



Original: **English**

No.: ICC-01/05-01/08

Date: 19/07/2013

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Public redacted version

Defence Submissions on the Testimony of CAR-D04-PPPP-0007

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms. Fatou Bensouda
Mr. Jean-Jacques Badibanga

Counsel for the Defence

Mr. Aimé Kilolo-Musamba
Mr. Peter Haynes QC

Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson
Mr. Zarambaud Assingambi

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massida

**The Office of Public Counsel for the
Defence**

Mr. Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Deputy Registrar

Mr. Didier Priera

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Other
Section**

A. BACKGROUND

1. Witness CAR-D04-PPPP-0007 (“Witness D04-07”) testified in these proceedings between 19 and 21 September 2012.

2. The witness was examined by the Defence for 2 hours and 55 minutes. He was then examined by the Prosecution for 4 hours and 26 minutes.¹ The Prosecution questioning was conducted by the then-Senior Trial Attorney, Ms. Petra Kneuer. During the Prosecution’s examination, the Defence objected to the style of Ms. Kneuer’s questioning, in particular “comments that [were] intended to put [the witness] down, to make fun of him, to humiliate him”.² The Presiding Judge intervened as follows:³

[REDACTED].

3. Upon the completion of the Prosecution questioning, Ms. Kneuer was explicit in stating: “**Madam President, that concludes my questioning.**”⁴ The Presiding Judge then gave the floor to the Legal Representatives of Victims (“LRVs”), who commenced their examination of Witness D04-07.⁵

4. During his questioning by the first LRV, Witness D04-07 informed the Trial Chamber III (“the Chamber”) that during the familiarization session, [REDACTED], “ [REDACTED].”⁶ [REDACTED]

[REDACTED].”⁷

5. Following Defence submissions concerning [REDACTED]conduct,⁸ the Chamber concluded as follows:⁹

¹ Figures provided to the Defence by Court Management Services, in an email entitled “Time Taken for Examination of Defence Witnesses”, 26 June 2013 at 10:28.

² ICC-01/05-01/08-T-250-CONF-ENG, p. 5.

³ ICC-01/05-01/08-T-250-CONF-ENG, p. 7.

⁴ ICC-01/05-01/08-T-250-CONF-ENG, p. 46: “[REDACTED].”; *See also* ICC-01/05-01/08-T-249-CONF-ENG, p. 59: “[REDACTED].”

⁵ ICC-01/05-01/08-1023, para. 11: The order of questioning during the presentation of evidence by the defence shall be as follows: the defence will question the witness first; then, the prosecution will be given the opportunity to question the witness. Finally, provided a written application has been made, and leave to ask questions has been granted, the victims’ legal representatives may also question the witness.”

⁶ ICC-01/05-01/08-T-250-CONF-FRA, p. 51.

⁷ ICC-01/05-01/08-2513-CONF, para. 7.

[REDACTED].

6. The Chamber [REDACTED] [REDACTED] [REDACTED] [REDACTED] that Witness D04-07 had stated that [REDACTED] [REDACTED] [REDACTED] [REDACTED].¹⁰ [REDACTED].¹¹

7. After adjourning Witness D04-07's testimony over the weekend, on 24 September 2012, the Presiding Judge informed the parties and participants [REDACTED], and was not available to complete his testimony.¹² To all intents and purposes that remains the position at the time of filing.

8. During a status conference on 27 June 2013, the Defence submitted that given that Witness D04-07 had been examined by both the Defence and Prosecution, his testimony should be deemed complete.¹³ The Prosecution Senior Trial Attorney, Maitre Badibanga stated that **“for the record, the Prosecution had not concluded its questioning of Witness 7.”**¹⁴ This prompted the Presiding Judge to note that “[t]his is what I had in my recollection.”¹⁵ These statements cannot be reconciled with the unequivocal contemporaneous statement by the former Senior Trial Attorney, that **“Madam President, that concludes my questioning,”**¹⁶ nor procedurally with the commencement of questioning by the participating victims.

9. The Presiding Judge then directed the Defence to file “an explicit request from the Defence for this partial testimony to be considered as evidence in the present case.”¹⁷

B. APPLICABLE LAW

⁸ Defence Submissions on the Report to the Chamber on the familiarization session of 18 September 2012, 13 March 2013, ICC-01/05-01/08-2534-CONF.

⁹ ICC-01/05-01/08-2605-CONF, para. 14.

¹⁰ ICC-01/05-01/08-2605-CONF, fn. 26.

¹¹ ICC-01/05-01/08-2605-CONF, para. 18.

¹² ICC-01/05-01/08-T-251-CONF-ENG.

¹³ ICC-01/05-01/08-T-331-CONF-ENG, p. 56.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ ICC-01/05-01/08-T-250-CONF-ENG, p. 46: “[REDACTED].”; *See also* ICC-01/05-01/08-T-249-CONF-ENG, p.59 : “[REDACTED].”

¹⁷ ICC-01/05-01/08-T-331-CONF-ENG, p. 56.

10. Article 69(1) of the Statute of the International Criminal Court (“the Statute”) requires each witness testifying before the ICC to “give an undertaking as to the truthfulness” of their testimony.

11. Rule 140 provides that the Presiding Judge shall give directions as to the “order and manner in which the evidence shall be submitted to the Trial Chamber.” The *Decision on Directions for the Conduct of the Proceedings* in the present case provides as follows:¹⁸

The order of questioning during the presentation of evidence by the defence shall be as follows: the defence will question the witness first; then, the prosecution will be given the opportunity to question the witness. **Finally**, provided a written application has been made, and leave to ask questions has been granted, the victims' legal representatives **may** also question the witness. Pursuant to Rule 140(2)(d) of the Rules, the defence shall have the right to question the witness last. [...]

12. Article 69(4) of the Statute provides that the Court “may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence”. Under Regulation 43 of the Regulations of the Court, a Presiding Judge should consider “fair and effective” proceedings for “the determination of the truth”.

C. SUBMISSIONS

(a) The testimony of Witness D04-07 should be deemed complete

13. Firstly, the Defence notes that its questioning of the witness was at all times subject to judicial control as to propriety, admissibility and relevance, and was conducted in the presence of the representatives of the parties and participants, who were accorded full opportunity to raise any objections as to form or content. Secondly, all potential challenges to and exploration of the testimony of Witness D04-07 by the Prosecution was exhaustively conducted. Maitre Badibanga’s statement during the status conference on 27 June 2013 that the Prosecution had not concluded its questioning of Witness D04-07 is simply incorrect.¹⁹

¹⁸ ICC-01/05-01/08-1023, para. 11 (emphasis added). See also ICC-01/04-01/07-1665-Corr, Directions for the conduct of the proceedings and testimony in accordance with rule 140, 1 December 2009, paras 33-42.

¹⁹ *Ibid.*

The Prosecution's former Senior Trial Attorney, having been urged by the Chamber on 20 September 2012 to complete her examination the following day,²⁰ then did so.²¹

14. Secondly, the constitutive documents of the ICC are quite explicit; the Legal Representatives of Victims are participants in and not parties to the criminal process joined between the Prosecution and the Defence. They do not have an unqualified right to question either parties' witnesses, but rather a qualified opportunity, where certain conditions are met.²² Rule 140(2) explicitly confers the "right" to examine a witness on the Prosecution, the Defence, and the Chamber itself.²³ By contrast, the ability of LRVs to question a witness is contingent on certain pre-conditions being deemed fulfilled by the Chamber.²⁴ The Appeals Chamber has confirmed that participation pursuant to Article 68(3) "does not equate victims, as the case law of the Appeals Chamber conclusively establishes, to parties to the proceedings before a Chamber".²⁵ This Chamber has also emphasized that the LRVs in the *Bemba* case "have a unique role, separate from that of the parties".²⁶

15. As such, the Defence submits that following the completion of examination by both **parties** to the proceedings, the questioning of Witness D04-07 was complete. He had been questioned at length by the adverse party, and as such his testimony and credibility had been thoroughly tested. In addition, the witness had also faced questions from the Chamber on

²⁰ ICC-01/05-01/08-T-249-CONF-ENG, p. 59: "[REDACTED]."

²¹ ICC-01/05-01/08-T-250-CONF-ENG, p. 46: "[REDACTED]."

²² See, for example, ICC-01/05-01/08-1023, para. 11: The order of questioning during the presentation of evidence by the defence shall be as follows: the defence will question the witness first; then, the prosecution will be given the opportunity to question the witness. Finally, provided a written application has been made, and leave to ask questions has been granted, the victims' legal representatives **may** also question the witness. Pursuant to Rule 140(2)(d) of the Rules, the defence shall have the right to question the witness last (emphasis added).

²³ Rules of Procedure and Evidence 140(2), "In all cases, subject to article 64, paragraphs 8 (b) and 9, article 69, paragraph 4, and rule 88, sub-rule 5, a witness may be questioned as follows: (a) A party that submits evidence in accordance with article 69, paragraph 3, by way of a witness, has the right to question that witness; (b) The prosecution and the defence have the right to question that witness about relevant matters related to the witness's testimony and its reliability, the credibility of the witness and other relevant matters; (c) The Trial Chamber has the right to question a witness before or after a witness is questioned by a participant referred to in sub-rules 2 (a) or (b); (d) The defence shall have the right to be the last to examine a witness"; Rome Statute Art. 67(1)(e), The accused has the right "To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute."

²⁴ ICC-01/05-01/08-1023, paras. 8, 11.

²⁵ Situation in the Democratic Republic of the Congo, ICC-01/04-556, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, para. 55.

²⁶ ICC-01/05-01/08-1023, para. 17.

various topics.²⁷ No argument can be made that the role of LRVs in proceedings at the ICC is to “test” the evidence of Defence witnesses, nor that they have a right to do so. The mandate proscribed in the constitutive documents and jurisprudence is one of presenting the views and concerns of victim participants, in a manner which is not prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.²⁸ The jurisprudence of the Court,²⁹ and of the present Chamber is littered with references to the LRVs not playing the role of a second Prosecutor,³⁰ and of ensuring that defendants at the ICC do not face multiple accusers. The Chamber has explicitly held that “with regard to the scope of questioning, the legal representatives are expected only to question a witness to the extent relevant to the victims' interests.”³¹

16. In point of fact, any sensible analysis of the transcripts of the evidence of Witness D04-07 inevitably leads to the conclusion that all of the questions which the LRV's had been authorized to put to the witness had already been asked and answered during his examination to that point by the various parties and participants.³² Although the practice of the Chamber has been to allow the LRVs to pose “follow-up” questions, these questions would necessarily have stemmed from the testimony of the witness, and by definition would not have addressed new material. Accordingly, it is not just in a technical or legalistic sense that the Defence submits that Witness D04-07's evidence was completed. He had quite literally been asked every conceivable question that the parties and participants had in mind for him.

17. In such a context, the Defence submits that, having been questioned by both the Defence and Prosecution, and all the authorized and/or conceivable questions of the LRV's having been put to him, the testimony of Witness D04-07 was completed, and should be assessed in the same manner as all other testimonial evidence heard in the present case.

(b) The testimony of Witness D04-07 is and should remain part of the trial record

²⁷ See, for example, ICC-01/05-01/08-T-249-CONF-ENG, p. 15-17; ICC-01/05-01/08-T-249-CONF-ENG, p. 50-51; ICC-01/05-01/08-T-250-CONF-ENG, p. 40-41; ICC-01/05-01/08-T-250-CONF-ENG, p.61.

²⁸ Article 68(3).

²⁹ ICC-01/04-01/07-T-127-RED-ENG, p. 41: LRVs “are not objective or subjective allies of the prosecutor. They are simply seeking to better inform themselves within the framework of the representation of the interests of their clients.”; ICC-01/04-01/07-T-87-RED-ENG, p. 26, 33: It is not the role of the LRVs to “reinforce the Prosecution team”; The LRVs are not supplemental prosecutors or “part two of the Prosecution”.

³⁰ ICC-01/05-01/08-1023, para. 17: “The Trial Chamber firstly recalls that victims are participants rather than parties to the trial and shall not be considered as a support to the prosecution.”

³¹ ICC-01/05-01/08-1023, para. 20.

³² ICC-01/05-01/08-2308-CONF; ICC-01/05-01/08-2309-CONF.

18. As is clear from the matters raised above, it is the primary contention of the Defence that Witness D04-07's evidence is complete both technically, and as a matter of practical reality. Nonetheless, the Defence will address the question of how a Chamber should approach the issue of partially completed testimony in any event.

19. The Defence firstly observes that it is by no means unheard of for witnesses to die, fall sick or become unavailable for other reasons, before they have finished their evidence. There is no absolute rule that in such circumstances, evidence should be disregarded. It is rather a question of degree. Secondly, the Defence observes that the tribunal of fact in the instant case is a body of professional Judges who are more than capable of determining whether they have sufficient material to weigh a witness' evidence. The Chamber's observations to the Prosecution in this case are, in the submission of the Defence, a plain indication that it had heard enough to make any such determination. Lastly, the Defence observes that the examination of this witness was very full, and, on any version of events, did not have long to go.

20. Whilst neither the Rome Statute nor the Rules of Procedure and Evidence provide guidance as to how a Chamber should characterize incomplete testimony, this situation has previously arisen in other cases before international tribunals. For example, Milan Babić committed suicide while testifying as a Prosecution witness in the *Martić* case, before the completion of his cross-examination by the Defence. Despite having no clear procedural guidance, the Trial Chamber turned to general principles governing the admission of evidence, stating:³³

The Trial Chamber notes that neither the Statute nor the Rules provide for the set of circumstances with which the Trial Chamber is faced. In particular, Rule 90 of the Rules, which deals with the testimony of witnesses in court, does not regulate any possible consequences of an incomplete examination of a witness, whether the testimony becomes incomplete at the time of examination-in-chief, or during cross-examination. Hence, in assessing the matter at hand, the Trial Chamber will revert to the general rule as expressed in Rule 89(B) of the Rules.³⁴

³³ *Prosecutor v. Martić*, IT-95-11-T, Decision on Defence Motion to Exclude the Testimony of Milan Babić, Together with Associated Exhibits, from Evidence, 9 June 2006, para. 11.

³⁴ Rule 89(B) of the ICTY Rules of Evidence and Procedure provides: "(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law."

21. The Trial Chamber also looked at other principles of evidence in international and domestic jurisdictions,³⁵ as well as factors the ICTY Appeals Chamber considered when determining reliability, including: whether the evidence was given under oath; whether the evidence was given in court with professional, double-checked simultaneous translation; whether the evidence is corroborated by other evidence; and whether the evidence was subject to **any** cross-examination.³⁶ The Trial Chamber noted that: “[a]s a principal matter, the Trial Chamber finds that an irregularity in one of several indicia of reliability does not necessitate a conclusion that the evidence has no probative value so as to render it inadmissible.”³⁷

22. The Trial Chamber then analysed the incomplete testimony provided by Mr. Babić in accordance with the following criteria:³⁸

- (a) the importance of the evidence;
- (b) whether there was an adequate opportunity for cross examination and the stage of cross-examination that was reached;
- (c) whether the completed cross examination was sufficient to fairly judge the witness’ credibility;
- (d) whether the interruption of cross examination could have been avoided or evidence of the same value was reasonably available some other way;
- (e) the presence of the witness before the accused and the Court;
- (f) defence’s opportunity to put prior inconsistent statements before the Court;
- (g) defence’s submissions on any areas of cross examination which were not pursued before the interruption;
- (h) a common sense realistic assessment of the likely impact cross examination would have if completed;
- (i) whether the limitations on cross examination could be remedied or ameliorated, such as by admitting prior testimony; and
- (j) the existence of evidence corroborating the witness’ testimony.

23. In light of the amount of cross-examination that had occurred, the Trial Chamber concluded that the Defence had been given ample opportunity to cross-examine the witness.³⁹ It concluded “there is no reason to find, *proprio motu*, that maintaining the evidence as part of the trial record is antithetical to and would seriously damage the proceedings;⁴⁰ rather, it would consider all circumstances surrounding the testimony when determining the weight to attach to his testimony. The Appeals Chamber confirmed the Trial Chamber’s decision, noting that that right of cross-examination is not absolute. In particular,

³⁵ *Prosecutor v. Martić*, IT-95-11-T, Decision on Defence Motion to Exclude the Testimony of Milan Babić, Together with Associated Exhibits, from Evidence, 9 June 2006, paras. 12-13.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*, para. 23.

³⁹ *Ibid.*, para. 57.

⁴⁰ *Ibid.*, para. 78.

it referred to the Trial Chamber's reliance on principle established by the European Court of Human Rights that "a complete absence of, or deficiency in, the cross-examination of a witness will not automatically lead to exclusion of the evidence".⁴¹

24. As such, even when cross-examination by the adverse party was incomplete (unlike in the case of Witness D04-07) the interrupted testimony was deemed admissible and remained as part of the trial record.

25. This approach was also adopted at the ICTR. In the *Media* case, a Prosecution witness had completed the vast majority of his cross-examination by the Defence teams, before becoming unavailable. In dismissing a Defence request to strike the testimony, the Trial Chamber considered that "there was substantial cross-examination of issues raised by Witness FS in examination-in-chief and of matters relating to his credibility"⁴², and directed that the testimony remain in the record.⁴³

26. In the *Haradinaj* case, the Trial Chamber did exclude the evidence of a Prosecution witness who was dismissed by the Chamber mid-testimony due to health concerns arising from his obvious distress at testifying.⁴⁴ Unlike Witness D04-07, however, the adverse party was "not given the opportunity to cross-examine the witness on the substance of his testimony" and there were "clear inconsistencies between the witness' evidence and his prior statements".⁴⁵ The Trial Chamber also considered the witness' health issues, and the fact that he had suffered from visual and auditory hallucinations. The Chamber could not exclude that these health issues had not affected his recollection and credibility of his testimony.⁴⁶ In all the circumstances, the prejudice to the accused of accepting the testimony outweighed its probative value, and it was excluded.⁴⁷ As such, only when an ICTY Trial Chamber had significant concerns concerning the credibility of the evidence, and the adverse party had been given no opportunity to cross-examine on the substance of the testimony, was the testimony excluded in order to preserve the rights of the accused.

⁴¹ *Prosecutor v Martić*, IT-95-11-AR73.2, Decision on Appeal Against the Trial Chamber Decision on the Evidence of Witness Milan Babić, 14 September 2006, paras. 12, 20. The Appeals Chamber took particular note of the ECHR jurisprudence in this regard, *see* paras. 19-20.

⁴² *Prosecutor v. Nahimana et al.*, ICTR-99-52-T, Decision on the Ngeze Defence's Motion to Strike the Testimony of Witness FS, 16 September 2002, para. 5.

⁴³ *Ibid.*, disposition.

⁴⁴ *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Reasons for Trial Chamber's Decision to Exclude the Evidence of Witness 55 Under Rule 89(D) and to Deny His Testimony Pursuant to Rule 92 *Quater*, 14 December 2007.

⁴⁵ *Ibid.*, paras. 11-12.

⁴⁶ *Ibid.*, para. 13.

⁴⁷ *Ibid.*, para. 15.

27. Applying the test set out by the Trial Chamber in the *Martić* case to the witness in point here, the Defence simply notes: Witness D04-07 testified under oath. His evidence was given with the assistance of professional, verified simultaneous translation, and the transcripts of his evidence have been reviewed and edited. Having completed his examination by the calling party, the adverse party (the Prosecution) examined him at length, and completed its examination. The Prosecution was given the opportunity to question him on all aspects of the substance of his testimony, and questions were put to him to test his credibility, both by the Prosecution and the Chamber.⁴⁸ He was questioned with the aid of contemporaneous documents which were alleged to contradict his testimony,⁴⁹ and also on internal working documents of the Registry which alleged to document his recent interaction with the Court.⁵⁰ In short, there is nothing particular to Witness D04-07's evidence, his health, or demeanor which suggest it would be unfair or unsafe to rely on his testimony.

28. Ultimately, the weight to be attached to evidence is a matter for the Chamber, however, any suggestion that Witness D04-07's testimony should be ascribed less weight because of incomplete questioning on the part of the LRVs is inconsistent with the constitutive documents and jurisprudence of the Court which requires that the views and concerns of victims be presented in a manner which is not prejudicial to the rights of the accused.⁵¹ The rationale behind ascribing less weight to incomplete testimony is insufficiency of "testing" in order to ensure its credibility and reliability. As discussed above, no argument can be made that it is the role of the LRVs to "test" the evidence of Defence witnesses, rather they are permitted to question witnesses with a view to eliciting information relevant to the victims' interests.⁵² There is no sensible basis for suggesting, moreover, that they would have asked him anything new or different or elicited any novel responses.

29. Witness D04-07's testimony is also important in the Chamber's search for the truth of the events in question. [REDACTED], and as such he gave direct testimony about many central questions in dispute between the parties. Witness D04-07 testified about the arrival

⁴⁸ See, for example, ICC-01/05-01/08-T-249-CONF-ENG, p. 15-17; ICC-01/05-01/08-T-249-CONF-ENG, p. 50-51; ICC-01/05-01/08-T-250-CONF-ENG, p. 40-41; ICC-01/05-01/08-T-250-CONF-ENG, p.61.

⁴⁹ ICC-01/05-01/08-T-250-CONF-ENG, p. 18.

⁵⁰ ICC-01/05-01/08-T-249-CONF-ENG, p. 12-17.

⁵¹ See, for example, Article 68(3) and Rule 89(1).

⁵² ICC-01/05-01/08-1023, para. 20.

of Bozizé's troops in Bangui;⁵³ the combat following their arrival;⁵⁴ the arrival of the MLC contingent in Bangui, including how and when they arrived;⁵⁵ the logistics given to the MLC troops upon their arrival, including uniforms and communication equipment;⁵⁶ the relationship between the MLC troops and the FACA soldiers;⁵⁷ the sharing of radio frequencies between the MLC and the FACA troops;⁵⁸ the composition of the CCOP and its sub-units;⁵⁹ the role of Colonel Thierry Lengbe;⁶⁰ the command system in place during the events;⁶¹ the structure of the various services and armed forces;⁶² the mixing of FACA troops and MLC troops in the field;⁶³ the gathering of intelligence during the events;⁶⁴ the languages spoken in the CAR and in Zongo, and the witness' own ability to speak Lingala;⁶⁵ the composition, dress, recruitment, and training of Bozize's troops;⁶⁶ detailed testimony of the crimes Bozizé's troops committed, including the names of perpetrators and victims known to him;⁶⁷ and ethnic realities and the root of hostility between different groups of Central Africans.⁶⁸ The details given by Witness D04-07 find corroboration not only in the evidence of numerous Defence witnesses,⁶⁹ but is also consistent in significant part with much evidence presented during the Prosecution's own case.

30. The importance of Witness D04-07's direct testimony is magnified by the dearth of evidence led by the Prosecution from any witnesses with firsthand knowledge of the events in question. The Prosecution did not present a single FACA soldier (or member of the Karakos, Miskine's force, USP soldier, or any other loyalist soldier) who had been on the ground moving with the MLC during the events. The Prosecution's case against Mr. Bemba centred largely on the testimony of "victim-witnesses" or "crime-base witnesses". Of the 40 witnesses called during the Prosecution case, the majority claimed to be direct victims of the 2002-2003 events in the Central African Republic or direct witnesses to crimes. Of the

⁵³ ICC-01/05-01/08-T-250-CONF-ENG, 19-09-2012, p. 10-11.

⁵⁴ ICC-01/05-01/08-T-250-CONF-ENG, 19-09-2012, p. 11.

⁵⁵ ICC-01/05-01/08-T-250-CONF-ENG, p. 11-12.

⁵⁶ ICC-01/05-01/08-T-250-CONF-ENG, p. 14-16 and 20-25.

⁵⁷ ICC-01/05-01/08-T-250-CONF-ENG, p. 30, 31, 36.

⁵⁸ ICC-01/05-01/08-T-250-CONF-ENG, p. 24-26.

⁵⁹ ICC-01/05-01/08-T-250-CONF-ENG, p. 31-32, 38-40.

⁶⁰ ICC-01/05-01/08-T-250-CONF-ENG, p. 25-26.

⁶¹ ICC-01/05-01/08-T-250-CONF-ENG, p. 26, 27, 28, 31, 36, 37, 39, 40, 41.

⁶² ICC-01/05-01/08-T-250-CONF-ENG, p. 32, 35, 41, 42, 43.

⁶³ ICC-01/05-01/08-T-250-CONF-ENG, p. 42, 43, 55.

⁶⁴ ICC-01/05-01/08-T-250-CONF-ENG, p.31-40.

⁶⁵ ICC-01/05-01/08-T-250-CONF-ENG, p. 44, 45.

⁶⁶ ICC-01/05-01/08-T-250-CONF-ENG, p. 45-46

⁶⁷ ICC-01/05-01/08-T-250-CONF-ENG, p. 45-53.

⁶⁸ ICC-01/05-01/08-T-250-CONF-ENG, p. 53-54.

⁶⁹ See, for example, the testimony of Defence Witnesses D04-75; D04-49; D04-45; D04-19; D04-39; D04-56; D04-02; D04-03; D04-09; D04-06.

FACA soldiers called by the Prosecution, Witness 31 was working at the CCOP, and left the Central African Republic in November 2002 when he says the MLC were still based in large part at PK13,⁷⁰ and Witness 151 was also working as a liaison officer at the CCOP and was not on the ground with the MLC forces.⁷¹ In such circumstances, the importance of Witness D04-07's firsthand evidence of what was happening on the ground is amplified.

31. It is also important to note that despite aspects of Witness D04-07's testimony finding corroboration in other evidence on the record, his testimony is unique in terms of the role he occupied in the *régiment de soutien* of the FACA, working in the intelligence services and reporting directly to [REDACTED] at the CCOP.⁷² There is no basis, in the Defence submission, for not weighing the evidence of Witness D04-07 in the same manner as all other oral testimony in the case. The fact that the LRVs (whose role in discomfiting the witness the Chamber has noted) had not put their authorized questions to him should not result in less weight being ascribed to his testimony. Such an approach would be significantly prejudicial to the accused, particularly in light of the importance of this testimony described above.

D. RELIEF REQUESTED

32. Based on the above submissions, the Defence accordingly requests that the Chamber:

DECLARE that the testimony of CAR-D04-PPPP-0007 is complete, and a part of the trial record to be assessed in the same manner as other testimony evidence heard in the present case; or, in the alternative

DECLARE that the testimony of CAR-D04-PPPP-0007, notwithstanding his not being fully questioned by the Legal Representatives of Victims, is a part of the trial record, to be accorded the same weight as other testimonial evidence heard in the present case

The whole respectfully submitted.

⁷⁰ ICC-01/05-01/08-T-182-CONF-ENG, p. 9-10; ICC-01/05-01/08-T-183-CONF-ENG, p. 21.

⁷¹ ICC-01/05-01/08-T-172-CONF-ENG, p. 8.

⁷² ICC-01/05-01/08-T-248-CONF-ENG, p. 10, 12; ICC-01/05-01/08-T-249-CONF-ENG, p. 22.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 19th of July 2013
At The Hague, The Netherlands