00 p.m.,
14 without authorisation to file responses. We have agreed to grant ten
15 days. The sooner, however, the better the parties who would like to send
16 written submissions, because this Chamber will start working on this
17 decision as of tomorrow, Friday, the 16th of January.

18 I remind the parties and the legal representatives that they are
19 not obliged to make these submissions. Only if the parties and the legal
20 representatives would like to make some additional enrichments related to
21 their argumentation these written submissions are welcome by the Chamber.
22 If you do not make some written submissions, do not fear that the Chamber
23 will decide you are not diligently dealing with your case. On the
24 contrary. We will know you are of the opinion that you fulfilled
25 properly your responsibilities and you don't need to file anything in

1 addition.

2 The decision on the confirmation of charges will be issued in
3 60 days after the 26th of January.

4 Finally, I would like to say that as the decision will be
5 prepared in English, in the event the Defence wishes to appeal the final
6 decision of the Chamber on the charges it should be aware that the
7 five-day's period for leave to appeal does not begin to run until
8 Mr. Bemba is notified of a French translation of the decision. For the
9 Prosecution, the deadline will be the issuance of the decision.

10 Now, finally, I would like to thank the interpreters -- to thank
11 the interpreters. Thank you very much. The court reporters, the
12 security officers, all the members of the Registry, the legal officers
13 not only of the team of the Bench but the full teams who have contributed
14 and made it possible for this hearing to -- to end just in four days.

15 I would also like to express my thankfulness to all the
16 participants for adhering to the schedule and performing their duties in
17 a professional manner with due respect for the proceedings, for the
18 Chamber, and for the International Criminal Court.

19 The Confirmation Hearing is over.

20 COURT USHER: All rise.

21 The hearing ends at 6.15 p.m.

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