

Trial Hearing
Witness: CAR-D04-PPPP-0053

(Open Session)

ICC-01/05-01/08

- 1 International Criminal Court
- 2 Trial Chamber III - Courtroom 1
- 3 Situation: Central African Republic
- 4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
- 5 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and Judge Kuniko Ozaki
- 6 Trial Hearing
- 7 Thursday, 23 August 2012
- 8 (The hearing starts in open session at 9.35 a.m.)
- 9 THE COURT USHER: All rise.
- 10 The International Criminal Court is now in session.
- 11 Please be seated.
- 12 PRESIDING JUDGE STEINER: Good morning.
- 13 Could, please, court officer call the case.
- 14 THE COURT OFFICER: Thank you, Madam President. Situation in the Central African
- 15 Republic, in the case of The Prosecutor versus Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
- 16 PRESIDING JUDGE STEINER: Thank you very much. I welcome the Prosecution team,
- 17 legal representatives of victims, the Defence team, Mr Jean-Pierre Bemba. Good morning
- 18 to our interpreters and court reporters.
- 19 We will continue today with the questioning of Witness D-53 and I ask, please, court
- 20 usher to bring the witness in.
- 21 (The witness enters the courtroom)
- 22 WITNESS: CAR-D04-PPPP-0053 (On former oath)
- 23 (The witness speaks French)
- 24 PRESIDING JUDGE STEINER: Good morning, General Seara.
- 25 THE WITNESS: (Interpretation) Good morning, your Honour.

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1 PRESIDING JUDGE STEINER: I hope you are feeling well and ready to continue with
2 your testimony?

3 THE WITNESS: (Interpretation) Yes, indeed.

4 PRESIDING JUDGE STEINER: General, I need to remind you that you are still under
5 oath, and that you are expected to speak slower than normal in order to allow our
6 interpreters to do their job. Is that fine with you, sir?

7 THE WITNESS: (Interpretation) Yes, indeed.

8 PRESIDING JUDGE STEINER: We will start this morning with a continuation of the
9 questioning by Maître Zarambaud, legal representative of victims.

10 So, Maître Zarambaud, you have the floor.

11 MR ZARAMBAUD: (Interpretation) Thank you, Madam President. I will not take too
12 much time.

13 QUESTIONED BY MR ZARAMBAUD: (Interpretation) (Continuing)

14 Q. Good morning, General.

15 A. Good morning, Counsel.

16 Q. It would appear to me that in answer to the Prosecution you talked about an
17 armoured battalion that was assigned to the Central African forces by the Chadian
18 government; is that the case?

19 A. Yes. Two officers who were with General Bozizé's camp confirmed that to me and
20 I therefore included their testimony in my write-up.

21 Q. How many armoured vehicles were with -- were involved, and when General
22 Bozizé got into Bangui did he come along with those armoured tanks?

23 A. I have no details as to their arrival in Bangui but when we talk about an armoured
24 squadron it is one that would involve about ten vehicles.

25 Q. Thank you. Transcript 232 of 17 August 2012, lines 17 to 20, you stated as follows:

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1 "In 2002 there was no network that would enable the use of mobile telephones in
2 Gbadolite, therefore the only available means was a Thuraya, and therefore he must have
3 communicated or it was possible for him to communicate only by Thuraya, from one
4 Thuraya set to another."

5 This is my question: Was the situation the same in Bangui? Were there no mobile
6 telephone facilities in Bangui?

7 A. I do not know whether there were mobile telephones in Bangui. What I said clearly
8 was that at the time, in 2002, General Amuli in his statement says that there was no
9 coverage for mobile telephones in Gbadolite. I don't know about Bangui, but it must
10 have been possible because people received mobile telephones which were used in the
11 intelligence services. It must have thus been the case that the mobile telephone was
12 available and working in Bangui, but not in Gbadolite.

13 Q. I thank you. If we take it that the mobile phone system worked in Bangui, would it
14 have been possible to call a Thuraya set in Gbadolite using a mobile telephone while in
15 Bangui?

16 A. Yes, subject to knowing the telephone directory or number on the other side.

17 Q. Yesterday, my learned colleague, Ms Douzima, showed you a number of documents
18 from the Chief of General Staff; that is General Gambi Antoine. She asked you to look at
19 the letterhead of those documents carefully as well as the signatures. Those were very
20 important documents, to the extent that they dealt with logistics, fuel, six vehicles for the
21 transportation of troops, ten jeeps and the effective engagement of allied MLC troops in
22 the operations, that is in the counter-offensive under the CEMA command and control;
23 that is the General Staff of the Central African Joint Forces and so on and so forth.

24 What I would like to know from you is whether you cross-checked to determine for sure
25 that these documents actually came from General Gambi, Chief of Staff Joint Services of

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1 the Central African Armed Forces?

2 A. I had no means by which to cross-check. The documents were given to me. I
3 received them as is. It was not for me to check, or question, the veracity of any
4 documents that were given to me.

5 Q. Why do you not have to cross-check, or challenge, the veracity of those documents?
6 Is it because you think that, because the documents were produced or tendered before the
7 Court, amounts to evidence that they contain the truth?

8 A. These are documents that are being used by the courts, these are documents that are
9 in evidence and I therefore do not see why I should question the veracity of the said
10 documents.

11 Q. This will be my last question. If it emerged that in November 2002, given that the
12 document was signed on 17 January 2002, 20 January 2002 and 25 November 2002, if it
13 emerged at some point that neither in December 2002, nor even at the very end of
14 Patassé's regime, if it emerged that General Gambi were never a Chief of Staff, namely
15 that he did not even have the rank of general and that he was not therefore in a position to
16 sign any document in the capacity of a general, if such were to emerge, what would be
17 your reaction to it?

18 PRESIDING JUDGE STEINER: Yes, Maître Kilolo?

19 MR KILOLO: (Interpretation) Madam President, once again we are delving into
20 speculation, as we did yesterday. I do not see the specific question that my learned
21 colleague is putting to the expert in this specific case.

22 PRESIDING JUDGE STEINER: You could maybe rephrase a little bit your question,
23 Maître Zarambaud, but in relation to an expert witness it was said many times by the
24 expert himself that many times he needs not to speculate, but to take conclusions on the
25 basis of his experience. So it's different than a witness of the facts, but I think the

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1 question as put may be too speculative and Maître Zarambaud could try to put it in
2 another way.

3 MR ZARAMBAUD: (Interpretation) Thank you, your Honour. My question is a
4 follow-up on what I already stated in relation to the veracity of the documents that are
5 produced before this Court. My question, therefore, is to find out from him whether the
6 documents are true and accurate.

7 THE WITNESS: (Interpretation) I cannot answer you because, if I were to do so, I
8 would have to question all the 3,000 or so pages that I was given. It is therefore not for
9 me to determine the veracity of the documents which were provided to me with a view to
10 obtaining my expert opinion in a report, or even the other documents that have been
11 displayed on the screen a number of times. That is not my job. It is not my terms of
12 reference. It is not within my purview.

13 MR ZARAMBAUD: (Interpretation) Your Honour, that would be all and I thank the
14 expert for answering my questions.

15 PRESIDING JUDGE STEINER: Thank you very much, Maître Zarambaud.
16 Before I give back the floor to Defence -- Defence I suppose intends to redirect?

17 MR KILOLO: (Interpretation) Three short small questions, your Honour.

18 PRESIDING JUDGE STEINER: Before I give back then the floor to Defence, although I
19 don't have the precise reference here, but if you feel able to confirm my recollection that
20 you said that, once arriving in Central African Republic, the ALC troops received
21 uniforms, ammunition, logistics or barracks, a place to stay and they were fed by the
22 Central African Republic. Is my recollection correct?

23 THE WITNESS: (Interpretation) Yes, that is correct, and that can be found in the
24 various testimonies and interviews that were conducted and which can be found in the
25 documents which I used.

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1 PRESIDING JUDGE STEINER: Did you have any information on whether the ALC
2 troops received soldes from the Central African Republic?

3 THE WITNESS: (Interpretation) I did not find any information in the documents
4 relating to payment of allowances to the soldiers. What I found in the documents is that
5 the ALC soldiers, while in the DRC, did not receive a salary. No one received any
6 salaries, except maybe the generals.

7 PRESIDING JUDGE STEINER: In any of the documents that were given to you, have
8 you got any information or any reference to an expression "Article 15"?

9 THE WITNESS: (Interpretation) No, I have no such recollection.

10 PRESIDING JUDGE STEINER: In your military expertise, and in your analysis of the
11 situation within ALC, do you know the meaning of "Article 15"?

12 THE WITNESS: (Interpretation) No, I have no recollection of coming across that
13 expression in the various documents which I analysed.

14 PRESIDING JUDGE STEINER: Thank you very much.

15 Maître Kilolo, you have the floor for your redirect.

16 QUESTIONED BY MR KILOLO: (Interpretation)

17 Q. General, I don't have many questions for you, only three. My first question will be
18 put in open session, and for the last two I would request that we go into private session.
19 Now, regarding crimes that may have been committed by soldiers on the battle-field, is it
20 possible to distinguish between disciplinary sanctions taken by the commander, pursuant
21 to military rules and regulations, and judicial sanctions taken in relation to the criminal
22 law or the penal law?

23 A. Once again, there is clearly a distinction. Military rules and regulations apply to
24 soldiers and not to civilians. Military rules, therefore, provide for various sanctions in
25 relation to the severity of the acts or actions involved. Where the act amounts to a crime,

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1 then the file is forwarded to the judiciary which will then prosecute as need be and try the
2 suspects, or those who may have been found guilty. These are therefore parallel
3 proceedings, so to speak.

4 Q. If we were to take this specific case and base ourselves on the analysis of the
5 documents you had relating to the activities of the contingent of the MLC troops in the
6 CAR, whose responsibility was it to undertake criminal proceedings against anyone who
7 may have been so involved while in the CAR; and I would like you to look at the entire
8 hierarchical structure?

9 A. It all depends on the level at which the misconduct occurs. If it is by ordinary
10 soldiers, then it is the head of section who takes the relevant measures and reports to the
11 company commander. The company commander may also take other measures and
12 report to his hierarchy; that is to the battalion commander. The battalion commander
13 can also take a number of measures at his level and report to the brigade commander,
14 who in turn may take measures and if necessary, and if he deems it necessary, for the
15 matter to be referred to the courts. He must in any event report to his direct hierarchy, in
16 this case the Operational Command Centre in the Central African Republic, to which he
17 would indicate that, "Such and such a thing happened at such and such a place, involving
18 these individuals, and these are the measures I have taken," and then leave it up to the
19 centre to determine what other measures to take.

20 Now, if it is a matter relating to staff - to personnel - and it is thus an administrative issue,
21 that brigade commander will also have to report to his Chief of General Staff to be
22 informed accordingly so that on his side the Chief of General Staff may also take other
23 measures, or work with the Central African Republic to decide on what relevant measures
24 can be taken. That is the manner in which such an incident has to be prosecuted, or
25 processed.

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- 1 Q. We need your clarification on these types of actions and disciplinary measures,
2 General. Now, Colonel Moustapha was the commander of the ALC brigade in the
3 Central African Republic. Who had ultimate responsibility for disciplinary measures in
4 any cases where any disciplinary offences may have occurred on the ground in the
5 Central African Republic?
- 6 A. The Chief of General Staff Joint Services of the Central African forces had the power
7 to take such measures. Let me, by the way, open a parenthesis here and inform the
8 Court that there are two types of documents that are lacking in this case.
9 The first category of documents is the archives, archives of all the operational orders that
10 were issued by the operational centre of the Central African forces. If those forces were
11 available then we would be able to read them and see the types of orders that were issued
12 throughout the conflict.
13 Then there is another document which also is missing from these proceedings, is what is
14 referred to in military terms as a "log" - or a register - of daily activities of the operations.
15 This register is an outline of all the activities, a summary of all the activities per day,
16 covering the 24 hours of that specific day, including the number of orders given; the
17 number of wounded persons; the units to which those persons who have died or
18 wounded belonged; the measures that have been taken in that particular day; particular
19 reports on various incidents that may have occurred during that day, including the
20 possibility of crimes that may have been committed. All of that is registered in that daily
21 log on operations.
22 If those two documents were available, then it would have been a significant contribution
23 to the discovery of exactly what transpired during the operations and even what
24 happened outside the scope of the operations on a day-to-day basis. So if we had such
25 an account of offences, well, if such things were put down in such a log-book we could see

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1 what measures had been taken by the Operational Command Centre to deal with these
2 incidents. I did not see any such document, and I think really we should try to
3 determine whether such documents still exist.

4 Now, getting back to your question, Counsel, normally, in such documents, one should
5 find at the level of the CAR Operational Command Centre, we should find such an
6 account, such a log, with the daily incidents, also setting out the various measures taken,
7 but in this case we don't know. We really are at a loss here.

8 Now, the fact that the brigade commander should report to his superior, his -- the Chief of
9 Staff in Gbadolite, and then, you see, measures should be taken, measures that were
10 decided on. We saw that a joint commission of inquiry had been set up, perhaps several
11 such commissions were set up but at least one was set up, and the people in question, in
12 accordance certainly with the CAR, were sent back to the Congo and tried there in the
13 DRC.

14 So, normally, for each serious offence, this procedure has to be followed systematically.

15 It would appear since they were tried by the court-martial of the ALC, this seems to
16 indicate that the CAR did not want to try them but rather preferred the MLC to try them
17 through their court-martial system. Perhaps things could have been done differently,
18 but perhaps there was an agreement at the strategic level, not at the operative or tactical
19 level but rather at the strategic level.

20 Q. This now leads me to the other question I wanted to ask you in this regard.

21 Judging by the -- well, considering the lack of rules of engagement between the MLC
22 administration and the CAR State, which jurisdiction was responsible for undertaking
23 legal proceedings or which court should have undertaken legal proceedings in relation to
24 crimes that may have occurred in the Central African Republic?

25 PRESIDING JUDGE STEINER: Yes, Mr Iverson?

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1 MR IVERSON: Madam President, once again, Mr Kilolo is asking a question of legal
2 jurisdiction. I don't believe that this expert witness has any competence to talk about
3 legal jurisdiction.

4 PRESIDING JUDGE STEINER: I think more important than your observation that refers,
5 goes to the substance of the question, here we are facing again a speculation. I will allow,
6 but it's a mere speculation that you are doing here, Maître Kilolo, which court should have
7 undertaken legal proceedings if the MLC or if there were no MLC rules of engagement,
8 but I will allow the question.

9 MR KILOLO: (Interpretation) With all due respect, I don't share your view-point.
10 Why? Because this has to do with military organisation. The expert has already said
11 that there were no rules of engagement in a written form between the MLC administration
12 and the Central African Republic regarding the status of the forces or measures that
13 should be taken. So now, this leads me to ask, in light of his experience, his knowledge
14 of military matters, we are -- we do have an expert before us.

15 Q. In this particular case, this case you have analysed, now, there have been allegations
16 of crimes; murder, rape, looting, and it has been alleged that these crimes were committed
17 by the MLC soldiers in the CAR. So, in this particular case, in accordance with the usual
18 rules of the military, which jurisdiction should have taken measures in relation to these
19 alleged crimes in the Central African Republic?

20 A. I will reply but as a military expert. Since there was no defined status, apparently
21 there was none, I didn't find any traces initially at the time of engagement, and the status
22 or the agreement rather should have been signed before, before the first MLC soldier
23 stepped on to CAR soil. Given the absence of an agreement regarding the status of the
24 MLC forces, the Chief of Staff Joint Services, Central African Republic, was the one who
25 should have told his Minister of Defence, or perhaps even the Minister of Justice and the

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1 president, he should have asked who should judge whom.

2 It was not up to the Chief of Staff Joint Forces to decide whether it would be a CAR court
3 or an MLC court that would deal with the matter, but he was entitled to have an opinion.
4 So he could have told his ministers that he reported to that he wanted a person to be tried
5 in the Central African Republic or, on the contrary, he might have preferred -- as for
6 Colonel Moustapha, he could have taken exactly the same attitude regarding Gbadolite,
7 saying, "Well, this is what happened. My opinion is that ...", and so, in actual fact, it's
8 really not the military leader to decide. It is at a higher level that the decision must be
9 made, at the strategic level, which I defined in my report. Some agreement should have
10 existed to determine who should try whom.

11 It would appear that -- now, it would appear that there was some kind of agreement for
12 those soldiers to be sent back to the DRC to be tried there. So one has the impression that
13 the CAR judicial system did not want to try them there, but this goes beyond the military.
14 This is really something that should be determined at the ministerial level or at an
15 equivalent level. This is really something that goes beyond the purview of military men.
16 To my mind, some sort of opinion should have been issued by the Chief of Staff. These
17 people allegedly did these things to CAR nationals on CAR soil, but it's a very complex
18 issue. Like myself, I think you realise that some States have not signed agreements with
19 this Court, and so they do not want their nationals to be tried here, and so consequently
20 once again this is an individual case or a specific case.

21 Given the lack of a prior agreement, any solution could have been looked at and it was
22 sufficient to have an agreement at the highest level, and an agreement could have been
23 made.

24 Q. You mentioned a joint commission of inquiry, which ultimately prepared a file and
25 the file ultimately went to the court-martial in Gbadolite. Who would have been in

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1 charge of all the various inquiries conducted in the Central African Republic by this joint
2 commission of inquiry?

3 A. To my mind, it's clear that it was the authorities who took part in this inquiry on the
4 CAR side, who were running the show. Because of reasons relating to the hearing of
5 witnesses, they had to -- it had to be local people to interview them, to take statements
6 from them, and so, so that -- there was that joint commission of inquiry and I believe it
7 was run by or led by CAR authorities.

8 MR KILOLO: (Interpretation) With the Presiding Judge's leave, I'd like to ask for us to
9 go into private session.

10 PRESIDING JUDGE STEINER: If you allow me, Maître Kilolo, before we go into private
11 session, could I put to the witness one or two follow-up questions? Would you mind?

12 MR KILOLO: (Interpretation) No problem, your Honour.

13 PRESIDING JUDGE STEINER: Thank you very much.

14 General Seara, sometimes I must confess that I have difficulties in again separating
15 the -- your opinion on the facts and your assumptions based on conventional military
16 rules, based on of course your expertise.

17 More than once, for instance, you referred to intervening in -- that a multinational force is
18 set up to intervene in a particular area. You referred to that expression, "a multinational
19 force intervening in an area."

20 Just as an example, this is the transcript from 15 August which is transcript -- it's just one
21 example. 15 August, it's transcript 230, on page 84, lines 18 and following, "When a
22 multinational force is set up to intervene in a particular area, the decision of a country to
23 send a contingent force to that country is a political decision," and you are basing many of
24 your findings in this model of multinational forces that intervene in a certain country.

25 In other occasions, and in your report, you recognise that the ALC is not -- cannot be

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1 defined as a multinational force, because it's not an army. It's a private armed group. Is
2 that correct, to apply the same rules or the same conclusions that you would apply for
3 conventional armed forces, or a conventional multinational force in another country, to
4 the kind of armed conflict that took place in Central African Republic that involved in one
5 side one regular armed force and in the other side at least nine armed groups; therefore
6 non-conventional armies, but rather nine armed groups? Is it easy, in other words, to
7 transplant the rules - the military rules in general - to this kind of conflict, in your view?

8 THE WITNESS: (Interpretation) Your Honour, with regard to armed groups, I'd like
9 to refer you to the Geneva Conventions. Regarding International Humanitarian Law, the
10 customary sort, in the distinction between combatant and non-combatant, rule number 4,
11 it says that, "Armed forces belonging to one of the parties involved in the conflict are
12 made up of the armed forces of that country, all armed groups or organised -- or armed
13 organisations, with the exception that all of these forces are to be placed under a single
14 unified command."

15 And so that means that the ALC in this particular instance can be placed in the category of
16 combatants, subsequent to the Geneva Conventions, so to make the distinction between a
17 combatant and an armed -- from an armed group and a combatant from an armed force,
18 you see there is the definition in Regulation 4. We see from that definition that both
19 categories -- both groups fall into that category. So there was a military hierarchical
20 organisation, so I don't see why we would make a distinction because both groups would
21 be considered to be combatants.

22 Of course, we always have to look at the general principles. I made reference to what
23 usually happens within a coalition; for example a UN coalition. I recognise that we are
24 not dealing exactly with such a situation here, but the general principles that support
25 international interventions can be used for us to analyse to see whether we are following

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1 the principles, or departing somewhat from the principles.

2 An armed group that you describe, or that one describes as the MLC, going to the CAR,
3 were among the combatants because they were with the members of the CAR forces.
4 They fought alongside them.

5 PRESIDING JUDGE STEINER: General Seara, since the beginning of this case, I think
6 nobody has any doubt in that ALC troops were considered as combatants. I think this is
7 not the point. If they were not combatants there would be no accusation of commission
8 of war crimes against them, so I don't think -- maybe I didn't make myself understood.
9 What I'm trying to say is that in a non-conventional armed conflict, which is the armed
10 conflict involving armed groups, militias, whatever the name you give, sometimes you
11 talk about rules, hierarchy and obligations that as a matter of fact are not followed by
12 armed groups or militias. They belong to the ideal model of a conventional war, or a
13 conventional army.

14 This is the point that I'm trying to understand sometimes when you say something, as you
15 were saying now, about jurisdiction. Are you talking about what, in your experience,
16 happens in an armed conflict involving militias is the same as what happens in an armed
17 conflict involving armed forces?

18 THE WITNESS: (Interpretation) Well, if it was not exactly what happened under the
19 circumstances, all the same it's quite similar, because indeed we are talking about a
20 foreign force that was fighting alongside the loyalists, because if they had not fought
21 alongside the loyalists, the day they stepped over, touched -- stepped on to CAR soil, the
22 CAR would have been in a position to deem their actions to be a form of aggression, but
23 that was not the case. They fought with the loyalist forces and they came under unified
24 command, joint command. We've already touched upon this point.

25 So it does not appear to be an engagement by a national army. It was a matter of forces

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1 from the DRC coming to the assistance of President Patassé. It was a paramilitary force
2 that was called upon to serve. In any event, it was a foreign force. They were called to
3 serve on CAR soil, with the agreement of the CAR authorities. So they were foreign
4 soldiers integrated amongst all the forces. It's not entirely similar to what we see when a
5 contingent takes part in an international coalition, but there are a number of resemblances.

6 PRESIDING JUDGE STEINER: Thank you very much.

7 I ask, please, the court officer to turn into private session.

8 (Private session at 10.25 a.m.)* Reclassified as Open session

9 THE COURT OFFICER: We are in private session, your Honours.

10 PRESIDING JUDGE STEINER: Maître Kilolo?

11 MR KILOLO: (Interpretation)

12 Q. Sir, I would like to take a different approach now. I'll be asking my questions in
13 open session, but perhaps we could agree to some codes.

14 My question will have to do with the relevance of some information that you gathered,
15 that you analysed, that General Opende -- that General Opende did not read at all, and
16 then I will ask you some questions about the relevance of information analysed by
17 General Opende which you did not have an opportunity to analyse before drawing up
18 your own report.

19 So this means I will have to make reference to a number of officers. I'll also be referring
20 to (Redacted), and I would suggest we call him "General 1," "Number 1." I will
21 be talking about (Redacted), and I would suggest we call him
22 "General number 2." I will also be referring to (Redacted), and I would suggest
23 we call him "General number 3."

24 I will be making reference to an officer of the CAR, (Redacted)

25 (Redacted). I'll call him "Officer number 4." I'll be referring to an

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1 officer (Redacted) so that will be

2 "Officer number 5," and what's more I will be referring to (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted) If we can agree to this system of code words, we can

6 go back into open session.

7 PRESIDING JUDGE STEINER: Mr Iverson?

8 MR IVERSON: Madam President, I don't have a specific objection to what Mr Kilolo is

9 doing. It's just that it seems like it could enter into a very long section of testimony, and I

10 would just ask that the Chamber enforce the principle that redirect is meant to ask

11 questions based on questions that were asked, material that was covered during the

12 questioning by the Prosecution and the questioning by the legal representatives.

13 This seems like it will broadly go into questions that Mr Kilolo may like to have asked

14 during his examination, during his questioning excuse me, and that should not be

15 allowed.

16 PRESIDING JUDGE STEINER: Maître Kilolo, I'll give you the floor, but I can advance

17 that this is exactly the understanding the Chamber has about redirect. It's not a new

18 questioning related to facts that -- or to fill gaps during the Defence questioning. The

19 redirect is just follow-up of questions that were put by Prosecution, legal representatives,

20 and even the Chamber. That's why Defence has the last word. It's not to start again

21 with a new questioning of the witness. Otherwise, we'll have to do the whole round

22 again.

23 So just for you to bear in mind that only follow-up questions will be allowed. Is that fine

24 with you, sir?

25 MR KILOLO: (Interpretation) That is fine by me. I'll even specify the question that

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1 justifies my own questions. At one particular point in his cross-examination the
2 Prosecutor pointed out to the General that a number of documents were analysed by
3 General Opande, that he did not look at. So this is what I'm really focusing on. This is
4 what the questioning will be all about, just to go on to specify -- we're still in private
5 session, so to specify who is whom. I will --

6 Q. Now, regarding the seven witnesses whose statements you did not look at, unlike
7 what was done by General Opande, in particular I mentioned (Redacted) the person
8 in charge of private issues. Then (Redacted) and I will refer to him as Witness 63,
9 that was his code. I don't want to mention what his job was, I'll say so right now in
10 private session (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 So after all that I will then go into open session with the leave of the Presiding Judge.

25 PRESIDING JUDGE STEINER: First, I would like you to clarify for myself what all these

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1 names have to do with the question put by the Prosecution in relation to the report of
2 General Opande, because I can see some of these names but not the name of -- a number
3 of witnesses that you are mentioning here. I'm just authorising you to mention other
4 witnesses because we are dealing with an expert. I would like to remind Defence that
5 it's -- usually we don't mention other witnesses during our questioning, but you were
6 mentioning here many persons that apparently have nothing to do with the report of
7 General Opande. Unless I'm completely wrong, but I have the report here, so --
8 JUDGE ALUOCH: Mr Kilolo, I will be expecting you to refer us to the specific question
9 that the Prosecution did put that warrants you to redirect. In that way we will have
10 some sort of order, please.
11 MR KILOLO: (Interpretation) Thank you, your Honour. That's what I'm going to do
12 indeed.
13 Mr Iverson, at the start of his examination, asked a series of questions to the General, the
14 aim of which was to demonstrate that the information that was provided by the Defence
15 before the drafting of its report was incomplete. This was based on the fact that when we
16 examine the number of witnesses which -- whose statements General Opande analysed,
17 we see that there are seven thereof that General Seara did not examine and it is these
18 witnesses - these seven - are the ones who I have just mentioned.
19 There are six who are witness victims and there's a seventh, (Redacted)
20 (Redacted) and it is around that
21 issue that I would like to question the witness in order to ask him his opinion, because
22 everything taken into account there is a common basis with regards to information that's
23 been analysed by both experts.
24 So beyond this common framework there's also a certain amount of information which
25 comes from seven witnesses which General Opande examined but General Seara has not,

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1 but there's also information from 20 witnesses - 20 military witnesses - who were
2 questioned by General Seara and who were not questioned by General Opande.
3 So I would just like to have the view-point of the expert with regard to that difference and
4 the impact that that has on the drafting of the report of General Seara. That's all.
5 PRESIDING JUDGE STEINER: The Chamber will reserve its right to intervene if we
6 think that the questions are not really follow-up questions, but your intention to put
7 General Seara to comment on testimonies that he had not examined. Let's turn into open
8 session, please.
9 Yes, Mr Iverson?
10 MR IVERSON: I'm really sorry to intervene, and it's not my intention to do so, but I'm
11 concerned here because we're talking about hundreds of pages of statements.
12 Now, the Defence didn't provide these statements to the expert witness. We're in trial.
13 A trial cannot go on forever. An expert witness's testimony cannot go on forever. I just
14 am concerned that the hundreds of pages will not really be able to be captured in minutes
15 of questioning by Mr Kilolo. If he is able to do that I would be very, very surprised, and
16 give a fair rendition of each statement to the expert and then expect the expert in a matter
17 of seconds, in minutes, to make an on-the-spot call. It just seems entirely unreasonable.
18 This entire endeavour that Mr Kilolo is proposing seems that -- if Article 69(4) means
19 anything, that even if his - the expert witness's - testimony is tangentially relevant, or
20 marginally relevant, the amount of time that it would take to go through these hundreds
21 of pages it's so -- is so disproportionate to the amount of relevant testimony the Chamber
22 would expect to hear that the Prosecution asks that the Chamber put a stop to this, or at
23 least after it becomes apparent that Mr Kilolo is not able to faithfully capture the hundreds
24 of pages of these statements that the expert witness did not review.
25 And if the expert witness is not able on the spot to make conclusions in a way that is in

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1 any way helpful for the Chamber that the Chamber puts a stop to this exercise, because it
2 could go on indefinitely and it may produce more issues that weren't covered that the
3 Prosecution and the legal representatives may then further have to inquire into. And
4 that's the Prosecution's concern, Madam President and your Honours.

5 PRESIDING JUDGE STEINER: Yes, Maître Kilolo.

6 MR KILOLO: (Interpretation) Your Honour, I have to note that in reality what the
7 Prosecution does not like is the fact that the Defence is highlighting the fact that the
8 difference that there is between the documents provided to General Opaté and those
9 provided to General Seara, outside the common information that they all analysed, is that
10 General Opaté analysed six or seven statements of witnesses, civil civilians, who weren't
11 in the theatre of operations; whereas General Seara analysed about 15 statements from
12 different officers, military officers, Congolese and Central Africans who themselves were
13 involved in the theatre of operations, including (Redacted)
14 who are mentioned as being the main actors in the affair, or protagonists in the affair.
15 Now, we have the right to ask our questions, that won't take more than five minutes for
16 both questions, and it's justified all the more because the Prosecution itself has done the
17 same thing by trying to have questions whereby this information that wasn't analysed by
18 General Seara didn't make it possible for him to get a clear opinion because he didn't get
19 seven statements from witnesses in the case, without having the opportunity to read these
20 statements in advance, in order to be able to speak about what these informations were
21 and whether they were essential or useful in the drafting of his expert opinion.

22 PRESIDING JUDGE STEINER: I think we have already learned from both parties their
23 understanding about the redirect of the Defence, and we understand the concerns of the
24 Prosecution and these concerns are also concerns of the Chamber.

25 The only point is that the Chamber, according to the Statute, is entitled to decide the

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1 admissibility of whatever piece of evidence is put before it and, if the Chamber at the end
2 comes to the conclusion that this comparison, or in the quality or level of knowledge,
3 between witnesses that were heard by one or other expert, the Chamber will be able to
4 attribute the proper probative value, if any.

5 On the other hand the -- also, Maître Kilolo, I don't believe that you or whatever human
6 being is able to summarise in a few lines hundreds of pages of statements and so, in case
7 your recollection of the content of any of these statements is not correct, the Chamber will
8 simply disregard when analysing the evidence as a whole. Under these conditions, the
9 Chamber will allow you to proceed.

10 Let's turn into open session, please.

11 (Open session at 10.46 a.m.)

12 THE COURT OFFICER: We are in open session, your Honours.

13 MR KILOLO: (Interpretation)

14 Q. General, I have a couple of short questions before I have finished with you. I
15 wanted to question you with regards to a certain number of documents, and the reason
16 why is that in this case there were two military experts: General Opande called by the
17 Office of the Prosecutor, as well as yourself called at the request of the Defence.
18 Now, you have both, as experts, examined a certain number of information which was in
19 common, that's the common structure, if you like, of information that you both gathered,
20 but it turns out that each of you also looked at information which was not brought to the
21 knowledge of the other expert prior to drafting the expert report.

22 So my question is as follows: When you look at the information that you've analysed
23 that was not analysed by General Opande, we see that you analysed the log-books of the
24 MLC, which had all the operational messages contained therein. You also analysed a
25 certain number of messages which were sent by the Central African authorities, and they

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1 spoke about operations in the Central African Republic. You also analysed the
2 statements which were made by the Office of the Prosecutor of General number 1, and it's
3 also the same for General number 2 as well as General number 3.
4 There was also Officer number 4 and Officer number 5, and in addition to that you also
5 had information which you were able to obtain thanks to a visit you made to the field in
6 Africa, where you met ten officers - ten military officers - both Congolese and Central
7 Africans, who were deployed to the theatre of operations.

8 Now, when we look at the entirety of this information, you have 15 officers - 15 military
9 officers - who were deployed into the field, whose information you analysed. There
10 were also two additional documents that you analysed, which was not the case of General
11 Opaté despite the fact that the prior statements came from the Office of the Prosecutor.
12 So the question that I would like to put to you, as an expert, is would you have been able,
13 as a military expert, to get an enlightened opinion with regards to the command exercised
14 on the MLC group in Central Africa without being able to analyse the different
15 information that I have just mentioned? Does that also apply to every military expert?

16 A. The answer's clear. It's clear for a military expert and, taking into account the
17 mandate and the request and the different parts that had to be written up in my report, it's
18 the military statements that were of interest to me in the -- primarily of interest to me,
19 because that's the subject. And so these people were protagonists, they had
20 responsibilities in this regard and that's the reason why I considered that, as a military
21 expert, it was the statements of, or testimony of, soldiers which I would have given the
22 greatest proportion of attention to.

23 Q. And the last question --

24 THE INTERPRETER: The interpreter also corrects page 30. It was ALC, not MLC.

25 MR KILOLO: (Interpretation)

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1 Q. Now, General Opande also examined the statements of seven witnesses and the
2 additional witnesses who are not soldiers, involved or deployed to the theatre of
3 operations. Now, why didn't you feel such statements were indispensable when it came
4 to forming your analysis?

5 A. First of all, I should say that I didn't carry out a comparative analysis of the
6 documents that are listed in the report with regards to the documents that I was provided
7 with, so I didn't carry out such an exercise myself personally. I didn't note that certain
8 documents that I had examined hadn't been examined by General Opande, and the
9 reverse is also true. I would consider that I had sufficient work to deal with the
10 documents I was already provided with, without getting distracted by some kind of
11 comparison. As I didn't know the content of the documents mentioned, which come
12 from testimony of civilians, I can't tell you whether it would have influenced me or not,
13 but I was there to speak about the command of the force and in the list of different
14 witnesses that you mentioned, apparently none of them was really a stakeholder in the
15 actions that were taken of the force, other than -- well, I don't know how.

16 But what it seems to me, my priority was to look at the testimony of soldiers because my
17 objective was to speak about military matters. Necessarily, if these documents which
18 come from civilian testimony had figured among the documents that I'd been provided
19 with, well, of course I would have examined them, just as I examined the others.

20 But I'd like to go back to what I stated previously. As a military expert, when you have a
21 list which is made by the Court, when somebody contacts me for the first time and they
22 tell me I have been designated as an expert, General Opande, he's used to doing that. I
23 didn't even ask the question, because I thought for reasons of fairness it was the Court
24 which gave its approval to the list of documents that was provided to me, because these
25 are confidential documents and it was up to the Court to ensure that a balance be

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1 achieved; that is to say the list that's given to an expert must be the list that's given to
2 another, because at that moment if they had different documents how can you ensure that
3 you can watch their different points of view? And that's what I've already said at the
4 start of the different sessions.

5 So, now, that's my answer. Taking into account the mandate that was accorded to me, I
6 found among the military testimony what I needed in order to write my report.

7 PRESIDING JUDGE STEINER: Sorry to interrupt you, Maître Kilolo.

8 Maybe just one point of clarification. When you refer that it will be up to the Court to
9 ensure that a balance be achieved, the Chamber has no participation in the choice of
10 documents any of the parties is going to provide to their experts.

11 On the other hand, in some systems the Courts expect from experts that they give an
12 impartial - totally impartial - report, which means that the expert is always allowed to
13 request whatever information they deem necessary in order to provide the Court with an
14 impartial expertise.

15 This is how it works, just to make it sure that it's not the Court - and when I say "Court,"
16 meaning the Judges - that select documents to be given to the experts, but rather the
17 parties are the ones who provide their experts with the elements they deem necessary.

18 Maître Kilolo?

19 MR KILOLO: (Interpretation) General, I have no further questions to put to you. I'd
20 just like to thank you once again for having accepted to answer our questions, and we
21 hope above all that if ever the Defence and why not the Chamber needs you in order once
22 again to shed light on things, we hope that you will be as available as you have been.
23 Thank you very much.

24 PRESIDING JUDGE STEINER: Thank you, Maître Kilolo.

25 And once again, just for the sake of the record, the Chamber takes the opportunity to once

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1 again encourage the parties in the proceedings to make joint or to give joint instructions to
2 the experts. That would be most helpful in order to provide the Chamber with the
3 information the Chamber needs - the impartial information the Chamber needs - in order
4 to find the truth.

5 General Seara, that brings to an end that long journey you took in order to come to this
6 Court and provide the Chamber with your expertise. We are very grateful to you for the
7 time and trouble you had to come to The Hague, to stay here for such a long period of
8 time, in order to help the Chamber in it's very difficult task in finding the truth in the
9 present case, and for that reason we are very, very thankful to you.

10 Before you leave the Court, General, the Chamber would like to ask whether there's
11 anything you would like to address to the Chamber, asking you to feel free if you so wish?

12 THE WITNESS: (Interpretation) I would like to thank you, your Honour, for the
13 words that you've just spoken. I have to say that it is with all goodwill that I have spent
14 this time reading the documents and writing my report, filing it here, because my modest
15 contribution perhaps will perhaps help you to find the truth and if I can even just help
16 you a tiny bit that's something which will greatly satisfy me.

17 PRESIDING JUDGE STEINER: Thank you very much, General. Before you leave, I just
18 wanted to remind you that we saw that you took some notes during your testimony, and
19 the content of those notes are confidential, so if you want to keep your notes, please be
20 very careful because it contains names of witnesses, of protected witnesses, of people
21 whose identities are unknown to the public, so we would like you, please, to be very
22 careful and if you don't need it any more, just get rid of it, destroying the notes you here
23 make.

24 Thank you very much. I will ask, please, court usher to accompany the witness outside
25 the courtroom.

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1 (The witness is excused)

2 PRESIDING JUDGE STEINER: I was informed that Prosecution wanted to address the
3 Chamber. Is it time for our break? If we are sure that it won't take too long, we can
4 continue with the agreement of our interpreters. Otherwise, we will have to go to our
5 break. Maître Badibanga?

6 MR BADIBANGA: (Interpretation) Thank you, Madam President. What I wanted to
7 raise will take only two minutes. But if Defence were to speak too, we should be done
8 within five or ten minutes. Not more than that.

9 PRESIDING JUDGE STEINER: Is the court reporters agreed? Instead of going to break
10 we just proceed for ten or 15 minutes and then we adjourn; is that agreeable? Thank you
11 very much. Maître Badibanga, your concerns will be expressed in open session or in
12 private session?

13 MR BADIBANGA: (Interpretation) I would like to address the Court in private session,
14 your Honour.

15 PRESIDING JUDGE STEINER: I ask, please, court officer to go into private session.

16 (Private session at 11.03 a.m.) * Reclassified as Open session

17 THE COURT OFFICER: We are in private session, your Honours.

18 PRESIDING JUDGE STEINER: Maître.

19 MR BADIBANGA: (Interpretation) Your Honours, the question I address the Court on is
20 in relation to our submission of 18 August, relating to a meeting with the Defence
21 witnesses. This was 10 August, rather, 2012. From the time of that filing, a number of
22 things have happened and we are now placed in a relatively urgent situation.

23 The facts are as follows: On 14 August Defence disclosed a list of nine witnesses, which
24 will be heard after the witness who has been heard. They told us which witnesses were
25 ready to meet representatives, or to meet with representatives of the OTP. Two of the

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1 witnesses were mentioned as having agreed to meet us, D-59 and D-60. For witness D-59
2 it would appear that a number of conditions were spelt out, including receiving questions
3 ahead of time, in the presence of the Defence, and that such questions should not be
4 questions that will be raised in the -- during the hearing. I hope that we can set aside any
5 discussions about this witness because we agreed with the Defence that we will not
6 submit those questions because we will not be meeting that witness.
7 However, we are concerned about Witness 60, a language expert who, according to our
8 assessment, should be testifying around 10 September. In his email of 14 August, in their
9 email of 14 August, this is what Defence said: "The witness is willing to meet with the
10 Prosecution." So the witness is willing to meet us without any further conditions.
11 That was by email of 14 August, close of business.
12 Then on 15 August, the very next day, we offered to meet that witness between 4 and 5
13 September. The witness is in the United States and we have enough time to contact him
14 and make any arrangements within those 20 days for the meeting to take place.
15 It took the Defence one week, seven days to reply, yesterday, and to inform us that on the
16 one hand Defence would like to be present at such a meeting and that furthermore, the
17 proposed dates are no longer possible, and that such meeting should take place between
18 27 and 30 August at which time -- and 31 August at which time there will be no -- at
19 which time there were no hearings. So that is in five days, five days, after taking one
20 week to tell us that the meeting was no longer possible.
21 In addition to requesting to be present at the meeting, the Defence said that the case
22 manager should be able to travel on their behalf, and the conditions for the travel of the
23 case manager are a visa, finances, an official letter from the Court, authorisation from the
24 Counsel Support Section, and a mission order signed by the Registrar. This is what the
25 Defence is asking us to confirm, whether we can make all necessary arrangements for a

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1 member of their team to be present at the meeting at the dates which they have proposed.
2 Now, Madam President, what we submit, without prejudice to any decision that you will
3 take on this matter, is that we have before us a practical matter, a practical case where
4 there is an emergency to meet this witness.

5 What the Defence position is, in fact, is that they are telling us that we cannot have this
6 meeting. The witness arrives on the 10th and will proceed to testify. That is why we
7 apply for authorisation to travel and meet the witness directly, because the witness had
8 indicated that they were ready to meet us, or to meet with us. Failing that, there should
9 be practical solution such as video link, a Skype connection or what have you to ensure
10 that the Defence can be part of the meeting.

11 Now, is it possible in four days to get authorisation from the Registry and the necessary
12 funds and visas to travel to the US? I think that this is not realistic and such a request
13 from the Defence is not realistic.

14 One last solution would be to have the witness come here ahead of the date of his
15 testimony. If he is going to testify on 10 September, we would request that the witness
16 should be here at The Hague in time to handle the jet lag and then talk to us on Friday, 7
17 September.

18 Those are my situations regarding the issue we wanted to bring to the attention of the
19 Chamber. Thank you.

20 PRESIDING JUDGE STEINER: Thank you, Maître Badibanga. Before I give the floor to
21 Defence, just to confirm that the further request made, the urgent request that would refer
22 to expert D-59, then Prosecution is withdrawing?

23 MR BADIBANGA: (Interpretation) Madam President, the witness is expected on 3
24 September. The conditions are such that, in principle, we may insist, but to be realistic
25 we realise that this will not be useful, and for that reason the OTP will not be meeting the

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1 Witness D-59 but we shall proceed to cross-examination.

2 PRESIDING JUDGE STEINER: Defence?

3 MR HAYNES: I'm going to be very brief. I disagree in many ways with the way in
4 which the exchanges of correspondence have been characterised. We're perfectly
5 prepared to listen to suggestions such as meetings via video link in the next couple of
6 weeks, if that can push the matter forward, but we submit that that is something that can
7 be dealt with between the parties perfectly sensibly and amicably, without involving the
8 Chamber and if Mr Badibanga wants to come and talk to you us about such a suggestion
9 we have a very open mind and we will do everything to facilitate it.

10 PRESIDING JUDGE STEINER: I think it's -- for the Chamber is very good news,
11 Mr Haynes, because the Chamber is now in charge of the preparation of a decision
12 because the Chamber has been seized formally of a request in order to try to regulate as
13 much as possible these situations because we cannot go into this kind of discussion for
14 every and each Defence witness. We have 64. If we have to go into motions and
15 discussions 64 times it will certainly cause delays in the proceedings but the Chamber will
16 take into account the observations made by Maître Badibanga today and the position
17 expressed by -- of the Defence expressed by Mr Haynes, that will for sure help the
18 Chamber in the decision to be issued.

19 In the meantime, for sure, if the parties come to an agreement it's just for the parties to
20 communicate and the Chamber will endorse whatever feasible solution the parties come
21 up with.

22 Court officer, please turn into open session.

23 (Open session at 11.12 a.m.)

24 THE COURT OFFICER: We are in open session, your Honours.

25 PRESIDING JUDGE STEINER: Thank you very much.

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- 1 We will adjourn for today, and resume on 3 September 2012 with the testimony of
- 2 Witness D-059. So the Chamber just wishes that the parties and participants take
- 3 opportunity of this long break in order to come back fully prepared for what we expect to
- 4 be very, very busy months, and which we hope we can have before the Chamber as many
- 5 witnesses as possible, in order to advance proceedings.
- 6 I wanted to remind the parties and participants that as from 3 September we start sitting
- 7 at 9 in the morning, instead of 9.30.
- 8 I thank very much Prosecution team, legal representatives of victims, the Defence team,
- 9 Mr Jean-Pierre Bemba Gombo. I thank very much our interpreters and court reporters.
- 10 And bearing in mind the long break that we will have in the proceedings, we adjourn and
- 11 resume 3 September.
- 12 The hearing is adjourned.
- 13 THE COURT USHER: All rise.
- 14 (The hearing ends in open session at 11.14 a.m.)
- 15 RECLASSIFICATION REPORT
- 16 Pursuant to Trial Chamber III 's Orders, ICC-01/05-01/08-2223 and
- 17 ICC-01/05-01/08-3038, the version of the transcript with its redactions becomes Public.